

FAMILY LAW IN HONG KONG. By L. PEGG. [London: Butterworths. 1981. xxii+183 pp. £12.50]

The legal system of the Crown Colony of Hong Kong is to a large extent modelled on the English legal system. Indeed the formal reception of English Law as the *lex loci*, can be traced as far back as section 5 of the Supreme Court Ordinance of 1873. One essential feature of the colonial expansion of the United Kingdom in the 19th century was that whilst it sought to make English law the *lex loci*, it recognised the need in applying that law to take into account the local circumstances of the inhabitants of the newly acquired territories, especially where personal laws were concerned. It is therefore not surprising to find that in the realms of Family Law, the colonial courts have long recognised the validity of Chinese customary marriage laws. The Chinese customary marriage system thus existed side by side with the newly imported western marriage systems. This multiplicity in marriage systems continued to exist until 1971 when the legislature decided to introduce one common monogamous marriage system (Marriage Reform Ordinance, Cap. 178). With this change-over to a common monogamous marriage system, transitional problems were bound to occur, including questions relating to the continuing validity of customary marriages and the jurisdiction of the courts to grant matrimonial relief in the case of such marriages. These transitional problems have in a sense been further aggravated by the pre-existing difficulties in defining Chinese customary marriage laws. This was especially true in the case of defining the requirements necessary for the formation of such marriages. Thus, whilst present day Family Law in Hong Kong is to a large extent governed by statutory provisions modelled on English legislation, there existed a clear and obvious need for a locally written book which could deal with not only the law as contained in the current statutory provisions, but also the problems mentioned above. Leonard Pegg in his book attempts to deal with these transitional problems as well as setting out the present state of Family Law in Hong Kong.

The book is divided into six chapters. Chapter I which is entitled "Marriage and Concubinage" deals with questions relating to the formal

and essential validity of marriages, registrations of customary and modern validated marriages and concubinage. The chapter is concise and readers may find the section on Chinese customary marriages especially interesting. This reviewer is however of the view that the section dealing with essential validity of marriages could have been improved by a fuller discussion of the concepts involved, especially that of domicile and that the decision of Cumming Bruce J. in *Radwan v. Radwan* [1973] Fam. 35 deserved slightly fuller treatment than a cursory reference in the footnotes.

Chapter 2 is entitled Matrimonial Causes, in which the author deals with: void and voidable marriages; jactitation of marriages; judicial separation and separation orders; divorce; divorce on presumption of death; divorce under the Marriage Reform Ordinance; and special procedures in divorce. Readers will find that the chapter is on the whole well written and that the section on divorce raises interesting points in relation to the question of jurisdiction of the courts and the continuing validity of divorces obtained under Chinese customary law for marriages celebrated prior to the reforms of 1971. However, the section on void and voidable marriages tended to be a repetition of the relevant statutory provisions, with insufficient discussion of the concepts and, the distinction between them. Furthermore, whilst it is appreciated that the substantive grounds of nullity are to a large extent modelled on English legislation, nevertheless fuller treatment and reference to the relevant authorities would have made the section much more meaningful. In particular the author, whilst dealing with the question of lack of consent due to duress etc., merely refers to the English authorities without actual discussion of the principles involved and with little attempt to relate the authorities to the domestic situation in Hong Kong.

Chapter 3 is entitled "Financial Obligations to the Family" and deals with a wide range of topics including maintenance during marriage and after divorce. Whilst the survey of this branch of the law is fairly comprehensive for an introductory work, it is perhaps disappointing to find that the much vexed question of ownership of matrimonial property was left largely untouched, apart from a fleeting reference to the decisions of the House of Lords in *Pettit v. Pettit* [1970] A.C. 177 and *Gissing v. Gissing* [1971] A.C. 886. Chapters 4, 5, and 6 deal with legitimacy, parental rights and adoption and contain a brief but useful survey of the relevant statutes and cases thereon.

In conclusion, readers of this work will find it useful in providing an introduction to Family Law in Hong Kong. Of particular interest will be those sections in which the author deals with Chinese customary marriages and the transitional problems relating thereto. Much of the criticism levelled at this book relate more to omissions, and the writer, however, appreciates that it is not easy to know what materials should be appropriately left out for a book of this nature. Nevertheless, this writer feels that a fuller discussion of the nature of marriage, its effects, and the rights to consortium would not have been out of place.