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BAILMENT WITHOUT CATEGORIES: *QING* LEGAL NORMS, CHINESE DIASPORA FINANCE, AND THE COLONIAL RECONSTITUTION OF PRIVATE LAW IN MALAYA (C. 1820–1920)

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Abstract

This article examines how Qing legal norms governing entrustment shaped Chinese commercial practices in Malaya, and how British colonial courts subsequently re-characterised those practices within the framework of English private law. Under the Great Qing Legal Code, disputes over entrusted property were not organised through an abstract law of obligations but evaluated in terms of misuse, trust, and social order. These norms travelled with Chinese migrants and structured remittance, deposit, and partnership practices within diaspora networks. Colonial courts, however, translated these relationships into the categories of debt, bailment, and trust, typically classifying them as debtor–creditor relationships where funds were mixed or used. This article argues that this process did not merely clarify legal relations but transformed their normative character, with significant distributive consequences. The encounter reveals a deeper tension between relational and categorical legal orders and challenges assumptions about the universality of private law reasoning. The shift might also be said to have changed the Chinese diasporic subconsciousness of that which is important in commercial relationships.

Keywords: Qing legal system; Entrustment; Bailment; Chinese diaspora finance; Colonial legal transplantation; Comparative private law; Malayan legal history

I INTRODUCTION

Late Qing commercial practice did not lack sophistication; it lacked taxonomy. While systems such as Roman law developed explicit distinctions between deposit (*depositum*) and loan (*mutuum*), Qing law organised disputes around conduct rather than classification.[1] Property

* *The author is grateful to the library staff at the Faculty of Law, Universiti Malaya and Mr Philip Koh for lending him his extensive collection of Kyshe Reports. This article is inspired in part by the proposed reform to the law of bailment being undertaken as part of the current drive in Malaysia to reform its contract law, and in part, the growing interest in Southeast Asia in qiaopi.*

entrusted to another triggered expectations of accountability, but the legal system did not insist on a formal distinction between custody and authorised use.

This article explores what happened when such norms travelled. Chinese migrants to Malaya carried with them a deeply embedded concept of entrustment (寄托),[2] which structured remittance systems, merchant deposits, and kongsi finance. When disputes reached British colonial courts, however, these relationships were recast within the categories of English private law – notably trusts or bailment. In this translation, the moral and relational dimensions of entrustment were displaced by a classificatory logic centred on ownership, possession, intention, and risk allocation.

The core claim advanced here is that colonial adjudication did not merely apply law to Chinese practices; it re-described and transformed those practices, converting relationships of trust into relations of credit.

The scope of this work is thus not concerned, in the main, with the reception of Chinese customs which bore elements of Qing law in the Straits Settlements and then subsequently the Malay states. The reception of such customs was largely confined to matters loosely described as "personal law".[3] This work is directed at matters which extended beyond the relationships or matters which, from a colonial perspective, did not fall within "personal law". However, it is nevertheless the premise of this work that the migrant Chinese's perception of what is "personal law" differed from that held by the legal institutions.

II QING LEGAL NORMS OF ENTRUSTMENT

A. Absence of a General Law of Obligations

The late imperial Chinese legal order, as embodied in the Great Qing Legal Code,[4] did not construct a general law of obligations comparable to that found in Roman or modern civil law systems. There was no systematic taxonomy distinguishing contract, bailment, loan, or trust as discrete juridical categories. Instead, what modern lawyers would recognise as "civil" disputes were embedded within a broader penal–administrative framework, in which the primary concern of the state was the maintenance of social order rather than the articulation of abstract private rights.[5]

This structural feature has been emphasised by Philip C. C. Huang, who shows that Qing adjudication operated through what he terms a "third realm" of civil justice—neither purely

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1 Nancy Park, 'Officials and Chinese Justice: Public and Private Wrongdoing in Qing Law' (2020) 106 *T'oung Pao* 661.

2 For the purposes of this article, Malaya will be taken to encompass the Malay states and Straits Settlements generally.

3 See, eg, *Yeap Cheah Neo v Ong Cheng Neo* (1875) LR 6 PC 381.

4 The Code was the first Chinese legal text translated into a European language, published in 1810 as *Fundamental Laws of China* by Sir George Thomas Staunton. It became a key resource for European diplomats and scholars seeking insight into Chinese governance, influencing Western legal perceptions during the 19th century.

5 Kam C. Wong, 'Black's Theory on the Behavior of Law Revisited IV: The Behavior of Qing Law' (2000) 28 *International Journal of the Sociology of Law* 327; see also Philip C C Huang, 'Civil Adjudication in China, Past and Present' (2006) 32 *Modern China* 135.

penal nor purely private, but a hybrid in which magistrates resolved disputes pragmatically, often drawing on custom and moral reasoning rather than doctrinal rules.[6] Similarly, Zelin demonstrates that while contract-like practices were widespread and sophisticated, they were not underpinned by a general theory of obligation; instead, agreements were enforced through a combination of written instruments, commercial norms, and official intervention where misconduct was alleged.[7]

Within this framework, the law did not begin by asking what kind of legal relationship existed—whether a bailment, a loan, or a trust. Rather, it asked a different set of questions, grounded in conduct and social expectation:

- Had property been entrusted (付托 / 寄托) to another?[8]
- Had the recipient acted consistently with that entrustment?[9]
- If not, did the conduct amount to wrongful appropriation or abuse of trust?

The conceptual starting point, in other words, was not classification but relationship and behaviour.

This is particularly evident in cases involving the handling of money or goods. Where one party delivered property into the hands of another, the legal significance of the transaction did not turn on a prior categorisation of rights (for example, whether ownership had passed). Instead, liability arose if the recipient's conduct could be characterised as a breach of the expectations inherent in the entrustment. As Huang notes, magistrates were less concerned with defining legal forms than with determining whether a party had acted in good faith and in accordance with socially recognised obligations.[10]

The absence of a general law of obligations did not imply the absence of legal structure. On the contrary, Qing law embodied a functional distinction that maps closely onto what modern lawyers would recognise as the difference between custody and authorised use. Where property was given for safekeeping, the expectation was that it would be returned in specie. Where it was given for use, the obligation was to return an equivalent. Yet this distinction was not formalised into doctrinal categories. It remained implicit, to be inferred from the circumstances, the parties' understanding, and prevailing commercial practice.

Crucially, misuse of entrusted property could trigger consequences framed not merely as civil liability but as penal wrongdoing.[11] The Code contained provisions addressing forms of

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6 Philip C. C. Huang, 'Between Informal Mediation and Formal Adjudication: The Third Realm of Qing Civil Justice' (1993) 19(3) *Modern China* 251.

7 Madeleine Zelin, Jonathan K Ocko and Robert Gardella (eds), *Contract and Property in Early Modern China* (Stanford University Press, 2004) pt II.

8 Stephen Tensmeyer, 'Modernizing Chinese Trust Law' (2015) 90 *New York University Law Review* 710.

9 Until modern PRC law, the proper discharge of an entrustment contract (akin to contractual bailment) remains dependent on the terms of the entrustment. See Liang Zhao, 'International Recent Developments: China' (2018) 42(2) *Tulane Maritime Law Journal* 569, where the Supreme People's Court's case of *CASA China Ltd Shenzhen Haikou Branch v Shenzhen Zhongyi Freight Forwarding Co Ltd* (Supreme People's Court, 23 June 2017) was considered.

10 Sir George Thomas Staunton (n 4).

11 Y Cheng and H Du, 'On the Fundamental Characteristics and Formative Causes of Traditional Chinese Contractual Legal Institutions' (2007) 2 *Journal of Inner Mongolia University (Humanities and Social Sciences).*

misappropriation that, while not articulated in the language of "breach of trust," effectively served that function. Conduct that involved the unauthorised conversion or retention of entrusted goods could be prosecuted under headings such as theft or embezzlement-type offences. As a result, the boundary between civil and criminal responsibility was porous. A dispute over property could well escalate into a matter of punishment if the conduct was deemed sufficiently wrongful.

Indeed, as was observed:

> "A fixed concept was generated in the ancient people's mind: law was equivalent to punishment and vice versa. The initial meaning of written law pertained to penal law whose characteristics that penal law and public law were more emphasized than civil law and private law never changed ever since the written law was created. China's highest legal institution was invariably called the "Ministry of Punishment" before the political reform during the late-Qing dynasty in 1906 can be seen as an illustration."[12]

This orientation reflects a broader normative structure in which the law was concerned less with the allocation of risk between private parties than with the preservation of trustworthy social relations. Entrustment was not simply a transactional device but was embedded in a moral economy shaped by Confucian expectations of reliability, hierarchy, and good faith. The legal system reinforced these expectations by attaching serious consequences to their violation, even in contexts that would, in other systems, be treated as purely civil matters.

The result is a legal order in which entrustment operates as a central organising concept, but without being crystallised into a discrete doctrinal category. Instead of a general law of obligations, Qing law offers a normative framework of accountability, in which liability turns on whether a party has honoured or abused the confidence placed in him. This framework proved highly adaptable in practice, accommodating a wide range of commercial arrangements without requiring formal classification. At the same time, its reliance on context and moral evaluation meant that it did not generate the kind of conceptual clarity associated with systems built around abstract legal categories.

For present purposes, this absence of taxonomy is not a deficiency but a defining feature. It explains how Chinese migrants could carry with them a coherent set of expectations about the handling of entrusted property—expectations that were intelligible and enforceable within their own normative universe, even as they resisted translation into the categories of English private law.

B. Misappropriation as a Penal Concern

A defining feature of the Qing legal treatment of entrustment is that misappropriation was not conceptualised primarily as a civil wrong, but as conduct potentially attracting penal liability. Under the Great Qing Legal Code, the misuse of property placed in another's hands could be

12 R Zhang, 'Penal Culture and Practice' in *Traditional Legal Culture in China* (Springer, 2026) 52.

prosecuted under categories such as **theft (盗)** or offences analogous to **embezzlement (侵吞)**, depending on the circumstances and the degree of wrongful intent.[13]

This penal orientation reflects the broader structure of Qing law, in which the distinction between civil and criminal responsibility was not sharply drawn. As discussed above, disputes that modern systems would treat as matters of private obligation were frequently addressed within a framework that combined compensation with punishment. The critical question for the magistrate was not simply whether a party had failed to perform an obligation, but whether the conduct in question amounted to a morally culpable abuse of trust.

Where property had been entrusted, the recipient's position was therefore not merely that of a debtor or bailee in the technical sense, but of a person occupying a relationship of confidence recognised by both law and social norms. If that confidence was abused—by unauthorised use, concealment, or failure to return—the act could be characterised as a form of wrongful appropriation. In such cases, liability did not depend on the prior classification of the transaction (for example, whether ownership had passed), but on an assessment of intent, conduct, and context.[14]

The penal framing is particularly significant in relation to money. In a system where silver circulated in fungible forms and was frequently handled through intermediaries, strict proprietary tracing was often impracticable. Rather than resolving disputes through technical rules about ownership or segregation, Qing law addressed the problem by focusing on whether the holder of funds had acted dishonestly or contrary to the expectations of the entrustment. Where such conduct was established, the law responded not only by ordering restitution but also, where appropriate, by imposing punishment.

This approach is consistent with Zelin's analysis. She notes that Qing commercial practice relied heavily on reputation, bookkeeping, and contractual instruments, but that the ultimate sanction for serious misconduct lay in the possibility of official intervention framed in penal terms.[15] The threat of punishment thus functioned as a backstop to private ordering, reinforcing norms of reliability in commercial dealings.

The structural implication is important. In systems organised around a law of obligations, the misuse of entrusted property is typically analysed as a breach of duty, giving rise to remedies such as damages or equitable relief. In the Qing context, by contrast, the same conduct could be elevated into a matter of public concern, attracting punitive consequences. The legal system thereby treated the abuse of entrustment not merely as a failure between private parties, but as a disturbance of the moral and social order that the state was charged with maintaining.

This orientation helps explain the robustness of entrustment-based practices in late imperial Chinese commerce. The absence of a formal doctrine of bailment or trust did not always imply weak protection. On the contrary, the possibility that misuse could be construed as criminal behaviour imposed a powerful constraint on intermediaries. The effectiveness of this regime

13 See William C Jones, 'Theft in the Qing Code' (1982) 30(3) *American Journal of Comparative Law* 499; so-called property offences are contained in the section of the code administered by the Board of Punishments (刑部).

14 Ibid.

15 Huang (n 6).

did not depend on precise legal classification, but on the combination of moral expectation, reputational sanction, and the latent coercive authority of the state.

For present purposes, this penal dimension is critical. It underscores that Qing legal norms did not treat entrustment as a neutral allocation of risk, but as a relationship carrying heightened normative significance. When such norms travelled with Chinese migrants into Malaya, they brought with them an understanding of accountability that differed fundamentally from the private-law framework of the colonial courts.

It is suggested that the latter's insistence on categorising disputes as matters of debt or property thus entailed not only a change in legal form, but a reduction in the moral and punitive weight attached to the misuse of entrusted property. Putting it more bluntly, the divide between private law and public law in substance and enforcement is lost on the diaspora.

C. Functional Distinction Without Doctrine

Notwithstanding the absence of a formal taxonomy of obligations, Qing practice consistently embodied a functional distinction between custody and authorised use. Where property was entrusted without a right of use, the expectation was that it would be returned in specie; where use was contemplated or permitted, the obligation shifted to the return of an equivalent value.[16] In economic terms, the distinction closely parallels that between bailment and loan, even though it was never articulated in those doctrinal terms.

Enforcement likewise reflected this non-doctrinal structure. Disputes were mediated through a combination of custom, local adjudication, and the shadow of penal sanction under the Great Qing Legal Code. The absence of explicit classification did not preclude effective regulation. Rather, it allowed the system to accommodate a wide range of commercial practices while maintaining a clear normative boundary between acceptable use and wrongful appropriation.

III TRANSPLANTATION TO MALAYA – DIASPORA PRACTICE

Chinese migrants to the Straits Settlements and the Malay States did not arrive as blank slates in legal terms. They carried with them a set of normative expectations about entrustment, shaped by late imperial practice under the Great Qing Legal Code.[17] In the absence of familiar institutions and in a colonial environment where access to formal courts was often limited or strategically avoided, these norms were reproduced and adapted within diaspora establishments.

Three sites are particularly significant.

First, remittance systems,[18] often organised through native-place associations and commercial intermediaries, allowed migrants to send earnings back to families in China. Funds were handed

[16] Ibid.

[17] In Gengwu Wang, 'Letters Live: Examine Chinese Migrant Families Through Migrants' Letters from the 1900s to the 1940s' (PhD Dissertation, University of Minnesota, 2024), the same phenomenon is observed from migrants from the Siyi district in China to the US.

[18] Remittances were almost entirely delivered by Qiaopiju 僑批局, or the so-called overseas letter office, is a general name for a type of business firm that appeared during one of the great waves of Chinese migration in the late 19th century. These overseas remittance firms of course had their dialect-based – for example, the letter agency (piju 批局), silver letter office (yin xinju 銀信局), overseas letter office (qiao xinju 僑信局), letter

to agents[19] who arranged payment through networks extending across the South China Sea. As Wang Gungwu has shown, these systems depended less on formal legal enforcement than on continuity of relationships and mutual recognition within dialect communities.[20] Although money received by remittance agents was typically pooled[21] and used in ongoing commercial operations, migrants understood the transaction as one of entrustment, carrying an obligation of faithful transmission rather than merely repayment.

Second, merchant "deposits" with shopkeepers performed both custodial and financial functions. Labourers and small traders frequently left surplus funds with established merchants for safekeeping or convenience. In practice, these funds were rarely held idle. Shopkeepers might deploy them in trade, extend credit, or incorporate them into circulating capital. Yet, as studies by Yen Ching-Hwang suggest, the social understanding of these arrangements did not map neatly onto a loan.[22] And, I would suggest, as an investment. The expectation remained that the merchant would account for and return the funds on demand, and failure to do so was framed as a breach of trust rather than a mere inability to repay a debt (or a simple failure of an investment).

Third, kongsi organisations—collective enterprises in mining, agriculture, and commerce—embodied entrustment at a group level. Members contributed capital to a common pool managed by elected or recognised leaders. These funds were explicitly intended for use in productive activity, placing them closer, in economic terms, to a loan or partnership contribution. Nevertheless, the relationship between members and managers was structured by strong expectations of loyalty, accountability, and good faith, enforced internally through communal mechanisms. Kongsi governance relied heavily on collective discipline and shared norms, rather than formal legal remedies.[23]

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office (xinju 信局), remittance office (huidui ju 匯兑局), remittance letter office (huidui xinju 匯兑信局), remittance firm (huidui zhuang 匯兑莊), overseas letter shop (qiaopi guan 僑批館), and letter shop (xin guan 信館). See Lane J Harris, 'Overseas Chinese Remittance Firms, the Limits of State Sovereignty, and Transnational Capitalism in East and Southeast Asia, 1850s–1930s' (2015) 74(1) *Journal of Asian Studies* 129.

19 Over 1,000 remittance houses operated in the Malaya/Singapore region before World War II, using three primary channels: remittance houses, postal services, and banks. Documentary evidence from the *Straits Times* (Singapore, 1 May 1939) and archival correspondence between remittance houses and the Post Master General of Malaya records disputes over the right to "club" packets — bundling multiple remittances — which was an efficiency practice the colonial postal authorities sought to prohibit to channel business through the official post. See Cheong Kee Cheok, Lee Kam Hing and Poh Ping Lee, 'Chinese Overseas Remittances to China: The Perspective from Southeast Asia' (2013) 43(1) *Journal of Contemporary Asia* 75.

20 Wang Gungwu, 'Southeast Asian Chinese and the Development of China' (1994) 2(2) *Asian Journal of Political Science* 1.

21 This is commonplace with both large and small remittance houses. Small which had no cross-border connections would pass the remittances they collected to the larger remittance houses for onward transmission. Cheong, Lee and Lee (n 19) 75 referred to a couple of examples. For instance, Chop Chin Joo Seong in the small fishing town of Kuala Selangor sent what it had collected to the larger Chop Eng Joo in Kuala Lumpur. See Hoy Chan and Co. in Kuala Lumpur sent its remittances to Chop Hock Thye Hoe in Singapore. Primary source: Nanyang Chinese Exchange and Remittance Association (NCERA), 1948 Annual Volume 2, Singapore 82.

22 Ching-Hwang Yen, *The Chinese in Southeast Asia and Beyond: Socioeconomic and Political Dimensions* (World Scientific, 2008) ch 11.

23 See generally Wei Chin Wong, *Governing Chinese Secret Societies in Colonial British Malaya, 1786–1900* (Palgrave Macmillan, 2025).

Across these domains, enforcement rested on a combination of reputation, clan[24] or association authority, and network-based trust. A merchant or agent who defaulted risked exclusion not only from a single transaction but from an entire web of commercial and social relationships. Information travelled quickly within dialect and native-place networks, creating powerful incentives to honour obligations. This mode of enforcement echoes the Qing legal emphasis on moral accountability, even in the absence of direct state intervention. Having said that, such "enforcement" is not foolproof given the social influence and the power imbalances that existed in the highly stratified diasporic communities.

At the same time, the economic reality of these arrangements introduced a persistent ambiguity. Funds entrusted to intermediaries were frequently pooled, commingled, and put to productive use, blurring the line between custody and credit. From one perspective, such practices resemble a debtor–creditor relationship: the intermediary uses the funds and undertakes to return an equivalent. From another, they retain the character of entrustment (but no longer "bailment"), grounded in personal obligation and expectations of faithful handling.

This duality produces the central tension that runs through diaspora finance. The same transaction could simultaneously exhibit features of custody and loan, depending on whether it is viewed through a relational or a classificatory lens.

For participants operating within Qing-derived normative frameworks, the absence of strict segregation or the use of funds did not necessarily alter the character of the relationship. Entrustment could coexist with circulation. For colonial courts applying English private law, however, these same features were decisive indicators of a loan. It is this divergence—between lived practice and legal classification—that would become critical when disputes moved from the domain of community enforcement into the arena of formal adjudication.

I would suggest that that perception was felt by the communities who would tend to rely on clans and dialect associations to resolve their disputes.[25] Only more serious disputes are taken to the courts of law.[26] It is submitted that despite the many disputes concerning monies being entrusted for various purposes, as remittances to loans, resort to the common law was rarely made. The communities' perception is not unfounded.

IV COLONIAL COURTS AND THE PRIVATE LAW LENS

British courts in Malaya were institutionally committed to categorisation. They required clear distinctions between:

- bailment (custody),
- trust (proprietary obligation), and
- debt (personal obligation).

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[24] On the role of clans, see a newspaper report at *Sin Chew Jit Po* (Singapore, 15 May 1939).

[25] See Ching-Hwang Yen, *A Social History of the Chinese in Singapore and Malaya, 1800–1911* (Oxford University Press, 1986) 49. Yen's research of one association between February 1890 to April 1904 showed that it engaged in arbitration in 142 cases: 68 related to debt, and 58 related to business disputes.

[26] Ibid 48.

There was, admittedly, a window in the early years of colonial occupation where Chinese customs (though not Qing law) were permitted to apply alongside legal obligations easily recognisable in the common law. Tan Cheng Han[27] referred to a promissory note case in 1883 in Penang where the following was recorded by Ford J. in the Judge's book.[28]

April 13, 1883.

Lim Guan Teet v Yew Boh Neo & anor.

Action on a Promissory Note.
Execution denied.
Thomas, for Plaintiff.
Defendant in person.
By consent of both parties, if plaintiff goes to swear according to Chinese custom by cutting off head of a cock[29], and burning joss sticks before the temple in Pitt Street, he shall have verdict, if plaintiff refuses to do so, there will be verdict for defendants. The Interpreter of the Court directed to accompany the parties. Arrangement tumbles through, priest of temple declining to allow. April 18th. Verdict by consent for $150.

However, the substantive cause of action was not determined by reference to Qing law or customs, only the form of the remedy.

A. Bank Deposits as Debt: The Governing Analogy

The leading authority of *Foley v Hill* established that money deposited with a banker becomes the banker's property.[30] That act of depositing creates or at least is enabled by the relationship of debtor and creditor. There, the House of Lords held that money deposited with a banker becomes the banker's property, leaving the customer with a personal claim in debt rather than a proprietary interest.

The importance of this doctrinal positioning is illustrated vividly in the Malayan decision of *N.N. Sockalingam Chettiar v A.R.S.P. Palaniappa Chettiar* (1934),[31] where the court considered whether sums deposited by migrant Indian workers with a Chettiar firm in Malaya constituted money "lent" or "deposited" for limitation purposes. The court treated the relationship between banker and customer as one of debtor and creditor, expressly relying on *Foley v Hill.* Huggard CJ observed that the relation "is one of debtor and creditor, with a superadded obligation arising out of the custom of bankers to honour the customer's drafts." The judgment repeatedly emphasised that the deposited funds had been mixed with the firm's business capital and used in commercial operations, thereby reinforcing the classification of the transaction as debt rather than entrustment.

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27 Cheng Han Tan, 'Private Ordering and the Chinese in Nineteenth Century Straits Settlements' (2016) 11(1) *Asian Journal of Comparative Law* 27.

28 JWN Kyshe, *Cases Heard and Determined in Her Majesty's Supreme Court of the Straits Settlements, 1808–1884* (Singapore and Straits Printing Office, 1885) vol 1, xxxv.

29 Jonas Daniel Vaughan, *The Manners and Customs of the Chinese of the Straits Settlements* (Oxford University Press, 1971) 92 observed that the Chinese "consider no oath binding on their consciences unless they cut a cock's head off, or burn sacrificial paper, or let a saucer fall on the floor and shiver to pieces; each form is emblematical of the dire end the operator is sure to meet if he tells a lie." Cited by Tan (n 27).

30 (1848) 2 H.L.C. 28.

31 [1934] 1 MLJ 207.

Yet the facts of the case also reveal the persistence of older relational understandings. The plaintiff had placed money with the Chettiar firm not as an abstract investment but through kinship and trust-based arrangements involving family maintenance and commercial confidence. The account itself was transferred between firms and family members over time, while still being treated by the parties as carrying continuing obligations of accountability. What the colonial court re-described as a banker–customer relationship was, within the community's own normative framework, an arrangement of entrusted funds embedded in social relationships.

B. Mixing and the Denial of Trust

In *Re Hallett's Estate*,[32] the English court emphasised:

- trust requires identifiable property,
- mixing complicates proprietary claims (though equity may trace).

Colonial and subsequently Malayan courts applied this logic strictly. The absence of segregation means no trust (*Geh Cheng Hooi & Ors v Equipment Dynamics Sdn Bhd and other appeals*).[33]

C. Partnership and kongsi disputes

By English common law convention, the courts have framed these under partnership law principles and fiduciary duties in limited form. In so doing, crucially obligations were legalised, not moralised.

The decision in *Re Chops Loh Kee Seng and Loh Chee Seng*[34] further illustrates the difficulties colonial courts encountered when confronted with Chinese commercial forms organised through relational rather than categorical principles. The dispute concerned rubber estates developed through kongsi arrangements in which land was formally registered in the names of certain individuals or firms but allegedly held "for and on behalf of the partners" according to internally recognised shares. The case reveals a structure in which legal title, management, beneficial ownership, and family representation were separated and layered across multiple actors. Such arrangements do not fit neatly within the categories of English partnership or trust law, even though the colonial court necessarily analysed them through precisely those concepts.

The judgment demonstrates the broader process of legal re-description explored in this article. The kongsi was not treated as an autonomous normative institution governed by Chinese commercial understandings, but translated into the language of bankruptcy, equitable ownership, fraud, and partnership shares. At the same time, the court's repeated concern with finality and the prevention of "vexatious" re-litigation reflects a deeper discomfort with the fluid and continuing character of relational claims within diaspora commercial networks. As with migrant remittances and merchant deposits, the colonial legal system responded to ambiguity

[32] (1879) 13 Ch 696.
[33] [1991] 1 MLJ 293.
[34] [1936] 1 MLJ 67; the report itself uses the plural "chops". Given that *chop*—a loanword from Malay and ultimately from Chinese, denoting a seal, mark or trading house—had already entered the colonial commercial vernacular, the English pluralisation is a small but telling linguistic artefact of legal transplantation.

not by preserving the relational structure of the arrangement, but by converting it into forms legible within English private law.

V. THE TRANSFORMATIVE EFFECT OF CLASSIFICATION

A. From Moral Obligation to Legal Neutrality

The reclassification of diaspora financial relationships within colonial courts entailed more than a technical shift in legal analysis. It marked a transformation in the normative character of the obligation itself—from a morally charged relationship of entrustment, grounded in expectations of fidelity and reinforced by the shadow of penal sanction, into a legally neutral claim in debt.

Under Qing-derived norms, entrustment was embedded in a broader moral economy. To receive another's property, whether for safekeeping or transmission, was to assume a position of personal responsibility shaped by social expectations of honesty, reliability, and proper conduct. As discussed above, misuse could trigger not only restitution but potential liability under the Great Qing Legal Code, framed in terms that approached theft or embezzlement. The consequence was that obligations arising from entrustment carried a heightened normative weight: they were not merely promises to pay, but duties whose breach implicated one's moral standing and social legitimacy.

This normative structure persisted within diaspora practice. Remittance agents, merchants, and kongsi managers operated in environments where reputation functioned as both economic asset and disciplinary mechanism. As Wang Gungwu[35] and Yen[36] have shown, failure to honour entrusted obligations could result in exclusion from networks, loss of business, and damage to one's standing within the community. The obligation to return entrusted funds was therefore experienced not as a contingent financial liability, but as a binding moral commitment, backed by both social sanction[37] and the residual authority of Qing legal norms.

Colonial adjudication, however, operated within a fundamentally different framework. When such disputes came before British courts, they were recast through the categories of English private law. The central question became whether the relationship was one of bailment, trust, or debt, and—crucially—whether the recipient of funds had the right to use them. Where funds were commingled or employed in business, courts consistently characterised the relationship as one of debtor and creditor, following the logic exemplified in *Foley v Hill*.

This reclassification had the effect of stripping the relationship of its moral particularity. A debt, in English law, is a legally defined and morally neutral obligation; it is neither aggravated by the circumstances in which it arises nor transformed by the personal relationship between the parties. The debtor's failure to pay is a breach of a legal duty, giving rise to remedies in damages or insolvency proceedings, but it does not, in itself, carry the connotation of moral wrongdoing that attaches to the abuse of entrustment in Qing practice.

The contrast is not merely semantic. Under a regime of entrustment, the obligation is qualitative. It reflects the nature of the relationship and the expectations it generates. Under a

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35 Gungwu Wang (n 20).
36 Yen, *A Social History of the Chinese in Singapore and Malaya* (n 25).
37 Ibid.

regime of debt, the obligation is quantitative. It is reducible to a sum of money, recoverable according to established rules of priority and procedure. In moving from one framework to the other, the law alters not only how disputes are resolved, but what kind of obligation is recognised in the first place.

This transformation is particularly evident in cases of default. Within the diaspora's normative order, failure to remit entrusted funds could be understood as a betrayal of trust, attracting both social sanction and, in principle, penal consequences. But when these disputes are heard by the clan or dialect associations, as was commonplace, these associations did not have any penal power to enforce those norms in a manner befitting Qing's legal norms. Within the colonial legal order, conversely, the same failure is treated as non-payment of a debt, to be addressed through civil process.

The shift from moral censure to legal neutrality does not eliminate consequences, but it reconfigures them, replacing reputational and quasi-penal sanctions with formal remedies that are indifferent to the relational context.

As Benton has argued in a broader imperial context, such moments of translation involve not simply the application of one legal system to the practices of another. It is in substance a process of re-description in which the underlying meaning of those practices is altered.[38] In the present context, the colonial insistence on categorisation converts relationships of entrustment into fungible financial claims, thereby aligning them with the requirements of a system concerned with certainty, calculability, and the orderly distribution of loss.

The consequence is a subtle but significant redistribution of normative weight. What had been a relationship marked by trust, moral accountability, and the possibility of punishment becomes, under colonial law, a relationship defined by rights, liabilities, and procedural remedies. The law does not deny that an obligation exists; it recasts that obligation in a form that is legible within its own conceptual framework. In doing so, it transforms not only the legal outcome, but the social meaning of the transaction itself.

B. Insolvency and Risk Allocation

The reclassification of entrustment as debt had its most concrete and consequential effects in the context of insolvency, where legal characterisation directly determined the allocation of loss. The shift from a relational model of entrustment to a categorical model of debt did not merely alter doctrinal analysis. It redistributed economic risk among participants in diaspora financial networks.

Under Qing-derived norms, funds entrusted to an intermediary carried an expectation—if not a formally articulated rule—of priority in recovery.[39] This expectation flowed from the moral structure of entrustment. Property placed in another's hands was not understood as part of the recipient's general estate, but as something held subject to an obligation of faithful return.

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[38] Lauren Benton, *A Search for Sovereignty: Law and Geography in European Empires, 1400–1900* (Cambridge University Press, 2010).

[39] Emily Mokros, 'Communication, Empire, and Authority in the Qing Gazette' (PhD Thesis, Johns Hopkins University, 2016) <https://www.academia.edu/97694706/Communication_Empire_and_Authority_in_the_Qing_Gazette>.

Where misappropriation occurred, the response could escalate under the Great Qing Legal Code into forms of liability approaching theft or embezzlement. Even where formal priority rules were not codified, the normative force of entrustment supported a view that such funds ought, in justice, to be restored ahead of ordinary claims.

Within diaspora practice, as alluded to earlier, this expectation was reinforced by social mechanisms. In cases of financial distress, there was often strong pressure—whether through negotiation, mediation, or collective action—to ensure that entrusted funds, particularly remittances destined for families in China, were honoured as a matter of moral priority, even at the expense of other obligations.

Colonial law, by contrast, approached insolvency through a framework of formal equality among creditors, structured by established rules of priority tied to legal classification.[40] Once a transaction was characterised as creating a debtor–creditor relationship, the depositor's claim was reduced to that of an unsecured creditor, ranking alongside other unsecured claims and subject to *pari passu* distribution. The fact that the funds had originally been "entrusted," or that their intended purpose carried moral significance, was legally irrelevant unless it could be translated into a recognised proprietary interest, such as a trust.

The doctrinal logic underpinning this approach is consistent with principles exemplified in *Foley v Hill*, where money paid into a banker becomes the banker's property, leaving the customer with a personal claim in debt. In the absence of segregation or a clearly established trust, the claimant cannot assert a proprietary right to specific funds and therefore cannot claim priority in insolvency. The requirement of identifiable property, emphasised in cases such as *Re Hallett's Estate*, further limits the circumstances in which such priority can be achieved.

The practical consequence is stark. Under an entrustment model, loss is normatively directed toward the intermediary who has failed in his obligation, with strong expectations that entrusted funds will be restored in full. Under a debt model, loss is collectivised among creditors, and the depositor bears the risk of the intermediary's insolvency. The transformation from one model to the other thus entails a shift from relationship-specific accountability to system-wide risk distribution.

This shift also alters incentives. In a system grounded in entrustment, intermediaries face heightened pressure to safeguard funds, given the moral and potentially penal consequences of misuse. In a system grounded in debt, the risk of failure is partially externalised to creditors, who must rely on contractual protections or diversification rather than on the intrinsic character of the relationship. The law thereby moves from reinforcing trust through normative expectations to managing risk through formal rules of priority and distribution.

The broader implication is that the colonial reclassification of Chinese financial practices did not simply impose conceptual clarity; it reconfigured the economics of trust. By denying priority to claims grounded in entrustment unless they satisfied the technical requirements of trust law, colonial courts effectively subordinated relational expectations to the imperatives of a system designed for predictability and administrative efficiency. In doing so, they transformed not only

[40] The *pari passu* principle might be traced all the way back to the first attempt to deal with insolvency issues by statute; see 34 & 35 Hen. 8 c. 4, s. 2, a Henry VIII statute!

legal outcomes in cases of insolvency, but also the underlying allocation of risk within diaspora financial networks.

C. Evidentiary Reversal

A further, and often underappreciated, consequence of the colonial reclassification of entrustment lies in the allocation of the burden of proof. The encounter between Qing-derived norms and English private law did not simply change legal categories; it reversed the evidentiary baseline against which claims were assessed.

Within Qing practice, transactions involving the delivery of property into another's hands were generally approached against a background assumption of entrustment and accountability. Where one party handed over money or goods, the starting point—shaped by both legal and social norms—was that the recipient was under an obligation to account for and return what had been received. As Philip C. C. Huang emphasises, magistrates were less concerned with formal classification than with whether the recipient had acted in accordance with the expectations of the relationship.[41] The practical effect was that a claimant could invoke the fact of delivery and the surrounding circumstances to establish a prima facie case of entrustment, shifting attention to the conduct of the recipient.

This orientation was reinforced by the broader moral economy of Qing society. As Zelin notes, commercial dealings were embedded in networks of trust, where the receipt of property carried with it an expectation of proper handling. The absence of strict requirements of segregation or formal documentation did not undermine this expectation; rather, it reflected a system in which relational credibility substituted for documentary proof.[42] In such a context, the evidentiary burden lay, in practical terms, on the holder of the property to explain and justify any failure to return it.

Colonial courts in Malaya operated from a markedly different starting point. Applying the principles of English private law, they required claimants or plaintiffs to establish the specific legal character of the transaction. The mere fact of delivery was insufficient. To avoid classification as a debt, a plaintiff had to prove elements such as:

- an intention to create a trust or bailment,
- the absence of any right of use, and often
- the segregation or identifiability of the funds in question.

In the absence of such proof, the default position was that the transaction created a debtor–creditor relationship.

The result is an evidentiary inversion. Under Qing-derived norms, the claimant benefits from a presumption of trust, grounded in the fact of entrustment and the expectations it carries. Under colonial law, the claimant faces a presumption of debt, which can only be displaced by satisfying

41 Philip C. C. Huang and Kathryn Bernhardt (eds), *The History and Theory of Legal Practice in China* (Brill, 2014) ch 6.

42 Madeleine Zelin, 'A Deep History of Chinese Shareholding' (2019) 37(2) *Law and History Review* 325.

the technical requirements of trust or bailment. What had been a relational inference becomes a matter of formal proof.

This reversal has significant practical implications. It raises the threshold for claimants seeking to assert anything other than a personal claim in debt, particularly in contexts where transactions were informal, undocumented, or embedded in customary practice. Many diaspora arrangements—such as remittances or merchant "deposits"—were precisely of this kind. The evidentiary demands of colonial law thus tended to systematically favour reclassification as debt, not necessarily because this reflected the parties' understanding, but because alternative characterisations were difficult to prove within the available evidentiary framework. It was no surprise that the communities resorted to self-help or their clan or dialect associations.

More fundamentally, the shift reflects a deeper difference in legal orientation. Qing practice begins from relationship and expectation, allowing legal consequences to follow from the nature of the interaction. Colonial law begins from category and proof,[43] requiring the relationship to be fitted into predefined legal forms.[44] The evidentiary reversal is therefore not an incidental feature of the encounter between the two systems, but a direct consequence of their differing conceptions of what it means to establish a legal claim.

In this sense, the transformation effected by colonial adjudication operates not only at the level of substantive law, but also at the level of legal epistemology. It changes what must be shown, how it must be shown, and ultimately which claims are likely to succeed.

VI REFRAMING THE ENCOUNTER

The conventional account of colonial legal encounters in Southeast Asia presents English law as a force of clarification and rationalisation. On this view, indigenous or migrant practices—often described as informal, customary, or insufficiently defined—were rendered intelligible through the application of systematic legal categories such as contract, property, and trust. The introduction of these categories is taken to have produced greater certainty, predictability, and coherence in commercial life. Interestingly, that continues to be the way trade custom and usage are integrated into commercial law.

This article suggests a different reading. The issue is not that Qing-derived norms of entrustment lacked clarity, but that they were organised according to a different legal logic. Rather than structuring obligations through abstract categories, Qing practice relied on a framework centred on relationship, conduct, and moral expectation. Within that framework, the distinction between acceptable use and wrongful appropriation was intelligible and enforceable, even if it was not expressed in the language of bailment or debt. As scholars such as Philip C. C. Huang have shown, this mode of ordering was neither rudimentary nor incoherent; it was a functional system of regulation adapted to the social and institutional conditions of late imperial China.

43 As is the case with medieval common law – only where a claim (indeed the word "right" was rarely used) was said to fit within a "form of action", there was no remedy at common law. See generally John Baker, *An Introduction to English Legal History* (Oxford University Press, 5th ed, 2019).

44 Ibid, also known as "writs".

What colonial law introduced, therefore, was not clarity in the abstract, but a particular form of clarity—one grounded in classification, definition, and the systematic allocation of rights. The insistence on distinguishing between bailment, trust, and debt did indeed produce a more determinate set of legal outcomes, especially in contexts such as insolvency. But this determinacy came at a cost. To achieve this, colonial courts were required to reconfigure the relationships before them, translating them into forms that could be recognised under English private law.

In this sense, the shift is not merely one of terminology. Colonial law has substituted what the diaspora had considered important with something more impersonal and technocratic. Instead of focusing on the relationship between the parties and the obligations of trust arising from it, colonial courts focused on questions of ownership, intention, and whether the funds had been kept separate.

This transformation is particularly evident in cases where the same set of facts could plausibly support more than one characterisation. Under Qing-derived norms, the pooling and use of entrusted funds did not necessarily negate the obligation of faithful return. Under English law, those same features were treated as decisive indicators of a debtor–creditor relationship. What appears, from within the colonial framework, as a clarification of the legal position is, from another perspective, a reclassification that privileges one interpretation over others.

The broader implication is that clarity is not a neutral or purely technical achievement. It is produced through the adoption of a particular conceptual framework, which determines how relationships are described and what consequences follow from that description. In the Malayan context, the framework of English private law rendered Chinese commercial practices legible to colonial courts, but it did so by reshaping those practices in its own image.

VII CONCLUSION

Accordingly, the encounter between Qing norms and colonial law might better be understood not as a movement from ambiguity to clarity, but as a shift from one form of legal ordering to another. The former was socio-relational, context-sensitive, and morally inflected whilst the latter was categorical, rule-based, and oriented toward the systematic allocation of risk. The significance of this shift lies not only in its doctrinal consequences, but in its capacity to alter the way in which economic relationships were conceived, experienced, and enforced. The imposition of private law categories thus did not merely resolve disputes—it redistributed risk, diminished moral obligations, and reshaped commercial relationships within the Chinese diaspora.

Seen in this light, the contribution of colonial law was not simply to make Chinese practices clearer, but to make them different.

As Malaysia considers opening a new chapter to the law of bailment and custody in its law reform endeavours, it is perhaps good to remind ourselves of the mosaic of our diasporic histories.