

# TABLE OF CONTENTS

<i>Foreword to the First Edition</i> .....	v
<i>Preface to the Third Edition</i> .....	vii
<i>List of Authors</i> .....	xi
<i>Acknowledgements</i> .....	xiii
<i>Table of Hong Kong Cases</i> .....	xxxvii
<i>Table of Cases from International Jurisdictions</i> .....	liii
<i>Table of Hong Kong Legislation</i> .....	lxxv
<i>Table of International Legislation</i> .....	cvii

## CHAPTER 1 DIVORCE AND DISSOLUTION OF MARRIAGE

*Philippa Hewitt*

1. Introduction.....	1.001
2. Applications to present a divorce petition before one year.....	1.014
3. Jurisdiction.....	1.018
(a) Recognition of foreign decrees .....	1.035
4. Ground for divorce.....	1.037
(a) Irretrievable breakdown – the sole ground for divorce .....	1.037
(b) The five facts .....	1.040
(i) Adultery (s 11A(a)).....	1.040
(ii) Unreasonable behaviour (s 11A(b)).....	1.053
(iii) One year's separation with consent (s 11A(c)).....	1.069
(A) Rescission of decree <i>nisi</i> .....	1.076
(iv) Two year's separation without consent (s 11A(d)).....	1.077
(A) Protection for respondents in separation cases.....	1.080
(B) Applications under s 15B of the MCO.....	1.082
(C) Applications under s 17A of the MCO.....	1.087
(v) Desertion (s 11(e)).....	1.093
5. Attempted reconciliation and the six-month rule .....	1.096
6. Special procedure and decree <i>nisi</i> .....	1.100
7. Remarriage and the effect of final decree .....	1.103
8. Petitions for judicial separation.....	1.108
9. Petitions for nullity.....	1.115
(a) Void marriages .....	1.116
(b) Voidable marriages.....	1.118
(c) Jurisdiction of the court in nullity.....	1.123
(d) Bigamy .....	1.125

10. Petitions for a decree of presumption of death .....	1.127
11. Chinese customary marriages .....	1.131
(a) Background .....	1.131
(b) Some definitions .....	1.140
(c) Validating a customary marriage .....	1.143

## CHAPTER 2 PRACTICE AND PROCEDURE OF DIVORCE, JUDICIAL SEPARATION AND NULLITY

*Philippa Hewitt*

1. Relevant law .....	2.001
2. Names of the parties .....	2.010
3. Preliminary matters .....	2.011
4. Drafting the divorce petition .....	2.014
(a) The particulars .....	2.015
(b) The prayer .....	2.020
5. Drafting the joint application .....	2.030
6. Drafting the nullity petition .....	2.036
7. Drafting the petition for judicial separation .....	2.039
8. Drafting the petition for presumption of death and dissolution .....	2.040
9. Statement as to arrangements for the children .....	2.041
10. The certificate of reconciliation .....	2.048
11. Filing .....	2.050
12. Service .....	2.054
(a) Documents to be served on the respondent .....	2.058
(b) Deemed service .....	2.061
(c) Substituted service .....	2.063
(d) Order dispensing with service .....	2.066
(e) Service out of the jurisdiction of Hong Kong .....	2.068
13. Subsequent pleadings .....	2.069
14. Amending the pleadings .....	2.073
15. Directions for trial and affidavit in support of petition .....	2.081
16. Special procedure divorce and the decree <i>nisi</i> hearing .....	2.083
17. The decree <i>nisi</i> hearing .....	2.086
(a) Decree <i>nisi</i> hearing for nullity .....	2.089
(b) Judicial separation .....	2.090
18. Drafting the decree <i>nisi</i> and accompanying order .....	2.091
19. Rescission of decree <i>nisi</i> .....	2.097
20. The decree absolute .....	2.101
(a) Application for decree absolute by the respondent .....	2.103
(b) Application to abridge the six-week time limit .....	2.104

(c) Certificate to make decree <i>nisi</i> absolute .....	2.106
(d) Application for decree absolute within one year .....	2.107
(e) Application to set aside decree absolute .....	2.109
21. Acting for the respondent – the acknowledgement of service .....	2.112
22. The procedure if acting for an applicant in a joint application .....	2.122
23. The defended suit .....	2.126
(a) Filing an acknowledgement of service and answer .....	2.128
(b) Application to file an answer out of time .....	2.134
(c) Directions for trial following filing of acknowledgement of service .....	2.144
(d) The answer .....	2.146
(e) The cross-petition .....	2.149
(f) The statement as to arrangements for the children .....	2.151
(g) Filing and service .....	2.152
(h) Drafting the reply .....	2.154
(i) Directions for trial after the close of pleadings .....	2.157
(j) Preparation for hearing .....	2.159
(k) In court .....	2.162
(l) The opening .....	2.163
(m) The examination-in-chief .....	2.164
(n) Cross-examination .....	2.165
(o) Re-examination .....	2.166
(p) Witnesses .....	2.167
(q) Closing .....	2.168
(r) Compromise .....	2.169
(s) Costs .....	2.171

## CHAPTER 3 JURISDICTION AND FORUM

*Mairéad Rattigan and Alexander Tang*

1. Jurisdiction .....	3.003
2. Submission to the jurisdiction .....	3.028
3. <i>Forum conveniens</i> .....	3.033
4. Concurrent proceedings in court overseas: anti-suit injunctive relief .....	3.056
5. Recognition of overseas divorce: jurisdiction of the Hong Kong Court .....	3.064
6. Applications under Part IIA Matrimonial Proceedings and Property Ordinance .....	3.072
(a) Statute .....	3.072
(b) <i>C v H</i> .....	3.078

## CHAPTER 4 ANCILLARY RELIEF: THE LAW

*Philippa Hewitt*

1. Introduction .....	4.001
(a) Guidance on division of assets from the Court of Final Appeal in <i>LKW v DD</i> .....	4.005
(b) Judicial Discretion: Guidelines Only .....	4.007
2. Factors to bear in mind: s. 7 .....	4.013
Matrimonial Proceedings and Property Ordinance (Cap 192) (MPPO)	
(a) Introduction – preliminary matters .....	4.013

(b) Differences between s 25, Matrimonial Causes Act and s 7, MPPO .....	4.017
(i) The child is the first consideration .....	4.017
(ii) Provision as to clean break .....	4.021
(c) The statutory provisions – s 7(1) MPPO .....	4.026
(d) All the circumstances of the case .....	4.029
(i) Remarriage .....	4.031
(ii) Cohabitation .....	4.033
(iii) Agreements – pre or post nuptial .....	4.034
(e) Conduct of the parties .....	4.037
(i) Financial and non-financial misconduct .....	4.041
(ii) Addbacks for bad behaviour or dissipation of funds .....	4.045
(iii) Litigation misconduct .....	4.053
3. The financial resources .....	4.056
(a) The financial resources .....	4.056
(b) Income .....	4.064
(c) Earning capacity .....	4.067
(d) Property and other financial resources .....	4.073
(e) Determining beneficial ownership .....	4.078
(f) Financial resources a party is likely to have in the foreseeable future: bonuses, inheritances .....	4.084
4. Needs and obligations .....	4.089
(a) “Needs” .....	4.091
(b) “Obligations” and “responsibilities” .....	4.098
(c) “Obligations in the foreseeable future” .....	4.100
5. Standard of living .....	4.101
6. Age and duration of marriage .....	4.106
(a) Age of the parties and earning capacity .....	4.107
(b) Duration of marriage and contribution .....	4.109
(c) Cohabitation prior to marriage .....	4.117
7. Physical and mental disability .....	4.123
8. Contribution .....	4.124
(a) Non-financial contribution .....	4.126
(b) Financial contribution .....	4.133
9. Compensation for loss of benefit and for relationship-generated loss .....	4.147
(a) Compensation for relationship generated loss .....	4.148
(i) <i>McFarlane v McFarlane</i> .....	4.148
(ii) <i>LKW v DD</i> .....	4.154
(iii) <i>WLK v TMC</i> .....	4.155
(iv) <i>A v B</i> .....	4.162
(v) <i>Waggott v Waggott</i> .....	4.164
(b) Loss of pension .....	4.168
(c) Disclosure of pension details .....	4.169
(d) Pension schemes .....	4.171
(e) Jurisdiction of the pension scheme .....	4.173

(i) America .....	4.174
(ii) England .....	4.175
(iii) Australia .....	4.177
(iv) Hong Kong .....	4.178
10. Case law – past and present: Hong Kong and England .....	4.179
(a) Summary of the current position .....	4.179
(b) History of the judicial approach .....	4.185
(i) <i>Watchel v Watchel</i> : the one - third rule and <i>Preston v Preston</i> : the Reasonable Requirements Approach .....	4.186
(ii) Pre <i>White v White</i> law in Hong Kong – <i>C v C</i> .....	4.191
(iii) <i>White v White</i> .....	4.193
(c) English Cases post <i>White v White</i> : <i>Miller /McFarlane</i> ; <i>Charman v Charman</i> .....	4.199
(i) <i>Miller v Miller</i> .....	4.199
(ii) <i>McFarlane v McFarlane</i> .....	4.200
(iii) <i>Charman v Charman</i> .....	4.202
11. Hong Kong Cases .....	4.207
(a) Hong Kong Cases since <i>C v C</i> and prior to <i>DD v LKW</i> .....	4.207
(i) <i>F v F</i> .....	4.207
(ii) <i>L v L</i> .....	4.208
(b) <i>DD v LKW</i> .....	4.211
(i) The facts .....	4.212
(ii) Guidelines given by the Court of Appeal in <i>DD v LKW</i> .....	4.216
(c) Significant Court of Appeal cases in Hong Kong subsequent to the Court of Appeal guidelines in <i>DD v LKW</i> .....	4.221
(i) <i>C v T (Ancillary Relief)</i> .....	4.221
(ii) <i>W v H (Financial Relief – Big Money)</i> .....	4.222
(d) Judgments of the Court of Final Appeal: <i>LKW v DD</i> and <i>WLK v TMC</i> .....	4.229
(i) <i>LKW v DD</i> : the current law .....	4.229
(ii) <i>WLK v TMC</i> .....	4.230
(e) Cases since <i>LKW v DD</i> and <i>WLK v TMC</i> .....	4.237

## CHAPTER 5 FINANCIAL ORDERS

Philippa Hewitt

1. Introduction .....	5.001
2. Financial provision: periodical payments, secured periodical payments and lump sum orders .....	5.003
3. Periodical payments .....	5.007
(a) Duration of the order .....	5.008
(b) Index linking .....	5.010
(c) Tax .....	5.011
(d) Important considerations in respect of a periodical payments order .....	5.012
(e) Section 7 factors and aspects of the case which may limit periodical payments: earning capacity, cohabitation and length of marriage .....	5.013
(f) Earning capacity .....	5.015
(g) Cohabitation .....	5.032

(h) Quantum of periodical payments .....	5.039
(i) The clean break .....	5.048
4. Secured periodical payments .....	5.057
5. Lump sum orders .....	5.059
(a) <i>Duxbury</i> orders .....	5.069
(b) Big money cases .....	5.077
(i) <i>C v C</i> .....	5.079
(ii) <i>F v F</i> .....	5.080
(iii) <i>L v L</i> .....	5.084
(iv) <i>C v F</i> .....	5.087
(v) <i>C v T</i> .....	5.089
(vi) <i>W v H</i> .....	5.090
(vii) <i>LKW v DD and WLK v TMC</i> .....	5.094
(viii) <i>ARAV v VP</i> .....	5.096
(ix) <i>KLK v PLTO</i> .....	5.099
(x) <i>TCWF v LKKS</i> .....	5.100
(xi) <i>Mimi Kar Kee Wong Hung v Raymond Kin Sang Hung</i> .....	5.101
(xii) <i>PW v PPTW</i> .....	5.103
(c) Business cases: private companies .....	5.104
(i) <i>Prest v Petrodel Resources Ltd</i> .....	5.110
(ii) Valuation of a private business .....	5.121
(iii) How to distribute a company? .....	5.131
(d) Trusts .....	5.139
(e) Ascertaining the value of the assets: the date of the value and matrimonial and non-matrimonial property .....	5.143
(i) The date of valuation of assets .....	5.142
(ii) Matrimonial and non-matrimonial property .....	5.146
(iii) Balancing post separation accruals with the clean break .....	5.156
(iv) Bonuses .....	5.170
(v) Premarital assets .....	5.177
(vi) Inheritances and gifts .....	5.183
6. Property adjustment orders .....	5.189
7. Transfer of property orders .....	5.192
(a) Real property and the matrimonial home .....	5.195
(b) Transfers free of or subject to mortgage .....	5.199
(c) <i>Mesher</i> and <i>Martin</i> orders .....	5.200
(i) <i>Mesher</i> orders .....	5.200
(ii) <i>Martin</i> orders .....	5.204
(d) Transfer on condition .....	5.206
(e) Transfer of tenancies .....	5.207
8. Settlement of property orders .....	5.212
9. Variation of settlement .....	5.217
10. Orders for sale of property .....	5.220
11. Financial provision for children .....	5.227
(a) Financial Provision under s 5 of the MPPO .....	5.228

(b) Financial Provision under the Guardianship of Minors Ordinance .....	5.236
(c) Duration of an order .....	5.243
(d) Factors relevant in exercising judicial discretion .....	5.249
(e) Financial needs of the child .....	5.254
(f) Child maintenance to cover a proportion of general household expenses? .....	5.259
(g) The manner in which the child should be maintained .....	5.266
(h) Financial resources of the child .....	5.273
(i) Physical or mental disability and standard of living .....	5.275
(j) The child's education expenses .....	5.276
(k) Drawing up an order and the s 18 declaration .....	5.277
(l) Where a child is not the child of a party to the marriage .....	5.283
12. Consent orders .....	5.287
(a) The form of a consent order .....	5.292
(i) Recitals of fact .....	5.293
(ii) Undertakings and agreements .....	5.297
(iii) The orders .....	5.305
(b) Dismissal of claims .....	5.310
(c) Liberty to apply and s 18 declaration .....	5.312
(d) Costs .....	5.314
(e) Finalising a consent order .....	5.315
(f) Whether to appeal or apply to set aside a consent order .....	5.319
(g) Basis on which to set aside a consent order .....	5.327
(i) Non-disclosure, fraud and misrepresentation .....	5.330
(ii) Remarriage of a party .....	5.339
(iii) Supervening event: <i>Barder v Barder (Caluori)</i> .....	5.342
(iv) Supervening event: change in the value of the assets .....	5.345
(v) Global financial crisis – a supervening event under the <i>Barder</i> principles .....	5.346
13. Preliminary hearings: determining the beneficial ownership .....	5.353
14. Applications under the Inheritance (Provision for Family and Dependents) Ordinance (Cap. 481) .....	5.363
(a) The position of spouses .....	5.368
(b) Children .....	5.372
(c) Interim orders .....	5.374

## CHAPTER 6 VARIATION AND MAINTENANCE PENDING SUIT APPLICATIONS

Philippa Hewitt

I. Applications to vary .....	6.001
(a) Statutory provisions .....	6.003
(b) Orders to which this section applies .....	6.005
(c) Factors to which the court will have regard .....	6.013
(i) The court's approach .....	6.014
(d) Hong Kong cases .....	6.020
(i) <i>YYLJ v CWC (Application to vary)</i> .....	6.020
(ii) <i>AEM v VFM</i> .....	6.021
(iii) <i>HCTT v TYYC</i> .....	6.027

(iv) <i>AEL v MRL (Variation of MPS)</i> .....	6.032
(v) Applications to vary child maintenance downwards: <i>WNWG v PBF</i> and <i>SMC v JAC</i> .....	6.035
(vi) Effect of remarriage or co-habitation on variation applications.....	6.043
(c) Applications to recover arrears of maintenance.....	6.046
(f) Applications to vary and enforcement.....	6.054
(g) Financial disclosure in applications to vary.....	6.056
(h) Procedure.....	6.059
2. Maintenance pending suit.....	6.062
(a) Statutory provisions.....	6.062
(b) Factors the court will take into account and judicial discretion.....	6.069
(c) Court of appeal decision: <i>HJFG v KCY</i> .....	6.077
(d) Provision for legal costs.....	6.085
(e) Financial disclosure in MPS.....	6.106
(f) Procedure.....	6.110

## CHAPTER 7 ANCILLARY RELIEF: PRACTICE AND PROCEDURE

*Peter Barnes and Philippa Hewitt*

1. Review of family procedure rules relating to financial relief.....	7.001
2. Financial Dispute Resolution (FDR).....	7.008
(a) Applications under Part IIA, Matrimonial Proceedings and Property Ordinance (Cap. 192) (MPPO).....	7.019
3. The FDR Procedure.....	7.027
(a) Phase 1 – First appointment.....	7.028
(b) Phase 2 – FDR.....	7.029
(c) Phase 3 – Trial.....	7.030
(d) Decrees <i>nisi</i> & <i>absolute</i> .....	7.031
(e) Preparing for the first appointment.....	7.032
(i) Form E financial statements.....	7.032
(ii) Exchange of Forms E.....	7.037
(iii) First Appointment bundle.....	7.039
(iv) List of orders and directions sought.....	7.042
(v) Questionnaire/list of documents sought from the other party.....	7.043
(vi) Statement of issues.....	7.051
(vii) Chronology.....	7.053
(viii) Estimate of costs.....	7.055
(ix) Court bundles.....	7.057
(f) The first appointment hearing.....	7.059
(g) The FDR.....	7.068
(i) The FDR bundle.....	7.068
(ii) The FDR hearing.....	7.071
(h) Procedure at the hearing of contested applications.....	7.088
(i) Pre-trial review or directions for trial.....	7.089
(ii) Statement of open proposals.....	7.092
(iii) Bundles for the final hearing.....	7.095
(iv) Procedure at trial.....	7.101

4. Discovery and non-disclosure.....	7.103
(a) Financial disclosure: Form E financial statement.....	7.103
(i) The importance of full and frank disclosure.....	7.104
(ii) Effect of non-disclosure: costs, adverse inferences.....	7.110
(iii) “Self help” remedy outlawed: <i>Imerman v Tchenguiz</i> .....	7.121
(b) Contents of the Form E.....	7.135
(i) Part 1 – general information.....	7.137
(ii) Part 2 – Assets.....	7.139
(iii) Part 3 – Income.....	7.173
(iv) Part 4 – Expenses.....	7.183
(v) Paragraph 4.2 – Anticipated future expenses.....	7.194
(vi) Part 5 – Other information.....	7.196
(vii) Part 6 – Orders sought.....	7.207
(viii) Part 7 – Schedule of attachments.....	7.210
(ix) Attestation.....	7.212
5. Evidence other than the parties: experts and witnesses.....	7.214
(a) Rules in relation to expert evidence.....	7.215
(b) Timing for expert evidence.....	7.220
(c) Real property valuations.....	7.221
(d) Company valuations.....	7.222
(e) <i>Duxbury</i> calculator.....	7.223
(f) Dispute as to valuations.....	7.224
(g) Subpoena of witnesses.....	7.228
(h) Determination of third party interests, joinder of a third party.....	7.232
6. Appeals.....	7.236
(a) Application for leave to appeal to the Court of Appeal.....	7.238
(i) <i>Smith v Cosworth Casting Processes Ltd (Practice note)</i> .....	7.243
(ii) <i>TCWF v LKKS (Jurisdiction of the Court of Appeal)</i> .....	7.244
(iii) <i>CCMJ v SSM (Appeals; Bundles; Case management)</i> .....	7.247
(b) Appeal to the Court of Final Appeal.....	7.251

## CHAPTER 8 NUPTIAL AGREEMENTS

*Jain Brown and Andrew Lynn*

1. Introduction.....	8.001
2. The law.....	8.011
(a) Current law and practice in respect of pre-nuptial agreements.....	8.011
(b) <i>Radmacher v Granatino</i> .....	8.022
(c) Applying <i>Radmacher v Granatino</i> .....	8.030
(i) <i>Z v Z</i> .....	8.032
(ii) <i>V v V</i> .....	8.040
(iii) <i>Jenna Kremen v Boris Agrest</i> .....	8.045
(iv) <i>B v S</i> .....	8.050
(v) <i>BN v MA</i> .....	8.056
(vi) <i>Victoria Lee Luckwell v Francesco Alessandro Limata</i> .....	8.061
(vii) <i>Y v Y</i> .....	8.069
(viii) <i>G v W</i> .....	8.075

(ix) <i>WW v HW</i> .....	8.085
(x) <i>WA v The Executors of the estate of HA (deceased)</i> .....	8.092
(xi) <i>Caroline Louise Hopkins v William Ian Hopkins</i> .....	8.096
(xii) <i>DB v PB</i> .....	8.102
(xiii) <i>KA v MA</i> .....	8.111
(xiv) <i>SPH v SA</i> .....	8.119
3. Planning, drafting and executing a pre-nuptial agreement.....	8.125
(a) Advising as to jurisdiction and powers.....	8.125
(b) Drafting a pre-nuptial agreement.....	8.132
(c) Safeguards: procedural fairness and substantive fairness.....	8.135
(i) Procedural fairness.....	8.136
(ii) Substantive fairness.....	8.143
4. Other marital agreements.....	8.152
(a) Post-nuptial agreements and separation agreements: overview.....	8.152
(b) Post-nuptial agreements (pre-separation).....	8.154
(c) Separation agreements.....	8.157
(d) Agreements for compromise.....	8.164
5. Conclusion.....	8.166
(a) Summary.....	8.166

## CHAPTER 9 TRUSTS AND DIVORCE

Marcus Dearle

1. Trusts in context.....	9.001
2. Approaches to trusts in divorce.....	9.004
3. Impact of <i>LKW v DD</i> .....	9.006
4. Variation of settlements and offshore settlements (ante-nuptial or post-nuptial).....	9.008
5. Trust interests as a resource.....	9.021
6. Sham trusts.....	9.038
7. Set aside of disposition creating trust.....	9.044
8. Trustees as parties in ancillary relief proceedings.....	9.045
9. Disclosure of trust documents and financial information.....	9.063
10. Enforcement.....	9.076
11. The implications of other cases including <i>Prest v Petrodel Resources Ltd</i> - resulting trusts and can corporations be treated as variable nuptial settlements?.....	9.082
(a) <i>KG v LG</i> .....	9.090
(b) <i>Joy v Joy-Moranchio</i> .....	9.091
(c) <i>Quan v Bray</i> .....	9.093
(d) <i>P v P</i> .....	9.094
(e) <i>NR v AB</i> .....	9.095
(f) <i>Chai v Peng</i> .....	9.097
12. Recent important offshore cases.....	9.101
(a) Guernsey.....	9.101
(b) Jersey.....	9.104

(i) <i>J v Tully</i> .....	9.104
(ii) <i>In the matter of the D settlement</i> .....	9.108
(iii) <i>HSBC International Trustee Ltd v Poon</i> .....	9.112
(c) Cayman.....	9.114

## CHAPTER 10 THE LAW IN RELATION TO CHILDREN

Frances Irving and Philippa Hewitt

1. Introduction.....	10.001
(a) The Proposed Children's Proceedings (Parental Responsibility) Bill.....	10.011
2. The Current Legislation.....	10.022
(a) Matrimonial Proceedings and Property Ordinance ("MPPO") (Cap 192).....	10.025
(i) Section 19 of the MPPO.....	10.025
(ii) Section 18 of the MPPO.....	10.031
(iii) Section 10 of the MPPO.....	10.035
(b) Guardianship of Minors Ordinance ("GMO") (Cap 13).....	10.040
(i) Section 3 of the GMO.....	10.041
(ii) Section 10 of the GMO.....	10.050
(iii) Other relevant provisions of the GMO.....	10.061
(c) Matrimonial Causes Ordinance ("MCO") (Cap 179).....	10.067
(d) Matrimonial Causes Rules ("MCR") (Cap 179A).....	10.072
(i) Rule 92.....	10.072
3. The Orders Made by a Court: Custody, Care and Control and Access.....	10.082
(a) Custody, care and control.....	10.082
(i) Meaning of custody.....	10.085
(ii) Meaning of care and control.....	10.111
(b) Access.....	10.131
(i) Meaning of access.....	10.131
(ii) Types of access: reasonable or defined; visiting or staying.....	10.138
(c) "No order".....	10.150
4. Factors the court will take into account: the welfare principle and suggested checklist.....	10.155
(a) The welfare principle.....	10.155
(b) The draft statutory checklist of factors.....	10.159
(c) The views of the child.....	10.167
(d) The physical, emotional and educational needs of the child.....	10.177
(e) Preserving the <i>status quo</i> – the likely effect on the child of any change in his circumstances.....	10.186
(f) The age, sex, background and characteristics of the child.....	10.198
(g) Any harm which the child has suffered or is at risk of suffering.....	10.206
(h) The capacity of each parent or third party to meet the child's needs.....	10.209
(i) Other factors.....	10.223
5. Social Welfare Reports.....	10.225
(a) Social welfare report recommendation.....	10.228
6. Other Expert Reports.....	10.236
7. Guardianship.....	10.244

8. Changing a Child's Name .....	10.264
(a) Common law .....	10.269
9. Adoption .....	10.276
(a) "Best interests" principle .....	10.278
(b) Effect of an adoption order .....	10.280
(c) Who may adopt? .....	10.281
(d) Residence requirement .....	10.287
(e) Procedure .....	10.288
(f) Consent .....	10.289
10. Surrogacy .....	10.303
(a) Who are the legal parents? .....	10.306
(b) Restrictions in Hong Kong .....	10.310
(c) Parental Orders .....	10.314
11. Declaration as to parentage .....	10.321
12. Jurisdiction in children's cases: <i>QMY v GSS</i> .....	10.330

## CHAPTER 11 PRACTICE AND PROCEDURE IN RELATION TO CHILDREN

Winnie Chow

1. Powers of the court in family proceedings .....	11.001
(a) The overriding principle .....	11.004
(b) Section 18 declaration .....	11.008
2. The CDR process .....	11.014
(a) Children's appointment .....	11.016
(b) The CDR hearing .....	11.021
(c) The trial .....	11.026
3. Preparation of the pleadings .....	11.030
(a) Application for custody, care and control in divorce proceedings .....	11.030
(i) Statement of arrangements for children of the family .....	11.038
(ii) Children's appointment of the CDR .....	11.042
(iii) CDR before FDR .....	11.044
(b) Application for custody, care and control and access under the GMO .....	11.047
(c) Applications for interim custody, care and control and access .....	11.053
(i) Access .....	11.056
(ii) Supervised access .....	11.060
4. The evidence – the party's affidavit in support of the application or in reply .....	11.065
5. Expert reports .....	11.072
6. Evidence from the social welfare officer .....	11.081
7. Evidence of other parties – witnesses .....	11.087
8. Children's views – judicial interview and separate legal representation .....	11.090
(a) Judicial interview .....	11.091
(b) Separate representation for children .....	11.100
9. Preparing the client for the hearing .....	11.112
10. The hearing .....	11.117

11. Costs in children's cases .....	11.122
12. Summary – the attitude to adopt .....	11.129

## CHAPTER 12 INTERNATIONAL ASPECTS OF THE LAW RELATING TO CHILDREN AND CHILD PROTECTION

Enzo Chow

1. Introduction .....	12.001
2. Wardship jurisdiction of the court .....	12.003
(a) Background to wardship .....	12.003
(b) Who can be made a ward of court .....	12.007
(c) Who can make the application? .....	12.013
(d) Minor's welfare the "first and paramount consideration" .....	12.020
(e) Application to make a child a ward of court .....	12.023
(f) Effect of wardship .....	12.040
(g) Costs .....	12.043
(h) Appeals .....	12.044
3. Removal of children from the jurisdiction .....	12.045
(a) Application restricting the removal of a child .....	12.047
(b) Application to remove a child temporarily from the jurisdiction .....	12.052
(c) Application to remove a child permanently from the jurisdiction .....	12.058
(d) Contested applications .....	12.063
(e) Recent cases for permanent removal .....	12.079
(i) <i>IDC v SSA</i> .....	12.079
(ii) <i>RK v YS</i> .....	12.081
(iii) <i>ZJ v XWN (Leave to appeal; child relocation)</i> .....	12.082
4. Applications under the Child Abduction and Custody Ordinance (Cap.512) "Hague Applications" .....	12.084
(a) The court's discretion to refuse return .....	12.117
(b) Consent or acquiescence .....	12.119
(c) Allegations of risk of harm .....	12.122
(d) The Child's view .....	12.126
(i) Procedure .....	12.130
(e) Costs .....	12.145
(f) The lack of arrangement between the Mainland and Hong Kong in relation to children wrongfully removed by a parent to the Mainland .....	12.146
5. Child protection .....	12.147

## CHAPTER 13 COHABITATION

Philippa Hewitt and Samantha Gershon

1. Cohabitation .....	13.001
(a) The legal status of cohabitants .....	13.003
2. Property problems: determining the beneficial ownership .....	13.013
(a) Resulting trusts .....	13.016
(b) Presumption of advancement .....	13.018
(c) Constructive Trust or 'Common Intention Constructive Trust' .....	13.019
(d) Proprietary Estoppel .....	13.024

3. England and Wales .....	13.026
(a) Trusts of Land and Appointment of Trustees Act 1996 (TOLATA) .....	13.026
(b) Caselaw .....	13.027
(i) <i>Stack v Dowden</i> .....	13.028
(ii) <i>Jones v Kernott</i> .....	13.035
(iii) <i>Smith v Bottomley</i> .....	13.041
(iv) <i>Bhura v Bhura</i> .....	13.042
(v) <i>Marr v Collie</i> .....	13.043
(c) Property held by family members and friends cohabiting .....	13.050
(i) <i>Laskar v Laskar</i> .....	13.050
(ii) <i>Gallarotti v Sebastianelli</i> .....	13.051
4. Hong Kong Cases .....	13.052
(a) <i>Z v X (C intervening)</i> .....	13.057
(b) <i>Chen Lily v Yip Tsun Wah Alvan</i> .....	13.060
(c) Land Law Considerations .....	13.064
5. Cohabitation agreements and declarations of trust/deeds of trust .....	13.065
(a) The Contract .....	13.068
(b) Contents .....	13.070
(c) Requirements in the Absence of a Cohabitation Agreement .....	13.078
6. Children of Cohabitees .....	13.079
(a) Legitimacy and the position of fathers .....	13.079
(b) Registration of the birth .....	13.090
7. Custody and financial provision for children of unmarried parents .....	13.091
(a) Custody .....	13.092
(b) Financial provision .....	13.092
(c) Case law: <i>IDC v SSA: A Lump Sum to Meet a Child's Immediate and Non-recurring Needs</i> .....	13.097
8. Carer's allowance .....	13.103
9. Engaged couples .....	13.108
10. Intestacy .....	13.111

## CHAPTER 14 DOMESTIC VIOLENCE IN HONG KONG

*Anne Scully-Hill*

1. Introduction .....	14.001
(a) Legislative history .....	14.004
(b) The effect & impact of the 2008 & 2009 reforms .....	14.006
2. Injunctive relief from domestic violence .....	14.023
(a) Who can apply? .....	14.030
(b) Practical matters: making the application .....	14.041
3. The forms of injunctive relief available to victims of domestic violence .....	14.050
(a) The injunctions .....	14.050
(b) The non-molestation order .....	14.055
(c) The ouster/occupation order .....	14.062
(d) Existing custody and access orders .....	14.074

4. Practical matters .....	14.075
(a) Advising the client: acting for the applicant .....	14.075
(b) The non-molestation order/ouster or occupation order .....	14.078
(c) The restraining order .....	14.080
(d) The restraining order in relation to children .....	14.084
(e) Practical matters: advising the client: acting for the respondent .....	14.086
(f) Practical matters: drafting the summons and affidavit in support .....	14.087
5. Enforcement issues .....	14.088
(a) Contempt of court and authorisation of arrest .....	14.088
(b) Practical matters: the authorisation of arrest .....	14.097
(c) Practical matters: the hearing .....	14.100
(i) Procedure if acting for the applicant: the <i>ex parte</i> hearing .....	14.100
(ii) Procedure if acting for the applicant: <i>inter partes</i> hearing of return hearing date on an <i>ex parte</i> application .....	14.102
6. Alternatives to Injunctive Relief .....	14.104
(a) Undertakings .....	14.104
(b) Criminal justice .....	14.105
(c) Social welfare and therapeutic assistance .....	14.106

## CHAPTER 15 INJUNCTIVE RELIEF ON FINANCIAL MATTERS

*Russell Coleman SC*

1. Introduction .....	15.001
2. Section 17 Matrimonial Proceedings and Property Ordinance (Cap 192) (MPPO), – “The avoidance of transactions intended to defeat claims” .....	15.005
(a) Introduction .....	15.005
(b) Applications made under s 17 of the MPPO .....	15.007
(c) “Property” .....	15.017
(d) “Dealing with” .....	15.024
(e) “Intention” .....	15.027
(f) “Defeating the claim” .....	15.031
(g) Constructive notice sufficient .....	15.032
(h) Undertaking as to damages .....	15.037
(i) Procedure .....	15.038
(j) <i>UL v BK (Freezing orders: safeguards: standard examples)</i> .....	15.042
3. <i>Mareva</i> injunctions – freezing assets .....	15.045
(a) Introduction .....	15.045
(b) <i>Ex parte</i> application .....	15.048
(c) Requirements for the grant of <i>Mareva</i> injunction .....	15.053
(d) Ceiling figure necessary .....	15.062
(e) Cross-undertakings .....	15.063
(f) Procedure .....	15.065
(g) Ancillary orders .....	15.069
(h) Limitations on <i>Mareva</i> injunctions .....	15.072
4. <i>Anton Piller</i> orders .....	15.078
(a) Search and seizure .....	15.078
(b) Requirements for <i>Anton Piller</i> orders .....	15.082



(c) Full and frank disclosure necessary.....	15.093
(d) Cross-undertakings.....	15.098
(e) Service and execution of order.....	15.100
(f) Supervising solicitor.....	15.107
(g) Procedure.....	15.108

## CHAPTER 16 ENFORCEMENT OF JUDGMENTS *Enzo Chow*

1. In General.....	16.001
2. The temporal limit for enforcing a judgment or order.....	16.004
3. Judgment summons.....	16.007
(a) Section 87 MCR.....	16.007
(b) <i>CYM v YML</i> .....	16.021
(c) A complete review of the law and procedure relating to judgment summons under <i>YBL v LWC</i> .....	16.026
(d) Section 88 MCR.....	16.051
4. Writ of <i>fiery facias</i> .....	16.057
5. Committal for contempt of court.....	16.070
(a) <i>Hadkinson</i> orders.....	16.093
6. Charging order.....	16.097
7. <i>Garnishee</i> order.....	16.113
8. Attachment of income order.....	16.126
9. Prohibition orders.....	16.136
10. Reciprocal Enforcement of orders.....	16.139
(a) Maintenance Orders (Reciprocal Enforcement) Ordinance (Cap 188).....	16.140
(i) Enforcement of Hong Kong maintenance orders overseas.....	16.140
(ii) Enforcement of overseas orders in Hong Kong.....	16.142
(iii) Maintenance Orders (Reciprocal Enforcement) Rules (Cap 188A) govern procedure.....	16.147
(b) Foreign Judgments (Reciprocal Enforcement) Ordinance (Cap 319).....	16.148
(i) Reciprocal Recognition and Enforcement of Civil Judgments in Matrimonial and Family Cases between the Mainland and Hong Kong.....	16.153

## CHAPTER 17 COSTS *Jonathan Mok*

1. Introduction.....	17.001
2. The principles of costs.....	17.005
(a) The discretion of the court.....	17.006
(b) Costs arising from a party's misconduct or neglect.....	17.008
(c) Costs orders in favour of or against non-parties.....	17.009
(d) Wasted costs orders.....	17.010
(i) Procedure for making a wasted costs order.....	17.012
(ii) A means of intimidation.....	17.015
(e) The several bases of taxation and assessment of costs.....	17.016
(i) The indemnity principle.....	17.016

(ii) Party and party basis.....	17.018
(iii) Common fund basis.....	17.019
(iv) Indemnity basis.....	17.022
(v) Costs as between a solicitor and own clients basis.....	17.026
(vi) Costs on the trustee basis.....	17.027
(f) Litigants in person.....	17.028
(g) Legal aid cases.....	17.030
3. Summary assessment of costs.....	17.031
(a) Summary assessment of costs in interlocutory proceedings.....	17.032
(b) Procedure.....	17.035
4. Costs in family proceedings.....	17.039
(a) Ancillary relief.....	17.043
(i) Unreasonable conduct.....	17.044
(ii) <i>Calderbank</i> offers.....	17.047
(iii) "To order as to costs".....	17.052
(iv) Costs in interlocutory proceedings.....	17.056
(b) Children.....	17.060
(i) The starting point of no costs orders.....	17.061
(ii) Costs consequences of failure to mediate.....	17.073
(c) Wardship proceedings and the role of the official solicitor.....	17.074
5. Taxation.....	17.078
(a) Costs-only proceedings.....	17.080
(b) Powers of taxing officers.....	17.082
(c) Provisional taxation.....	17.085
(d) Procedure on taxation.....	17.088
(i) Preparing the bill of costs.....	17.090
(ii) Time limit for commencement of taxation.....	17.094
(iii) Commencement of taxation.....	17.097
(iv) The list of objections.....	17.099
(v) Setting down a bill for taxation.....	17.101
(e) Taxation with a Hearing.....	17.103
(f) Certificates Issued by the Taxing Master.....	17.105
(i) Interim certificates.....	17.105
(ii) Final certificates.....	17.106
(g) Sanctioned Costs Offers and Payments.....	17.107
(i) Sanctioned offers by receiving parties.....	17.110
(ii) Sanctioned payments by paying parties.....	17.111
(iii) Clarification of sanctioned offer or sanctioned payment notice.....	17.113
(iv) Time for accepting sanctioned offers or sanctioned payments.....	17.114
(v) Consequences of acceptance of a sanctioned offer or payment.....	17.115
(vi) Costs consequences if receiving party fails to better the sanctioned payment.....	17.116
(vii) Costs consequences if receiving party does better than his sanctioned offer.....	17.117
(viii) Disclosure of sanctioned offers or payments to the court.....	17.119

**CHAPTER 18 LEGAL AID***Stella Cheng*

1. Legal aid in Hong Kong .....	18.001
(a) Legal aid in matrimonial and family proceedings .....	18.004
(b) The pilot scheme on legal aid for mediation of legally aided matrimonial cases .....	18.007
(c) The legal aid schemes .....	18.009
2. Applying for legal aid .....	18.012
(a) The “means” test .....	18.014
(b) Calculation of financial resources .....	18.016
(c) Calculation of a spouse’s income .....	18.018
3. The “merits” test .....	18.019
4. Grant and refusal of legal aid .....	18.021
5. Stay of proceedings .....	18.024
(a) Lift of stay of proceedings .....	18.026
6. Costs and contributions by the legally aided person .....	18.032
(a) Contributions .....	18.033
(b) Director’s first charge .....	18.035
(c) Enforcement of the director’s first charge .....	18.037
(d) Duty of the solicitor to the aided Person .....	18.040
(e) Costs Liability of aided persons .....	18.044
(f) Payment of Costs by aided persons .....	18.049
(g) Costs of counsel and solicitors .....	18.050
7. Taxation of costs .....	18.054
(a) Payment of money due to legally aided persons .....	18.058
8. Discharge and revocation of legal aid certificates .....	18.061
(a) “Regulation 11” orders .....	18.065
9. Legal aid appeals .....	18.067

**CHAPTER 19 FAMILY MEDIATION***Dr. Helena Yuen*

1. Brief history of family mediation in Hong Kong .....	19.001
2. Definition, training and practice of family mediation .....	19.006
3. Mediation process as an alternative to other dispute resolution process .....	19.014
(a) Mediation and counselling .....	19.014
(b) Mediation and the adversarial process .....	19.019
(c) Mediation process .....	19.020
(d) Use of experts in mediation .....	19.021
(e) Pre-mediation session .....	19.022
(f) Disclosure .....	19.024
(g) Confidentiality .....	19.025
(h) Children .....	19.026
(i) Interest-based negotiation .....	19.027
(j) Parties in control .....	19.028
(k) Summary .....	19.029
4. The pilot scheme of family mediation 2000–2003 .....	19.030

5. Future of family mediation .....	19.042
(a) Role of lawyers in mediation .....	19.049
(b) Domestic violence and mediation .....	19.051
(c) Parenting plans .....	19.053
(d) Case study .....	19.055
(e) Collaborative practice .....	19.058
6. Pilot Scheme on Private Adjudication of Financial Disputes in Matrimonial and Family Proceedings .....	19.063

**CHAPTER 20 INTERNATIONAL OVERVIEW OF  
MATRIMONIAL FINANCE IN OTHER  
JURISDICTIONS** *Sharon Ser and a team of international experts*

1. Introduction .....	20.001
2. England and Wales .....	20.015
3. Australia .....	20.031
(a) Statutory framework .....	20.031
(b) Identifying and valuing the property, liabilities and financial resources of the parties at the date of the hearing .....	20.036
(c) Property brought into the marriage .....	20.046
(d) Prenuptial Agreements in Australia .....	20.051
(e) Legislation—the factors to which a court must have regard .....	20.059
(f) The ways in which the courts have dealt with the legislation .....	20.064
(g) Equality? .....	20.071
(h) Stellar contributions .....	20.074
(i) <i>Fields &amp; Smith</i> .....	20.076
(k) The section 75(2) factors .....	20.080
(l) Just and equitable requirement .....	20.081
(m) Conclusion .....	20.082
4. Canada .....	20.084
(a) Statutory framework .....	20.084
(b) Family assets and non-family assets .....	20.085
(c) Marriage agreement and separation agreement .....	20.086
(d) The division of property .....	20.087
5. New Zealand .....	20.097
(a) What are considered to be marital assets? .....	20.098
(b) Factors a court must consider in the division of relationship property .....	20.114
6. People’s Republic of China .....	20.122
(a) Cross border issues .....	20.122
(b) Financial division in the PRC .....	20.125
(i) Statutory framework .....	20.125
(ii) What assets are considered marital assets/liabilities? .....	20.126
(c) The factors to consider on the division of assets in a divorce .....	20.135
(d) Summary .....	20.142
7. Singapore .....	20.177
(a) Statutory framework .....	20.177

(b) The factors a court must consider in division of assets .....	20.178
(c) Which assets are marital assets? .....	20.179
(d) Authorities.....	20.190
8. United States of America .....	20.201
(a) Statutory framework.....	20.201
(b) Separate property versus marital property.....	20.206
(c) The factors a court must consider in the division of assets.....	20.208
(d) Dissipation of assets.....	20.214

### Appendices: Sample Documents

#### APPENDIX A

Statement of Truth .....	823
Petition for Nullity - Void .....	825
Petition for Nullity - Voidable .....	827
Petition for Judicial Separation-Behaviour .....	829
Petition for Presumption of Death and Dissolution of Marriage .....	831
Petitioner's Certificate as to Mediation .....	832
Respondent's Certificate as to Mediation .....	834
Notice of Discontinuance and letter to court .....	836
Form 3 - Notice of Overseas Service .....	839
Affirmation for Deemed Service.....	842
Draft Order for Deemed Service.....	844
Draft Order for Substituted Service.....	845
Notice for Substituted Service .....	846
Affirmation to Dispense with Service.....	847
Consent Summons to amend petition .....	849
Decree <i>Nisi</i> .....	851
Accompanying Order with Decree <i>Nisi</i> .....	852
Summons for an Extension of Time.....	853
Answer .....	854
Answer and Cross Petition .....	855
Notice of Desired Place of Trial of Defended Cause .....	857

#### APPENDIX B

Consent Order to Settle.....	861
------------------------------	-----

#### APPENDIX C

Notice of application to vary maintenance .....	867
Affidavit for application to vary.....	868
Draft Order for application to vary .....	871
Application for Maintenance Pending Suit (MPS) .....	872
Affidavit in support for MPS .....	873

Affidavit in Reply.....	876
Draft Order for MPS .....	879

#### APPENDIX D: FIRST APPOINTMENT BUNDLE

Chronology.....	883
List of Directions and Orders Sought .....	884
Statement of Issues .....	885
Estimate of Costs .....	886

#### APPENDIX E

Pre-nuptial Agreement.....	890
Deed of Separation.....	899

#### APPENDIX F: CHILDREN

Order for Custody and Access made on Decree <i>Nisi</i> .....	905
Summons for Custody Care and Control.....	906
Affidavit in support of Application for Custody, Care and Control.....	907
Order for Custody, Care and Control.....	909
Consent Summons for Directions .....	910
Summons for Defined Access .....	911
Affidavit in Support of Application for Defined Access.....	912
Order for Defined Access.....	914

#### APPENDIX G: WARDSHIP AND REMOVAL FROM THE JURISDICTION

Originating Summons for a Wardship Application .....	917
Memorandum .....	919
Notice of Wardship Application .....	920
Reply to Notice .....	921
Letter to Immigration Department .....	922
Affirmation in Support of Application .....	923
Affirmation of Service .....	924
Notice of Appointment to hear Originating Summons .....	925
Order for Wardship .....	926
<i>Ex Parte</i> Summons to prevent Removal of the Children .....	927
Affidavit in Support of Application to Prevent the Removal of the Children .....	928
Order to Prevent the Removal of the Children .....	930
<i>Ex Parte</i> Summons to Apply for the Temporary Removal of the Children .....	931
Affidavit in Support of Application for Temporary Removal of the Children .....	932

Order to Permit Temporary Removal of the Children .....	934
Undertaking .....	935
Consent Summons .....	936
<i>Inter Partes</i> Summons to Remove the Children Temporarily from the Jurisdiction .....	937
Affidavit in Support of an <i>Inter Partes</i> Summons to Apply for Temporary Removal of the Children .....	938
<i>Inter Partes</i> Summons to Apply for the Permanent Removal of the Children .....	940
Affidavit in Support of an <i>Inter Partes</i> Summons to Apply for the Permanent Removal of the Children.....	941
Letter to the Immigration Department .....	943

### APPENDIX H: INJUNCTIONS

Inter partes summons to restrain a respondent from dealing with matrimonial property .....	947
Restraining Order.....	948
Inter partes summons for a non - molestation and exclusion order .....	949
Undertaking of the Respondent on a non - molestation injunction application .....	950
Affidavit in support of ex-parte summons for non - molestation injunction and exclusion order .....	951
Order for a non - molestation injunction and an exclusion order on an <i>ex parte</i> summons .....	953
Order under the Guardianship of Minors Ordinance with penal notice and power of arrest attached.....	955

### APPENDIX I

Agreement to Mediate .....	959
Mediation Agreement .....	963
<i>Index</i> .....	967