

BOOK REVIEWS

FAMILY LAW IN MALAYSIA (THIRD EDITION) BY AHMAD IBRAHIM. [Malaysia: Malayan Law Journal Sdn Bhd, 1997. xxxviii + 401 pp (including index). Hardcover: \$139.05 (inclusive of GST)]

IN 1978 Professor Ahmad Ibrahim released his first book on the subject *Family Law in Malaysia and Singapore* (Malaysia: Malayan Law Journal (Pte) Ltd, 1978). The reviewer welcomed this ‘foundation’ in her review in (1980) 22 Mal LR 382 even though, in the author’s own words, the text was written only ‘to give an outline of the law’. The reviewer can recall being somewhat dismayed that its publication came after her study of the subject at the Faculty of Law, University of Malaya, Kuala Lumpur in 1973 when Professor Ahmad was then the Dean. Although well taught by a young enthusiastic lecturer, the reviewer’s learning curve might have been gentler if aided by the text. This was especially so as the non-Muslim family laws of Malaysia were a ‘maze’ as Professor Ahmad, introducing the laws then applying in the text under review, at 1-2, observes:

The Chinese and Hindus could marry according to their own law or customs as determined by the courts. The natives of East Malaysia may marry according to their customs. In Peninsula Malaysia, anyone, except a person professing the religion of Islam, could have his or her marriage solemnized under the Civil Marriage Ordinance 1952, which provided for civil monogamous marriages before registrars of marriages. A marriage between Christians ... could be solemnized in accordance with the provisions of the Christian Marriage Ordinance 1956. In Sarawak marriages ... could be solemnized under the Church and Civil Marriages Ordinance. In Sabah marriages between ... Christians were required to be solemnized in accordance with the Christian Marriage Ordinance. Divorces under the religious or customary laws were recognised. The Divorce Ordinance was applicable only to monogamous marriages

The first text covered the non-Muslim and Muslim family laws of Malaysia and Singapore. In 1984, Professor Ahmad released the second edition of the text continuing the same wide coverage although, *vide* the (Malaysia) Law Reform (Marriage and Divorce) Act 1976 *wef* 1 March 1983, the segregated non-Muslim family laws of Malaysia had been replaced with one, in the words of Professor Ahmad, at 6, ‘[f]ollowing the pattern of the Women’s Charter of Singapore and the Marriage Reform Ordinance 1950 of Hong Kong’. In the text under review, Professor Ahmad has decided to limit coverage only to the non-Muslim and Muslim laws of Malaysia. Despite this, the text is released as the third edition of this series.

In his Preface, Professor Ahmad offers that ‘it is more appropriate to deal with the Family Law in Malaysia separately’. The reviewer cannot agree more. As useful as Professor Ahmad’s previous texts were, the one under review is superior in being

more focussed. It is a broad enough scope to discuss both the non-Muslim and Muslim family law of a relatively big nation like Malaysia. To spread one's efforts to cover the laws of Singapore as well might have proved a lesser achievement. While the family laws of the two countries retain substantial similarity, even small differences are significant. These differences distinguish us as of one nation or the other. A text on the family laws of two nations should be a serious comparative study to be useful. Professor Ahmad should be complimented for recognising that separate texts are more appropriate.

Professor Ahmad informs that he is planning a book on the family law of Singapore. This is eagerly anticipated. In the meantime, students of the family law of Singapore have several texts on, at least, the non-Muslim family law of Singapore, including Tan Cheng Han *Matrimonial Law in Singapore and Malaysia* (Singapore: Butterworths, 1994), the reviewer's *Principles of Family Law in Singapore* (Singapore: Butterworths, 1997) and her annotation under the series *Butterworths' Annotated Statutes of Singapore* Vol 6: Family (Singapore: Butterworths, 1997).

Family Law in Malaysia is an invaluable source of the non-Muslim and Muslim family laws of Malaysia for readers who are unable to use similar books written in Bahasa Malaysia, eg, Mimi Kamariah Majid *Undang-Undang Keluarga di Malaysia* (Malaysia: Butterworths, 1992). Professor Ahmad's new book brings the reader up to date with the family laws of Malaysia. As with his previous texts, Professor Ahmad writes lucidly and presents his materials with impeccable structure. The text discusses the uniform non-Muslim marriage and divorce statute supplemented by statutes on narrower areas, thirteen Islamic family law enactment statutes and the substantive Muslim marriage and family laws of these states which laws absorb some Malay customs. This is a lot of law yet Professor Ahmad glides the reader smoothly through them. The reviewer had to remind herself that the text covered this many laws. So seamlessly were they weaved into the text.

Family Law in Malaysia appears to concentrate on the Muslim family law. A quick comparison shows that the book is more than twice as long on the Muslim family law as on the non-Muslim. This may partly be due to the fact that, as Muslim law is under the regulation of individual states, there continues to be as many Muslim laws and administrative statutes as there are states and territories of Malaysia while the non-Muslim family law is now common for all non-Muslim Malaysians. A reader may, however, wish for a more even treatment of the family laws. There is, for example, an additional chapter 'Ancillary orders in divorce' of the Muslim law while the substance of this, of the non-Muslim family law, is covered only in three pages at the end of the chapter 'Divorce and matrimonial proceedings'.

The chapter 'Ancillary orders in divorce' is exceedingly interesting. It contains detailed discussion of cases from various states on *Harta sepencharian* which Professor Ahmad describes, at 308, thus:

[J]urisprudentially *harta sepencharian* rests upon legal recognition of the part played by a divorced spouse in the acquisition of the relevant property and in improvements done to it (in cases where it was acquired by the sole effort of one spouse only). It is due to this joint effort or joint labour that a divorced spouse is entitled to share in the property.

Thus described this idea is akin to 'deferred community of property'. Indeed, Professor Ahmad points out that this Malay custom is absorbed into Islamic family law enactment statutes. He provides, at 309, the Islamic Family Law (Federal Territories) Act 1984, section 1, which students of family law in Singapore will recognise as substantially the provision in the (Malaysia) Law Reform (Marriage and Divorce)

Act 1976, section 76. This was the model on which the predecessor of the Women's Charter, Cap 353 1997 Rev Ed of the Statutes of the Republic of Singapore, section 112, was based.

At present then, the non-Muslim and Muslim family laws of both Malaysia and Singapore empower the court, on terminating a marriage, to divide property acquired during marriage in fair proportions between the two spouses although the expression of what constitutes fairness may vary slightly. In Malaysia, this power is bestowed by the (Malaysia) Law Reform (Marriage and Divorce) Act 1976, section 76, and state Islamic statutes like the Islamic Family Law (Federal Territories) Act 1984, section 1, while in Singapore the equivalent are the Women's Charter, section 112, and the Administration of Muslim Law Act, Cap 3, section 52. That the non-Muslim and Muslim family laws of both countries have settled on the same view of how property should fairly be disposed between husband and wife on the termination of marriage is interesting but not surprising. It may be attributed as much to a conscious move to unify laws as the natural choice of a fair response to a similar problem. Students will want to follow closely the path of development of these provisions.

Professor Ahmad's discussion of the Muslim family law of Malaysia is detailed and informative. It will no doubt come to be regarded as the standard text on the Muslim family laws of Malaysia. Until a similar text on the Muslim law of Singapore is available, this discussion of the equivalent laws applying in our neighbour is also immensely useful to the student of the Muslim family law of Singapore.