

# **FAMILY LAW FOR THE HONG KONG SAR**

**ATHENA NGA CHEE LIU**



香港大學出版社

HONG KONG UNIVERSITY PRESS

**Hong Kong University Press**  
14/F Hing Wai Centre  
7 Tin Wan Praya Road  
Aberdeen, Hong Kong

© Hong Kong University Press 1999

ISBN 962 209 492 9

All rights reserved. No portion of this publication may be reproduced or transmitted in any form or by any means, *electronic or mechanical*, including photocopy, recording, or any information storage or retrieval system, without permission in writing from the publisher.

Cover designed by Lea & Ink Design

Printed in Hong Kong by Caritas Printing Training Centre

---

# Contents

Preface	vii
Table of Cases	xi
Table of Legislation	xxxvii
 Part I:   Marriage and Its Termination	 1
1   Customary Marriage, Union of Concubinage and Modern Marriage	3
2   Dissolution under the Marriage Reform Ordinance	55
3   Marriage under the Marriage Ordinance	73
4   Divorce under the Matrimonial Causes Ordinance	99
5   Nullity and Judicial Separation	141
 Part II:   Children	 177
6   Status	179
7   Parentage	193

8	Parental Rights and Authority	211
9	Welfare of the Child	245
10	Children on Family Breakdown	275
11	Adoption	291
12	Wardship	321
13	International Child Abduction	333
 <b>Part III: Financial Provision for Family Members</b>		<b>349</b>
<hr/>		
14	Maintenance Obligations during Marriage	351
15	Money and Property on Divorce	363
16	Financial Provision for Children	413
17	Settlement, Consent Order and Variation	421
 <b>Part IV: Protection</b>		<b>437</b>
<hr/>		
18	Child Protection	439
19	Protection against Domestic Violence	459
 <b>Index</b>		<b>477</b>

---

# Table of Cases

## Hong Kong Cases

- Adoption Application, Re [1958] HKLR 150 296–297  
Agell v Agell, High Court, Action No 4 of 1977 (1977) 362  
An Infant, Re [1962] HKLR 167 297  
An Infant, Re, [1985] HKLY 512 300
- Baillieu v Baillieu, Court of Appeal, Civil Appeal Action No 149 of 1995 (1995) 381, 390, 399  
Baring v Baring [1992] HKLY 526 461  
Beynon v Beynon, District Court, Divorce Jurisdiction, Action No 614 of 1975 (1977) 382, 383  
Boulter v Boulter [1977–1979] HKC 282 278, 279, 286
- C (a minor) (wardship: medical treatment), Re [1994] 1 HKLR 60 224, 225, 328  
C (a minor), Re [1989] 2 HKLR 652 331  
C v C, Court of Appeal, Civil Appeal Action No 44 of 1988 (1988) 252  
C v C [1971] HKLR 56 158  
C v C [1990] 2 HKLR 183 viii, 364, 380, 385, 402  
C v C, [1977–1979] HKC 363 262, 383, 385, 402  
CCCY v CWL [1980] HKC 522 158, 159  
Chan Cheung-hing v Chan Tang-lan [1985] 2 HKC 316 370  
Chan Chiu-lam v Yau Yee-ping [1998] HKLRD 716 vii, 31, 37

- Chan Chuck-wai v Chan Chan Yin-kwan, District Court, Divorce Jurisdiction, Action No 245 of 1979 (1981) 382, 408
- Chan Chung-hing v Wong Kim-wah [1986] HKLR 715 7, 11, 12, 13, 18, 19, 21, 23, 67, 77
- Chan Chun-hon v Chan Lam Lai-bing, Court of Appeal, Civil Appeal Action No 43 of 1994 (1994) 466, 467, 468
- Chan Heung (an infant), Re, High Court, Miscellaneous Proceedings No 349 of 1983 (1983) 251
- Chan Kam-nga v Director of Immigration, 1997 AL No 104 (1998) viii
- Chan Lee-kuen v Chan Sui-fai [1966] HKLR 796 12, 80
- Chan Shin Sui-ping v Chan Din-tsang [1958] HKLR 283 79, 80
- Chan Tse-shi, Re [1954] HKLR 9 291
- Chan Wei-yin v Cheong Shun-chiu [1993] 2 HKLR 485 368
- Chan Wing-ming v Chan Li-li [1957] HKLR 474 126
- Chan Yu Wai-ming v Chan Cheak-wing, Court of Appeal, Civil Appeal Action No 123 of 1985 (1986) 128
- Chan Yue v Henry Leong Estate Ltd [1953] HKLR 66 291
- Chau Ming-cheong v R [1983] HKLR 187 442
- Cheung Lai-wah v The Director of Immigration [1997] 3 HKC 64 188
- Cheung Wong Kim-ching v Cheung Chai-kong [1991] 1 HKLR 698 362, 370, 385, 386, 392, 395, 396, 404, 405
- Cheung Yee-mong v So Kwok-yan [1996] 2 HKC 360 220
- Cheung Yuk-lin v Hui Shiu-wing (No 4) [1970] HKLR 119 382, 396, 397
- Chiu Kwai-fun v Lam Hing-keung, High Court, Miscellaneous Proceedings No 968 of 1985 (1985) 326, 333
- Cho Fok Bo-ying v Cho Chi-biu [1990] 2 HKC 269 422
- Chong Chui Yuk-ching v Chong Pui-cheong [1983] HKDCLR 1 22, 42, 77
- Chow Cheung Suk-king v Chow Yan-piu, Court of Appeal, Civil Appeal Action No 180 of 1984 (1984) 255, 256, 257, 259, 260
- Choy Kin-choy v Choy Chan Kai-ngar, Court of Appeal, Civil Appeal Action No 47 of 1993 (1993) 370, 371, 383, 409, 412
- Chung Kai-fun v Lau Wai-king [1966] HKLR 881 79
- D (an infant), Re [1962] HKLR 431 294, 295
- Director of Social Welfare v Lam Kwok-wah [1988] 1 HKLR 206 224, 329
- Director of Social Welfare v Tam [1987] HKLR 66 224, 328
- Fei Tai-chung v Gloria Fei, Court of Appeal, Civil Appeal Action No 170 of 1994 (1995) 380, 383, 398, 411 .

Fong Pak-kai v Fong Chue Yiu-ling [1995] 2 HKC 518 153  
Fung Ling Pui-sim v Fung Ning-sam, District Court, Divorce Jurisdiction,  
Action No 69 of 1981 (1982) 410

Gensburger v Gensburger [1968] HKLR 403 108  
Griggs v Griggs [1971] HKLR 299 104

H v H [1981] HKLR 376 388  
Hamlett v Hamlett [1996] 1 HKC 61 380, 382, 393, 405, 411, 470  
Ho Har-chun v Yiu Hon-ming, District Court, Action No 2381 of  
1970 12, 19, 22, 23  
Ho Lee Kam-wan v Ho Man, Court of Appeal, Civil Appeal Action No 78  
of 1988 (1988) 269  
Ho Tsz-tsun v Ho Au-shi (1915) 10 HKLR 69 30  
Ho Yiu-chuen Fong v Ho Wei-yiu [1986] HKLR 99 417  
Hon To Lai-chu v Hon Wing-chun [1985] HKLR 490 385  
Horton v Horton, High Court, Divorce Jurisdiction, Action No 19 of  
1983 (1984) 362  
Hudson v Hudson, District Court, Divorce Jurisdiction, Action No 1223  
of 1980 385  
Huen Sook Jong Miller v Stephen Henry Miller, High Court, Divorce  
Jurisdiction, Action No 6 of 1985 (1985) 362  
Hui I-mei v Cheng Yau-shing, Court of Appeal, Civil Appeal Action No 157  
of 1996 (1996) 369, 381, 383, 385, 395, 402, 408, 411  
Hui Shiu-wing v Cheung Yuk-lin [1968] HKLR 501 121  
Huthart (infants), Re, High Court, Miscellaneous Proceedings No 1037 of  
1981 (1984) 247, 251, 253, 262, 267

Ives v Ives [1967] HKLR 423 83

Julie Ong, Re, High Court, Miscellaneous Proceedings No 1895 of 1988  
(1989) 252, 260

K v W [1998] 1 HKLRD 402 363, 419  
Kam Leung Kit-ye v Kam Ying-fai, Court of Appeal, Civil Appeal Action  
No 194 of 1996 (1997) 368  
Kao Yeung Lun-kuk v Kao Cho [1975] HKLR 449 83  
Keiō Maruko v Yoshio Maruko, Court of Appeal, Civil Appeal Action  
No 32 of 1995 (1995) 367  
Kishen Das, Re (1933) 26 HKLR 42 5, 82  
Kwan Bui-lock v Isabella Stamm Lock, District Court, Miscellaneous  
Proceedings No 106 of 1979 125

- Kwan Chui Kwok-ying v Tao Wai-chun [1995] 1 HKC 374 19, 22, 26, 36, 37
- Kwan Kai-ming, Re, High Court, Miscellaneous Proceedings No 2996 of 1990 (1994) 199
- Kwok Micah (a minor), Re, High Court, Miscellaneous Proceedings No 3040 of 1984 (1985) 251, 253, 326
- L (an infant), Re [1989] 1 HKLR 614 299
- L v C, High Court, Miscellaneous Proceedings No 4167 of 1993 (1994) 191, 198
- L v L [1970] HKLR 556 251
- Lai Kin-fung (an infant), Re, District Court, Miscellaneous Proceedings No 401 of 1979 (1980) 259, 262
- Lai Lai-hing v Lai Kwai-ping [1995] 1 HKC 654 368, 380, 383, 411
- Lau Chu v Lau Tang Su-ping [1989] 2 HKLR 470 131, 421
- Lau Lap-che v Wong Sut-fan [1996] 1 HKC 165 411
- Law Lo Shiu-chun v Law Wing-chee, Court of Appeal, Civil Appeal Action No 130 of 1993 (1994) 388, 389
- Law Shi-ying v Law Kam-tai, Court of Appeal, Civil Appeal Action No 45 of 1994 (1994) 389
- Lee Cheuh-wah (an infant), Re, High Court, Miscellaneous Proceedings No 2678 of 1983 (1984) 252, 255, 261, 262
- Lee Ka-ming, Re, Court of Appeal, Civil Appeal Action Nos 162 & 163 of 1990 (1991) 187
- Lee Lan v Henry Ho, High Court, Miscellaneous Proceedings No 3441 of 1978 (1980) 19, 40, 42, 43
- Lee Wai-chu v Lee Yim-chuen, High Court, Miscellaneous Proceedings No 2678 of 1983 (1984) 277, 326
- Lee Yuen-sam v Lee Tang Hop-wo, High Court, Divorce Jurisdiction, Action No 14 of 1978 (1979) 111
- Leung May-ling v Leung Sai-lun [1997] HKLRD 12 26
- Leung Yuet-ming v Hui Hon-kit, Court of Appeal, Civil Appeal Action No 63 of 1994 (1994) 361
- Li Kao Feng-ning v Li Hung-lit, Court of Appeal, Civil Appeal Action No 58 of 1983 (1983) 110
- Li Wang-fat v R [1982] HKLR 133 441
- Lily Li v Patrick Wu [1956] HKLR 363 106
- Lindsay v Lindsay [1983] 2 HKC 302 109
- Liu Lau Oi-yuk v Liu Chian-hsiong, Court of Appeal, Civil Appeal Action No 126 of 1997 (1997) 255, 261, 263
- Lo Chun Wing-ye v Lo Pong-hing [1985] 2 HKC 647 277, 278, 279
- Lui Kit-chiu v Lui Kwok Hin-chau [1976] HKDCLR 51 42, 43



- Lui Sik-kuen v Lee Suk-ling [1992] 2 HKLR 371 433  
Lui Yuk-ping v Chow To [1962] HKLR 515 12, 28, 32, 245, 247, 262  
LYC (an infant), Re [1961] HKLR 491 297
- M, Re [1989] 2 HKLR 117 468  
Mark Leung, Re, High Court, Miscellaneous Proceedings No 142 of 1985 (1985) 255, 259, 261, 327  
Melwani v Melwani, Court of Appeal, Civil Appeal Action No 39 of 1986 (1986) 288  
Mok Po-sing v Lie Lie-khim [1996] 3 HKC 330 160, 172  
Mong Ka-hung (a minor), High Court, Miscellaneous Proceedings No 1908 of 1982 (1983) 253  
Moss v Moss, Court of Appeal, Civil Appeal Action No 145 of 1992 (1993) 382, 385, 393, 395  
Mr and Mrs C v Mr D, Guardian ad litem [1993] 2 HKLR 385 299, 311–312  
Murphy v Murphy, Court of Appeal, Civil Appeal Action No 56 of 1992 (1992) 366, 367, 374, 381, 390
- Ng Cheei-fai v Ng Han Lai-wah, Court of Appeal, Civil Appeal Action No 28 of 1980 (1980) 257  
Ng Kwok-hing, Re, High Court, Miscellaneous Proceedings No 2564 of 1994 (1996) vii, 22, 26  
Ng Shum (No 2), Re [1990] 1 HKLR 67 12, 18, 19, 24, 31, 46, 47  
Ng Ying-ho v Tam Suen-yu [1963] HKLR 923 13, 35  
Ngai Wong Yun-ping v Ngai Yun-lung, Court of Appeal, Civil Appeal Action No 50 of 1996 (1996) 368, 370, 371, 401, 410  
Ngao Tang Yau-lin v Ngao Kai-suen [1984] HKLR 310 380  
Nguyen Dang Vu v AG, High Court, Miscellaneous Proceedings No 4257 of 1993 (1994) 322, 323, 331  
NTH (an infant), Re [1996] 1 HKC 93 296
- Partridge v R [1977] HKLR 89 153  
Phillips, Re, High Court Adoption Nos 2 & 3 of 1985 (1986) 308
- R v Cheung King-po [1927] HKLR 104 291  
R v Sze Tin-sin [1987] 3 HKC 333 153  
R v Wong Tin Kau, 28 March 1996, *South China Morning Post* 220  
Ryker (infants), Re, High Court, Miscellaneous Proceedings No 1184 of 1980 (1982) 258, 277
- S v S, High Court, Miscellaneous Proceedings No 364 of 1998 (1998) 340, 341

- Savournin v Lau [1971] HKLR 180 104
- Seghin v Seghin, Court of Appeal, Civil Appeal Action No 274 of 1995 (1996) 258
- Shu Wing-li v Yeung Siu-ling, Court of Appeal, Civil Appeal Action No 42 of 1994 (1994) 161
- Sit Woo-tung [1990] 2 HKLR 410 187
- So Mei-chu v Wong Wai-anucha, High Court, Miscellaneous Proceedings No 3360 of 1990 (1991) 324
- T.M.H. an infant, Re (No 2) [1962] HKLR 316 327
- Ta Tran Thi Thanh v Ta Van Hung and other [1981] HKDCLR 37 104
- Tang Lai Sau-kiu v Tang Loi [1987] HKLR 85 12, 79
- Tang Lau Wai-chun v Tang Fung-fat [1986] HKLR 907 264, 265
- Tang Yung Wai-han v Kwing Pui-yung, Civil Appeal, Civil Appeal Action No 201 of 1985 (1986) 362
- Tao Chen Pi-o v Tai Hsiuo-ming, Court of Appeal, Civil Appeal Action Nos 37 and 38 of 1993 (1993) 388, 389
- Thomson v Thomson, Court of Appeal, Civil Appeal Action No 52 of 1991 (1991) 365, 380
- Trance v Walli, High Court, Miscellaneous Proceedings No 905 of 1988 (1988) 260, 322, 327
- V (infant), Re, Miscellaneous Proceedings No 477 of 1979 (1979) 326, 344
- V v V, Court of Appeal, Civil Appeal Action No 200 of 1980 (1981) 362
- W (an infant), Re [1971] HKLR 219 307
- W v W [1970] HKLR 4 106, 158
- W v W [1981] HKC 466 258
- Wong Che-wa v Wong Chung Yee-fong, High Court, Divorce Jurisdiction, Action No 64 of 1981 (1983) 362
- Wong Chiu Ngar-chi v Wong Hon-wai [1987] HKLR 179 252, 277, 278, 324, 326
- Wong Choi-ho, Re [1969] HKLR 391 10, 13, 14, 25, 31, 32
- Wong Kam-ying v Man Chi-tai [1967] HKLR 201 6, 11, 13, 21, 33, 34, 37
- Wong Leung-see v Wong Lo Lung-kwan [1985] 2 HKC 228 130
- Wong Sin-yee v Cheung Si-yan, Court of Appeal, Civil Appeal Action No 222 of 1996 (1997) 391-392, 395, 411
- Wong Tai-hing v Wong Lau Yuk-ling, District Court, Divorce Jurisdiction, Action No 776 of 1983 (1984) 368
- Wong Tat-lun v Wong Chan Siu-ping, Court of Appeal, Civil Appeal Action No 111 of 1987 (1987) 133

- Wong Wong, Re, High Court, Probate Jurisdiction No 1797 of 1998 (1998) 26
- Wong Yee-ling v Ng Tung-hoi [1970] HKLR 183 245, 247, 262
- Wong Yip Yuk-ping v Wong Sze-sang, Court of Appeal, Civil Appeal Action No 116 of 1985 (1985) 251, 256, 257
- Wong Yiu-lan v Wong Yuen-ting [1995] 1 HKLR 411 389, 395, 397, 410
- Y (minors), Re [1984] HKLR 204 257, 262, 321, 324, 325
- Y v Y [1997] 3 HKC 43 viii
- Y, Re [1946-1972] HKC 378 251
- Yau Tin-sung v Yau Wan-loi [1983] 2 HKC 647 291
- Yeung Chung-ping v Yeung Wan Yuet-kuen [1987] 1 HKC 206 202
- Yeung Leung Yau-lin v Yeung Kam-wah [1977-1979] HKC 328 109
- Yeung Yeu-kong v Yeung Fung Lai-mui [1971] HKLR 13 26, 30, 32
- Yue Chen Kuei-mei v Yue Kwok-kee, Court of Appeal, Civil Appeal Action No 19 of 1993 (1993) 376
- Yuen Yu-biu v Yuen Nip [1977-1979] HKC 453 114, 133

## Other Cases

- A (a minor) (abduction), Re [1988] 1 FLR 365 340
- A (a minor) (adoption: access), Re (1991) Fam Law 360 315
- A (a minor) (paternity: refusal of blood test), Re [1994] 2 FLR 463 204
- A (minors) (wardship: children in care), Re [1980] 1 FLR 100 267
- A (minors: disclosure of material), Re [1991] 2 FLR 473 325
- A (section 8 order: grandparent application), Re [1995] 2 FLR 153 289
- A v A (a minor: financial provision) [1994] 1 FLR 657 363, 366, 419
- A v A (children: arrangements) [1979] 1 WLR 533 129
- A v A (family: unborn child) [1974] 2 WLR 106 415
- A v A (minors) (shared residence order) [1994] 1 FLR 669 279
- A v DPP, (1996) The Times Law Report 18 April 219
- A v J (nullity) (1989) Fam Law 63 160
- A v Liverpool City Council [1982] AC 363 331
- AB (adoption: joint residence), Re [1996] 1 FLR 27 295
- Adeoso v Adeoso [1981] 1 All ER 107 117, 461
- Adoption Application (non-patrial: breach of procedures), Re (1993) Fam Law 275 310
- Adoption Application (payment for adoption), Re [1987] Fam 81 311
- Adoption Application, Re [1992] 1 FLR 341 311
- Agar-Ellis, Re (1878) 10 Ch. D 49; (1883) 24 Ch D 318 218
- Ah Chuck v Needham [1931] NZLR 559 197

- Ainsbury v Millington [1986] 1 All ER 73 471, 472  
 Aldrich v AG [1968] P. 281 198, 199  
 Allsop v Allsop (1981) Fam Law 18 433  
 Amey v Amey [1992] 2 FLR 89 434  
 Ampthill Peerage Case, The [1977] AC 547 179, 194, 199  
 An infant, Re, [1963] 6 FLR 12 (Supreme Court of Victoria, Australia) 152  
 Ansah v Ansah [1977] 2 All ER 638 468  
 Archard v Archard (1972) The Times 20 April 108  
 Armstrong v Armstrong (1974) 118 SJ 579 406  
 Ash v Ash [1972] 1 All ER 582 108  
 Associated Provincial Picture Houses Ltd. Wednesbury Corporation [1948]  
 1 KB 223 444  
 Atkinson v Atkinson [1988] FLR 353 393  
 Attar v Attar (No 2) [1985] FLR 653 380, 382, 389, 398  
 AW (adoption application), Re [1993] 1 FLR 62 311  
 AZ (a minor) (abduction: acquiescence), Re [1993] 1 FLR 682 339  
  
 B (a minor) (abduction), Re [1994] 2 FLR 249 336  
 B (a minor) (access), Re [1984] FLR 648 287  
 B (a minor) (adoption: jurisdiction), Re [1975] 2 All ER 449 308  
 B (a minor) (adoption: parental agreement), Re [1990] 2 FLR 383 307  
 B (a minor) (disclosure of evidence), Re [1993] 1 FLR 191 270  
 B (a minor) (wardship: medical treatment), Re [1981] 1 WLR 1421 224  
 B (a minor) (wardship: sterilisation), Re [1987] 2 All ER 206 223  
 B (adoption: child's welfare), Re [1995] 1 FLR 895 300, 306  
 B (JA) (an infant), Re [1965] Ch 1112 325  
 B (minors)(abduction) (No 2), Re [1993] 1 FLR 993 336, 337, 339  
 B (parentage), Re [1996] 2 FLR 15 207  
 B and G (minors) (custody), Re [1985] FLR 134 254  
 B and G (minors) (custody), Re [1985] FLR 493 254  
 B v AG (B and others intervening) [1966] 2 All ER 145 199  
 B v B (abduction) [1993] 1 FLR 238 340  
 B v B (consent order: variation) [1995] 1 FLR 9 424, 432  
 B v B (custody of children) [1985] FLR 166 254, 263  
 B v B (discovery: financial provision) [1990] 2 FLR 180 389  
 B v B (financial provision) [1982] 3 FLR 298 385, 391  
 B v B (financial provision) [1990] 1 FLR 20 387  
 B v B (minors) (interviews and listing arrangements) [1994] 2 FLR 489 251,  
 252, 268  
 B (otherwise S) v B [1958] 1 WLR 619 159  
 B v C (enforcement: arrears) [1995] 1 FLR 467 366  
 B v K (child abduction) (1993) Fam Law 17 341

- B v Miller & Co [1996] 2 FLR 23 422  
 Baby M 109 NJ 396; 537 A 2d 1227 (1988) 206  
 Banbury Peerage Case, The (1811) 1 Sim. & St. 153 197  
 Bannister v Bannister (1980) 10 Fam Law 240 109  
 Barder v Barder (Caluori Intervening) [1987] 2 FLR 480 433  
 Barnado v McHugh [1891] AC 388 229  
 Barrett v Barrett [1988] 2 FLR 516 378, 382  
 Baxter v Baxter [1948] AC 274 158  
 BC (a minor) (access), Re [1985] FLR 639 287  
 Beach v Beach [1995] 2 FLR 160 424  
 Beeken v Beeken [1948] P. 302 118  
 Bennett v Bennett [1969] 1 All ER 539 168  
 Bennett v Bennett (1979) 9 Fam Law 19 391  
 Benson v Benson (deceased) [1996] 1 FLR 692 434  
 Bernstein v Bernstein [1892] P. 375 356  
 Birchall, Re (1880) 16 Ch D 41 222  
 Blower v Blower (1986) 16 Fam Law 56 396  
 Bolsom v Bolsom [1983] 4 FLR 21 266, 382  
 Bowman v Bowman [1949] P. 353 124  
 Boylan v Boylan [1988] 1 FLR 282 382  
 Bradley v Bradley [1973] 1 WLR 1291 113  
 Bradshaw v Bradshaw [1956] P. 274 82  
 Brickell v Brickell [1974] Fam 31 134  
 Brockwell v Brockwell (1976) 6 Fam Law 46 423  
 Brooks v Brooks [1995] 2 FLR 13 370  
 Brown v Brown [1959] P. 86 369  
 Brown v Brown [1994] 1 FLR 233 468  
 Brown v Matthews [1990] 2 All ER 155 266, 267  
 Browning v Browning [1911] P. 161 353  
 BT v BT (divorce: procedure) [1990] 2 FLR 1 433  
 Buchler v Buchler [1947] 1 All ER 319 121  
 Buckland v Buckland [1968] P. 296 163  
 Buffery v Buffery [1988] 2 FLR 365 105  
 Burbury v Jackson [1917] 1 KB 16 191  
 Burgess v Burgess [1996] 2 FLR 34 385, 402  
 Burke v Burke [1987] 2 FLR 71 468  
 Burnett v George [1992] 1 FLR 525 474  
 Burris v Azadani [1996] 1 FLR 266 473  
 Burton v Burton [1986] 2 FLR 419 370  
  
 C (a minor) (abduction), Re [1989] 1 FLR 403 340  
 C (a minor) (adoption application), Re [1993] 1 FLR 87 311

- C (a minor) (adoption order: conditions), Re [1989] AC 1 314  
 C (a minor) (adoption: parental agreement: contact), Re [1993] 2 FLR 260 302, 306  
 C (a minor) (irregularity of practice), Re [1991] 2 FLR 438 270  
 C (a minor) (wardship: medical treatment), Re [1989] 3 WLR 240 224, 328  
 C (a minor) (wardship: surrogacy), Re (1985) 15 Fam Law 191 330  
 C (a minor), Re (1979) Fam Law 50 266  
 C (an infant), Re (1956) Times, 14 December 323  
 C (minors) (wardship: adoption), Re [1989] 1 FLR 222 296  
 C (minors) (wardship: jurisdiction) [1977] 3 WLR 561 326, 344  
 C (minors) (parental rights) [1992] 1 FLR 1 233  
 C v C (1981) 11 Fam Law 147 268  
 C v C (divorce: exceptional hardship) [1980] Fam 23 125, 126  
 C v C (financial provision: non-disclosure) [1994] 2 FLR 272 433  
 C v C (financial provision: personal damages) [1995] 2 FLR 171 391  
 C v C (financial relief: short marriage) [1997] 2 FLR 26 366, 383, 399  
 C v C (minors: custody) [1988] 2 FLR 291 257  
 C v C [1942] NZLR 356 165, 166  
 C v K (inherent powers: exclusion order) [1996] 2 FLR 506 472  
 C, Re (financial provision: leave to appeal) [1993] 2 FLR 799 433  
 C, Re [1978] Fam 105 237  
 Cackett v Cackett [1950] P. 233 158  
 Cadman v Cadman [1982] 3 FLR 275 264, 266  
 Calderbank v Calderbank [1976] Fam 93 364, 385, 396, 397  
 Camm v Camm [1983] 4 FLR 577 416, 424  
 Campbell v Campbell [1977] 1 All ER 1 400  
 Campbell v Tameside Metropolitan BC [1982] 2 All ER 791 266  
 Carpenter v Carpenter [1988] 1 FLR 121 469  
 Carr v Carr [1974] 1 WLR 1534 107  
 Carson v Carson [1983] 1 All ER 478 429  
 Cassidy v Cassidy [1959] 3 All ER 187 353  
 CB (a minor)(blood tests) [1994] 2 FLR 762 203  
 CH (contact: parentage), Re [1996] 1 FLR 569 289  
 Chamberlain v Chamberlain [1974] 1 All ER 33 417  
 Chard v Chard [1956] P. 259 83  
 Chatterton v Gerson [1981] 1 Q.B. 432 222  
 Chaudhuri v Chaudhuri [1992] 2 FLR 73 434  
 Cheang Thye Phin v Tan Ah Loy [1920] AC 369 35  
 Choo Eng-neo v Neo Chan-neo (1908) 12 SSLR 120 29  
 Churchman v Churchman [1945] P. 44 356  
 Clark v Clark (1970) 114 SJ 318 266.

- Clarke-Hunt v Newcombe [1983] 4 FLR 482 268  
 Cleary v Cleary [1974] 1 All ER 498 106, 107  
 Clutton v Clutton [1991] 1 FLR 242 382  
 Coleman v Coleman [1972] 3 All ER 886 366  
 Collett v Collett [1968] P. 482 76  
 Cook v Cook [1988] 1 FLR 521 434  
 Cooper v Crane [1891] P. 369 162  
 Corbett v Corbett [1971] P. 83 155, 156, 158  
 Cornick v Cornick [1994] 2 FLR 530 434  
 Cossey v UK (1990) 13 EHRR 622 157  
 Council of Civil Service Unions v Minister of the Civil Service [1985] AC 374 444  
 Court v Court [1982] 3 WLR 199 124  
 Crabtree v Crabtree [1953] 2 All ER 56 119  
 Crowther v Crowther [1951] AC 723 119  
 Crozier v Crozier [1994] 1 FLR 126 434  
 Cumbers v Cumbers [1975] 1 All ER 1 131, 383  
  
 D (a minor) (abduction), Re [1989] 1 FLR 403 335  
 D (a minor) (adoption: freeing order), Re [1991] 1 FLR 48 301, 306  
 D (a minor) (contact: mother's hostility), Re [1993] 2 FLR 1 287  
 D (a minor) (wardship: sterilisation), Re [1976] 1 All ER 326 223, 322, 324, 325  
 D (a minor), Re [1987] 1 AC 317 449, 450, 451  
 D (adoption reports: confidentiality), Re [1995] 1 FLR 631 313  
 D (adoption: parents consent), Re [1977] AC 602 308  
 D (minors) (adoption by step-parent), Re [1981] 2 FLR 102 307, 308  
 D (minors) (conciliation: privilege), Re [1993] 1 FLR 932 265  
 D (minors) (wardship: jurisdiction), Re [1973] 2 All ER 993 247, 282  
 D v A (1845) 1 Rob Eccl 279 158  
 D v D (custody of child) [1981] 2 FLR 74 267  
 D v D (nullity) [1979] 3 All ER 337 144  
 D v D [1979] 3 WLR 185 170  
 D v Hereford and Worcester County Council [1991] 1 FLR 205 233  
 D v National Society for the Prevention of Cruelty to Children [1978] AC 171 266, 442  
 D v Registrar General [1996] 1 FLR 707 317  
 D.J.M.S. (a minor), Re [1977] 3 All ER 582 219  
 Dart v Dart [1996] 2 FLR 286 389, 395  
 Daubney v Daubney [1976] 2 All ER 453 391  
 Davis v Johnson [1979] AC 264 459, 461, 462, 464  
 De Lasala v De Lasala [1980] AC 546 423, 433, 435

- De Reneville v De Reneville [1948] P. 100 142  
 Deacock v Deacock [1958] P. 230 153  
 Dean v Dean [1923] P. 172 397  
 Dennis v Dennis (1955) P. 153 106  
 Dennis v Dennis (1976) 6 Fam Law 54 391  
 Des Salles d'Epinoix v Des Salles d'Epinoix [1967] 1 WLR 553 470  
 Dickson v Dickson (1983) 13 Fam Law 174 268  
 Dicocco v Milne [1983] 4 FLR 247 254  
 Dinch v Dinch [1987] 2 FLR 162 429  
 Dipper v Dipper [1980] 2 All ER 722 277, 278  
 Dodds v AG (1880) The Law Times 22 May 198  
 Dorin v Dorin (1875) LR 7 188  
 Douglas v Douglas [1951] P. 85 357  
 Drew v Drew (1888) 13 PD 97 118  
 Dunford v Dunford [1980] 1 All ER 122 410  
 Dunn v Dunn [1965] 1 All ER 1043 119, 121  
 Durham v Durham (1885) 10 PD 80 166  
 Duxbury v Duxbury [1987] 1 FLR 7 387, 394
- E (a minor) (child support: blood test), Re [1994] 2 FLR 548 203  
 E (a minor) (wardship: court's duty), Re [1984] 1 WLR 156 325  
 Edgar v Edgar [1980] 3 All ER 887 423, 424, 427, 432  
 Edmonds v Edmonds [1990] 2 FLR 202 434  
 Edwards v Edwards [1986] 1 FLR 187 265  
 EH and MH (step-parent adoption), Re (1993) Fam Law 187 307, 308  
 Elder v Elder [1986] 1 FLR 610 267  
 EL-G (minors) (wardship and adoption), Re [1983] 4 FLR 421 301, 305  
 Essex County Council v R [1993] 2 FLR 826 271  
 Essex County Council v T.L.R. and K.B.R. (1979) 9 Fam Law 15 451  
 Ette v Ette [1964] 1 WLR 1433 389  
 Ettenfield v Ettenfield [1940] P. 96 195  
 Eve, Re [1909] 1 Ch. 796 188  
 Ewart v Ewart [1959] P. 23 425
- F (a minor), Re [1989] 1 All ER 1155 331  
 F (an infant), Re [1969] 2 Ch. 238 251  
 F (an infant), Re [1970] 1 QB 385 300  
 F (an infant), Re [1988] 2 Ch. 238 263  
 F (child abduction: risk if returned), Re [1995] 2 FLR 31 335, 340  
 F (in utero), Re [1988] 2 All ER 193 332, 451  
 F (minor: paternity tests), Re [1993] 1 FLR 225 203  
 F (minors) (police investigation), Re [1989] Fam 18 266



- F v AG (1980) Fam Law 60 182  
 F v F (Duxbury calculation: rate of return) [1996] 1 FLR 833 387  
 F v F (Maintenance Pending Suit) (1982) Fam Law 16 362  
 F v F (protection from violence: continuing cohabitation) [1989] 2 FLR 451 462, 463  
 F v F [1902] 1 Ch. 688 240  
 F v Metropolitan Borough of Wirral District Council [1991] 2 FLR 114 216  
 F v S (adoption: ward) [1973] Fam 203 324  
 F v Suffolk County Council [1981] 2 FLR 208 450  
 F v West Berkshire Health Authority [1989] 2 All ER 545 222  
 Fay v Fay [1982] AC 835 125  
 Fisher v Fisher [1948] P. 263 125  
 Foley v Foley [1981] Fam 160 400  
 Ford v Ford (1987) Fam Law 232 160  
 Fowke v Fowke [1983] 1 Ch. 774 144  
 Fowler v Fowler [1963] P. 311 269  
 Francis v Francis [1960] P. 17 197  
 Freeman-Thomas v Freeman-Thomas [1963] 1 All ER 17 430  
 Fuller v Fuller [1973] 1 WLR 730 113, 114  
 Furniss v Furniss [1982] 3 FLR 46 385  
 Fynn, Re (1848) 2 De G & SM 457 248
- G (a minor) (abduction), Re [1989] 2 FLR 475 340  
 G (adoption: freeing order), Re [1997] 2 FLR 202 305  
 G (minors) (welfare report: disclosure), Re [1993] 2 FLR 293 265  
 G (parentage: blood sample), Re [1997] 1 FLR 360 205  
 G v G (1871) LR 2 P & D 287 159  
 G v G (minors) (abduction) [1991] 2 FLR 506 343  
 G v G (minors: custody appeal) [1985] FLR 894 268  
 G v G [1924] AC 349 159  
 G v J (ouster order) [1993] 1 FLR 1008 465, 466, 467, 468  
 Galan v Galan [1985] FLR 905 464, 468  
 Gallagher v Gallagher [1965] 1 WLR 1110 119, 120  
 Gardner v Gardner (1877) 4 R. (HL) 56 184, 196  
 Garner v Garner [1992] 1 FLR 573 432  
 Gaskin v Liverpool City Council [1980] 1 WLR 1549 266  
 Gengler v Gengler [1976] 2 All ER 81 398  
 George v George [1986] 2 FLR 347 462  
 Gereis v Yagoub [1997] 1 FLR 854 152  
 Gillick v West Norfolk and Wisbech Area Health Authority [1985] 3 All ER 402 216, 218, 226  
 Gipps v Gipps (1864) 11 HL Cas 1 356, 357

- Godfrey v Godfrey [1965] AC 444 357  
 Goertz v Gordon unreported, ( May 2 , 1996) (Supreme Court of Canada)  
 278  
 Gojkovic v Gojkovic [1990] 1 FLR 140 383, 387, 403  
 Gollins v Gollins [1963] 2 All ER 966 121  
 Goodfield v Goodfield (1975) 5 Fam Law 197 409  
 Goodrich v Goodrich [1971] 1 WLR 1142 107  
 Gorman v Gorman [1964] 3 All ER 739 427  
 Gorst v Gorst [1952] P. 94 356  
 Goshawk v Goshawk (1965) 109 SJ 290 106  
 Griffiths v Griffiths (1944) 1R 35 164  
 Griffiths v Griffiths [1974] 1 All ER 932 385  
 Griffiths v Griffiths [1984] 2 All ER 626 417  
 Grigson v Grigson [1974] 1 All ER 478 131
- H (a minor) (contact), Re [1994] 2 FLR 776 289  
 H (a minor) (parental responsibility), Re [1993] 1 FLR 484 234, 287, 288  
 H (abduction: acquiescence), Re [1997] 1 FLR 872 335, 337, 339  
 H (abduction: custody rights) [1991] 2 FLR 262 335, 338  
 H (adoption: disclosure of information), Re [1995] 1 FLR 236 317  
 H (an infant), Re [1959] 3 All ER 746 238  
 H (conciliation: welfare reports), Re [1986] 1 FLR 476 265  
 H (illegitimate children: father: parental rights (No 2)), Re [1991] 1 FLR  
 214 231, 233  
 H (infants) (adoption: parental consent), Re [1977] 1 WLR 471 301  
 H (minors) (access), Re [1992] 1 FLR 148 286  
 H (minors) (sexual abuse: standard of proof), Re [1996] 2 WLR 8 106,  
 449, 451  
 H (or. D) v H [1953] 2 All ER 1229 161, 164  
 H (paternity: blood test), Re [1996] 2 FLR 65 203  
 H v H (child abuse: access) [1989] 1 FLR 212 288  
 H v H (child: judicial interview) [1974] 1 All ER 1145 267  
 H v H (financial provision: conduct) [1994] 2 FLR 801 407  
 H v H (financial provision: remarriage) [1975] 1 All ER 367 375, 394, 401  
 H v H (financial provision: short marriage) [1981] 2 FLR 392 399  
 H v H (Kent County Council intervening) (child abuse: evidence) [1989] 3  
 All ER 740 449, 450, 452  
 H v H (minors) (forum conveniens) [1993] 1 FLR 958 345  
 H v H (residence order: leave to remove from jurisdiction) [1995] 1 FLR  
 529 250  
 H v H [1969] 1 All ER 262 256  
 H v H (1982) The Times Law Report 1 April 269

- H's Settlement, Re [1909] 2 Ch. 260 324, 328  
 Haines v Jeffreys (1696) 92 ER 929 148  
 Hale v Hale [1975] 2 All ER 1090 367, 368  
 Hall v Hall (1749) 3 Atk. 719 218  
 Hall v Hall [1960] 1 WLR 52 120  
 Hall v Hollander (1825) 4 B & C 660 215  
 Hanlon v Hanlon [1978] 2 All ER 889 410  
 Hanlon v Law Society [1981] AC 124 372  
 Harnett v Harnett [1973] 3 WLR 1 373, 406  
 Haroutunian v Jennings [1980] 1 FLR 62 419  
 Harris v Manahan [1997] 1 FLR 205 424, 435  
 Harrison v Lewis [1988] 2 FLR 339 461, 462  
 Hartford v Morris (1776) 2 Hag Con 423 162  
 Harthan v Harthan [1948] 2 All ER 639 160  
 Harvey v Harvey [1982] 1 All ER 693  
 Hawkins v AG [1966] 1 All ER 392 183  
 HB (abduction: children's objections), Re [1997] 1 FLR 392 339, 340, 341  
 Healey v Healey [1984] 3 All ER 1040 129  
 Heath, Re [1945] 1 Ch. 417 195  
 Hennie v Hennie [1993] 2 FLR 351 471  
 Hepworth, Re [1936] 1 Ch. 750 184  
 Hewer v Bryant [1970] 1 QB 357 212, 213, 217, 279  
 Hewitson v Hewitson [1995] 1 FLR 241 435  
 Hill v Hill [1997] 1 FLR 730 366, 400, 432, 435  
 Hillier v Hillier [1958] P. 186 124  
 Hirani v Hirani [1983] 4 FLR 232 161, 163  
 Hitchcock v WB [1952] 2 All ER 119 306  
 Hopes v Hopes [1948] 2 All ER 920 113, 117  
 Hope-Smith v Hope-Smith [1989] 2 FLR 56 434  
 Horner v Horner [1982] 2 WLR 914 462, 469  
 Horton v Horton [1947] 2 All ER 871 159  
 Hunt v Hunt (1884) 28 Ch. D 606 278  
 Hunter v Canary Wharf Ltd [1997] 2 All ER 426 473  
 Hyde v Hyde (1866) LR 1 P & D 130 73, 154  
 Hyman v Hyman [1929] AC 601 421  
  
 In the Goods of Lao Leong An [1893] 1 SSLR 1 29  
 In the marriage of C and D [1979] 35 FLR 304 156  
 Inglis v Inglis [1967] 2 All ER 71 356  
 Inze v Republic of Austria (1987) 10 EHRR 394 180  
 Iredell v Iredell (1885) 1 TLR 260 326

- J (a minor) (abduction), Re [1990] 1 FLR 276 336  
 J (a minor) (abduction: custody rights), Re [1990] 2 AC 562 335, 336, 337  
 J (a minor) (interim custody: appeal), Re [1989] 2 FLR 304 255  
 J (a minor) (wardship), Re [1988] 1 FLR 65 203  
 J (a minor) (wardship: medical treatment), Re [1990] 3 All ER 930 224  
 J (adoption order: conditions), Re [1973] Fam 106 315  
 J (H.D.) v J (A.M.) [1980] 1 WLR 124 430  
 J v C [1969] 1 All ER 788 246, 259  
 J v J (C intervening) [1989] 1 FLR 453 416  
 J v S-T (formerly J) (transsexual-ancillary relief) [1997] 1 FLR 402 154  
 J.-P.C. v J.-A.F. [1955] P. 215 390  
 Jackson v Jackson [1964] P. 25 196  
 Jackson v Jackson [1973] Fam 99 396  
 James & Son Ltd v Smee [1955] 1 QB 78 76, 152  
 James v McLennan 1971 SLT 162 184  
 Jane v Jane [1983] 4 FLR 712 277, 279  
 Janvier v Sweeney [1919] 2 KB 316 474  
 Jenkins v Hargood [1978] 3 All ER 1001 396  
 Jessel v Jessel [1979] 3 All ER 645 429  
 Jodla v Jodla [1960] 1 WLR 236 159  
 Johnson v Calvert (1993) 5 Cal. 4th 84 193, 206  
 Johnson v Johnson (1981) 12 Fam Law 116 132  
 Johnson v Walton [1990] 1 FLR 350 462  
 Jones v Jones [1971] 2 All ER 737 470  
 Jones v Jones [1975] 2 All ER 12 407  
 Jones v Jones [1976] Fam 8 396  
 JS (a minor) (declaration of paternity), Re [1981] 2 FLR 146 198, 199, 203  
 Julian v Julian (1972) 116 SJ 763 132  
 Jussa v Jussa [1972] 2 All ER 600 280
- K (a minor) (wardship: adoption), Re [1991] 1 FLR 57 260  
 K (abduction: child's objections), Re [1995] 1 FLR 977 341  
 K (abduction: consent: forum conveniens), Re [1995] 2 FLR 211 344  
 K (minors) (children: care and control), Re [1977] Fam 179 262  
 K v K (financial relief: widow's pension) [1997] 1 FLR 35 133, 404  
 K v K (minors: property transfer) [1992] 2 FLR 220 418  
 K v K [1961] 2 All ER 266 426  
 KD (a minor) (access: principle), Re [1988] 2 FLR 139 260, 285  
 Kaczmarz v Kaczmarz [1967] 1 WLR 317 119  
 Kane v Littlefair [1985] FLR 859 191  
 Kaur v Singh [1972] 1 WLR 105 159  
 Kendricks v Kendricks [1990] 2 FLR 107 469

- Khoo Hooi Leong v Khoo Hean Kwee [1926] AC 529 35  
 Khorasandjian v Bush [1993] 3 All ER 669 473  
 Kinnear v DHSS (1989) 19 Fam Law 146 222  
 Knowles v Knowles [1962] P. 161 196  
 Kokosinski v Kokosinski [1980] 1 All ER 1106 400, 406  
 Krystman v Krystman [1973] 1 WLR 927 400  
 Kyte v Kyte [1987] 3 All ER 1041 407
- L (an infant), Re [1968] P. 119 285  
 L (child abduction) (psychological harm), Re [1993] 2 FLR 401 340  
 L (minors) (wardship: jurisdiction), Re [1974] 1 WLR 250 255, 326, 342, 344  
 L (police investigation: privileged), Re [1996] 1 FLR 731 457  
 L v L (child abuse: access) [1989] 2 FLR 16 258, 288  
 L v L [1962] P. 101 379  
 Lang v Lang [1955] AC 402 121  
 Le Marchant v Le Marchant [1977] 1 WLR 559 132, 404  
 Leadbeater v Leadbeater [1985] FLR 789 382, 398, 406  
 Lee Gee-chong (deceased) (1965) 31 MLJ 102 35, 68  
 Lee v Lau [1967] P. 14 61, 81  
 Lee v Lee (1975) 5 Fam Law 48 133  
 Lee v Lee [1984] FLR 243 467  
 Lewis (AH) v Lewis (RWF) [1978] 1 All ER 729 469  
 Lewis v Lewis [1977] 3 All ER 992 432  
 Lilford (Lord) v Glynn [1979] 1 WLR 78 417  
 Livesey v Jenkins [1985] 1 All ER 106 422, 435  
 Livingstone-Stallard v Livingstone-Stallard [1974] 2 All ER 766 108, 109  
 London Borough of Sutton v Davis [1994] 1 FLR 737 220  
 Lort-Williams v Lort-Williams [1951] P. 395 370  
 Loseby v Newman [1995] 2 FLR 754 468  
 Lough v Ward [1945] 2 All ER 338 215  
 Lucas v Lucas [1992] 2 F.L.R. 53 471
- M (a minor) (care order: threshold conditions), Re [1994] 3 All ER 298 453  
 M (a minor: custody appeal) [1990] 1 FLR 291 306  
 M (child support act: parentage), Re [1997] 2 FLR 90 206  
 M (contact: welfare test), Re [1995] 1 FLR 274 284, 286, 288  
 M v M (child of the family) [1981] 2 FLR 39 415  
 M v M (child: access) [1973] 2 All ER 81 285, 286  
 M v M (custody application) [1988] 1 FLR 225 472  
 M v M (financial provision) [1987] 2 FLR 1 381  
 M v M (sale of property) [1988] FLR 389 409

- Macey v Macey [1982] 3 FLR 7 393  
 MacLennan v MacLennan [1958] SC 105 106  
 Mahadervan v Mahadervan [1964] P. 233 81, 82  
 Manser v Manser [1940] P. 224 153  
 Marckx v Kingdom of Belgium [1979–1980] 2 EHRR 330 180  
 Marsden v Marsden [1967] 3 WLR 230 120, 121  
 Marsden v Marsden [1973] 2 All ER 851 394  
 Martin (BH) v Martin (D) [1978] Fam 12 374, 375, 395  
 Martin v Martin [1976] 3 All ER 625 407, 408  
 Mary Ng v Ooi Gim-teong [1972] 2 MLJ 18 61  
 Mason v Mason [1972] 3 WLR 405 115  
 Mathias v Mathias [1972] 3 WLR 201 134  
 McEwan v McEwan [1972] 1 WLR 1217 390  
 McGill v Robson [1972] 1 WLR 237 115  
 McGrath (infants), Re [1893] 1 Ch. 143 240, 248  
 Mckee v Mckee [1951] 1 All ER 942 344  
 McLean v Nugent [1980] FLR 26 461  
 McVeigh v Beattie [1988] 2 All ER 500 191, 204  
 Mehta v Mehta [1945] 2 All ER 690 166  
 Mesher v Mesher [1980] 1 All ER 126 395, 411  
 Messina v Smith [1971] P. 322 165, 166  
 Michael v Michael [1986] 2 FLR 389 392  
 Militante v Ogunwomoju (1994) Fam Law 17 165  
 Milligan v Milligan [1941] 2 All ER 62 117  
 Milne v Milne [1981] 2 FLR 286 391  
 Minton v Minton [1979] 1 All ER 79 379, 421  
 Moge v Moge [1992] 2 SCR 813 377  
 Montgomery v Montgomery [1964] 2 All ER 22 470, 471  
 Mordaunt v Mordaunt (1870) LR 2 P & D 109 73  
 Morgan v Morgan [1959] 1 All ER 539 164  
 Morgan v Morgan [1977] 2 All ER 515 392  
 Moss v Moss [1897] P. 263 165, 166  
 Mouncer v Mouncer [1972] 1 All ER 289 113, 114  
 M.T. v J.T. 355 A. 2d 204 (1976) 155  
 MT v MT (financial provision: lump sum) [1992] 1 FLR 362 392  
 Mullard v Mullard [1983] 2 FLR 330 370  
 Mummery v Mummery [1942] P. 107 122  
 MW (adoption: surrogacy), Re [1995] 2 FLR 759 304, 311  
  
 N (minors) (abduction), Re, [1991] 1 F.L.R. 413 341  
 N (minors) (parental rights-acquisition.), Re [1974] Fam 93 239  
 N v N (abduction: article 13 defence) [1995] 1 FLR 107 340

- N v N (consent order: variation) [1993] 2 FLR 868 431  
 Naylor v Naylor [1961] 2 WLR 751 117  
 Newham London Borough Council v AG [1993] 1 FLR 281 451  
 Nicholas v Nicholas [1984] FLR 285 369  
 Norman v Norman [1983] 1 All ER 486 429  
 Nota v Nota [1984] FLR 573 125  
 Nutley v Nutley [1970] 1 WLR 217 120  
 NW (a minor) (medical reports), Re [1993] 2 FLR 591 270  
  
 O (a minor) (abduction: habitual residence), Re [1993] 2 FLR 594 336  
 O (a minor) (custody: adoption), Re [1992] 1 FLR 77 306  
 O (abduction: consent and acquiescence), Re [1997] 1 FLR 924 339  
 O (contact: imposition of conditions), Re [1995] 2 FLR 124 284, 285, 286, 287, 288  
 O'Donnell v O'Donnell [1975] 2 All ER 993 383  
 O'Neill v O'Neill [1975] 3 All ER 289 109  
 O'Neill v Williams [1984] FLR 1 461–462  
 Official Solicitor v K [1965] AC 201 270, 325  
 Overbury, Re [1955] 1 Ch. 122 195  
 Oxfordshire County Council v P [1995] 1 FLR 552 271, 456  
  
 P (a minor) (parental responsibility order), Re [1994] 1 FLR 578 235  
 P (abduction: non-convention country), Re [1997] 1 FLR 780 343  
 P (GE) (an infant), Re [1965] Ch. 568 322, 323  
 P (infants), Re [1967] 2 All ER 229 257  
 P v P (financial provision: lump sum) [1978] 3 All ER 70 385  
 P v P (ouster) (1993) Fam Law 283 471, 472  
 P v P (ouster: decree nisi of nullity) [1994] 2 FLR 400 144  
 Page v Page [1981] 2 FLR 198 382, 385, 395, 408  
 Pardy v Pardy [1939] 3 All ER 779 118  
 Park Estate, Re [1954] P. 112 167  
 Parker v Parker [1972] Fam 116 404  
 Parkinson v Parkinson [1939] P. 346 153  
 Parojcic v Parojcic [1959] 1 All ER 1 163  
 Patel v Patel [1988] 2 FLR 179 460, 472  
 Paton v British Pregnancy Advisory Service Trustees [1979] QB 276 332  
 Payne v Payne [1968] 1 WLR 390 389, 432  
 Peete, Re [1952] 2 All ER 599 83  
 Pelech v Pelech [1987] 1 SCR 801 (Supreme Court of Canada) 431  
 Penrose v Penrose [1994] 2 FLR 621 434  
 Perry v Perry [1963] 3 All ER 766 118  
 Pheasant v Pheasant [1972] 1 All ER 587 103, 108

- Pidduck v Molloy [1992] 2 FLR 202 460, 474  
 Piers v Piers (1849) 2 HL Cas 331 82  
 Piper v Piper (1978) 8 Fam Law 243 114  
 Potter v Potter (1975) 5 Fam Law 161 160  
 Pound v Pound [1994] 1 FLR 775 422, 424  
 Practice Direction (injunction: domestic violence) [1978] 1 WLR 1123 464  
 Practice Direction [1984] 1 All ER 187 266  
 Pratt v Pratt [1939] AC 417 122  
 Preston v Preston [1982] Fam 17 366, 367, 375, 395, 397, 402  
 Preston-Jones v Preston-Jones [1951] AC 391 197  
 Priest v Priest [1979] 9 FLR 252 391  
 Pritchard v Cobden [1987] 2 FLR 56 391  
 Prow v Brown [1983] 4 FLR 352 436  
 Pulford v Pulford [1923] P. 18 117  
 Puttick v AG [1980] Fam 1 76, 152, 165
- Q (parental order), Re [1996] 1 FLR 369 207, 208, 209  
 Quinn v Quinn [1983] FLR 394 472  
 Quoraishi v Quoraishi [1985] FLR 780 121
- R (a minor) (child abuse: access), Re [1988] 1 FLR 206 258, 288  
 R (a minor) (wardship: medical treatment), Re [1991] 4 All ER 177 227  
 R (a minor: abduction), Re [1992] 1 FLR 105 340  
 R (adoption), Re [1967] 1 WLR 34 300  
 R (child abduction: acquiescence), Re [1995] 1 FLR 716 341  
 R (minors: child abduction), Re, (1994) The Times Law Report  
 December 5 338  
 Re R (minors) (wardship: jurisdiction) [1981] 2 FLR 416 343  
 R (MJ) (an infant) (proceedings transcript: publication), Re [1975] 2 All ER  
 749 266  
 R (wardship: child abduction), Re [1992] 2 FLR 481 335, 337  
 R v Ahluwalia [1992] 4 All ER 889 460  
 R v Brighton Inhabitants (1861) 1 B & S 447 148  
 R v D [1984] 1 AC 778 218, 333  
 R v Derriviere (1969) 53 Cr App R 637 219  
 R v Devon County Council, ex parte L [1991] 2 FLR 541 443, 444  
 R v Gyngall (1893) 2 QB 232 325  
 R v Hatton [1925] 2 KB 322 448  
 R v Holmes [1979] Crim LR 52 449  
 R v Hopley (1860) 2 F & F 202 219  
 R v Human Fertilisation and Embryology Authority ex parte Blood [1997]  
 2 All ER 687 208



- R v Ireland [1997] 1 All ER 112 473  
 R v Jenkins [1949] VLR 277 194  
 R v Lewisham London Borough Council ex parte P [1991] 2 FLR 185 444  
 R v London Borough of Harrow ex parte Deal (1990) Fam Law 18 443  
 R v Nash (1883) 10 QBD 454 228  
 R v Norfolk County Council ex parte X [1989] 2 FLR 120 444  
 R v R (rape: marital exemption) [1991] 2 All ER 257 460  
 R v Registrar-General, ex parte Smith [1990] 2 QB 253 316  
 R v Rushmoor Borough Council ex parte Barrett [1988] 2 FLR 252 370  
 R v Senior [1899] 1 QB 283 76, 152  
 R v Sheppard [1981] AC 394 441, 448, 449  
 R v Tan [1983] 2 All ER 12 155  
 R v Thornton [1992] 1 All ER 306 460  
 Radziej v Radziej [1967] 1 All ER 944 369  
 Ratcliffe v Ratcliffe [1962] 3 All ER 993 426, 427  
 Re Roberts (deceased) [1978] 3 All ER 225 144  
 Redpath v Redpath [1950] 1 All ER 600 106  
 Rees v United Kingdom, The [1987] 2 FLR 111 156  
 Reiterbund v Reiterbund [1975] Fam 99 132  
 Richards v Richards [1972] 3 All ER 695 111  
 Richards v Richards [1983] 2 All ER 807 465, 467, 470  
 Richardson v Richardson (No 2) [1996] 2 FLR 617 431  
 Rigby v Rigby [1944] P. 33 353  
 Ritchie v Ritchie [1996] 1 FLR 898 434  
 Roberts v Roberts [1970] P. 1 396  
 Roberts v Roberts [1986] 2 All ER 483 391, 393  
 Roberts v Roberts [1991] 1 FLR 294 469  
 Robinson v Robinson (disclosure) [1983] 4 FLR 102 433  
 Robinson v Robinson [1965] P. 39 470, 471  
 Robinson v Robinson [1983] 1 All ER 391 406  
 Rogers v Rogers (1830) 162 ER 1079 357  
 Rukat v Rukat [1975] 1 All ER 343 133  
 Rumbelow v Rumbelow [1965] P. 207 356  
 Russell v AG [1949] P. 391 81  
 Rutherford v Richardson [1923] AC 1 73
- S (a minor) (adoption or custodianship), Re [1987] 2 FLR 331 309, 315  
 S (a minor) (adoption order: access), Re [1976] Fam 1 315  
 S (a minor) (blood transfusion: adoption order condition), Re [1994] 2 FLR 416 314  
 S (a minor) (custody), Re [1991] 2 FLR 388 257  
 S (contact: grandparents), Re [1996] 1 FLR 158 286

- S (infants), *Re* [1967] 1 All ER 202 252, 324  
 S (minors) (access: religious upbringing), *Re* [1992] 2 FLR 313 252, 288  
 S (parental responsibility), *Re* [1995] 2 FLR 648 233  
 S v H (abduction: access rights) [1997] 1 FLR 971 336  
 S v McC [1972] AC 24 197, 200, 202, 203, 204, 210  
 S v S (child abduction) (child's view) [1992] 2 FLR 492 338, 340, 341  
 S v S (child abuse: access) [1988] 1 FLR 213 258, 288  
 S v S (financial provision) (post divorce cohabitation) [1994] 2 FLR 228 435  
 S v S [1961] 1 WLR 445 285  
 S v S [1976] Fam 18 396  
 S v S [1977] 1 All ER 56 399  
 S.Y. v S.Y. (orse. W) [1962] P. 37 155, 158  
 Sandford v Sandford [1986] 1 FLR 412 430  
 Samson v Samson [1982] 1 WLR 252 467  
 Santos v Santos [1972] 2 All ER 246 113, 115  
 Savage v Savage [1982] 3 WLR 199 124  
 Schuller v Schuller [1990] 2 FLR 193 392  
 Scott v Scott [1959] 1 All ER 531 169  
 Scott v Scott [1992] 1 FLR 529 465, 468  
 Scott v Sebright (1886) 12 PD 21 162  
 Serio v Serio [1983] 4 FLR 756 106, 198  
 Sheward v AG [1964] 2 All ER 324 183  
 Silver v Silver [1955] 2 All ER 614 164  
 Sim Siew-guan Deceased, *Re* (1932) MLJ 95 58, 59  
 Simister v Simister [1987] 1 All ER 233 427  
 Singh v Singh [1971] 2 WLR 963 159, 161, 163  
 Slater v Slater [1982] 3 FLR 364 385, 386, 393  
 Slawson v Slawson [1942] 2 All ER 527 122  
 SM (a minor) (natural father: access), *Re* [1991] 2 FLR 333 287  
 Smith v McNerney [1994] 2 FLR 1077 424  
 Smith v Smith [1991] 2 All ER 306 403, 434  
 SN v ST (maintenance order: enforcement) [1995] 1 FLR 868 366  
 Spence, *Re* [1990] 1 Ch. 652 183  
 Spencer v Camacho [1983] 4 FLR 662 462, 464  
 Spindlow v Spindlow [1978] 3 WLR 777 468  
 Starkowski v AG [1954] AC 155 41  
 Stephenson v Stephenson [1985] F.L.R 1140 266  
 Stockford v Stockford [1982] 3 FLR 58 385, 386  
 Stringfellow v Stringfellow [1976] 2 All ER 539 110  
 Sullivan v Sullivan 2 Hag Con 237 76, 152  
 Surtees v Kingston-upon-Thames BC [1991] 2 FLR 559 216  
 Suter v Suter [1987] 2 All ER 336 382, 393

- SW (a minor) (wardship: jurisdiction), Re (1985) 15 Fam Law 322 328  
 SY v SY [1963] P. 37 158  
 Sydall v Castings Ltd [1967] 1 QB 302 188  
 Szechter v Szechter [1970] 3 All ER 905 161, 162
- T (a minor) (parental responsibility: contact), Re [1993] 2 FLR 450 233  
 T (a minor), Re (welfare report recommendation) [1980] 1 FLR 59 266  
 T (adoption: contact), Re [1995] 2 FLR 251 315  
 T (infants), Re [1968] Ch. 704 344  
 T (wardship: medical treatment), Re [1997] 1 FLR 502 225, 329  
 T v S (financial provision for children) [1994] 2 FLR 883 419  
 T v T (consent order: procedure to set aside) [1996] 2 FLR 640 436  
 Talbot v Talbot (1967) 111 SJ 213 154  
 Talbot v Talbot (1971) 115 SJ 870 132  
 Talyor v Talyor [1967] P. 25 84  
 Taylor v Taylor (1974) 119 SJ 30 400  
 Taylor, Re [1961] 1 All ER 55 81  
 Taylor's Application, Re [1972] 2 QB 769 222  
 Thain, Re [1926] Ch. 676 248, 254  
 Thomas v Thomas [1948] 2 KB 294 117  
 Thompson v Thompson [1985] FLR 863 370, 429  
 Thompson v Thompson [1986] 1 FLR 212 265, 266  
 Thompson v Thompson [1991] 2 FLR 530 434  
 Thurlow v Thurlow [1975] 2 All ER 979 111, 112  
 Thwaite v Thwaite [1982] Fam 1 435  
 Thyssen-Bornemisza v Thyssen-Bornemisza (No 2) [1985] FLR 1069 375, 389  
 Tinsley v Milligan [1993] 2 FLR 963 154  
 Tommey v Tommey [1982] 3 All ER 385 422  
 Townson v Mahon [1984] FLR 690 255  
 Tremain's case (1721) 1 Strange 168 218  
 Trippas v Trippas [1973] Fam 134 394  
 Tuck v Nicholls [1989] 1 FLR 283 462  
 Turner v Blunden [1986] 2 All ER 75 191  
 Tweney v Tweney [1946] P. 180 83
- Ulrich v Ulrich [1968] 1 All ER 67 369
- V (a minor) (adoption: dispensing with agreement), Re [1987] 2 FLR 89 303  
 Van G v Van G (financial provision: millionaire's defence) [1995] 1 FLR 328 389  
 Vaughan v Vaughan [1973] 3 All ER 449 462

- Vervaeke v Smith [1982] 2 All ER 144 165  
 Vicary v Vicary [1992] 2 FLR 272 408  
 V-P v V-P (access to child) [1980] FLR 336 286
- W (a minor) (adoption by grandparents), Re [1981] 2 FLR 161 310  
 W (a minor) (adoption: custodianship), Re (1992) Fam Law 64 310  
 W (a minor) (adoption: custodianship: access), Re [1988] 1 FLR 175 310  
 W (a minor) (contact), Re [1994] 2 FLR 441 286, 287  
 W (a minor) (custody), Re [1983] 4 FLR 492 256, 265  
 W (a minor) (medical treatment), Re [1992] 4 All ER 627 227, 228  
 W (a minor) (residence order), Re [1992] 2 FLR 332 254, 256  
 W (a minor) (residence order), Re [1993] 2 FLR 625 260  
 W (adoption: homosexual adopter), Re [1997] 2 FLR 406 294, 305  
 W (an infant), Re [1971] AC 682 300  
 W (infants), Re [1965] 3 All ER 231 248  
 W (otherwise K) v W [1967] 3 All ER 178 158  
 W v D [1980] 1 FLR 393 255  
 W v Ealing London Borough Council [1993] 2 FLR 788 233  
 W(C) v W (R) [1968] 3 All ER 608 281  
 W (otherwise K) v W [1967] 3 All ER 178 158  
 Wachtel v Wachtel [1973] Fam 72 372, 373, 384, 385, 386, 391, 394, 401, 405, 406  
 Wagstaff v Wagstaff [1992] 1 FLR 333 391  
 Ward v Secretary of State for Social Services [1990] 1 FLR 119 144  
 Warden v Warden [1981] 3 WLR 435 428  
 Waterman v Waterman [1989] 1 FLR 380 383  
 Watson v Watson [1954] P. 48 197  
 Way v Way [1950] P. 71 166  
 Webb v Webb [1986] 1 FLR 541 471  
 Wells v Wells [1954] 3 All ER 491 356  
 Wells v Wells [1992] 2 FLR 66 434  
 West v West [1978] Fam 1 406  
 Westminster City Council v Croyalgrange Ltd [1986] 2 All ER 353 76, 152  
 Whiston v Whiston [1995] 2 FLR 268 153, 154  
 White v British Sugar Corporation [1977] IRLR 121 155  
 White v White [1983] 4 FLR 696 461, 469  
 Whitfield v Whitfield [1985] FLR 955 429  
 Whiting v Whiting [1988] 1 WLR 565 374  
 Wilde v Wilde [1988] 2 FLR 83 471  
 Wilkinson v Downton [1897] 2 QB 57 474  
 Willett v Wells [1985] FLR 514 190

- Williams v Williams [1939] P. 365 122  
Williams v Williams [1963] 2 All ER 994 121  
Wilson v Wilson [1973] 2 All ER 17 131  
Wiseman v Simpson [1988] 1 FLR 490 465, 468  
Woodbury v Woodbury [1949] P. 154 356  
Woolf v Pemberton (1877) 6 Ch D 19 222  
Wooton v Wooton [1984] FLR 871 463, 464  
Worlock v Worlock [1994] 2 FLR 689 434  
Wright v Wright [1960] P. 85 353  
Wright v Wright [1970] 3 All ER 209 423
- X (a minor) (wardship: injunction), Re [1984] 1 WLR 1422 325, 330  
X (a minor) (wardship: jurisdiction), Re [1975] Fam 47 322, 330, 332  
X (minors) v Bedfordshire County Council [1995] 2 FLR 276 442  
X, Y, Z (wardship: disclosure of materials), Re (1991) Fam Law 318 266
- Y (minors) (adoption: jurisdiction), Re (1986) 16 Fam Law 26 296  
Young v Young [1962] 3 All ER 120 121  
Young v Young (1973) 117 SJ 204 425
- ZHH (adoption application), Re [1993] 1 FLR 83 311

---

# Table of Legislation

## Hong Kong Legislation

Adaptation of Laws (Courts and  
Tribunals) Ordinance 1998 222

Adoption Ordinance (No 22 of  
1956) 217, 247, 291, 318,  
s2 294, 296, 298  
s4 294  
s4(1) 292, 294  
s4(2) 293, 295  
s4(3) 294, 295  
s4A(1) 292  
s4A(2) 293  
s5 295  
s5(3) 294  
s5(4) 295  
s5(5)a 298  
s5(5)b 295  
s5(5A) 298  
s5(5B) 299  
s5(5C) 299  
s5(5D) 299  
s5(5F) 299, 311

s5(6) 296  
s5(7) 297  
s5(7)(a)(aa) 297  
s5(7)(b) 297  
s5(8) 297  
s5A 304  
s5A(1) 304  
s5A(3) 305  
s5A(4) 305  
s6(1) 300  
s6(2) 295  
s7(3) 298  
s8(1) 298  
s8(1)(b) 305, 307  
s8(1)(c) 310  
s8(1A) 315  
s8(2) 314  
s12 310  
s12(3) 312  
s13(1) 185, 313  
s13(3) 148, 313  
s15 313  
s18(1) 316  
s18(4) 316

- s19(3) 316
- s19(4) 316
- s22 310
- s25 291
- Adoption Rules
  - Form 4 298
  - Form 4a 298
  - r6 316
  - r9 311
  - r13 313
  - r14 313
  - Second Schedule 313
- Age of Majority (Related Provisions) Ordinance (Cap 410) 226
  - s6 282
- Basic Law
  - Article 8 vii
  - Article 24 187
  - Article 24(3) viii, 188
- Births and Deaths Registration Ordinance (Cap 174)
  - s7 191
  - s12 191, 196, 197
  - s12B 199
  - s24(2) 196
- Child Abduction and Custody Ordinance (No 49 of 1997) ix, 327, 334, 342
  - s3 334
  - s4 334, 346
  - s4(2)(b) 335
  - s5 335
  - s6 335
- Corporal Punishment (Repeal) Ordinance (No 72 of 1990) 220
- Crimes Ordinance (Cap 200)
  - ss47–51 150, 441
- Detention Centres Ordinance (Cap 239) 220
- District Court Ordinance (Cap 336)
  - s48(1) 470
- Divorce Ordinance No 35 of 1932 99
- Divorce (Amendment) Ordinance (No 44 of 1956) 99
- Domestic Violence Ordinance (Cap 189) 247, 463, 470, 474
  - s2(2) 461
  - s3 461, 468
  - s3(1) 460, 462
  - s3(2) 464, 467
  - s4 460, 461
  - s5(1) 469
  - s5(2) 469
  - s5(3) 469
  - s6(1) 464
  - s6(3) 461
  - s7 464
- Domestic Violence Rules
  - r5 469
  - r6 469
- Education Ordinance (Cap 297)
  - s74 219
  - s74(2A) 219
  - s74(2B) 219
  - s78 219
  - s87(3A) 219
- Education Regulations
  - r58 220

Evidence (Amendment) Ordinance  
(No 70 of 1995) 440

Fatal Accidents Ordinance (Cap  
22) 185

Guardianship of Minors Ordinance  
(Cap 13) 191, 192, 211, 213, 215,  
241, 413

Part III 236

Part VI 213

s2 236, 282

s3 211, 264, 275, 282, 285

s3(1) 216, 220, 245, 247, 251

s3(1)(a) 230

s3(1)(b) 229

s3(1)(c) 190, 230

s3(1)(d) 232, 298

s3(a)(ii) 229

s3(2) 233

s4(1) 235

s4(2) 229, 235

s5 236, 237, 238

s5(b) 238

s6(1) 237

s6(2) 237

s6(3) 238

s7 239

s8 239

s9 240

s10 236, 284, 326

s10(1) 247, 282

s10(2) 283, 418

s11 238

s12(a) 238, 240

s13(1)(a) 283

s13(1)(b) 283

s13(2) 284

s14(1) 283

s15(1) 284

s17 265, 284

s17(1) 284

s18(1) 235

s18(2) 240

s20 420

s21 189, 234, 236

High Court Ordinance (Cap 4)

s21L(1) 470

s26 324

Hong Kong Bill of Rights  
Ordinance (Cap 383)

Article 14 157

Article 19 157

Article 20 180

Article 22 180

Hong Kong Reunification  
Ordinance (No 110 of 1997)

s8 293

s24(2) 321

Housing Ordinance (Cap 283)  
Schedule 368

Immigration Ordinance (Cap 115)

s19(1)(b) 331

Immigration (Amendment) (No 2)  
Ordinance (No 122 of 1997) viii

s5 187

Infants Custody Ordinance (No 48  
of 1935)

s2(1) 245

Inheritance (Provision for Family  
and Dependants) Ordinance  
(Cap 481) 48

s2 186

s4 428, 433

Inland Revenue Ordinance  
(Cap 112)

s8(2)(i) 386



Intestates' Estates Ordinance (Cap 73)	s11(1) 182
s2 186	s11(3) 182
s3A 186	s11(4) 182
s4A(1) 174	s11(5) 182
s4A(2) 354	s12 143, 183
s13 48	s14 181, 352
s13(2) 37	s14(2) 37, 181
Schedule 1 48	s14(3) 181
Juvenile Offenders Ordinance (Cap 226)	Mandatory Provident Fund Schemes Ordinance (Cap 485) 405
s10 219	Marriage and Children (Miscellaneous Amendments) Ordinance (No 69 of 1997) 352, 358, 370, 417, 463
Law Amendment and Reform (Consolidation) Ordinance (Cap 23)	s4 283
s20B 215	s11 354
Law Reform (Miscellaneous Provisions and Minor Amendments) Ordinance (No 80 of 1997) 75, 217	s20 280
s26 296	s25 358
s28 151, 192	s26 276
s31 151	s30 366
s78 191	Marriage Ordinance (Cap 181) 3, 4, 7, 16, 33, 181, 217, 352
s79 191	s6 74
Legal Practitioner Ordinance (Cap 159) 310	s7 74
Legitimacy Ordinance (Cap 184)	s9 75
Schedule 1 184	s11 76
s2 183	s12 75
s3(1) 184	s13 75, 151
s4(1) 184, 185	s14 151, 192
s4(4) 185	s15 151
s5 185	s16(1) 151
s6 185	s18A 151
ss4-9 184	s19 75
s10 186	s21 75, 152
s11 143, 183, 184	s24 77
	s27(1) 147
	s27(2) 76
	s39 76
	s40 74

Marriage Reform (Amendment)  
Ordinance (No 62 of 1979) 67

Marriage Reform Ordinance (Cap  
178) 3, 15, 35, 55, 62, 64, 139, 181,  
184, 352

Part V 65, 67

s2 17, 40, 69

s4 16, 74

s5(2)(b) 36

s6 47

s7 25, 106

s7(1) 17

s7(2) 17, 18, 19, 23, 24

s7(2)(a) 19

s7(2)(b) 19

s8 40, 41, 43

s9 26, 41, 45

s9(3) 45

s9(5) 44

s9(7) 44

s10 44

s11 26, 45

s14 62, 68

s15 64, 67, 68

s16(1) 65

s16(2) 65

s17(1) 65

s18 65

s19(1) 65

s20 65

s22A 63

Matrimonial Causes Ordinance  
(Cap 179) 26, 64, 68, 99, 172

s2 26, 45, 78, 106, 145

s3 103

s5 173

s6(1) 153

s7A(1) 66

s7A(2) 66

s9 26, 45, 67, 104, 145

s11 103, 136

s11A 103, 105

s11A(1) 101

s11A(2) 105, 119, 123, 124, 173

s11A(2)(c) 136, 137

s11A(2)(e) 110

s11A(3) 113

s11B 135

s11B(2) 105

s11C 136

s11C(1) 113

s12 124

s12(1) 124

s13(1) 123

s14 108

s15 105

s15(1) 144

s15A 173

s15A(1) 128

s15A(3)(a) 107

s15A(3)(b) 107, 123

s15A(4) 113

s15A(5) 123, 136

s15B 132, 133, 173, 404

s15C(1) 115, 173

s15C(2) 137

s17(2) 123, 137

s17A 137, 173

s17A(2) 130

s17A(3) 130, 131

s17A(3)(b) 131

s17A(4) 131, 132

s18A 355

s18(B)(b) 127

s20(1) 145

s20(1)(a)(iii) 152

s20(B) 143

s20(d) 168

s20(2) 157

s20(2)(c) 167

s20(2)(d) 167

s20(3) 169

s20(3)(b) 170

s20(4) 170

s20(5) 170

s20(6) 170

s22 144

s24 77, 173

s24(1A) 173

s24(2) 174

s24(3) 174

s26 153

s32(2) 174

s38 26

s48A(1) 280, 281

s48A(2) 280

s48A(3) 280

s48A(4) 280

Matrimonial Causes (Amendment)  
(No 2) Ordinance (No 33 of  
1972) 100, 101

Matrimonial Causes (Amendment)  
Ordinance (No 29 of 1995) ix,  
102, 107, 119, 124, 138

s7 104

s14 174

Matrimonial Causes Rules

Form 2C 136

Form 2E 137

r5 125

r13 108

r15A 115

r33 134

r33(2B) 137

r40(1) 77

r47A 135

r47(1A) 137

r73(2) 387, 388, 389

rr86-91 366

r95(1) 264

r95(2) 264

r107 166, 167

r108 325

Matrimonial Proceedings and  
Property Ordinance (Cap 192)  
131, 173, 275, 351, 352, 355, 358,  
363, 375, 380, 435

s2 124, 213, 276, 414, 419

s3 174, 351, 361

s4 365, 370, 371

s4(2)(b) 367

s5 351, 361, 370, 415

s5(1) 413, 414

s5(2) 413

s5(3) 414

s5(4) 414

s5(5) 414

s6 365, 370, 371, 391, 414, 415,  
430

s6(1)(a)-(b) 408

s6A 365, 408, 409

s6A(1) 370

s6A(2) 370

s7 376

s7(1) 361, 371, 373, 374, 387,  
388, 389, 391, 405, 412, 422,  
430

s7(1)(a)-(g) 405

s7(1)(g) 404

s7(1)(h) 370

s7(2) 416, 417, 419, 428

s7(2)(a) 416

s7(3) 359, 415, 416, 426, 427

s8 351, 358, 396, 413, 414, 418

s8(1) 358, 359

s8(2) 358

s8(5) 360

s8(6) 359

s8(7)(a) 359

s8(7)(b) 360

s9(1)(2) 366

s9(4) 396

s10 360, 417  
 s10(2) 419  
 s10(2)(b)–(c) 420  
 s10(3) 360  
 s11 380, 423, 425, 428  
 s11(1) 430  
 s11(2) 429  
 s11(4) 429  
 s11(5) 430  
 s11(6) 432, 433  
 s11(7) 430  
 s12A 420  
 s14 424, 425  
 s14(1)(b) 425  
 s14(2) 425  
 s15 423  
 s15(1) 426  
 s15(2) 425, 426, 427  
 s16(1) 428  
 s16(2) 428  
 s18 134, 173  
 s18(1) 128, 129  
 s18(1)(b) 129  
 s18(1)(c) 129  
 s18(2) 129  
 s18(3) 129  
 s18(6) 128  
 s19 276  
 s19(1) 281  
 s19(7) 281  
 s20 428, 433  
 s26 409  
 s28 360  
 s28A 360  
  
 Mental Health Ordinance (Cap  
 136) 157, 201  
 s2 167  
  
 Offences Against the Person  
 Ordinance (Cap 212)  
 s27 218, 441, 448

s43 218  
 s45 153

Official Solicitor Ordinance (Cap  
 416) 325

Parent and Child Ordinance (Cap  
 429) 180, 230

Part III 194

Part IV 192

Part V 206

s2 201

s3 188

s3(1) 189

s3(2) 189

s5(1) 194

s5(1)(b) 196, 199

s5(2) 197

s5(3) 196

s6 191

s6(1) 198

s6(1)(a) 199

s6(1)(b) 199

s6(2) 198

s6(3) 199

s6(4) 199

s6(5) 199

s6(6) 199

s6(7) 199

s6(8) 199

s7 199

s9(1) 206, 208

s10 207

s10(2) 208

s10(3) 207, 208

s10(4) 208

s10(5) 207

s10(6) 208

s10(6)(b) 208

s12 208, 247, 310

s12(5) 209

s12(6) 209

- s12(9) 209
- s13 204, 247
- s13(1) 201
- s14(1) 201
- s14(2) 201
- s14(3) 201
- s14(4) 201
- s15(1) 204
  
- Pensions Benefits Ordinance (Cap 99) 185–186
  
- Pensions Benefits Ordinance (Judicial Officers) (Cap 401) 186
  
- Pensions Regulations 186
  
- Protection of Children and Juvenile Ordinance (Cap 213) ix
  - s2 446
  - s8 446
  - s26 218
  - s34 220
  - s34(1) 247, 447, 448
  - s34(1)(d) 455
  - s34(1AA) 455
  - s34(2) 445, 448, 449, 451, 454
  - s34(4)(a) 454.
  - s34(5) 454
  - s34(6) 454
  - s34E(1) 446
  - s34E(2) 447
  - s34E(5) 447
  - s34E(6)(7) 447
  - s34F(1)(2) 447
  - s34F(4) 447
  - s45A 447
  - s45A(1) 445, 446
  - s45A(1)(a) 447
  - s45A(2) 446
  - s45A(5) 446
  - s45A(6) 446
  
- s45A(8) 446
- s45A(9) 446
  
- Reformatory Schools Ordinance (Cap 225) 220
  
- Royal Hong Kong Auxiliary Police Force Ordinance (Cap 233) 186
  
- Rules of the High Court
  - O15 r16 45, 199
  - O80 r2 222
  
- Separation and Maintenance Orders Ordinance (Cap 16) 48, 275, 351, 359, 413, 418
  - s2 352, 353
  - s3 354
  - s3(1) 353
  - s3(2) 353
  - s5 281, 357, 359
  - s5(1) 354
  - s5(3) 355
  - s5(b)(d) 353
  - s6(1) 282, 355
  - s6(2) 357
  - s6A 282, 356
  - s9A(1) 357
  - s9A(2) 358
  - s12 355
  
- Supreme Court Ordinance (No of 1873)
  - s3 293
  - s5 5
  
- Surviving Spouses' and Children's Pensions Ordinance (Cap 79) 185
  
- Training Centre Ordinance (Cap 280) 220

Widows and Orphans Ordinance  
(Cap 94) 186

Ontario Family Law Act 1986  
s5(1) 372

## Australian Legislation

Adoption Act 1984 (Vic) 316

Adoption Act 1988 (SA) 316

Adoption Act 1988 (Tas) 316

Adoption Act 1991 (ACT) 316

Adoption Information Act 1990  
(NSW) 316

Adoption Legislation Amendment  
Act 1991 (Qld) 316

Adoption of Children Act 1986–  
1991 (WA) 316

Adoption of Children Amendment  
Act 1990 (NT) 316

Children (Equality of Status) Act  
1976 (NSW) 195

Family Law Act 1975 100, 272–  
273

Marriage Act 1961 (Commonwealth  
of Australia) 150

## Canadian Legislation

Divorce Act 1985 100

Marriage (Prohibited Degrees) Act  
1990 150

## Chinese/PRC Legislation

*Ta Tsing Leu Lee* 7–10, 30, 31, 47,  
57

Article 90 25

Article 101 8

Article 102 33

Article 103 27

Article 105 26

Article 116 34, 58, 59, 60, 61,  
68

Chinese Civil Code 1930 5, 40, 56,  
68, 78, 79, 80

Article 972 38, 43

Article 980 39, 49–53

Article 982 39, 49–53

Article 983 39, 49–53

Article 985 38, 40, 49–53

Article 986 39, 49–53

Article 988 39, 49–53

Article 993 39, 49–53

Article 997 43

Article 1049–1058 71–72

Book IV 14, 38

Marriage Law of 1950 78, 79, 83,  
85–91

Article 1 80

Article 6 79

Marriage Law of 1980 78, 81, 91–  
98, 100, 180

Article 2 80

Article 3 80

Article 5 80

Article 6 80, 150

Article 7 81

Marriage Registration Regulations  
(1 February 1994) 80

s50(9) 187

Children Act 1975 214, 309

## **New Zealand Legislation**

Family Proceedings Act 1980 100,  
171

s31 150

s64(1) 372

Marriage Act 1955

s15 150

Matrimonial Property Act 1976  
372

Status of Children Act 1969 180

## **Singaporean Legislation**

Maintenance of Parents Ordinance  
396

## **UK Legislation**

Abduction and Custody Act  
1985 334

Adoption Act 1976 30, 318

s6 305

s16 318

s47(1)

s50(1) 317

s51 316

s51A 317

British Nationality Act 1981

s15 186

s16 187

Children Act 1989

s1 247

s1(3) 249

s2(4) 242

s2(9) 241

s3(1) 214

s3(2) 221

s3(2)(3) 242

s3(3) 221

s4 232

s5(5) 242

s5(6) 242

s5(7) 243

s5(7)(a) 243

s5(8) 243

s5(9) 243

s6(5) 243

s8(1) 284

s11(7) 284

s44 447

s85 214

s86 281

s88 317

Schedule 10 317

Children (Scotland) Act 1995  
231

s1(1) 214

s2(1) 214

Custody of Infants Act 1839  
(Talfourd's Act) 228

Deceased Brother's Widow's  
Marriage Act 1921 147

Deceased Wife's Sister's Marriage  
Act 1907 147

Divorce and Matrimonial Causes  
Act 1857 142

Divorce Reform Act 1969 101, 172

Domestic Proceedings and  
Magistrates' Courts Act 1976  
s2 469

Domestic Proceedings and  
Magistrates' Courts Act 1978  
s1 354

Domestic Violence and Matrimonial  
Proceedings Act 1976 460

Family Law Act 1996 138, 460

Family Law Reform Act 1969  
s8 226

Family Law Reform Act 1987 180  
s1(1) 179  
s4 232

Family Law Reform Act 1996  
(period of notice) 100

Guardianship of Minors Act 1971  
s5(1) 239

Law Reform (Parent and Child)  
(Scotland) Act 1986 195

Marriage (Enabling) Act 1960  
148

Marriage (Prohibited Degrees of  
Relationship) Act 1931 147

Marriage (Prohibited Degrees of  
Relationship) Act 1986 148

Marriage Act 1949  
s78(1)

Matrimonial Act 1983  
s1(3) 467

Matrimonial and Family  
Proceedings Act 1984 372, 375,  
379, 407

Matrimonial Causes Act 1973  
s23(6) 367  
s25 372, 374, 375, 407  
s33A(1) 422

Pension Act 1995 405

Summary Jurisdiction (Married  
Women) Act 1895 352

## International Conventions

European Convention on Human  
Rights

Article 8 156

Article 12 156–157

The Hague Convention on Civil  
Aspects of International Child  
Abduction 1980 334, 337, 344

Article 3 335

Article 4 335

Article 12 337, 338, 341

Article 13 338

UN Convention on the Rights of  
the Child 216, 305

Article 2 180

Article 3(1) 455

Article 9 439

Article 9(2) 251



Article 9(3)	285
Article 12(1)	251, 455
Article 12(2)	456
Article 19(1)	439
Article 21	

# Customary Marriage, Union of Concubinage and Modern Marriage

## INTRODUCTION

7 October 1971 was a watershed date for Hong Kong marriage law. This was because prior to that date there was in operation a dual marriage system. One of the marriage systems was peculiarly 'Chinese', and it consisted of 'customary marriages', 'unions of concubinage' and 'modern marriages'. The other system was 'Western' or Christian in nature and origin. It was and is commonly referred to as 'marriage under the Marriage Ordinance' or 'registry marriage'.

As from 7 October 1971, the Chinese system was abolished by the Marriage Reform Ordinance (MRO), and since then only marriage under the Marriage Ordinance has been recognised. This institution will be examined in greater detail in Chapter 3. Suffice to say here that one of the distinguishing features of a marriage under the Marriage Ordinance is monogamy, that is, the voluntary union of one man and one woman to the exclusion of all others.

This chapter is concerned with the Chinese marriage system. The need to study this system, abolished almost three decades ago, is not, as some may assume, merely a matter of historical interest. As can be seen from Table 1.1, there are 2518 Chinese marriages registered under the MRO. This system of registration was introduced on 7 October 1971 and one of the consequences of registration is that evidence of a marriage is provided. However, outside this system of registration, there are no statistics indicating how many customary marriages, unions of concubinage and modern

**Table 1.1** 'Chinese' marriages registered under the Marriage Reform Ordinance (figures extracted from Hong Kong Yearbook, Hong Kong Government Press, an annual publication, from the period 1973–97)

	<i>Customary</i>	<i>Modern</i>
1972	181	21
1973	45	8
1974	25	4
1975	52	19
1976	124	39
1977	80	27
1978	66	25
1979	44	20
1980	43	21
1981	53	17
1982	54	20
1983	71	26
1984	72	15
1985	97	19
1986	98	27
1987	85	34
1988	53	60
1989	136*	140*
1990	78	136
1991	49	113
1992	17	60
1993	25	42
1994	24	32
1995	23	22
1996	15	25
sub-total	1610	972
Total		2582

\* This sharp increase in numbers was probably because of Tiananmen Square and registration for immigration purposes.

marriages still exist today even though the status of parties who have entered into these marriages, and of children born as a result, hinges on their validity. Often, the issue of validity, unquestioned during the lifetime of the parties concerned, arises only when one of them dies and succession is at stake. With the passing of time, all these marriages will become extinct. To that extent, the Chinese system of marriage is of transitional interest only since marriage under the Marriage Ordinance will eventually become the sole marriage system relevant in Hong Kong family law.

The marriages which are of transitional interest are:

- (1) Customary marriage: this refers to a marriage contracted in accordance with 'Chinese law and custom'. The parties to such a marriage are a husband and wife. The wife is sometimes called the principal wife or *t'sai* (妻). In addition, Chinese law and custom permitted a husband to take secondary wives. These secondary wives are sometimes referred to as concubines or *t'sip* (妾). The union between a husband and a secondary wife being referred to as a union of concubinage.
- (2) Modern Marriage: this refers to a marriage contracted in accordance with certain requirements of the Chinese Civil Code of the Republic of China, 1930.

We will first consider customary marriage and this will be followed by an examination of unions of concubinage which are an integral part of customary marriages. Both customary marriages and unions of concubinage are steeped in Chinese legal and social history. Modern marriages, however, are of more recent origin and will be examined in the latter part of this chapter.

## CUSTOMARY MARRIAGE

Prior to 1843, and before Hong Kong became a British colony, it was the practice of the Chinese inhabitants to marry in accordance with 'Chinese law and custom'. This type of marriage is sometimes referred to as 'Chinese customary marriage'. Consistent with the terminology of the MRO, the term 'customary marriage' (舊式婚姻) will be adopted. There is no real difference between the two; customary marriage in Hong Kong refers only to Chinese custom, and to no other.<sup>1</sup>

The legal basis for customary marriages has been the subject of much debate<sup>2</sup> and it can be traced back to s5 of the Supreme Court Ordinance which stated that:

Such of the laws of England as existed when the Colony obtained a local legislature, that is to say, on the 5th day of April, 1843, shall be in force

<sup>1</sup> See *Re Kishen Das* (1933) 26 HKLR 42.

<sup>2</sup> Greenfield, 'Marriage by Chinese Law and Custom in Hongkong', 7 ICLQ (1958) 437 (hereafter referred to as Greenfield); Haydon, 'The Choice of Chinese Customary Law in Hong Kong' 11 ICLQ (1962) 231 (hereafter referred to as Haydon); D Lewis, 'A Requiem for Chinese Customary Law in Hong Kong' 32 ICLQ (1983) 347.

within the Colony . . . except so far as the said laws shall be inapplicable to the local circumstances of the Colony or of its inhabitants.<sup>3</sup>

This was almost universally interpreted<sup>4</sup> as the legal basis for the preservation of customary marriages, as practised in 1843, up to 7 October 1971.<sup>5</sup>

## Nature

Customary marriage in dynastic Qing China was a product of centuries of development and evolution from earlier customs and practices.<sup>6</sup> Chu Tung-tsu,<sup>7</sup> a well respected scholar on Qing law and customs, described customary marriage as follows:

The ceremony of "marriage is a bond of affection between two surnames. It serves the ancestral temple on the one hand and continues the family line on the other," says the Hun-i (The meaning of marriage), a chapter in the Li Chi. From this ancient and most authoritative definition, it can be seen that it was the family that was the greatest concern, not the individual. Perpetuation of the family and ancestor worship were closely linked, and the latter seems to be the more decisive. It may be said that the family had to be maintained so that the ancestors could be sacrificed to. Ancestor worship was then the first and the last purpose of marriage. It is therefore not difficult to understand why a bachelor or a married man without a son was considered unfilial. Says Mencius, "There are three unfilial acts, the most serious of which is to be without descendants." Without a

<sup>3</sup> Ordinance No 3 of 1873.

<sup>4</sup> See n. 2.

<sup>5</sup> See for example *Wong Kam-ying v Man Chi-tai* [1967] HKLR 201.

<sup>6</sup> Vermier Chiu, *Marriage Laws and Customs of China*, Chinese University Press, Hong Kong, 1966, p. 1 (hereafter referred to as Vermier Chiu). See also J Dull, 'Marriages and Divorce in Han China: A Glimpse at "Pre-Confucian" Society' in *Chinese Family Law and Social Changes*, ed by D Buxbaum, University of Washington Press, Hong Kong, 1978 (hereafter referred to as J Dull); 陳顧遠《中國婚姻史》商務印書館, 上海, 1936 (Chen Ku-yuan, *A History of Marriage in China*, hereafter referred to as Chen Ku-yuan); 趙鳳喈《中國婦女在法律上之地位》食貨月刊社, 台北, (Chao Feng-chieh, *The Legal Status of Women in China*, hereafter referred to as Zhao Fung-Zia); A Wolf & Chieh Shan-huang, *Marriage and Adoption in China, 1845-1945*, Stanford University Press, Stanford, 1980; 馬之驊《中國的婚俗》經世書局, 台北, 1981. (Ma Chih-su, *Chinese Marriage Customs*);

<sup>7</sup> 瞿同祖《中國法律與中國社會》商務, 1947 (中華書局 1996 年第二次印刷) translated into English, Chu Tung-tsu, 'Law and Society in Traditional China', Westport, Connecticut, Hyperion Press, reprinted edition, 1980 (hereafter referred to as Chu Tung-tsu).

descendant, the ancestors would become unworshipped ghosts. Many ancient peoples believed that ghosts must have sacrifices.<sup>8</sup>

Unlike a marriage contracted under the Marriage Ordinance<sup>9</sup> with which we are familiar today, customary marriage was a union between two families as opposed to a union of two individuals. The purpose of such a union was not the pursuit of individual happiness, rather it was the procreation of male descendants.<sup>10</sup> The consent of the prospective groom and bride to their union was therefore unnecessary, nor was there a requirement for a minimum age of marriage.<sup>11</sup> Indeed, the contract of marriage was made between the heads of two families, usually the father or an agnatic senior of the family of the prospective groom and bride.<sup>12</sup> The head of the prospective groom's family selected a prospective bride, engaged a go-between<sup>13</sup> to negotiate a betrothal contract, and the heads of the families concluded the nuptial agreement.<sup>14</sup>

Customary marriage, important as it undoubtedly was to the family, was based on traditional customs and rites. According to the *Li Chi* or the Book of Rites (禮記), the ceremonials for a valid customary marriage consisted of what was known as the 'Three Covenants and Six Rites' (三書六禮). Their observance was crucial to the validity of a customary marriage.<sup>15</sup> On the other hand, Qing Law or the *Ta Tsing Leu Lee* (大清律例),<sup>16</sup> penal

<sup>8</sup> Chu Tung-tsu, p. 91; see n. 7.

<sup>9</sup> See Chapter 3.

<sup>10</sup> Vermier Chiu, p. 4; see n. 6.

<sup>11</sup> See *Chan Chung-hing v Wong Kim-wah* [1986] HKLR 715; cf. Chao Feng-chieh p. 39; see n. 6.

<sup>12</sup> For the parties who might contract a marriage for a family member, see G Jamieson, *Chinese Family and Commercial Law*, Vetch & Lee Ltd., Hong Kong, 1970 (original edition by Kelly & Walsh Ltd., Shanghai, 1921, hereafter referred to as Jamieson) p. 46. The order of the ranking of these parties were: (1) parents and paternal grandparents; (2) paternal uncles and their wives; (3) paternal aunts; (4) elder brothers and elder sisters; (5) maternal grandparents. See also Vermier Chiu, p. 99; n. 6.

<sup>13</sup> Such a person was also called a marriage broker, messenger, match-maker, introducer, *chieh shao jen* (介紹人) or *mei jen* (媒人); see also Chen Ku-yuan; n. 6.

<sup>14</sup> For detailed rules governing who the Master of Matrimony or *chu hun* (主婚) was, see Vermier Chiu, p. 15; n. 6.

<sup>15</sup> Vermier Chiu, p. 4; n. 6.

<sup>16</sup> The entire body of traditional Qing law was the product of over two thousand years of development in the work of codification. This was embodied in the *Ta Tsing Leu Lee*. Its first edition was promulgated by Emperor Yung Chen in 1728. The final edition was promulgated in 1908. Reference here to the *Ta Tsing Leu Lee* is that translated by George Thomas Staunton, Cheng Wen Publishing Co., Taipei, 1966 (hereafter referred to as Staunton). The *Ta Tsing Leu Lee* consists of seven parts. The first is called 'Names and General Rules', the other parts are named to correspond to the six departments or ministries of the central government. They were: 'Personnel/Civil Service', 'Revenue/Hu Pu', 'Rites',

in nature, did not prescribe the forms and procedures to be followed to contract a valid customary marriage.<sup>17</sup> The relationship between Qing law on one side and custom on the other was not always an easy one, and what impact this had on customary marriages in Hong Kong will be considered later.

## Early Formalities: The Three Covenants and Six Rites

The Six Rites, according to Vermier Chiu, an authority on customary marriage, consisted of the following, and it is useful to quote him here:<sup>18</sup>

1. *Na T'sai* (納采) – the procedure of sending a messenger, usually a go-between . . . to offer a present to the girl-elect in an attempt to find out whether or not she is marriageable. If she is not already betrothed or married and if the offer of marriage is acceptable, the girl's family will accept the present . . .
2. *Wen Ming* (問名) – the procedure of enquiring as to the name and date of birth of the girl-elect. After the girl's family has accepted the present which represents an offer of marriage, the same messenger is sent by the boy's family with a formal letter asking for the full name and date of birth of the girl-elect. In reply thereto the girl's family writes back, also formally, giving the year, month, date and hour of her birth besides her full name.
3. *Na Chi* (納吉) – the procedure of finding out whether or not the match would be suitable or felicitous. This is done by matching the girl's horoscope . . . with that of the boy. If they harmonise with one another, the match will be deemed favourable . . . the eight characters of nativity of the intended bride are written on a piece of red paper and placed underneath the incense burner in front of the ancestral tablets for three days. If during that period nothing infelicitous has happened, such as quarrelling in the family, breaking of earthenware or glassware, burning of the rice pan, etc., then the match will be deemed suitable and a messenger will be sent to the intended bride's family notifying her paterfamilias that the match is hereby approved . . .

---

'War', 'Punishments' and 'Works'. Hu Pu referred to 'family' or 'household'. The department was equivalent to revenue as taxes in China were levied on the family. The section on Hu Pu thus contained laws pertaining to family relations such as marriages, succession and inheritance. For further details on the *Ta Tsing Len Lee*, see Tsao Wen-yen, 'The Chinese Family Law from Customary Law to Positive Law', [1966] 17 *Hastings Law Journal* 727 (hereafter referred to as Tsao Wen-yen); *The Great Qing Code*, (William C Jones tr) Oxford, Clarendon Press, 1994 (hereafter referred to as William Jones).

<sup>17</sup> Except Article 101 of the *Ta Tsing Len Lee* which dealt with betrothal, Staunton; see n. 16.

<sup>18</sup> Vermier Chiu, p. 5; see n. 6; see also J Dull; Chen Ku-yuan; n. 6.

4. *Na Cheng* (納徵) – the procedure of paying money in settlement of the marriage. This is done by sending a messenger to the intended bride's family with the sum of money previously agreed upon. This is the final step in the betrothal.
5. *Ch'ing Ch'i* (請期) – the procedure of requesting the fixing of the date of the wedding. The literal meaning of these characters is: request made by the intended bridegroom's family to the intended bride's family for a day to be fixed for the wedding; but in actual practice the fixing of the wedding day rests with the intended bridegroom's family. The procedure generally adopted is this: the paterfamilias of the boy's family selects a lucky day, then he writes a formal letter to the paterfamilias of the girl's family informing him that the day of the wedding has been decided on, and finally he sends a messenger to deliver the letter to the paterfamilias of the girl's family who invariably declares in his reply thereto that such and such a day . . . shall be the wedding day . . . In this way, the letter and spirit of 'ching chi' are harmonized.
6. *Ch'in Ying* (親迎) – the procedure of the bride being welcomed by the bridegroom at his home. A commoner needed not welcome his bride to his home in person, but a person of position, especially in the days of yore, must proceed in person to the bride's home – usually on horseback – to escort her to his home.

The Six Rites are sometimes summarised as follows:<sup>19</sup>

- (1) Initiating the proposal;
- (2) Asking the name of the girl;
- (3) Reporting the results of the divination before the shrine in the groom's ancestral temple;
- (4) Such divination being propitious, the presenting of the betrothal gift;
- (5) Asking for the wedding date, and
- (6) Welcoming the bride.

Two additional rites were also performed by the bride, one called 'rites for becoming a wife', the other, 'rites for becoming a woman'.

The former is consummated by sexual intercourse on the night of the wedding . . . The latter is completed by paying respects to the bridegroom's parents by kowtowing and serving tea to them on the day after the wedding . . . the latter is more important than the former because consummation of the marriage by sexual intercourse is a matter concerning only the parties to the marriage, whilst completion of the latter is indispensable to becoming

<sup>19</sup> See Leonard Pegg, *Family Law in Hong Kong*, 3rd edition, Butterworths Asia, Hong Kong, 1994, p. 6 (hereafter referred to as Pegg).

<sup>20</sup> Vermier Chiu, p. 6; see n. 6.



a member of the husband's clan — a matter of no small concern for both the parties to the marriage and the whole clan.<sup>20</sup>

In the course of these Six Rites three documents might be exchanged, comprising the so-called 'Three Covenants'. The first document (聘書) which formed part of the betrothal and emanated from the prospective groom's family contained the prospective groom's pedigree. This would be reciprocated by the prospective bride's family, returning details of her pedigree. The second document (禮書), also forming part of the betrothal, consisted of a list of gifts presented to the girl's family.<sup>21</sup> The final document was the marriage document (迎書), written by the bride's family on the day of the wedding.<sup>22</sup>

## Evolving customs: From 1843–1971

By the very nature of human society, the customs of 1843 had to adapt to suit changing times and circumstances, and Hong Kong society in the 1950s and 1960s was vastly different from Hong Kong in 1843, not least in terms of demographics. In 1843, Hong Kong had a population of 5000, and by the 1950s, it was nearly three million. Thus, Haydon wrote in 1962:

Prima facie it is remarkable that many of the Chinese in Hong Kong at the present day, who comprise some of the most cultured people to be found in the Far East, should be at law subject in their domestic affairs, matters which are all important in Chinese eyes, to theoretical concepts of the customs of a riff-raff living in this same region of Kwangtung Province a hundred and twenty years ago.<sup>23</sup>

Fortunately, the courts did not consider customs ossified as of 1843. Thus, in 1969, in the case of *Re Wong Choi-ho* (which concerned the position of a concubine), Briggs J said that the correct law to apply was:

... the Ch'ing law and custom as it existed in 1843 with such modifications in custom and in the interpretation of the law as have taken place in Hong Kong since that period.<sup>24</sup>

<sup>21</sup> Sometimes also called 'the Passing of the Big Gift' (過大禮).

<sup>22</sup> Vermier Chiu, p. 76; see n. 6; see *Local Traditional Chinese Weddings*, Hong Kong Urban Council, Hong Kong, 1987, pp. 17 and 48, where this was described as a deed for the delivery of the bride, registering permission to take the bride.

<sup>23</sup> See Haydon; n. 2.

<sup>24</sup> [1969] HKLR 391 at 394.

The courts recognised that Chinese law and custom had evolved and developed to meet new circumstances. It was for the courts to decide how, and to what extent, it had developed.<sup>25</sup> Thus, Huggins J said that the applicable customary law was to be derived from a process which he described as follows:

... one merely looks to 1843 to ascertain the applicability of the customary law and the basic rules as they then existed and thereafter one applies those rules subject to such developments as may have taken place since that date.<sup>26</sup>

Customary law, then, was seen by the courts as a 'living and developing organ' and it was not static.<sup>27</sup> Writing in the 1960s, Vermier Chiu was of the view that the Six Rites had been reduced to three essentials, even as early as the Sung Dynasty (960–1279 AD).

*na ts'ai* and *wen ming* were combined and the new combination was called *ts'ai tse* (采擇) or select. *Na chi*, *na cheng* and *ch'ing ch'i* were amalgamated and became *na pi* (納幣) or payment of money. Only *ch'in ying* was left intact.<sup>28</sup>

Similarly, Leonard Pegg takes the view that the Six Rites had three dominant features:<sup>29</sup> betrothal through the go-between;<sup>30</sup> transfer of the bride to the bridegroom's home; reception of the bride into the bridegroom's family and giving her the status of daughter-in-law who then became responsible for the ancestral worship. The nature of these three dominant features for constituting a valid customary marriage will be considered later.

### ***The roles of expert witnesses and authoritative writings***

Although customs evolved in line with social change, how were these modifications to customs to be ascertained? The problem became acute with the mass influx of immigrants from different parts of China in the 1950s and 1960s. It was exacerbated by the fact that Chinese customs varied among the inhabitants of different districts and clans; the customs of the boat people differed from those of shore dwellers and among different

<sup>25</sup> *Wong Kam-ying v Man Chi-tai* [1967] HKLR 201 at p. 211.

<sup>26</sup> *Ibid.*

<sup>27</sup> See also Saied J in *Chan Chung-hing v Wong Kim-wah* [1986] HKLR 715 at p. 724.

<sup>28</sup> Vermier Chiu, see p. 7; n. 6.

<sup>29</sup> Pegg, p. 6; see n. 19; see also Jameison, p. 45; n. 6.

<sup>30</sup> See also Chen Ku-yuan; n. 6.

linguistic and regional groups such as the Cantonese, Hakka, Chiu Chow, Fukienese, Shanghaiese or Pekinese.<sup>31</sup>

By the 1950s, extensive efforts had been made by the government to study the institution of customary marriage in Hong Kong. The Strickland Report,<sup>32</sup> in 1948, was followed by the White Paper on Chinese Marriages in Hong Kong in 1960.<sup>33</sup> Further studies were published in the McDouall-Heenan Report in 1965<sup>34</sup> and then in the White Paper on Chinese Marriages in Hong Kong in 1967.<sup>35</sup>

It thus became clear that there could be no single authoritative account of the relevant customs in 1843 and the modifications to them which had occurred; yet important matters concerning the status of the parties to the marriage, the legitimacy of children, succession,<sup>36</sup> and the jurisdiction of the courts to entertain matrimonial applications,<sup>37</sup> all hinged on establishing the validity of a marriage.

The difficulty in ascertaining what constituted a valid customary marriage was daunting and this finally surfaced in 1962 in the Court of Appeal case of *Lui Yuk-ping v Chow To*,<sup>38</sup> where Macfee J observed that the practice of using expert witnesses to assist the court in ascertaining what constituted a valid customary marriage was effectively treating Chinese law and custom as foreign law. He remarked that:

If Chinese law and custom is to be accepted as part of the law of Hong Kong then surely its existence is a matter of which judicial notice is to be taken, and if the court should require any assistance on points of this, or any other law of this Colony, then surely the proper procedure is to consult written authorities on the subject, if necessary with the assistance of learned counsel and translators?

<sup>31</sup> Chinese Marriages in Hong Kong, Hong Kong Government Printer, Hong Kong, 1965 (hereafter referred to as the McDouall-Heenan Report 1965), para 15.

<sup>32</sup> Also called the Report on Chinese Law and Customs in Hong Kong (chaired by the then Solicitor General, Mr G Strickland), Hong Kong Government Printer, Hong Kong, 1948 (hereafter referred to as the Strickland Report 1948).

<sup>33</sup> White Paper on Chinese Marriages in Hong Kong, Hong Kong Government Printer, Hong Kong, 1960 (hereafter referred to as White Paper 1960).

<sup>34</sup> Chinese Marriages in Hong Kong, Hong Kong Government Printer, Hong Kong, 1965 (hereafter referred to as the McDouall-Heenan Report 1965).

<sup>35</sup> The 1967 White Paper on Chinese Marriages in Hong Kong, Hong Kong Government Printer, Hong Kong, 1967 (hereinafter referred to as the White Paper 1967).

<sup>36</sup> *Chan Chung-hing v Wong Kim-wah* [1986] HKLR 715; *Re Ng Shum (No 2)* [1990] 1 HKLR 67.

<sup>37</sup> *Tang Lai Sau-kin v Tang Loi* [1987] HKLR 85; *Chan Lee-ken v Chan Sui-fai* [1966] HKLR 796; *Ho Har-chun v Yiu Hon-ming*, District Court, Action No 2381 of 1970 (judgment date unknown).

<sup>38</sup> [1962] HKLR 515.

Macfee J doubted the propriety of using expert witnesses:

Here in Hong Kong, or anywhere else, there is obviously nobody now living who has had any practical experience of the Chinese law of 1843, and there must be comparatively few who have had practical experience of it immediately prior to the Revolution of 1911, yet the practice prevails in our courts of calling as witnesses learned “*experts*” in such law; it may well be that such practice originated in by-gone days when lawyers experienced in Chinese law of 1843 were available, at all events it obviously has not stopped when, in the course of time, they ceased to become available . . . . For my part I have doubted as to the propriety in any witness coming forward and, in effect, saying to a court “*I have studied such and such a branch of the law of this Colony and I now tell you on oath that the answer to the legal problem now propounded is so and so.*”<sup>39</sup>

Despite this, the practice of calling expert evidence continued. Thus, one year later, in 1963, in the case of *Ng Ying-ho v Tam Suen-yu* (which concerned the position of a concubine), Huggins J allowed expert evidence to be given by a solicitor of the Supreme Court, whom he was satisfied was ‘well-qualified’ to speak as to Chinese law on the basis that ‘there are no books of Chinese law’ to which he (the judge) might refer.<sup>40</sup> However, in 1967, in *Wong Kam-ying v Man Chi-tai* (a case again concerning a concubine), there was no expert witness before Huggins J and he had to rely for guidance upon ‘such writings as are available’.<sup>41</sup> Yet, in 1969, in *Re Wong Choi-ho*,<sup>42</sup> Briggs J allowed expert evidence to be tendered. Since then, and up until today, expert evidence has been accepted by the courts. However, the evidence of an expert is not conclusive, the final decision resting with the court, which is not bound to accept such evidence.<sup>43</sup>

### **‘Chinese law and custom’ not modified by events outside Hong Kong**

Although the ‘Chinese law and custom’ preserved in Hong Kong was the Qing law and custom, the marriage law in China had undergone fundamental changes since 1843. Most notably, early twentieth-century China had

<sup>39</sup> Ibid., at pp. 531–2. *Italic original*. It is worth noting that in *Re Wong Choi-ho* [1969] HKLR 391 which was lengthy litigation, two expert witnesses died before the litigation concluded.

<sup>40</sup> [1963] HKLR 923.

<sup>41</sup> [1967] HKLR 201 at p. 212.

<sup>42</sup> [1969] HKLR 391.

<sup>43</sup> Saied Deputy High Court Judge in *Chan Chung-hing v Wong Kim-wah* [1986] HKLR 715 at p. 728.

witnessed much effort at modernisation, and, concerning marriage, there had been a move away from customary marriage rituals towards a more simplified form.<sup>44</sup> In furtherance of this trend, after the Qing Dynasty had been overthrown by the Republican Revolution in 1911 and the Nationalist government established in 1928, in 1930 the Nationalists promulgated Book IV (entitled 'Family') of the Chinese Civil Code.<sup>45</sup> The Chinese Civil Code 1930 adopted a simpler form of marriage which was modelled on Japanese, German and Swiss law. It recognised, *inter alia*, an individual's freedom to contract a marriage without the consent of the head of the family (thus freeing the prospective bride and groom from the control of their families) and removed the need to follow ceremonials of customary practice for contracting a valid marriage. As will be seen later in the section on modern marriages, all that was required in terms of formalities was that a marriage be celebrated in an 'open' ceremony in the presence of two witnesses.<sup>46</sup>

Many of the inhabitants in Hong Kong embraced this simplified form for marriage.<sup>47</sup> Arguably, it could be considered as an evolved form of customary marriage,<sup>48</sup> a product of changing times and social circumstances. This view, if accepted, would mean that customary marriage had simply evolved to become the kind of marriage characterised in the Chinese Civil Code. This view, however, was not accepted by the courts, which took the view that modifications to customs were relevant only if they had developed in Hong Kong. Thus, it was held in *Re Wong Choi-ho*, in 1969, that such changes in the customs and in the law made in 'another country' were irrelevant. They could not be regarded as a part of the evolution of customary marriages in Hong Kong. Evolution relevant to customary marriages meant evolution that had taken place in Hong Kong alone and therefore modifications of Chinese custom in Chinese communities in other jurisdictions, such as Singapore and Malaysia, were also irrelevant. As Briggs J said:

We must . . . keep our eyes in the boat; and the boat is Hong Kong. What happened outside Hong Kong must be ignored.<sup>49</sup>

<sup>44</sup> For a history of law reform, see Van der Valk, *An Outline of Modern Chinese Family Law*, Henri Vetch, Peking, 1939 (hereafter referred to as Van der Valk).

<sup>45</sup> See Annex I of this chapter.

<sup>46</sup> See pp. 37–43.

<sup>47</sup> See the McDouall-Heenan Report 1965; n. 31.

<sup>48</sup> See also Greenfield at p. 449; n. 2, where it was remarked that the 'modern' form of marriage was neither a simplified version nor a development of customary marriage; Leonard Pegg, 'Chinese Marriage and Divorce under British Colonial Law: The Hong Kong Experience' (1974; M Phil. Thesis; HKU Library).

<sup>49</sup> [1969] HKLR 391 at p. 395.

## From 1971 Onwards: The Marriage Reform Ordinance

As mentioned earlier, customs change in step with a changing society and Hong Kong society was changing at a rapid pace. Apart from local variations, the practices of different clans, and the difficulty in ascertaining the relevant customs, the reality was that by the late 1960s and early 1970s, customary marriages were considered distinctly feudal and anachronistic. Some of the characteristics of a customary marriage, for instance, a husband's prerogative to unilaterally repudiate the marriage,<sup>50</sup> and his freedom to take concubines,<sup>51</sup> were clearly incompatible with women's role in society.

So far as United Nations standards are concerned, Chinese customary marriages leave a good deal to be desired, in that they are not registered or registrable, they are not celebrated before an official, they are not monogamous. Furthermore since such marriages can be unilaterally dissolved by the husband they are not consistent with Article 16 of the United Nations Universal Declaration of Human Rights which proclaimed that men and women are entitled to equal rights to marriage, during marriage and at its dissolution.<sup>52</sup>

This provided the final impetus for reform, the main aim of which was the abolition of customary marriages prospectively. Abolition served the function of capping the numbers of customary marriages and the epoch within which they have to be assessed as to their validity. Law reform was effected by the MRO.<sup>53</sup>

### **Abolition of customary marriage**

During the second reading of the Marriage Reform Bill on 3 June 1970, abolition of customary marriage was regarded as long overdue. Mr P C Woo said:

... the main provisions of this bill are based on the recommendations of the Committee on Chinese Law and Custom in Hong Kong made in February 1953 but it took 17 years before this matter comes to this Council for debate, and during these 17 years as the mover of the bill rightly pointed out, "that public attitudes and preferences and practice have been undergoing changes", which behoves us to review the antiquated Chinese

<sup>50</sup> See Chapter 2.

<sup>51</sup> See pp. 27–37.

<sup>52</sup> White Paper 1967, para 15; see n. 35.

<sup>53</sup> For some of the debates for and against law reform prior to the introduction of the MRO, see *Ming Pao*, 9 April 1958, 20 October 1958, *South China Morning Post*, 7 October 1962, 27 November 1964, 14 July 1967, *Sing Pao*, 23 August 1968.

law of marriages and to reform the same so as to suit the present condition in Hong Kong.<sup>54</sup>

The passage of the Bill was uncontroversial; four legislators spoke, three of whom were in favour and only one against. Mr Oswald Cheung made a last appeal to save customary marriages. He remarked that customary marriage, together with the institution of concubinage, was not an inferior institution to that of monogamy. Consequently, the law should not deprive a man of his right to contract a customary marriage. He argued as follows:

... is monogamy so manifestly a superior institution to the traditional Chinese institution of marriage that we should completely deny the right to people to opt out of it if they so wish? Are we right to force this institution upon the people who do not believe in it and who do not want it?

I regret I am completely unable to draw the conclusion from the historical or the present day evidence which is available to me that monogamy is so successful, so obviously superior and so more conducive to the public good and to the individual happiness of men and women, that I am prepared to say that this — and this only — shall be the way men and women shall regulate their lives. Let me next observe that the institution of monogamy, which is in force in Hong Kong . . . is at best a compromise between polygamy and the teachings of the Christian church. The Church decrees that a man shall have only one wife in his life. Our system of monogamy says a man shall have one wife at one time. It does permit him to have different wives at different times. Equally the Chinese customary marriage is a compromise.<sup>55</sup>

The main aim of the MRO was to abolish, *inter alia*, customary marriages prospectively. As Mr Holmes, the then Secretary for Home Affairs, who moved the second reading of the Marriage Reform Bill, stated:

all the connected matters fell into place more or less as transitional provisions . . . [and] as time goes on fewer and fewer [customary marriages] will exist and in due course the provisions I have described will become entirely spent.<sup>56</sup>

S4 of the MRO thus provides that marriages contracted in Hong Kong on or after the 7 October 1971 shall imply the voluntary union for life of one man and one woman to the exclusion of all others, and may be contracted only in accordance with the Marriage Ordinance. This thereby abolished customary marriage as of 7 October 1971.

<sup>54</sup> HK Hansard, 3 June 1970, p. 728.

<sup>55</sup> *Ibid.*, pp. 735–6.

<sup>56</sup> *Ibid.*, pp. 677–8.

***Customary marriage defined***

The prospective abolition of customary marriage as of 7 October 1971 did not deal with the questions of validity of those which had already been contracted prior to that date. To remedy the lack of a definition as to what constituted a valid customary marriage, the MRO defined it as:

a marriage celebrated in Hong Kong in accordance with section 7.<sup>57</sup>

S7(1) of the MRO provides that:

For the purposes of this Ordinance, a marriage shall constitute a customary marriage if it was or is celebrated in Hong Kong before the [7 October 1971] in accordance with Chinese law and custom.

‘Chinese law and custom’ means:

such of the laws and customs of China as would immediately prior to 5 April 1843 have been applicable to Chinese inhabitants of the Colony<sup>58</sup>

S7(2) further provides that a marriage ‘shall be deemed’ to accord with Chinese law and custom if it was celebrated in accordance with the

... traditional Chinese customs accepted at the time of the marriage as appropriate for the celebration of marriage either

- (a) in the part of Hong Kong where the marriage took place; or
- (b) in the place recognised by the family of either party to the marriage as their family place of origin.

**Customs of when**

S7(2) of the MRO focuses on ‘traditional Chinese customs’ for the celebration of a marriage, not those of 1843, but those at the time of the marriage. Its intention is to avoid disputes concerning what the customs were in 1843. For example, if a customary marriage was alleged to have taken place in 1940, all the court has to ask is: ‘was the ceremony accepted as appropriate for the celebration of a customary marriage in 1940?’ This is consistent with the notion that customary law is a living creature, evolving with changing social conditions. As has been mentioned earlier, this, indeed, has been the approach of the courts. What appears to be new, however, is

---

<sup>57</sup> S2.

<sup>58</sup> S2.



that the customs adopted need not be the local (or Hong Kong) customs, but could be those imported from other parts of China, being the customs of the place of origin of either party to the marriage.<sup>59</sup>

### Customs of where

The relevant customs could be those 'in that part of Hong Kong where the marriage took place'. For example, a customary marriage involving two families, one from Shandong, Guangdong (山東, 廣東) and one from Changsha, Hunan (長沙, 湖南), and celebrated in Kowloon Walled City, would be valid if the parties adopted the customs of Kowloon Walled City, as opposed to say the customs of a Hakka Village in the New Territories.

The customs could be that of the 'place recognised by the family of either party to the marriage as their family place of origin'. This envisages inter-marriage between families which have adopted different customs and rites.<sup>60</sup> Again, using the above example, it would suffice if the ceremony was in accordance with either the customs of Shandong or Changsha. But if the parties adopted a mixture of both Shandong and Changsha customs, the marriage would not be a valid customary marriage. It is also worth mentioning that as the customs of the place of origin of either party to the marriage could be used, there would be a valid customary marriage even if the customs of the wife's family, as opposed to that of the husband's family were adopted. This appears to recognise an element of equality between the families as to whose customs were to be adopted for the celebration of the marriage.<sup>61</sup>

### Customs accepted by whom

S7(2) of the MRO is silent on this. If the parties adopted the customs of the place of origin of the husband's family, it would be difficult to envisage that, after many years of marriage, its validity would be questioned either by the wife, an interested relative, a guest who had attended the wedding ceremony, or even by a local inhabitant of the place where the marriage took place. The McDouall-Heenan Report 1965 suggested that acceptance by the parties to the marriage was the relevant test:

<sup>59</sup> See Greenfield; n. 2; *Re Ng Shum (No 2)* [1990] 1 HKLR 67; *Chan Chung-hing v Wong Kim-wah* [1986] HKLR 715.

<sup>60</sup> C Osgood, *The Chinese: A Study of a Hong Kong Community*, University of Arizona Press, Tucson, 1975.

<sup>61</sup> See Greenfield; n. 2; *Re Ng Shum (No 2)* [1990] 1 HKLR 67; see also G MacCormack, *The Spirit of Traditional Chinese Law*, University of Georgia Press, Athens, 1996, Ch. 5.

All genuine customary marriages have at least one identifiable factor in common: they must be celebrated according to the accepted rites and ceremonies of the parties' families, in conformity with traditions which go back beyond their living memory.<sup>62</sup>

This must be correct as it is consistent with the approach hitherto taken by the courts. Although sections S7(2)(a) and (b) of the MRO refer to the practices of a certain area, and arguably this relates to the customs practised by the people of a particular locality,<sup>63</sup> however, in *Chan Chung-hing v Wong Kim-wah*,<sup>64</sup> Judge Saied took the view that the appropriateness of the traditional Chinese custom was not to be judged from ascertaining from 'each resident what that traditional custom' might be. He was of the view that it had to be judged only by those who were actually present at the wedding ceremony. However, this view would seem to carry the unfortunate consequence that the more people who attended, the more likely it would be that disagreements could arise.

### The role of expert witnesses

S7(2) does not set out in concrete terms the requirements of a valid customary marriage. It is therefore left to the court to ascertain whether a custom adopted in a particular case was capable of constituting such a marriage. Expert evidence, however, may continue to assist the court.<sup>65</sup>

### Judicial interpretation

For nearly three decades, the courts have entertained a large degree of laxity in interpreting the customs required for a valid customary marriage. The cardinal rules are: that each case is to be considered in the light of its own facts; the ceremonies must be viewed as a whole, taking into account changing social circumstances in Hong Kong, and; strict adherence to formality is not as important as the intention of the parties to proceed in accordance with customary rites.

Thus, it has been held that the first two of the Six Rites were obsolete by the 1970s.<sup>66</sup> It has also been held, in *Kwan Chui Kwok-ying v Tao Wai-*

<sup>62</sup> McDouall-Heenan Report 1965, para 16; see n. 31.

<sup>63</sup> See Pegg, p. 10; n. 19.

<sup>64</sup> [1986] HKLR 715.

<sup>65</sup> See *Lee Lan v Henry Ho*, High Court, Miscellaneous Proceedings No 3441 of 1978 (1980); *Chan Chung-hing v Wong Kim-wah* [1986] HKLR 715, *Re Ng Shum (No 2)* [1990] 1 HKLR 67, *Kwan Chui Kwok-ying v Tao Wai-chun* [1995] 1 HKC 374.

<sup>66</sup> *Ho Har-chun v Yiu Hon-ming*, District Court, Action No 2381 of 1970 (judgment date unknown).

*chun*,<sup>67</sup> (concerning a marriage which took place in 1960), that documentary evidence of the 'three covenants' was not necessary, nor was it necessary that the bridegroom fetch the bride on the wedding day personally, nor would it be fatal if the marriage took place on an inauspicious day or that it was within one year of mourning the death of a parent.

As was said earlier, of the Six Rites, there remained three which were crucial. They were: betrothal through a go-between, transfer of the bride to the bridegroom's home, and accepting the bride into the family as the daughter-in-law. As will be seen from cases decided since 1971, the role parents played in betrothal has been much reduced. The courts have been inclined to consider customary marriages as *affaires de coeur* as opposed to contracts between parents. However, the betrothal gift cementing the union could not be omitted. Finally, the rites for accepting the bride into the groom's family need not be exact and the parents welcoming of the bride some months after the marriage has been accepted as sufficient, either because it was taken as a form of *ex post facto* acceptance (and therefore still crucial) or because it was regarded as largely symbolic.

### ***Affaires de coeur***

By the late 1960s and early 1970s, customary marriages were no longer 'arranged marriages' but *affaires de coeur*, the role which heads of the families played having been seriously eroded, particularly when circumstances rendered it difficult, if not impossible, for them to participate. In *Ho Har-chun v Yiu Hon-ming*,<sup>68</sup> the marriage took place in 1970. The husband was a seaman, and through the medium of friends, he exchanged photographs and corresponded with the wife. Their first meeting was arranged by a go-between who acted on behalf of the wife's family and other members of the wife's family also attended. After a short period of courtship, the wife accepted the husband's suggestion of marriage. He fixed the wedding by agreement with his own family and communicated the arrangement to his prospective wife. Gifts were then exchanged. On the wedding day, the wife was fetched from her mother's home by the husband and was conducted to the husband's home. Photographs were taken. An evening dinner of 18 tables was provided in a restaurant, at which the parties served tea to their mothers and the two go-betweens. There was also 'some form of worshipping of the gods'.

A fundamental challenge to the validity of the marriage was that the betrothal was at the instance of the parties themselves; it was not concluded

<sup>67</sup> [1995] 1 HKC 374.

<sup>68</sup> District Court, Action No 2381 of 1970 (date of judgment unknown).

between the heads of the families and so was contrary to the spirit of a customary marriage. However, Cons J in the District Court held that tradition was by no means inflexible, particularly in circumstances where it was difficult, if not impossible, for the heads of the family to participate. In this case, the husband's father was in mainland China, and 'there was no mention in the evidence of any senior male member of the wife's family'. Nevertheless, betrothal was clearly with the consent of 'the close members of the respective families' and was 'cemented by the exchange of gifts'. It was a valid customary marriage.

Indeed, in 1967, Huggins J said (obiter) in *Wong Kam-ying v Man Chi-tai*, that customary marriages

... are now usually *affaires de coeur* rather than contracts between parents<sup>69</sup>

In other words, so long as a customary marriage was concluded with the consent (explicit or implicit) of close members of the respective families and was cemented by the exchange of gifts, it was a valid customary marriage.

This view of the diminished role which parents (or agnatic seniors of the families) played in a customary marriage was also accepted in the case of a marriage which took place during the Japanese Occupation, reflecting the circumstances of those whose families had been displaced by the social and political upheaval of the time. Thus, in *Chan Chung-hing v Wong Kim-wah*,<sup>70</sup> it was alleged (in a probate action) that a valid customary marriage was contracted between the plaintiff-woman and the deceased. The plaintiff and her widowed mother had come to Hong Kong from Chiu Chow in 1936 and they had no relatives in Hong Kong. The deceased also had no relatives in Hong Kong, although he had an elder brother and a mother in his native village in China. It was argued that a betrothal was not an agreement between the prospective bridegroom and the mother of the prospective bride. The court, accepting without much difficulty that a widowed mother had the exclusive right to consent to the marriage of her daughter, focused on the question of the capacity of a 'solo' man in Hong Kong to contract his own customary marriage. Deputy High Court Judge Saied was unwilling to deny to such a man 'his right to procreate' and be condemned to 'a life of bachelorhood'. He remarked:

I doubt very much that in a situation where ethnic communities leave the shores of their native countries and settle in foreign lands, it could ever be said that a young person, living alone without his parents or another senior male relative, would be denied the natural rights of procreation

<sup>69</sup> [1967] HKLR 201 at p. 213, italics original.

<sup>70</sup> [1986] HKLR 715.

through the sanctity of marriage on the argument of lack of the requisite consent to marry. Such rigidity would surely condemn such a person to the status of permanent bachelorhood or spinsterhood which cannot be in accord with the traditional customs with which we are concerned.<sup>71</sup>

He held that Chinese customary law permitted a junior member of the family, such as the deceased, living away from home and earning his own livelihood, if his betrothal had not already been arranged by his senior relatives, to arrange his own marriage without reference to them.<sup>72</sup>

### Betrothal gift

There is no customary marriage unless there has been a betrothal, signified by the passing of the 'Big Gift' or betrothal gift. So far, the courts have not considered the nature and value of the gift to be important.<sup>73</sup> For example, in *Chan Chung-hing v Wong Kim-wah*,<sup>74</sup> the gift of '4 silver coins of mainland China' was considered to be sufficient. In *Ho Har-chun v Yiu Hon-ming*, it was said that 'gifts were exchanged' and 'jewellery, wine and food were conveyed to the wife and her family'.<sup>75</sup> In *Chong Chui Yuk-ching v Chong Pui-cheong*, 'cash and 200 catties of wedding cakes' were involved.<sup>76</sup> However, the lack of any betrothal gift was fatal. Thus, in the recent case of *Re Ng Kwok-hing*,<sup>77</sup> the parties met, fell in love, and they decided to marry with the approval of their families. As it was during the Japanese occupation, they held a small dinner at the home of the parents of the 'husband', followed by the 'wife' serving tea to the parents-in-law. It was held, however, that a crucial element to a customary marriage — betrothal gift signifying the union between the two families — was missing. It was not a valid customary marriage.

### Accepting the bride into the groom's family

The customs and rites signifying acceptance of the bride into the bridegroom's family were not exact. Indeed, cases suggest that these might consist of the couple 'serving tea to the parents' and 'kowtowing to them',

<sup>71</sup> Ibid., at p. 725, cf. Pegg's commentary on the case in 17 (1987) HKLJ 237.

<sup>72</sup> See also *Kwan Chui Kwok-ying v Tao Wai-chun* [1995] 1 HKC 374.

<sup>73</sup> Chen Ku-yuan; see n. 6.

<sup>74</sup> [1986] HKLR 715; see also Pegg's commentary in (1987) 17 HKLJ 237.

<sup>75</sup> District Court, Action No 2381 of 1970 (unreported, date of judgment unknown).

<sup>76</sup> [1983] HKDCLR 1.

<sup>77</sup> High Court, Miscellaneous Proceedings No 2564 of 1994 (1996), judgment in Chinese only.

‘worshipping heaven and earth’ or the ‘ancestral tablets’ if they were available. For instance, in *Ho Har-chun v Yiu Hon-ming*, the couple offered tea ‘to their mothers’ and there was also ‘some form of worshipping of the gods’.<sup>78</sup> In *Chan Chung-hing v Wong Kim-wah*, the husband did not have his ancestors’ shrine so the couple worshipped ‘heaven and earth’.<sup>79</sup>

Furthermore, if the prospective groom was living in the same premises as the prospective bride, conveyance of the bride to the bridegroom’s house would be unnecessary, and the rites for the acceptance of the bride could be condensed into one place with the bride being ‘accepted’ in her own home. Thus, in *Chan Chung-hing v Wong Kim-wah* (above), the deceased lived with the plaintiff and her mother. He occupied a canvas bed just outside the room which the mother and daughter occupied in a premises in Second Street, Sai Ying Pun, Hong Kong. The ceremony took place at the premises following Chiu Chow customs. On the wedding day, the plaintiff wore a wedding gown and another tenant of the premises acted as a go-between, escorting her into the room of the deceased<sup>80</sup> where he received her. They ‘worshipped heaven and earth’ in the sitting room.

Where the father or an agnatic senior of the family of the groom could not be involved in the betrothal or the marriage ceremony, acceptance of the bride subsequently (i.e. after the marriage) has been recognised by the court as sufficient acceptance of the daughter-in-law into the groom’s family. Thus, in *Chan Chung-hing v Wong Kim-wah* (above), the defendant took the plaintiff back to his native village to visit his mother after the marriage. The plaintiff ‘served tea to her’ and received a *laissee* packet. The High Court held that the marriage ceremony was to be considered as a whole in order to decide if traditional customs had been complied with. There was evidence that the defendant received her in his room (which was probably so designated on that occasion), they later worshipped heaven and earth, and the deceased took her to meet his mother after the wedding. There had accordingly been sufficient compliance with the traditional customs.

### ***Chinese ‘law’ prevails over ‘custom’***

So far, we have focused on s7(2) — the customs required to contract a valid customary marriage. However, compliance with customs alone has not been accepted by the courts as satisfying the statutory requirement that customary marriage was a marriage in accordance with ‘Chinese law and

<sup>78</sup> Ibid.

<sup>79</sup> Ibid.

<sup>80</sup> Probably so designated on that occasion.

custom'. Indeed, conflicts between Chinese 'law' and 'custom' were noted by McAleavy in 1963 when he observed that:

In the Chinese law and custom of 1843 . . . there are a number of these topics, where the statute law, applied by the Chinese courts, laid down one rule, and custom, followed by the great mass of the people, persisted in another. Which of the two, custom or statute, ought to be recognised by the Hong Kong courts?<sup>81</sup>

This conflict has now been resolved in favour of Chinese law in the case of *Re Ng Shum (No 2)*,<sup>82</sup> where Benjamin Liu J held in the High Court that although s7(2) provided that a marriage be deemed to accord with 'Chinese law and custom' if it was celebrated in conformity with s7(2), such compliance created only a rebuttable presumption that a marriage was in compliance with custom, and hence a presumption that there was a valid customary marriage.<sup>83</sup> A party disputing the marriage may rebut such a presumption by showing that the alleged marriage was contrary to Chinese law.

In *Re Ng Shum (No 2)*,<sup>84</sup> the deceased died intestate. The plaintiff was the deceased's lawful *tin fong* (填房) wife.<sup>85</sup> Problems arose when the first defendant also claimed to be a wife of equal standing to the plaintiff or *ping t'sai* (平妻).<sup>86</sup> The plaintiff had married the deceased in 1942 in accordance with traditional customs and rites. In 1944, the deceased went through a form of marriage ceremony with the first defendant and the marriage ceremony followed the same rites as those befitting a wife. Indeed, the ceremony followed the same rites as those performed by the deceased and the plaintiff, and furthermore, both ceremonies were conducted by the same person, Mr Lai Chow-kwong, an old friend of the deceased. Betrothal was completed with the passing of the 'Big Gift' (過大禮), and on the wedding day, the first defendant wore a red wedding gown and was conveyed by a horse-drawn carriage to the deceased's home. The deceased and the first defendant worshipped ancestors and the gods and tea was offered to the father-in-law and other relatives. After the marriage, the deceased regarded both the plaintiff and the first defendant as his equal wives, and they were treated as such on both formal and informal occasions.

<sup>81</sup> McAleavy, 'Chinese Law in Hong Kong: The Choice of Sources' in Anderson (ed), *Changing Law in Developing Countries*, George Allen & Unwin Ltd., London, 1963 (hereafter referred to as McAleavy).

<sup>82</sup> [1990] 1 HKLR 67.

<sup>83</sup> Compare the deeming provision in s8.

<sup>84</sup> Ibid.

<sup>85</sup> See below on *tin fong*, p. 31.

<sup>86</sup> See below on *kim tiu*, pp. 46-7.

Benjamin Liu J held that the defendant's ceremonials had been shown to be in conformity with Chinese customs, which allowed equal wives or *ping t'sai*. However, compliance with customs only raised a rebuttable presumption that there was a valid customary marriage. In this case, the presumption was rebutted by the plaintiff proving that the marriage was contrary to the *Ta Tsing Leu Lee* (大清律例), which prohibited the taking of two wives:

Whoever, having a first wife living, enters into marriage with another female as a first wife, shall likewise be punished with 90 blows, and the marriage being considered null and void, the parties shall be separated, and the woman returned to her parents.<sup>87</sup>

A marriage which contravened the Qing law was not a customary marriage under s7 of the MRO. Consequently, the first defendant was not a wife. It appeared that she was not a concubine either because she had 'categorically denied ever offering tea or kow-towing to the plaintiff as a sign of obeisance',<sup>88</sup> and according to Benjamin Liu J, '[t]here was nothing to even remotely suggest a union with a "Tsip"'.<sup>89</sup>

This was a case where the woman was caught between Chinese 'law' and 'custom'. Benjamin Liu J noted this unfortunate outcome and he offered to address it thus:

... I derive much comfort from the thought that there can be little doubt of the first defendant continuing to be respected by members of her family and in society as the widowed "Ping Tsai" of the deceased. That is the understanding of Mr Lai Chow-kwong, the elderly scholar, and there is every reason to believe that no right-thinking members of our community would wish to take issue with that common sense notion.<sup>90</sup>

However, in the eyes of the law, the first defendant was not a wife, nor was she a concubine. She was a mistress, albeit not a clandestine one.<sup>91</sup> The decision has the effect of rendering any customary marriage invalid should it be found to be in contravention of the Qing law.

Interestingly, non-compliance with the Qing law was also raised as an issue in *Re Wong Choi-ho*, where the question was whether a son or grandson who assaulted a parent or grandparent was to be disinherited.<sup>92</sup> It

<sup>87</sup> See Article 90 of Staunton, *Ta Tsing Leu Lee*; n. 16.

<sup>88</sup> [1990] 1 HKLR 67 at p. 75, see later on concubinage.

<sup>89</sup> *Ibid.*, at p. 81.

<sup>90</sup> *Ibid.*, at p. 84.

<sup>91</sup> See below, pp. 27–37.

<sup>92</sup> [1969] HKLR 391.



was argued that under the Qing law, it was a crime which attracted the death penalty. However, Briggs J said (obiter) that contravention of the Qing law could not affect the status of a person.

In my view the relevant provision in Ching [Qing] law is of a penal nature pure and simple. I do not think that the correct inference to draw is that if a man commits an offence and renders himself liable to punishment his status is thereby altered.<sup>93</sup>

Similarly, it was held in *Re Ng Kwok-hing* that the fact that a marriage was held within one year of mourning the death of the woman's father (although it was contrary to the Qing law),<sup>94</sup> it did not render the marriage invalid.

### **Post-Registration**

A customary marriage contracted prior to 7 October 1971 was not registrable but s9 of the MRO provides for their post-registration.<sup>95</sup> As mentioned earlier, registration and the certificate issued provide evidence of the marriage.<sup>96</sup> Further, registration provides the court with matrimonial jurisdiction under the Matrimonial Causes Ordinance (MCO).<sup>97</sup> Another means whereby the court would have matrimonial jurisdiction under the Matrimonial Causes Ordinance is where the parties to a monogamous customary marriage<sup>98</sup> contract a marriage with each other in accordance with s38 of the Matrimonial Causes Ordinance. Such marriage has the effect of superseding the original, potentially polygamous union by a monogamous union, thus giving the court jurisdiction to dissolve the marriage.<sup>99</sup> The procedure for post-registration will be considered later.

<sup>93</sup> Ibid., at p. 402.

<sup>94</sup> See Article 105 of Staunton, *Ta Tsing Leu Lee*; n. 16; see also William Jones; n. 16 and Vermier Chiu; n. 6.

<sup>95</sup> See below, pp. 43–5.

<sup>96</sup> S11 MRO.

<sup>97</sup> S9 MCO; s2 MCO. S2 of the MCO defines a 'monogamous marriage' being one celebrated in Hong Kong (i) in accordance with the MO; (ii) being a validated marriage registered under the MRO or (iii) if it took place outside Hong Kong a marriage in accordance with the law of the *lex loci celebrationis* and recognised by that law as a monogamous marriage.

<sup>98</sup> That is, where there is no concubine.

<sup>99</sup> *Yeung Yeu-kong v Yeung Fung Lai-mui* [1971] HKLR 13; *Kwan Chui Kwok-ying v Tao Wai-chun* [1995] 1 HKC 374; *Leung May-ling v Leung Sai-lun* [1997] HKLRD 12. However, a monogamous marriage could not be converted to a potentially polygamous one, see *In the estate of Wong Wong*, High Court, Probate Jurisdiction No 1797 of 1998 (1998).

---

# Index

## **abduction, see child abduction**

### **access**

- defined 276–277
- denial to parent 286
- direct 284
- grandparents, by 288–289
- indirect 284, 287–288
- meaning 211–213, 276–277
- natural mother following adoption, by 314–315
- non-parent, by 288–289
- presumption in favour of 284–289
- right of the child 285
- right of the parent 285
- sexual abuse cases, in 288
- staying 276–277
- unmarried father, by 288–289
- welfare of the child 287–289
- wishes of the child 288

### **adoption**

- access by natural mother as condition of 314–315
- access to birth records, and 315–317
- age of adopted persons 296

- age of adopters 295–318
- Chinese customary law, under 291
- condition imposed in 304, 314–315
- consent unreasonably withheld 300–304
- discrimination against male applicant 294, 318
- dispensing with consent 297, 299–304, 318–319
- effect of 291, 313–314
- foster care, distinguished 291
- freeing for 304–305
- future development 318–319
- general consent, to 298–299
- grandparents, by 309, 315
- guardian ad litem, and 311–313
- guardian, consent by 298
- homosexual adopters 294
- illegitimate children, of 294, 313
- information to court, and 312–313
- joint applicants 294–295
- jurisdiction of the court 292
- marital status of adopters 295
- meaning 291
- natural parents, disclosure of identity of 315–317
- notice of intention, to 297

- overseas 326–327
  - parents, consent by 298
  - payment, for 310–311
  - private arrangements, and 292
  - property rights on 313
  - relative, by 304–310
  - residence provisions 296–297
  - revocation of consent, to 299
  - secrecy, and 308–9, 315–316
  - sole applicant 294–295
  - specific consent, to 298
  - statistics, of 292, 293
  - stepchildren, of 295, 307–301, 319
  - step-parent, by 295, 307–301, 319
  - succession of adopted child 313–314
  - total transplant view of 291, 306, 309, 313–314,
  - tracing adopted person by natural relatives, in 315–317
  - tracing natural relatives, in 315–317
  - welfare of child 298, 299–304, 305–307
  - wishes of the child 307
- adultery**
- condonation 355–357
  - conduct not amounting to 355–357
  - connivance 355–357
  - consensual sexual intercourse, as 105–106
  - continuing cohabitation, effect of 107
  - co-respondent, adulterer as 108
  - damages for 107
  - defences to 104–105, 355–357
  - intolerability of living with respondent, and 106
  - irretrievable breakdown of marriage, proof of 105–107
  - meaning 105–106
  - standard of proof 106
- affinity, see also consanguinity**
- meaning 145
  - prohibited degrees 148–149
  - reforming the law of 150
  - relaxation of prohibited degrees 147–148
- age**
- marriage-
    - judicial consent, of 151
    - parental consent required, for 151
    - void 151
- arrest, power of**
- effect of 468–469
  - nature of 468–469
- assault, see domestic violence and child abuse**
- assisted human reproduction**
- donor insemination 205–210
  - egg and embryo donation 205–210
  - in vitro fertilisation 205–210
  - meaning 205–210
  - parents, identifying 205–210
  - status of child 205–210
  - surrogacy,
    - meaning 205–210
    - surrogate born child 205–210
  - treated as child of the marriage 205–210
- attachment of earnings 357–358, 360–361**
- battery, see domestic violence and child abuse**
- behaviour**
- unreasonable, see unreasonable behaviour
- bigamy**
- concubine, see concubinage
  - kim tiu marriage, see customary marriage
  - nullity, and 153–154
  - Ta Tsing Leu Lee, see customary marriage

**birth**

- access to birth records by adopted child 315–317
- illegitimate, *see* **legitimacy and legitimation**
- registration and presumption of parentage 196–197
- registration of illegitimate child 191–192

**blood tests, *see also* parentage**

- power to order 201
- refusal to consent to 204–205
- to determine parentage-
  - child's right 203–205
  - consent to 201
  - discretion of the court, to order 201–205
  - husband's right 203–205
  - unmarried father's right 203–205
- welfare of the child, and 201–204

**care and control, *see also* custody of child**

- custody distinguished from 211–213, 278–279

**care or protection proceedings, *see* child abuse****child**

- agreement to give up rights to 235
- child of the family, *see* **child of the family**
- consent to marriage, of 192, 234
- divorce, arrangements for, *see* **divorce**
- financial provision, for, *see* **financial provision and maintenance during marriage**
- guardian, *see* **guardian**
- legitimacy, *see also* **illegitimacy**
- parental rights and authority, *see* **parent**
- property adjustment, for, *see* **property adjustment**

- rights of, *see* **Gillick case**
- welfare, *see* **welfare of child**

**child abduction**

- abduction amongst Hague Convention countries 334–342
- abduction into Hong Kong from a non-Hague Convention country 342–345
- access right 336
- Central Authority, and 334
- Contracting States 334, 346–348
- criminal sanction 333
- habitual residence, meaning 336–337
- jurisdiction of the court 335
- mandatory return 337–338
- preventing 333–334
- refusal to return 338–342
- rights of custody 335–336
- stay of proceedings 344–345
- wardship proceedings, *see* **wardship**
- wishes of the child 340–341
- wrongful removal or retention 335–336, 337–338

**child abuse**

- assault 448
- care committed to non-parent 454
- care or protection proceedings-
  - child's view to be heard 455–456
  - court orders 454–455
  - criterion for discharge from care 454
  - custody proceedings, and 450
  - grounds, for 448
  - legal representation 455–456
  - welfare of the child 455
- case conferences 442–444
- child assessment procedure 445–446
- child protection registry 445
- compulsory reporting laws 442
- co-ordination of authorities and agencies 456–457
- criminal law, and 441–442
- definition 440–441

- developmental abuse 450–453
  - Director of Social Welfare as guardian 454
  - disclosure, and privilege of information 456–457
  - drug-taking by expectant mother 450–453
  - emergency protection order 446–447
  - emotional abuse 450–453
  - future risk 451–453
  - grounds for interference by the Director of Social Welfare 445–454
  - ill-treatment 448–449
  - in need of care or protection 445–454
  - institutional care 454
  - investigation, of 442–445, 456–457
  - need for intervention, time of assessment 453
  - neglect 449
  - parents' self-incrimination 457
  - place of refuge 446–447
  - psychological abuse 450–453
  - recalcitrant teenagers 454
  - sexual abuse 449
  - standard of proof 449–450
  - statistics 440–441
  - supervision order 455
- child assessment procedure, see child abuse**
- Chinese customary marriage, see customary marriage**
- Chinese modern marriage, see modern marriage**
- clean break**
- application to children, and 414
  - big money cases 402–403
  - deferred 379
  - immediate 379
  - low-income family 380
  - periodical payment orders, and 379
  - power of the court to direct 379
  - power to impose 379–380
  - re-opening settlements 433–436
  - short marriage, after 380
  - unreliable husband 382–383
  - wife's earning capacity, and 381–382
- concubinage**
- abolition of 27, 35–37
  - bigamy 28–31
  - customary marriage, in 27–37
  - dissolution of 48
  - judicial attitudes 32–33
  - monogamy 28–31, 46–47
  - polygamy 28–31, 46–47
  - statistics, of 28
  - statutory definition 36–37
  - union of, **see also concubine**
- concubine**
- child, legitimacy of 36, 181
  - fu ching 32
  - husband's family, not member of 34
  - husband's right to take 5, 27–28
  - meaning 5, 27
  - mistress, distinguished 27
  - modern marriage, added to 40, 48
  - no principal wife, where 37
  - principal wife, promotion to status of 32
  - promotion, of 32
  - requirements for the taking of-
    - acceptance by the wife 34–37
    - ceremony, yap kung 34–37
    - holding out 34–37
    - intention of the parties 34–37
    - introduction of the husband's family 34–37
    - permanence of union 34–37
    - public recognition 34–37
  - rights of children of 35–36, 48
  - rights of 29, 33–34, 48
  - second wife, as 26
  - statistics 28
  - Ta Tsing Leu Lee 33–35, 46–47

- who might have 27
  - wife, and position of 33–34
- conduct**
  - financial and property adjustment after divorce, and 405–408
- consanguinity, see also affinity**
  - genetic consideration 146
  - history 147–148
  - meaning 145
  - prohibited degrees of 148
  - reforming the law of 150
  - religion 146
  - social policy 146–147
- consent order, see maintenance agreement**
- consummation of marriage, see also voidable marriage**
  - incapacity, and unwilling distinguished 159
  - meaning 158–159
  - physical incapacity, refusal to undergo treatment to cure 158–159
  - psychiatric condition 159
  - wilful refusal 159–160
- corporal punishment**
  - abolition, of 220
- criminal law**
  - bigamy 153–154
  - child abuse, and 441–442
  - domestic violence, and 459–460
  - incest 150
- cruelty, persistent, see separation order**
- custody of child**
  - access, *see access*
  - age of 18, until 281–283
  - appeal against decision, and 268–269
  - bar, to 282
  - care and control, distinguished from 211–213, 278–279
  - Director of Social Welfare, to 280, 283–284
  - disputes, nature of 269–271
  - effect of custody order 276–278
  - future of 289
  - illegitimate child, and 282
  - joint orders for 279–280
  - legal custody, and 282
  - meaning 211–213, 281, 354
  - satisfaction hearings on divorce, and 128–130, 135
  - social welfare report 264–267, 284
  - sole custody order 276–278
  - split orders 278–279
  - statutory provisions 275–284
  - step-parent, and, *see parent*
  - strangers, application by 282
  - supervision order 280–281, 283
  - uncontested cases, court's role in 128–130, 135
  - wardship proceedings 281
  - welfare and, *see welfare of the child*
- customary marriage**
  - abolition of 15
  - betrothal gift 20, 22
  - betrothal through go-between 7–9, 11, 20
  - by parties to marriage, consent to 7
  - Chinese law and custom 5, 13
  - Chinese law prevails over custom 23–26
  - concubines in 25
  - customs–
    - contract between parents 7–9, 20–22
    - difficulty in ascertaining 11–12, 15
    - location variation in 11–12
    - of when 17–18
    - of where 18
    - of whose 18–19
  - declaration of subsistence, of 44–45
  - dominant features of 11
  - evolving customs 10

expert evidence and authoritative writings 11–12, 19  
 extinction, of 16, 46–48  
 formal requirements of 12  
 grounds for dissolution-  
   at wife's suit 60  
   breaking of the bond 60–61  
   Ching law, continuation of 67  
   concubine, of 68–69  
   husband's unilateral repudiation 56, 58–60  
   mutual consent, by 60  
   formalities 61  
   Marriage Reform Ordinance, under 64–66  
   Matrimonial Causes Ordinance, under 67  
 judicial interpretation of 19–26  
 kim tiu 46–47  
 kit fat wife 31  
 legal basis of 5–6  
 legitimacy of children 181  
 maintenance agreements, and 66  
 meaning 5  
 minimum age of marriage 7  
 modern marriage, distinguished from 14  
 monogamy 16, 28–31  
 nature of 6–7  
 origin 6–7  
 parties to betrothal contract 7–9, 20–22  
 ping tsai 25, 46–47  
 polygamy 16, 28–31, 46–47  
 post-registration of-  
   application for 43–45  
   provision for 26, 43–45  
 powers to grant ancillary relief, and 66  
 preservation of 15–26  
 prohibition of taking two wives 27  
 purpose of 6–7  
 rebuttable presumption of 25–26  
 registry marriage after 26  
 seven ousts and three non-ousts 58–59  
 statistics 3–4,

statutory definition, of 17–19  
 statutory provisions for dissolution 64–65  
 Ta Tsing Leu Lee 7, 25–26, 47  
 three covenants and six rites 7–10  
 tin fong wife 31  
 validity of dissolution 65–66  
 women's position, in 15, 33–34, 56–58

### **declaratory judgments**

power to make 141

### **desertion**

abolition, proposed 116  
 consensual separation 119–120  
 consent, absence of 118, 119–120  
 constructive 121  
 elements of 117  
 enforced separation 118  
 fact of 117–118  
 intention to live apart permanently 118–119  
 involuntary separation 118  
 just or reasonable cause, lack of 120  
 meaning 117, **see also separation**  
 period of 119, 122–123  
 resumption of cohabitation, effect of 123  
 termination of 122  
 unreasonable behaviour, as 122

### **discrimination**

father affecting 189–192  
 illegitimate child, affecting 189–192  
 single men adopting female child 294, 318

### **divorce**

clean break, **see clean break**  
 custody of child, **see custody of child**  
 customary marriage, **see also customary marriage**  
 decree absolute 123–124, 130–134, 137  
 decree nisi 123–124, 130–134, 137

- defences 130–134
  - exceptional hardship or depravity 124–127
  - facts, inquiry into 99–103, 105
  - fault, importance of 99–103
  - fault-based facts 99–103, 135–137
  - finance and property after, *see* **financial provision and property adjustment**
  - financial provision, adequacy of 130–131
  - grave financial or other hardship 132–134
  - grounds for petitioning-
    - adultery, *see* **adultery**
    - desertion, *see* **desertion**
    - facts, proof of 103–104
    - irretrievable breakdown of marriage 100–103, 105
    - separation, *see* **separation**
    - unreasonable behaviour, *see* **Unreasonable behaviour**
  - history 99–103
  - joint application, by 103, 135–137
  - jurisdiction of the court 104
  - marriages celebrated in China, and 63–64
  - modern marriage, *see* **modern marriage**
  - mutual consent, by 137
  - no-fault facts 100–103
  - notice of intention of 135–137
  - nullity, distinguished, *see* **nullity**
  - objectives of the law 104
  - one-year discretionary bar 124–126
  - reconciliation, *see* **reconciliation**
  - special procedure 107, 134–135
  - statistics 102, 116
  - undefended 107, 134–135
  - welfare of children, arrangements for 128–130
  - wrong in the circumstances 134
- 
- children, protection of 460, 469
  - cohabitation, meaning 461
  - cohabitees, and 460–462
  - ex parte injunction 460
  - family members, and 461, 470, 474
  - harassment, and 472–475
  - law reform 474–475
  - molestation-
    - meaning 461–463
    - precondition to granting order 462–463
  - nature and extent, of 459–460, 474
  - non-molestation orders, *see* **non-molestation order**
  - ouster orders, *see* **ouster order**
  - power of arrest, *see* **arrest, power of**
  - private nuisance 473
  - stalking 472–475
- 
- domicile**
    - women's independent 104
- 
- duress**
    - fear, threat causing 161–164
    - life, limb or liberty, threat to 161–164
    - marriage, vitiating 161–164
    - party's responsibility for 161–164
    - reasonably entertained fear 161–164
- 
- emergency protection orders, *see also* child abuse**
    - child assessment procedure, *see* **child abuse**
    - supervision order, *see* **child abuse**
- 
- emigration**
    - children born in mainland China 186–188
    - illegitimate child, and 186–188
- 
- exclusion orders, *see* domestic violence**
- 
- family assets**
    - adjustment after divorce, *see* **finance**
- 
- DNA test, *see* blood test**
- 
- domestic violence, *see also* child abuse**
    - battered wife 459



- provision and property adjustment**
  - matrimonial home, *see* **matrimonial home**
- father, see also parentage**
  - assisted human reproduction, in 205–210
  - genetic 194–205
  - legal 194–205
  - non-genetic 205–210
  - presumptions-
    - from birth registration 196–197
    - from marriage 194–196
    - rebuttal of 197–198
- financial provision**
  - applicants 364–365
  - attachment of earnings 357–358, 360–361
  - child of the family, for 414–415, *see also* **maintenance during marriage**
    - age limits 417, 420
    - attachment of earnings 420
    - discretion, guidelines for exercise of 415–416, 419–420
    - duration of orders 417, 420
    - orders available 413–414, 418
    - property adjustment orders 414, 418
    - spouse not child's parent, against 414–415
    - spouses, interrelation of orders for 363–364
  - clean break 367–384
    - appropriate 382–383
    - deferred 379, 383–384
    - earning capacity, potential increase in 381
    - immediate 379
    - inappropriate 376–379
    - meaning 379
    - options available 379
    - power to impose 379–380
    - specified term, periodical payments order for 380
    - statement of principle 379
    - supervening events, effect of 433–436
    - termination of financial obligations, duty to consider 379
    - use of 380–381
    - wealthy parties, in case of 380
  - discretion of court, exercise of 371–412
    - age of parties 398–400
    - children's welfare, consideration of 363–364
    - conduct, relevant 405–408
    - consideration of all circumstances 405–408
    - contributions of parties 401–404
    - duration of marriage 398–400
    - earning capacity, as to 387–395
      - disclosure by parties 387–389
    - fully exploited, where 389–390
    - new partner, of 393–395
    - potential as to 390
    - reality, considering 389–390
  - loss of pension, etc. rights 404–405
  - needs of parties 395–396
  - obligations and responsibilities of parties 396–397
  - physical or mental disability of parties 401
  - principles governing 374–376
  - standard of living 397–398
  - statutory guidelines for 371
  - third party's means, evidence of 393–395
- duxbury calculation 386–387
- housing needs, dominance of 408–409, *see also* **matrimonial home**
- housing orders, factors influencing 408–412, *see also* **matrimonial home**
- minimal loss principle 374–376
- net effect approach 386
- one-third rule 384–385

order,  
 capital 366–370  
 categories of 365–370  
 children, for 413–420  
 income 365–366  
 lump sum, *see* **lump sum order**  
 maintenance pending suit 460–461  
 periodical payments, *see* **property adjustment order**  
 sale of property, for 370  
 settlement of property, *see* **property adjustment order**  
 powers of court 365–367  
 principles, flexibility of 371–384  
 third parties, powers not affecting 365, 393–395  
 variation of orders 428–432  
   discretion of the court 430–32  
   lump sum 429  
   periodical payments 429  
   property adjustment 429

### **formalities of marriage**

celebrated in the Peoples' Republic of China 77–81  
 celebration by an unauthorised person 152  
 celebration in an unauthorised place 152  
 celebration under a false name 152

### **fraud**

maintenance agreement 423–424  
 mistake, and 165–166

### **gender**

determining, criteria for 154–157  
 gender reassignment operation 154–157

### **Gillick case**

Gillick competent minors 226–228, 261  
 parental rights 216, 226–228  
 retreat from 227–228

treatment without parental consent 216, 226–228.

### **grandparents**

access to minors by 288–289  
 adoption by 307–310

### **guardian**

adoption, consent to 298  
 appointment-  
   court, by 235, 238, 239–240  
   deed or will, by 235, 237–238  
   revocation of 237–238  
 common law, at 211–213  
 disputes between 240  
 illegitimate child, of 189  
 law reform 240–243  
 meaning 211–213, 236–237  
 minor having no parent, as 239  
 non-parent, as 237–240  
 parent, as 211–213, 235, 237  
 replacement of 239–240  
 termination of guardianship 237–238  
 testamentary 189, 213, 237–238  
 the estate, of 235  
 the person, of 235

**guardian ad litem** 311, 325

### **hardship**

defence to divorce, as 132–134  
 grave financial, or other hardship 132–134

### **homosexuality**

adoption 298  
 marriage 154–157

### **Housing Authority**

tenancies, orders relating to 367–369

### **husband and wife, *see also* parent**

divorced, hardship suffered by wife 132–134, 376–378  
 domestic labour, division of 371–374, 401–404

- domestic violence, *see* **domestic violence**
- dual worker families 393–395, 401–404
- equal partners, as 372–374
- interest in money and property, *see* **financial provision and property adjustment**
- matrimonial home, *see* **matrimonial home**
- mutual obligation to support 352, 353–354
  - enforcement of 357–358, 360–361
- illegitimacy, *see also* father**
  - access by unmarried father, *see* **access**
  - adoption of illegitimate child 185
  - affiliation proceedings 190
  - artificial insemination, child born by 206–207
  - birth registration 187, 191–192
  - child's right of succession 186–189
  - common law, at 198
  - consent to marriage 192
  - declaration of parentage 198–199
  - defined 181
  - discrimination, and-
    - affecting child 189–192
    - affecting unmarried father 189–192
  - extramarital conceptions 181–184
  - fatal accidents claim 185–186
  - financial provision, *see* **financial provision**
  - guardianship, and 189
  - in vitro fertilisation 206–207
  - intestate succession, and 186
  - legitimacy, distinguished 181
  - parental rights and authority, and 190
  - pension claim, and 185–186
  - permanent residence, and 186–188
  - proving paternity, *see* **father**
  - provision from deceased's estates 186
  - rule of construction 188–189
  - subsequent marriage of parents 183–185
  - surrogate births 206–207
  - unmarried father, rights of 189–192
  - void marriage, and 182–183
- incest**
  - child abuse 449
  - criminal law 150
- injunction, *see* ouster order and non-molestation order**
- intestate succession**
  - adoption, effect of 313–314
  - decree of judicial separation, effect of 174
  - separation order, effect of 354
- judicial separation**
  - effect of 172–174
  - grounds for 173
  - history 172
  - jurisdiction of the court 173
  - obligation to cohabited terminated 172–173
  - rescission of decree 174
- kindred and affinity, *see* consanguinity and affinity**
- legal custody, *see* custody of child**
- legitimacy, *see also* illegitimacy**
  - artificial insemination by donor child 206–207
  - blood tests, *see* **blood tests**
  - concubines, children of 181
  - declarations of 198–199
  - defined 181
  - illegitimacy, distinguished 180
  - law reform, effect of 182–192
  - lawful unions, children of 181
  - presumptions arising from-
    - parents' marriage 194–196

- rebuttal on balance of probabilities 197–198
  - registration of birth 196–197
  - registration birth 191
- legitimation**
  - date of 184
  - declaration of 198–199
  - effect of 184–185
  - legal custody, *see* **custody of child**
  - parents subsequent marriage, by 183–184
- lump sum order**
  - action to set aside 433–436
  - appeal against 433–436
  - child, for 345, 414, 418
  - instalment 366
  - interest on 367
  - power order 366
  - secured 367
  - unsecured 367
  - variation of 433–436
- maintenance agreement**
  - binding contract, as 423–424
  - Chinese modern or customary marriages, in relation to 66
  - court order, implemented by 421–424
  - legal policy 421–422
  - powers conferred by law, within 422
  - role of court 421–423
  - variation of-
    - after death of payer 432–433
    - capital order 429, 433
    - discretion of the court 430–432
    - income order 429, 433
    - power of the court 429–430
  - court's jurisdiction, not ousting 421
  - defined 425
  - final, whether 423–424, 429
  - fraud, effect of 423–424
  - non-material disclosure, effect of 423–424
  - public policy considerations 421
  - setting aside 433–436
    - appeal out of time 433–434
    - change of circumstances 433–436
    - new events 433–436
  - statutory provision 425–428
  - variation of-
    - after death of payer 428
    - application of provisions 425–426
    - child, maintenance of 426
    - court, powers of 426
    - during parties joint lives 426–428
    - financial arrangements, meaning 425
    - periodical payments order 425–428
- maintenance during marriage**
  - attachment of earnings 257–258, 360–361
  - bar to relief 355–357, 360
  - child, for-
    - duration 355, 360
    - interim order 360
  - cohabitation, effect of 357
  - grounds for application 353
    - assault 353
    - desertion 353
    - drug addiction 353
    - failure to provide reasonable maintenance 353, 358
    - persistent cruelty 353
    - prostitution 353
    - venereal disease 353
  - jurisdiction of the court 258–259
  - maintenance pending suit-
    - discretion of the court 361–362
    - duration 361
    - nature 361
  - orders available 354–355, 359
  - statutory provisions 351

**marriage**

- age at 77, *see also* **nullity**
- arranged marriages 77–79, *see also* **customary marriage**
- Chinese Civil Code, under 78–79
- Chinese customary, *see* **customary marriage**
- Christian view of 73–74
- compulsory civil preliminaries, need for 74–76
- contract, as 73
- definition 73–74
- duress or lack of consent to 73, *see also* **nullity**
- dying person, of 75
- equal partnership, as 372–374
- formalities, failure to observe 74, 76–77, *see also* **formalities of marriage**
- modern, *see* **modern marriage**
- monogamous, meaning 73–74
- non-consummation of, *see also* **nullity**
- Peoples' Republic of China law, under 79–81
- presumptions of-
  - essential validity 82–84
  - formal validity 71–82
- prohibited degrees 77, *see also* **nullity**
- reconciliation, *see* **reconciliation**
- registry-
  - celebration, place of 75
  - certificate as evidence of 77
  - notice of intention 74–75
- sexual identity of spouse 77, *see also* **void marriage**
- special licence, by 75–76
- statutory provisions 74–77
- valid consent, lack of 77, *see also* **voidable marriage**
- void 75, 77, *see* **void marriage**
- voidable, *see* **voidable marriage**

**matrimonial home**

- adjustment after divorce 367–370, 409–412

- charging order on 411–412
- home ownership scheme 367–368
- ouster order, *see* **ouster order**
- postponing sale 411–412
- public rental housing 376–378
- sale of 409
- transfer of 409–410
- undertakings 371
- valuation 367–368

**matrimonial property**

- divorce, after, *see* **financial provision and property adjustment**
- matrimonial home, *see* **matrimonial home**

**mediation**

- information concerning the availability of 127, 139
- introduction of 127, 139

**modern marriage**

- Chinese Civil Code, requirements of 38–39
- concubines, in 40, 48
- customary marriage, distinguished from 14
- declaration of subsistence 44–45
- dissolution-
  - Chinese Civil Code, under 62–64
  - Marriage Reform Ordinance, under 64–67
  - Matrimonial Causes Ordinance, under 67
  - mutual consent, by 62–64
  - validation of 63–64
  - validity of 62–64
- Hong Kong version of 39–40
- intention, expression of 42–43
- man ming kit fan 37
- monogamy 41
- open ceremony-
  - definition 41–43, 46
  - requirement of 40–43
- origin 37–38
- parties consent to 38–43

- parties, contract between 39–43
  - post registration-
    - application for 44–45
    - effect of 44–45
    - provision for 44–45
  - powers to grant ancillary relief 66
  - retrospective validation 39–40
  - statutory definition, of 40–41
  - validated marriage 43
  - witnesses to 40–41
- monogamy, see marriage and customary marriage**
- mother**
- assisted human reproduction, in 205–210
  - biological 193
  - gestational 193–194, 205–210
  - legal 193
  - natural conception 194–205
  - social 193
  - surrogate 193–194, 205–210
- non-molestation order, see also domestic violence**
- bars to 463
  - decree absolute, after 471
  - jurisdiction of the court 470
  - legal or equitable right, supporting 470
  - matrimonial proceedings, in 471
- nullity**
- bars to 169–170
  - canon law of 142
  - duty of the court 144
  - grounds for, **see void marriage and voidable marriage**
  - jurisdiction of the court 144–145
  - meaning 141
  - reforming the law of 170–172
  - void and voidable marriages, distinguished 142–144
- official solicitor**
- wardship proceedings, role in 325
- ouster order, see also domestic violence**
- actual violence not required 466
  - applicant for 468
  - children's needs 464
  - conduct 464–466
  - decree absolute, after 471
  - discretion of the court 464–469
  - draconian 468
  - duration of 464
  - financial needs 466–467
  - matrimonial home, from 462
  - property rights 464
  - welfare of the child 471–472
- parent**
- absent 233–235
  - adjustment after divorce 275–289
  - child abuse by, **see child abuse**
  - children's rights 216–217, 226–228
  - contraception for child 216–217
  - custody of child, **see custody of child**
  - declaration of parentage 198–199
  - foster 291
  - hostility towards access 287
  - mature minor, and 216–217, 226–228
  - meaning, **see father and mother**
  - rights-
    - children's rights and 215–217
    - concept of 214–215
  - rights and authority-
    - agreement to transfer 235
    - diminishing nature of 215–217
    - Gillick case, and 215–217
    - married father, of 229
    - meaning, of 213–215, 217
    - resolving disputes between 229–230
    - termination, of 216–217
    - unilateral exercise of 229
    - unmarried father, of 229–235
    - unmarried mother, of 229–235
    - welfare of the child, and 215–217, 222–225

- wishes of the child, and 216–217, 222–228
- step-parents
  - adoption by 307–310
- parentage**
  - blood tests, use of, *see* **blood tests**
  - declaration 198–199
  - donor inseminated child 205–210
  - posthumous child 208
  - presumptions arising from-
    - birth registration 196–197
    - parents' marriage 194–196
    - rebutting 197–198
  - surrogate born child 205–210
- pension**
  - loss of on divorce, adjustment for 132–134, 404–405
- periodical payments order**
  - appropriate in case of 381–382
  - clean break, and 379
  - maintenance pending suit 361–362
  - nominal 379
  - secured 366
  - unsecured 365
- polygamy, *see also* customary marriage**
- property adjustment order**
  - action to set aside 433–436
  - appeal against 433–436
  - discretion of the court, *see* **financial provision**
  - duxbury calculation 386–387
  - matrimonial home, *see* **matrimonial home**
  - net effect approach 386
  - one-third rule 384–385
  - power of the court 367–371
  - public rental housing, in respect of 367–368
  - sale of property 370
  - settlement of property 369
  - transfer of property 367–369
- home ownership scheme 367–368
- public rental housing 367–368
- variation of 429
- variation of settlements 369–370
- reconciliation**
  - certificate of 127
  - divorce proceeding, in 105
  - mediation distinguished 127
  - relevance of 126–128
- separation**
  - consent to decree 115
  - grave financial hardship, wife suffering 132–134
  - innocent wife, protection of 130–134
  - living apart, meaning 113
  - living under one roof, and 113
  - maintenance, provision of 351–362
  - marital intercourse, and 113
  - mental element 115
  - one year, for 113–115, 123, 135–137
  - physical separation, insufficient 115
  - resumption of cohabitation, effect of 123
  - two years, for 116, 123
  - wrong to dissolve marriage, where 134
- separation order**
  - adultery by applicant, effect of 355
  - adultery, condoned 355–357
  - custody or maintenance of children, orders for 354
  - District Court, jurisdiction of 354
  - grounds for 354
  - husband, application by 352–353
  - intestate succession, effect on 354
  - married woman, application by 352–353
  - persistent cruelty 353
  - provisions of 354
  - resumption of cohabitation, effect of 354
  - statutory provisions 352–354

sexual abuse, *see* child abuse

status, *see* legitimacy and illegitimacy

step-parent, *see* parent

**succession**

adopted child 313–314

illegitimacy, effect on 186–189

surrogacy, *see* assisted human reproduction

**tenancy**

Housing Authority, property adjustment orders relating to 367–368

**unreasonable behaviour**

bitterness and hostility, due to allegation of 112

causation 109–110

continuing cohabitation, effect of 112–113

desertion as 110

excessive reaction to 110

incompatibility in personality 109

isolated acts as 110

meaning, of 108

mental or physical illness of respondent, due to 110–112

moral blameworthiness, and 108, 111

negative behaviour 109

objective test 108

petitioner, impact on 108–112

positive behaviour 109

reconciliation after 112–113

variation, *see* maintenance agreement

**void marriage**

children of 143

consent obtained by force or fraud 161–165

grounds for 145–157

kindred and affinity, *see* consanguinity and affinity

lack of consent 161–167

male and female, parties not 154–157

party already married 153–154

sham marriage 164–165

statutory provisions 145

voidable marriage distinguished 142–144

**voidable marriage**

AIDS 168

bars to 169–170

children of 143

duress 161–164

grounds for 157–169

hepatitis B 168

impotence 158–159

incapacity to consummate 158–159

lack of consent 161–167

mental disorder 167–168

mistake 165–166

pregnancy per alium 168–169

statutory provisions 157

unsoundness of mind 167–168

venereal disease 168

void marriage distinguished 142–144

wilful refusal to consummate 159–160

**wardship**

alternative jurisdiction, as an 327

effect of 324

guardian ad litem, *see* guardian ad litem

jurisdiction of the court 321–323, 326, 330–332

kidnapping 326, 333

nature of 324–325

overseas adoption 326–327

parens patriae 321

penalising an abductor 344

procedures of 324

recovery of kidnapped child 342–344



use, of 326–330, 332  
 welfare of the child 325, 326–330,  
 see also **welfare of child**

### **welfare officer**

custody cases, role in 264–267, 284

### **welfare of child**

application 247, 326–330, 342–344

first and paramount consideration,  
 meaning of 215–217, 223–225,  
 245–247, 247

hearsay in social welfare report 266

long term views 256–258, 253–254,  
 287

not of paramount consideration  
 305–307

relevant factors- 250

age of the child 255–258

appeal against decision 268–269

Chinese tradition 262–263

educational needs of child 253–254

evolving concept 247–249

grandparents' role 259–261

harm or risk of harm to child  
 258–259

interviewing the child 267

material well-being 260–261

maternal preference 255–258

natural parents, wishes of 260

parents, conduct of 262–263

physical and emotional needs of  
 the child 253–254

presumption in favour of parents  
 260

presumption in favour of primary  
 carer 255–258, 263–264

quality time 261–262

sex of the child 255–258

social welfare report,  
 recommendation in 264–267,  
 284

status quo, preserving 254–255

wishes of child 215–217, 226–228,  
 251–253, 305, 307

working parents 259, 261–262

short term view 253–254, 256–258,  
 287