

**INTELLECTUAL PROPERTY MOOT COURT PROBLEM****In Beijing Intellectual Property Court****Yang Jee****as PETITIONER****V.****Shirley Art Gallery****as RESPONDENT****Facts**

The following are undisputed facts:

**I**

1. Chien Chung (hereinafter referred to as “Chien”), a famous contemporary Chinese scholar and writer, passed away in 1998. He published many well-known novels and essays, including several influential pieces on the study of Chinese traditional classics. Chien is greatly admired by Chinese people for his profound knowledge of traditional Chinese culture, his unique views and keen perceptions about society, as well as his precise and witty style of writing. As a traditional Chinese scholar, he was also quite adept at the art of Chinese calligraphy. For this reason, Chien’s manuscripts are popular amongst collectors. Additionally, owing to his high achievements, a special school of study called “Chienism” gradually formed, which focuses on researching Chien’s works and thoughts.

2. Lee Fung (hereinafter referred to as “Lee”) has been the editor-in-chief of the famous magazine *Wide Angle* for more than 20 years. During his tenure, Lee established a sound friendship with Chien throughout which they had a continued correspondence. Chien wrote more than 100 letters to Lee, all of which were written in Chien’s beautiful Chinese Calligraphy with brush, a kind of traditional Chinese writing tool. Lee carefully preserved these letters as he knew what great influence Chien was in China and how precious those manuscripts would one day be.
3. After retirement, as he was getting older, Lee felt incapable of preserving his collections well and considered to transfer them to others. In 2013, when Yenny, the general manager of Shirley Art Gallery, visited Lee, she learned about Lee’s collection of Chien’s manuscripts. After Lee presented the originals of these letters, Yenny expressed her desire to purchase them. Lee sold all those letters to Shirley Art Gallery at RMB 500,000.
4. Shirley Art Gallery, an art company specialized in the purchase, exhibition and sale of artworks, took pictures of the letters and archived them electronically. In addition, they invited three Chienism experts and six media companies to attend an appreciation seminar featuring Chien’s letters. For the event, Shirley Art Gallery distributed DVDs containing the electronic copies of the letters to the guests without noting to keep the letters to themselves. The participating experts were very excited. They said that they had never seen such a large outflow of Chien’s letters. Each of them, the experts said, was not only an essay that could be enjoyed for its academic value, but it also a piece of calligraphic work that could be appreciated for its artistic value as well. A few days later, Fang Lun, an authority of “Chienism” from the United States, also received the photocopy of the letters from Shirley Art Gallery through email. He was so excited that he spent several days and nights writing a lengthy article annotating the letters.
5. The content of the letters is mostly related to details about the process of publishing Chien’s writings and also some views on current events or modern literary

celebrities. These incisive views of Chien's have never before been known to the public. The letters are valuable materials to the study of the "Chienism" since they provide insight into Chien's true character, temperament and quality. For example, he mentioned in one letter that

"History has always been written by the winner, and living longer is a way to win. The biography of Lu Xun<sup>1</sup> written by my own institute's colleague published three years ago never mentioned anything about his first wife. No one has ever talked about that in public although the private discussions have been heated both at home and overseas."

6. In another letter, when talking about the English version of *the Story of the Stone* by David Hawkes<sup>2</sup>, he wrote

"After reading, I found that the English version translated by Hawkes is much better than that by the Yangs<sup>3</sup>. However, I cannot tell the truth in public. How ironic is that!"

7. When it comes to the lies of officials, he satirized smartly as well saying

"Officials and lies are just the same as chickens and eggs. If you want to be an official, you must lie. In turn, if you lie, you will become an official. So lying is a sort of occupational fault for officials."

8. Among all the letters, there is also a manuscript by Shen Congwen<sup>4</sup> which was said to have hung in Chien's house and had been transferred to Lee as a gift.

9. The disclosure of Chien's personal letters soon became big news in the cultural field and was widely reported on by major media. Articles with titles such as "Chien Chung Commented on Lu Xun for First time in Letter", "Chien Chung Shows Sense of Humor in Manuscripts", "Chien Chung's Manuscripts Made Public Massively (pictures contained)", etc., discussed some details about the letters. Some reports even presented the full text of some manuscripts in the form of attached pictures.

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<sup>1</sup> One of the most highly regarded writers and thinkers of modern China, who passed away in 1936.

<sup>2</sup> Famous sinologist in Britain, Oxford University, also a great translator. He passed away in 2009.

<sup>3</sup> Famous translators in China who are a couple, passed away in 2009 (Yang) and 1999 (Yang's wife, Dai)

<sup>4</sup> Famous writer in China, passed away in 1988.

10. Before long, Shirley Art Gallery held a public exhibition of those letters in its exhibition hall, and priced the collection at RMB 10 million to sell. In order to garner more interest in the sale, the gallery uploaded some of the letters onto its official website, publicly available for viewing.

## II

11. Yang Jee (hereafter referred to as “Yang”), Chien’s widow, 100 years old, is the only heir of Chein. Both being famous writers, Chein and Yang shared almost the same social circle: most Chien’s friends are actually friends of their family. Yang’s essays have been sometimes published on *Wide Angle*, therefore, she is quite familiar with Lee and has kept correspondence with him.

12. Owing to enormous fame of Chein, his name, manuscripts and writings are always the objects of commercial activities and have been taken advantage of by all kinds of businesses, which annoys Yang so much. Yang wrote a letter to Lee in 1998 when Chein was seriously ill in which she specifically mentioned:

“There have been some evil fellows who had grabbed many letters and manuscripts of my husband, and published his biography without our permission, which discredits us. Please take care to preserve the letters in your hands to avoid them.”

13. Yang felt hurt deeply when she was informed that the letters in Lee’s hand had been made public. She wrote a public letter that says:

“I was shocked and hurt really hard by this. I can’t understand why the private letters between friends got sold publicly? Could all be sold as goods, including even personal privacy, trusts and emotions of years? It definitely cannot be accepted by me, a 100 year old me. I object to the selling and publishing of the letters resolutely. I hope that the relevant parties to stop the seminar and selling of the letters immediately. Otherwise, I’ll go to the court in person to protect me and my family.”

## Disputes

14. Yang has sued Shirley Art Gallery, claiming Shirley Art Gallery has infringed her and her husband's copyright and privacy right. She requests the court to order such act of infringement to cease and compel Shirley Art Gallery to compensate her for damages.

Appendix: Possible Relevant Statutes<sup>5</sup>

1. Copyright Law of People's Republic of China (2010).
2. Regulation for the Implementation of the Copyright Law of People's Republic of China (2013)
3. Tort law of People's Republic of China (2009)

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<sup>5</sup> Please understand that statutes provided here are just for convenience of participating teams, especially for international teams. Competitors are still expected to do your own research to find more legal authorities to support your views. English version of these statutes may be provided upon special request.