

LRC report on rules for determining domicile released

The Law Reform Commission (LRC) today (11 April) released a report containing proposals to reform the law determining a person's domicile.

Amongst other proposals, the report recommends that the existing differentiation between legitimate and illegitimate children should be abolished, and that the domicile of married women will no longer depend on that of their husbands.

The report explains that a person's domicile connects him with a system of law for the purpose of determining a range of matters, including legal capacity to marry, recognition of overseas divorces or legal separations, personal capacity to make a will and formal validity of a will.

The LRC notes that the concept of domicile is of significance in the Hong Kong legal system and plays a significant role in private international law.

However, despite the importance of the concept of domicile, the rules for determining a person's domicile have repeatedly been criticised for being unnecessarily complicated and technical, and sometimes leading to absurd results.

As a result, various law reform bodies in the common law world have recommended amending the rules for determining domicile. In Australia, Canada, New Zealand and South Africa, those recommendations have been implemented by legislation which amends the rules for determining domicile.

The chairman of the LRC's Domicile sub-committee, Miss Audrey Eu, SC, believes that the recommendations put forward in the report will improve this complex and confusing area of common law by simplifying the concept of domicile and making it easier to ascertain a person's domicile.

At present, a legitimate child's domicile is, during the lifetime of his father, the same as, and changes with, his father's domicile, whereas the domicile of an illegitimate child and of a child whose father is dead is the same as, and changes generally with, his mother's.

The report recommends abolishing the existing differentiation between legitimate and illegitimate children.

"Under the proposed rules, a child would be domiciled in the place to which he is most closely connected. In most cases, where the child is living with his parents, that will mean that the child's domicile is the same as that of his parents," Miss Eu said.

Under the existing law, a married woman cannot acquire a domicile of choice by her own actions, and is dependent upon her husband.

Hence, a married woman's domicile is the same as, and changes with, her husband's. This rule applies even where the spouses live apart in different countries, or where a wife has obtained a decree of judicial separation.

"The report proposes that the domicile of married women will no longer depend on that of their husbands. It will be ascertained in the same way as any other adult, irrespective of gender," Miss Eu said. "The domicile of an adult will depend on that person's intention and presence in the relevant jurisdiction," she added.

Other proposals include the abolition of the concepts of domicile of origin and domicile of dependency, which have created many anomalies.

“The concept of domicile is a technical area of the law which the Law Reform Commission believes will be clarified and simplified by its recommendations,” Ms Eu said.

Copies of the report are available on request from the Secretariat of the Law Reform Commission at 20/F Harcourt House, 39 Gloucester Road, Wanchai, Hong Kong. They are also available on the Internet at <www.hkreform.gov.hk>.

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