

**THE LAW REFORM COMMISSION OF HONG KONG**

**REPORT**

**YOUNG PERSONS — EFFECTS OF AGE  
IN CIVIL LAW  
(TOPIC 11)**

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Competence and Compellability of Spouses in Criminal Proceedings

Interest on Debt and Damages

Arrest and Detention

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15 April 1986

# THE LAW REFORM COMMISSION OF HONG KONG

## REPORT

### YOUNG PERSONS – EFFECTS OF AGE IN CIVIL LAW

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# Chapter 1

## Introduction

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### 1.1 Terms of reference

On 14 January 1983, the Chief Justice and Attorney General, under powers granted by the Governor-in-Council on 15 January 1980, referred to the Law Reform Commission ("the Commission") for consideration the following questions :

- (1) Whether any changes are desirable in the law relating to contracts made by persons under 21 years of age and to their power to hold and dispose of property, and in the law relating to marriage by such persons and to the power to make them wards of court.
- (2) Whether any changes are desirable in the law relating to the age at which a person may consent to surgical, medical and dental treatment.
- (3) To report whether in the course of their work it appeared that further consideration should be given as to whether any changes might be desirable in any law relating to the age at which a person -
  - (a) attains any legal capacity;
  - (b) acquires any right;
  - (c) may exercise or perform any power or duty;
  - (d) incurs any liability;
  - (e) is subject to special treatment by reason of his age.

### 1.2 Establishment and work of sub-committees

1.2.1 The Commission at its meeting on 18 January 1983 established a sub-committee to examine, investigate and report on the matters referred for consideration. The membership of the sub-committee is set out in Annexure 1A.

1.2.2 The sub-committee has met 17 times and three sub-groups within the sub-committee have met on eight occasions.

1.2.3 Interim reports were submitted by the sub-committee to the Commission on 25 January 1984 and 19 March 1985.

1.2.4 The Commission itself considered the reference at five of its meetings. A separate sub-committee set up to consider connected changes for the law of minors' contracts met on one occasion. The membership of that separate sub-committee is set out in Annexure 1B.

### **1.3 The relevance of age**

1.3.1 It has been said that originally, in England, 21 years was selected as the age for maturity since at that age a young man could reasonably be expected to be able to wear a full suit of armour. Social conditions and attitudes of mind have changed greatly since the middle ages but at the present time in Hong Kong, 21 years of age remains the main dividing line between children, infants or minors, and adults. It is important that the law in Hong Kong should reflect modern Hong Kong conditions and social opinion rather than the conditions and opinion of a distant country in a bygone age.

1.3.2 For society, the relevance of age in various contexts is essentially a social question from which legal consequences flow. A well organized society should from time to time, review the rules by which it lives, and the Commission considered its task of assessing the relevance of age to capacity in various social contexts an important one.

1.3.3 **The development of young people in Hong Kong :** Studies have shown that on average, girls in Hong Kong reach puberty at 12 years of age. By the age of 13 years, 75% of girls have reached puberty. (A Study of Hong Kong School Youth published by the Family Planning Association, 1983: Table 6.3.1.1 page 82). Boys reach puberty approximately 2 years later at 14 to 15 years of age. By the age of 16 years, both girls and boys in Hong Kong have attained adulthood in their physical development. However, there is no local study on the age at which most young people attain both physical and psychological maturity.

1.3.4 Compulsory schooling in Hong Kong ensures that the minimum school leaving age occurs at the completion of Form 3 or on the attainment of 15 years of age whichever happens first. The 1981 Census showed that 20.2% of children who were 15 years of age had left school and 31.9% of 16 year olds were not attending school. They were presumably working with a degree of financial independence. By the time 18 years of age was reached, 63.8% of young people were no longer in school or in post-school educational institutions. At 19 years of age, almost 80% were not attending school (A Study of Hong Kong School Youth : Table 2.1.1.1 at page 4).

1.3.5 The law is generally paternalistic towards minors. It seeks to protect them from their own inexperience. At the same time, the law tries to ensure that minors do not profit unfairly by this protection. It is against this general background that this report discusses whether these objectives are being achieved today in Hong Kong and whether the present lines dividing

minority from maturity in various social and legal contexts are still appropriate and satisfactory, or should be redrawn.

1.3.6 The present law regulating minors' contracts is in a confused state and appears to have lost sight of its objectives. The number of cases concerning such contracts that come before the courts in Hong Kong appears to be quite small, but nevertheless the underlying social injustice may be considerable. Young people can be at a great disadvantage in that traders and commercial enterprises may refuse to deal with them due to their age and incapacity to enter into binding contracts at law. This report examines the present law and practice and makes recommendations for change.

1.3.7 Generally, a minor, even if he or she is married with a family, cannot make a valid will. Medical law concerning minors is unclear. Doctors, dentists and surgeons may be wary of providing treatment for, or operating on, a minor even with the minor's consent, if the parent or guardian's consent is not also available. In family law generally, is 21 years an appropriate age up to which orders for custody and maintenance should continue? Should a mature 20 year old in this modern age still require the consent of father to marry? Should the minimum age at which a person can marry remain at 16 years? Why should a person under the age of 21 years be prohibited from acting as a company director? These and other social and legal questions are examined and discussed in this report.

1.3.8 Only the mentally normal are considered in this report. The legal capacity of the mentally handicapped is not related to age and raises different considerations.

## **1.4 Method of work of Commission and main sub-committee**

1.4.1 It was decided from the outset that a survey of interested parties would be conducted. It was considered that the most relevant persons to ask about the topic were those who had day-to-day dealings with young people as well as young people themselves.

1.4.2 A questionnaire, a copy of which is at Annexure 5, was prepared and circulated to 206 persons or organisations with a request that they answer the questions both from an "official" point of view and also as individuals. The organizations were invited to poll their members if they thought it appropriate. Details of the persons or organizations circulated are at Annexure 6.

1.4.3 A total of 1,587 duly completed questionnaires were returned to the Commission Secretariat. An analysis of the results is set out at Annexure 7.

1.4.4 Members of the sub-committee spoke to various service clubs. Articles have appeared in Chinese and English newspapers and also in specialist journals. The first Secretary to the sub-committee attended at

Wong Tai Sin, Southern, Eastern and Sha Tin District Board meetings to outline the sub-committee's work. He also addressed a one day seminar of social workers, convened by the Hong Kong Council of Social Service to discuss the issues.

1.4.5 The views of the Hong Kong Medical Association, the British Medical Association (Hong Kong Branch) and the Red Cross Society were all sought and copies of their letters in reply to the sub-committee's enquiries are contained in Annexure 4C.

## **1.5 Approach**

1.5.1 The Commission and the main sub-committee looked closely at the current legal situation in Hong Kong. It was considered that the question of the age of majority was not primarily a legal question but a social question from which legal consequences flowed.

1.5.2 This report examines the implications of the legal effect of age in three broad areas of civil law namely in property, family and medical law. Certain anomalies in the existing legal system were noted but a detailed consideration of the law relating to minors or its possible reform has not been undertaken. The policy of government, as reflected in the ordinances of Hong Kong which refer to age (see Annexure 2), and the rationale of the courts in establishing the protections offered to minors, are not questioned except where anomalies are noted. However the law with respect to minors' contracts is inherently anomalous (see paragraphs under 3.1) and a separate sub-committee considered reform in that area and made recommendations for change.

1.5.3 The survey conducted was purposely not a public opinion survey, but was a survey of those organisations or members of the public having dealings with young persons in their day to day activities.

1.5.4 It is considered that the survey results can validly be used for assistance in forming an opinion for various reasons :-

- (a) The questions asked were neutral, and did not imply an increase, decrease, or, change in the relevant age.
- (b) The targeted groups were the most appropriate.
- (c) A wider survey would have had to cover the whole of Hong Kong in order to ensure that all groups within the community were given their say.
- (d) The response was reasonable and the number of people who responded (1,587) gave a solid basis from which conclusions could be drawn.

1.5.5 While the Commission has been guided by the results of the survey, it has not felt bound by the opinions expressed. The age at which young people should or should not be able to do something at law need not necessarily coincide with the age at which the general population or a segment of it considers appropriate. Other factors also guided the Commission. These other factors are discussed throughout the report.

1.5.6 It may be questioned why certain groups within the community, say, "parent" groups, were not approached. The answer is that a large number of the respondents to the questionnaires could be expected to be parents and their views may be regarded as representative.

## **1.6 Division of subject matter**

1.6.1 The terms of reference focus on three specific areas and also call for a report on anomalous matters noted. The specific areas may be described broadly as property, family and medical law. This report examines the existing law, outlines existing difficulties and makes recommendations for change in the areas examined.

## Chapter 2

# Contracts, property and wills: outline of present position in Hong Kong

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### 2.1 Introduction

2.1.1 In Hong Kong it is English common law which provides the basis for the legal effects flowing from a person's age. However, a divergence has emerged between the English and Hong Kong law mainly as a result of differing statutory changes in these jurisdictions.

2.1.2 Much of the English common law is based upon 18th and 19th century cases which were decided against quite different conditions than those prevailing in Hong Kong today. Further a number of English cases have been decided against the statutory background provided by the Infants Relief Act 1874, which has no application in Hong Kong. Accordingly great care is needed when looking at these cases for guidance in an area where there is little other authority.

### 2.2 The age of majority

2.2.1 Section 3 of the Interpretation and General Clauses Ordinance (Cap. 1) defines "a minor" or "an infant" as a person who has not attained the age of 21 years.

2.2.2 To most people a birthday marks the time to add another year to one's age but the common law adopts the rather strange fiction that a person attains a certain age at the first moment of the day preceding his birthday.

2.2.3 In England, this odd common law rule has now been displaced by statute. Section 9 of the Family Law Reform Act 1969 provides -

*"9. Time at which a person attains a particular age.*

*(1) The time at which a person attains a particular age expressed in years shall be the commencement of the relevant anniversary of the date of his birth.*

*(2) This section applies only where the relevant anniversary falls on a date after that on which this section comes into force, and, in relation to any enactment, deed, will or other instrument, has effect subject to any provision therein."*

2.2.4 The Commission recommends that a similar statutory provision be enacted in Hong Kong.

## **2.3 Contract**

2.3.1 The law divides contracts broadly into two classes. Firstly those that are binding for all purposes on a minor namely contracts for necessary goods and services and beneficial contracts of employment. In Hong Kong contracts involving claims within the District Court jurisdiction of HK\$60,000 must also be considered in this class. The second class deals with all other contracts under which a minor may escape liability because the contract is treated as void, voidable or not binding on a minor.

### ***Necessary goods and services***

2.3.2 Contracts for necessary goods and services are binding for all purposes on a minor.

2.3.3 The difficulty with this category of contracts is deciding exactly what are necessities. Section 4(2) of the Sale of Goods Ordinance (Cap. 26) lays down the following test in respect of goods :

*"Goods suitable to the condition in life of such infant or minor or other person, and to his actual requirements at the time of sale and delivery."*

This definition provides no certain list of what are necessities. What was necessary ten years ago may not be necessary today and what may be necessary to the son of a fisherman may not be necessary to a daughter of a wealthy businessman. Further, something which may be considered a necessity in general terms may cease to be a necessity if the minor already has an adequate supply, regardless of whether this is known to the seller. For instance the English Court of Appeal in *Nash v Inman* ([1908] 2 KB 1) rejected a tailor's action for the price of certain clothes, including eleven fancy waistcoats, because he failed to prove that the minor did not already have a full wardrobe of waistcoats.

2.3.4 There is some doubt as to whether the goods have to be necessary at both the time of making the contract and the time of delivery or just at delivery. The Sale of Goods Ordinance states at the time of sale and delivery but several writers, including Anson and Winfield, have argued, on the identical wording found in the Sale of Goods Act 1893, that it is only the time of delivery that is important.

2.3.5 Services provided to a minor are also capable of constituting necessities if they satisfy the tests laid down in respect of goods; examples could be the receipt of medical treatment or legal advice.

2.3.6 A lender who provides funds to a minor will also be concerned to know if the minor has used those funds to purchase necessities. Although the loan itself may not be recoverable, he may claim to be subrogated to the supplier so as to be able to recover from the minor those funds that have been directly used to buy necessities.

2.3.7 The nature of a minor's liability for necessities has been a source of much debate. Two views have been canvassed. The first maintains that a minor's liability is contractual, while the second views a minor's liability as quasi-contractual, being imposed solely by law as a result of the benefits received by the minor. The difference is of importance where the necessities are yet to be delivered. The prevailing view appears to be that a minor will not be liable in these circumstances on the basis that his liability is quasi-contractual. But where the receipt of necessary services was in issue in the case of Roberts v Gray ([1913] 1 KB 520) the contractual view was preferred and damages were awarded against the defaulting minor even though the services had not been fully provided.

2.3.8 Even if a supplier has established that his contract is for necessities he may still fail if the terms upon which he is seeking to rely are onerous to the minor. It should be noted in particular that by section 4(1) of the Sale of Goods Ordinance (Cap. 26) a minor is only required to pay a reasonable price for goods which constitute necessities but the subsection does not cover necessary services.

### ***Beneficial contracts of employment***

2.3.9 Contracts of employment or service are binding on a minor as long as they are substantially for his benefit. The whole contract must be considered in establishing whether it is beneficial. Accordingly, a contract may contain an onerous term but if the term is usual and overall the contract is beneficial to the minor, the onerous term will be enforceable. This category does not however extend to trade contracts.

### ***Claims for debt, damages or demand of not more than HK\$60,000***

2.3.10 The protection provided to minors by the English common law is eroded by section 46 of the District Court Ordinance (Cap. 336), which provides that minority is no defence to claims within the District Court jurisdiction. This jurisdiction now extends to claims not exceeding HK\$60,000.

2.3.11 The same limitation does not appear in the legislation establishing the Small Claims Tribunal (Small Claims Tribunal Ordinance (Cap. 338)) which may determine claims under HK\$8,000 save for actions by moneylenders.



2.3.12 Consequently, there arises the anomaly that a person can successfully sue a minor in the District Court for a sum under HK\$8,000 for non-necessaries but not in the tribunal intended for such claims. The result is likely to be the institution of such claims in the District Court rather than in the Small Claims Tribunal and this would involve greater cost and formality which is in nobody's interest, least of all, that of the minor.

2.3.13 The limitation, also, does not appear in the Supreme Court Ordinance (Cap. 4).

### **Voidable contracts**

2.3.14 The law has distinguished contracts dealing with company shares, land, marriage settlements and partnerships as constituting special categories. Such contracts are viewed as binding on the minor until they are repudiated by him either during minority or within a reasonable time of attaining majority.

2.3.15 Thus prior to the repudiation of a lease or a contract for the acquisition of shares a minor may be sued for the rental due or for unpaid calls. What is not so clear however is the extent of a minor's liability once he has repudiated. Does his liability cease only in respect of future liabilities or for past liabilities too? Unfortunately there has been no case directly on this point and the only guidance is found in conflicting dicta. In *North Western Railway Co v M'Michael* ((1850) 5 Ex Ch 114) Parke B suggested that repudiation rescinded the contract and extinguished all liabilities arising under it while in both *Ketely's Case* (1 Brownlow 120) and *Steinberg v Scala (Leeds) Ltd* ([1923] 2 Ch 452) the court merely stated that future liabilities would cease with no mention of the fate of accrued liabilities. On the other hand in the Irish case of *Blake v Concannon* ((1870) 1R 4 CL 323) a minor was held liable for half a year's rental in respect of his occupation of premises prior to repudiation of the tenancy.

2.3.16 What is clear is that the minor will only be able to recover money that he has already paid under such a contract in the unlikely event that there has been a total failure of consideration (*Steinberg v Scala (Leeds) Ltd* : [1923] 2 Ch 452).

2.3.17 There is no restriction on a minor being a partner but his liability as such is restricted. He cannot be made liable for the repayment of loans made to the partnership or for its losses although he will only be entitled to his share of the partnership profits when all partnership debts have been paid.

2.3.18 The rationale behind the separate treatment of these contracts has been attributed to their continuing or permanent nature. There is little of a permanent or continuing nature in a contract for the sale or purchase of land which is likely to be completed within a month. Even a lease for a year cannot boast of being any more continuing than many a hire purchase agreement, but a landlord can sue a minor for unpaid rent (at least until repudiation of the

tenancy) while a minor can keep goods obtained under a hire purchase agreement without paying the instalments. Treital in 'The Law of Contract' (5th ed.) soundly criticises this distinction :

*"It perhaps provides the clearest illustration of the dilemma in which the law sometimes finds itself when it tries at the same time to protect infants and not to cause undue hardship to adults who deal with them. But this dilemma exists in all cases of contracts with infants and scarcely justifies special treatment of the four voidable contracts." ( page 422).*

### **Non-binding contracts**

2.3.19 Generally, all other contracts are not binding on a minor unless he ratifies them on attaining majority, although they are binding on the adult party.

2.3.20 It is only where the minor has not performed his contractual obligations that he will be able to benefit from claiming the contract does not bind him. Even so the drawbacks for the adult party are obvious. While he must perform his part of the bargain he will simply be unable to sue the minor for the price of goods or services he has supplied. Accordingly a supplier will rarely allow a minor delivery without immediate payment or some certainty that he will be able to obtain payment.

2.3.21 It is doubtful if a minor is bound to return the property he has obtained and not paid for. In England, under the influence of the Infants Relief Act 1874, it has been said that no such recovery from a minor is possible (*Cowern v Nield* [1911] All ER 425). In Canada however where, as in Hong Kong, there is no such legislation, it has been held in *Louden Manufacturing Company v Milmine* ([1907] 14 OLR 532) that a minor is required to return goods if he fails to meet his contractual liabilities.

2.3.22 If a minor has fraudulently misrepresented his age, or other matters which have induced the other party to contract with him, it is well established that he may be forced to return his ill-gotten gains by virtue of the equitable doctrine of restitution. Although it is not normally possible to rely on a minor's tortious liability to indirectly enforce a contract, equity will intervene to require restitution where the misrepresentation is fraudulent but not otherwise.

2.3.23 Restitution has only limited application however. The property itself must still be in the hands of the minor and thus the doctrine is of little assistance if the property in question is a loan of money as opposed to some identifiable goods.

2.3.24 There are conflicting authorities in the cases of *Stocks v Wilson* ([1913] 2 KB 235) and *R. Leslie Ltd v Sheill* ([1914] 3 KB 607) as to whether restitution might be possible where the property itself has been disposed of

but the proceeds of sale or property given in exchange are identifiable in the hands of the minor. The latter case, which rejected the proposition, appears to be able to summon the greater support.

2.3.25 The protection of the law will not assist the minor in all cases. Where a minor has performed his contractual obligations he will not be able to claim the return of property he has sold or money he has paid for goods or services if he subsequently finds the transaction unwise unless there has been a total failure of consideration. However, the dissenting judgement of Lord Denning in the English Court of Appeal in *Chaplin v Leslie Frewin (Publishers) Ltd* ([1966] Ch 71) has cast some doubt on the width of this proposition by suggesting that recovery may be possible where restitution is possible.

### **Void contracts**

2.3.26 The common law has recognised that certain contracts may be of such an oppressive nature as to be completely void. The advantage of such a view lies in both parties being able to recover their money or property and the minor being in no danger of rendering himself liable by ratification of the contract.

2.3.27 Where a minor is so young as to be incapable of appreciating the nature of what he is doing the contract will also be considered void.

### **Agency**

2.3.28 While a minor is capable of being an agent for an adult principal he cannot appoint an adult agent or attorney in order to clothe himself with contractual capacity.

### **Conclusion**

2.3.29 The law regulating minors' contracts has not only reached a confused state but appears to have lost sight of its objectives. Protection with fairness now seems to have little place in this area. A minor may be the victim of an unscrupulous claim not exceeding HK\$60,000 if he is sued in the District Court and a trader may find himself tricked by a minor's deception as to his age into supplying property for which he can have no hope of payment.

2.3.30 It is therefore not surprising that many traders and commercial enterprises refuse to deal with minors. The protection offered by the law may thus act to a minor's detriment in both his personal and business life. A landlord may refuse to rent him a flat or a hire-purchase company to provide him with finance to buy a car. Similarly a bank loan to set up a twenty-year old in his own business would be unlikely to be forthcoming as would customers and suppliers if they were aware of the young proprietor's

incapacity.

2.3.31 The exclusion of a defence of minority in the District Court mitigates for traders the drawbacks of dealing with minors but so far as the minor is concerned, in the District Court his basic protection has gone and he must take his place amongst adults with only the limited consumer protection legislation available in Hong Kong to protect him against his own inexperience.

## **2.4 Banking**

2.4.1 While governed by general contractual principles, banking has attained a position of such importance in most individuals' lives that it merits separate consideration.

2.4.2 There is no legal objection to a minor opening a current, savings or other account so long as it is maintained in credit for by doing so he is merely depositing his property with another. However once an account slips into overdraft it is the bank that is supplying money to the minor and they will be unable to demand its return, unless a claim can be brought in the District Court.

2.4.3 It is no doubt for this reason that banks in Hong Kong do not permit people under 21 years of age to open current accounts although savings accounts may be maintained by children as young as 12 years of age.

### ***Cheques***

2.4.4 By section 22(1) of the Bills of Exchange Ordinance (Cap 19) the capacity to incur liability on a cheque is co-extensive with the capacity to contract. Even so, it is difficult to see when a minor can be made liable on a cheque. *In Re Soltykoff* ([1891] 1 QB 413) it was held that a minor could not be made liable on a cheque given in payment for necessaries: he could only be sued on the contract itself.

2.4.5 If a minor has drawn or endorsed a cheque which is beyond his capacity, then by section 22(2) of the Bills of Exchange Ordinance any other party to the cheque may be made liable by the holder.

### ***Guarantees***

2.4.6 An adult may frequently be asked to guarantee a minor's overdraft or other credit facility or indeed any other contractual obligation into which a minor seeks to enter. However the English Court in *Coutts & Co v Browns-Lecky* ([1946] 2 AE 207) have held that to incur liability the guarantor must take on a primary responsibility for the debt or obligation. A secondary liability as guarantor of the minor's unenforceable obligations cannot be sustained. However this case was decided under the Infants Relief Act 1874

which rendered the contract in question void. It might therefore be argued that a guarantee of a minor's obligations under a voidable contract should be enforceable prior to its repudiation, although it is only likely to be in such circumstances that the guarantee would be important.

## **2.5 Land and immovable property**

2.5.1 In Hong Kong there is no statutory prohibition on a minor holding an interest in land, as there is in England by virtue of section 1(6) Law of Property Act 1925. However, almost all land in Hong Kong is leasehold and as such is held on the basis of a contract either between the Crown and the Crown lessee or a landlord and his tenant. Issues of contractual incapacity therefore become relevant and inevitably colour the practical ability of a minor to acquire and deal with land. As previously mentioned, contracts affecting land, including leases and contracts to sell or purchase land, are binding on the minor until repudiated.

2.5.2 Further difficulties arise when a minor gives a discharge for money or property he receives. Even if a minor inherits land by will or on intestacy, the deceased's personal representatives may be reluctant to pass that land to the minor since they may be unable to rely solely on the minor's receipt of this gift to discharge them from their duties.

2.5.3 Section 25(1) of the Probate and Administration Ordinance (Cap. 10), ensures that there are always two administrators or a trust corporation appointed where the deceased has failed to appoint an executor and there is a minority interest, whether in land or other property. These administrators can then act as trustees of that property for the minor until he attains 21 years of age.

2.5.4 Further, under the powers given by section 69 of the Probate and Administration Ordinance, personal representatives can appoint at least two individuals or a trust corporation to act as trustees in their stead where the minor's interest in the estate is absolute.

2.5.5 In the New Territories, where land can pass to a successor without the need for a grant of probate or administration, the Land Officer is given power to appoint a trustee of land held by a minor (section 18 New Territories Ordinance (Cap 97)). This trustee is granted power to sell or otherwise dispose of the land on behalf of the minor.

## **2.6 Personal property**

2.6.1 The position is similar to that regarding land.

2.6.2 There is no statutory or common law provision prohibiting a minor from holding any particular type of property. A minor's contractual incapacity will limit a party's willingness to acquire from or sell to a minor

assets of any value, other than on a "cash on delivery" basis. Again a minor may be clothed with capacity through the use of trustees to act on his behalf but there are many instances which do not warrant such trouble and expense.

2.6.3 A gift of property to a minor is irrevocable but a gift by a minor is revocable by him during minority or within a reasonable time of attaining majority.

2.6.4 The difficulties encountered by minors in holding property are perhaps greater where such property cannot be transferred by mere physical delivery but has to be transferred by specified means, for example money in a bank account, or shares. In addition, this type of property frequently enjoys incidental rights and liabilities which a minor may have difficulty in exercising, such as voting rights.

## **2.7 Trustees**

2.7.1 In England, a minor is prohibited from acting as a trustee by section 20 of the Law of Property Act 1925 but in Hong Kong there is no similar provision. Although a 20 year old may be considered competent to be entrusted with the affairs of others his inability to contract freely will make it difficult if not impossible for him to carry out his responsibilities as trustee.

2.7.2 Selection of a trustee is generally a matter for the choice and judgment of the settlor. It is arguable that he should be entitled to choose whom he thinks fit, minor or not, but there seems little point in sanctioning his appointment of someone who will be unable to discharge his duties however much he may want to do so.

2.7.3 Section 37 of the Trustee ordinance (Cap. 29) provides an escape from the dilemma of a minor trustee by allowing the appointment of a new trustee in place of a minor.

## **2.8 Personal representatives**

2.8.1 Though very similar to the post of a trustee the law prohibits a minor from being a personal representative. The difference perhaps arises from the fact that a personal representative may not always be chosen by the deceased. For instance, on an intestacy or on the death of a sole surviving executor, the law steps in and designates those responsible for the administration of the deceased's estate.

2.8.2 Section 39 of the Probate and Administration Ordinance (Cap. 10) and Rules 31 and 32 of the Non-Contentious Probate Rules (made under Cap. 10) make provision for instances where a minor may be entitled to a grant. If a minor is appointed as executor with others a grant may be made to the other executors with power reserved for the minor to take a further grant

when he attains full age. If the minor is the sole executor, then probate may be granted to his guardian on his behalf or, if he has no interest in the residuary estate, to the residuary beneficiary under the will for the use and benefit of that minor executor. Where a minor is otherwise entitled to apply for a grant then the grant may be made for his use and benefit to his parents or guardian to a person nominated by the Registrar or, if the minor is over 16 years old, to a person nominated by him.

## **2.9 Wills**

2.9.1 Though a minor can dispose of property by way of gift during his life time his power to give property away on his death is restricted by section 4 of the Wills Ordinance (Cap. 30).

2.9.2 No minor can make a valid will, with one exception. That exception, found in section 6 of the Wills Ordinance, is an historical inheritance from the English law and relates to servicemen on actual military service or seamen at sea who may make a will while still under 21 years of age and without the formalities laid down by the Wills Ordinance.

2.9.3 There can be few subject to Hong Kong law who can qualify as servicemen on actual military service but the exception for seamen must have far reaching applications particularly as 'at sea' has been given a wide interpretation by the courts. No doubt the exception arose when servicemen and seamen were particularly exposed to danger, but there are many jobs now which carry similar dangers. Indeed it could be said that driving down the Tuen Mun highway in a motorcar is as dangerous as crossing the Pacific in an oil tanker.

2.9.4 The object in setting testamentary capacity should not be diluted by an exposure to danger but by an appreciation of the effect of making a will. Such appreciation may have no relation to contractual capacity for it is not the minor who is in need of protection in this area but those whom the law deems entitled on his intestacy.

2.9.5 The dictates of the law, while made with a view to benefiting an intestate's dependents, cannot always reflect the intestate's wishes or take into account his individual circumstances in best providing for those dependents. The situation is likely to be most pertinent with married minors where a minor may wish to solely benefit his spouse at the expense of his parents.

2.9.6 While a serviceman or seaman who is under 21 years of age may make or revoke a will, it should be noted that if he loses that privilege by leaving the service or returning to shore he cannot revoke a privileged will whilst he is still a minor.

## Chapter 3

### Contracts and property law

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#### 3.1 Present situation : protection is the basis

3.1.1 The present law has already been examined in Chapter 2 and only the main points are outlined in this Chapter as an introduction to the Commission's recommendations.

3.1.2 The law treats minors in a paternal and protective manner. It seeks to protect minors against the possibility of people exploiting their inexperience. The means by which the law seeks to exercise this protection is to render a contract made with a minor unenforceable against the minor, although it remains binding on the other party.

3.1.3 There are exceptions. The main exception is the contract for necessities.

3.1.4 Contracts dealing with company shares, land, marriage settlements and partnerships form special categories on the basis that they are of a continuing or permanent nature. These contracts are recognised as binding on a minor until repudiated by him either during minority or within a reasonable time of attaining majority.

3.1.5 Employment contracts are also exempted from the non-enforceability concept if their terms are reasonable.

3.1.6. Another major exception to the non-enforceability rule is found in Section 46 of the District Court Ordinance (Cap. 336). This section provides that 'no person shall by reason of his not having attained the full age of 21 years be exempted from liability for any debt damages or demand within the jurisdiction of the court .....'. The financial jurisdiction is limited to claims not exceeding \$60,000. With the advent of a Small Claims Tribunal and the continued existence of a Supreme Court jurisdiction, neither of which have a similar exemption, this provision is an anomaly.

3.1.7 Another example of a statutory exemption is Section 17 of the Credit Unions Ordinance (Cap. 119) which is similar in effect to Section 46 of the District Court Ordinance. **This provision however appears to be well founded in principle and should be retained.** It is there to encourage savings and financial transactions by young people who would otherwise be handicapped by the protection offered by the law. In practice minors who wish to borrow from a financial institution must have a guarantor. This is a reasonable requirement as otherwise the minor may refuse to repay the advance and may raise the defence of being a minor. By removing this



defence in this class of transaction the legislature has recognised that in the limited area of credit union activities, minors who are acceptable risks to the credit union should be able to enter into contracts without the need to have special protection under the law.

3.1.8 The protection offered by the law often acts unfairly. While a minor may avoid onerous commitments which, due to his lack of maturity, he has entered into but found beyond his means, he may also escape his obligations under a contract which is entirely reasonable, leaving the other party with no remedy. Accordingly traders and other businessmen often will not transact business with minors for fear that they will be left with no recourse if the minor refuses to pay for the goods or services supplied.

3.1.9 The common principle behind the legal restrictions placed on persons dealing with minors in the areas of contract and property law is the protection of the minor. The actual rules differ but the principle of protection is the common feature.

## **3.2 Acquisition and disposal of property - the law at present**

3.2.1 While a minor may hold both movable and immovable property in his own right in Hong Kong, difficulties arise in the acquisition and disposal of property by a minor due to his contractual incapacity.

3.2.2 One of the primary reasons why the Court of Chancery in England created the trust was to overcome this disability. By the appointment of a trustee to hold property on behalf of a minor or other legally disabled person, the acquisition and disposal of property, whether movable or immovable, was removed from an area of doubt into an area of certainty.

3.2.3 The Legislature in Hong Kong has recognized the problem in certain areas. Section 18 of the New Territories Ordinance (Cap. 97) empowers the Land Officer to appoint a trustee where a minor holds land falling within the application of that Ordinance. There is no similar direct provision relating to urban land. In addition, an application may be made to the court under the Trustee Ordinance (Cap. 29) for a vesting order in limited circumstances.

3.2.4 Section 25 of the Probate and Administration Ordinance (Cap. 10) ensures that there are always two administrators or a trust corporation appointed as personal representatives, where there is a minority interest and the testator has failed to appoint an executor willing to administer his estate. The two administrators (or the trust corporation) act as trustees of the minor's interest in the estate until he is 21 years of age. Further, section 69 of the same Ordinance provides that personal representatives who wish to divest themselves of this responsibility must appoint at least two individuals or a trust corporation to act as trustees in their stead where the minor's interest is absolute.

### **3.3 Ownership of property : the present situation**

3.3.1 As the acquisition of property commonly arises out of contracts, minors do not normally accumulate large amounts of valuable property. If however a minor does acquire property, there is no restriction on him owning or holding it, whether it be movable or immovable property. However, since nearly all land in Hong Kong is leasehold, and thus based on a contract either between the Crown and the landowner or between the landlord and his tenant, issues of contractual capacity are relevant to the holding of that lease.

### **3.4 English Law Commission**

3.4.1 It has been suggested in England (Working Paper No. 81, The Law Commission, London) that a person should be able to enter into contracts without restriction at the age of 16 years. The Commission considered the concept but noted that some of the consumer protection legislation that applied in the English situation did not apply in Hong Kong. The basis for the English proposition relied on, among other matters, the protection offered by that legislation. That legislation includes the Consumer Credit Act 1974, Hire Purchase Act 1964, Unfair Contract Terms Act 1977, Supply of Goods (Implied Terms) Act 1973 and some of the provisions of the Employment Protection Acts. None of this legislation has any direct Hong Kong equivalent. **The Commission does not support a reduction of age to 16 years for contractual capacity for young persons in Hong Kong.**

### **3.5 Survey results**

3.5.1 The questionnaire which formed the basis for the survey contained five questions about contracts, property and wills. Two of the questions related to entering into "everyday" contracts and holding "everyday" property, while two related to contracts which were of a longer term and to holding property generally, thought to be of a more substantial nature. The remaining question related to wills. The results showed that a majority favoured persons of 18 years and younger having the right to deal freely with "everyday" matters. The figures for the longer term transactions showed an equal division of opinion over lowering or not lowering the age. The Commission considers that it is inadvisable for practical purposes to have separate ages for different types of transactions.

### **3.6 Section 46 District Court Ordinance (Cap. 336)**

3.6.1 The law relating to minors' contracts. The main Sub-committee did not consider in detail the law relating to minors' contracts. This topic was dealt with by a separate Sub-committee and recommendations for change are set out in paragraph 3.8.

3.6.2 In considering the question of protection of minors the Commission found difficulty in the anomaly created by section 46 of the District Court Ordinance (Cap. 336)(referred to at Paras. 2.3.10 - 2.3.13 and 3.1.6). This section removes the defence of "being a minor" in actions brought in the District Court. The section can be traced back to 1845 when an ordinance established a summary jurisdiction in the Supreme Court of Hong Kong. Unfortunately little comment can be found in histories or legal texts which is of assistance in discovering the reasoning behind the initial move to exempt certain contracts on the basis of the court's jurisdiction. When the 1845 Ordinance was enacted, it included a provision that no person was exempted from being sued in the Supreme Court exercising summary jurisdiction by reason of not having attained the age of 21, if the amount involved did not exceed \$100. It is assumed that this provision was inserted because it applied only to debts of minors not exceeding \$100, and it was considered undesirable to complicate a case where such a trifling sum was involved. The position today is very different for the minority defence is not available in respect of debts sued for in the District Court not exceeding \$60,000.

3.6.3 While there may be areas where there is a sound reason for an exemption, the Commission can see no good reason to maintain the "blanket" exemption of actions brought before a specific court on the sole basis that the action is brought in that court.

## **3.7 Recommendations**

3.7.1 **The Commission recommends that section 46 of the District Court Ordinance (Cap. 336) be repealed.**

3.7.2 The Commission considers that the age at which contracts may be freely entered into and at which property may be held and freely disposed of should be the same. From the study mentioned in paragraph 1.3.4 it would seem that at 18 years of age almost two-thirds of young people are no longer in school or post-school educational institutions. It is presumed that they are working and have a degree of financial independence. With this independence they should have the right to be free of the "protection" of the law, a protection which can be as much a hindrance as an aid. **The Commission recommends that for the purposes of liability at law under contract a person should normally be fully liable at 18 years of age.**

## **3.8 Connected matters on minors' contracts and recommendations**

3.8.1 The Commission has considered the English Law Commission's "Law of Minors' Contracts" Report (Number 134) and has particularly considered whether any connected changes are necessary or desirable in Hong Kong flowing from the Commission's existing recommendations on

contract. Some connected changes are desirable.

**3.8.2 The Commission recommends that the law of minors' contracts should not be codified.** The Commission noted in this respect that the English Law Commission in its Report (at para. 3.4) had also considered but rejected the idea of codification of this branch of the law.

**3.8.3 The Commission recommends that the law governing minors' contracts should continue to be based on the principle of "qualified unenforceability".**

**3.8.4 The Commission recommends that any new legislation on minors' contracts should be confined to the few aspects of the existing law which are likely, in practice, to cause difficulties or to lead to injustice.**

**3.8.5 Guarantees.** The present law concerning guarantees of a minor's contractual obligation can lead to injustice. **The Commission recommends that the common law rules be displaced by a statutory provision, to the following effect:-**

*"Where a guarantee is given in respect of an obligation of a party to a contract and the obligation is unenforceable against the party, or the party repudiates the contract, because he was a minor when he entered into the contract, the guarantee shall not for that reason alone be unenforceable against the guarantor."*

**3.8.6 Sale of property or goods to a minor.** The present law whereby a contract for the sale of property or goods to a minor can be totally unenforceable against the minor can also lead to injustice. As the law stands, in some cases, a dishonest minor can obtain goods under a contract and can refuse to pay for them. As the contract is unenforceable the supplier is unable to sue for the return of the goods or for the payment of any price even if it was a reasonable price. The Commission considers that while a minor generally should not be liable for damages under a contract and should have some protection, a minor should not be in a position to take an unfair advantage of his position at law (see paras. 2.3.29, 2.3.30 and 3.1.8). **The Commission recommends that the common law rules be displaced by a statutory provision to the following effect :-**

*"Where a person (the supplier) has entered into a contract with a minor and the contract is unenforceable against the minor (or he repudiates it) because he was a minor when the contract was made, the court may, if it is equitable and just to do so, require the minor to transfer to the supplier any property acquired by the minor under the contract, or any property representing it."*

**This recommendation should not prejudice any other remedy available to the supplier.**

**3.8.7 The reforms suggested above (paras. 3.8.5 and 3.8.6) should not apply to contracts entered into before the commencement of the amended law.**

## Chapter 4

### Wills, trustees and personal Representatives

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#### 4.1 The law at present : the main points

4.1.1 The Wills Ordinance (Cap. 30) provides that for a will to be valid the person signing the will must be at least 21 years of age at the date of signing. There are two categories of persons who may make wills under that age namely seamen while at sea and military personnel on active duty (see paras. 2.9.1 - 2.9.6).

4.1.2 **Trustees and personal representatives** : There is no restriction on a minor acting as a trustee but due to his contractual incapacity a minor is an unrealistic choice as a trustee. Section 37 of the Trustee Ordinance (Cap. 29) provides an escape from the dilemma of a minor trustee by allowing the appointment of a new trustee in place of a minor (see paras. 2.7.1 - 2.7.3 and 3.2.3).

4.1.3 The Probate and Administration Ordinance (Cap 10) prohibits a minor from acting as a personal representative and makes provision for alternative persons to become personal representatives where a minor is appointed an executor or would otherwise be entitled to take out a grant of representation (see paras. 2.5.3 - 2.5.4, 2.8.1 - 2.8.2 and 3.2.4).

#### 4.2 Recommendations

4.2.1 As wills are concerned with the disposition of property on death, the Commission feels that the age at which a person is able to make a valid will should be the same as the age at which he may freely deal with his property during his lifetime. **Accordingly the Commission recommends that the law be amended to allow a person who has attained the age of 18 years to make a valid will.**

4.2.2 As a result the Commission can see no reason to restrict a person who has attained the age of 18 years from carrying out the duties of an executor or administrator of the estate of a deceased person or of a trustee under a trust. Subject to the manner in which any amendment is made generally with respect to the word "infant" (see paras. 14.4.1 - 14.4.2 and 15.15.1 post), **the Commission recommends that -**

- (a) section 39 of the Probate & Administration Ordinance (Cap. 10) and rules 31 and 32 of the Non-Contentious Probate Rules be amended to allow a person to be a personal representative at the age of 18 years.**
- (b) the Trustee Ordinance (Cap. 29) be amended to permit a person who has attained the age of 18 years to be a sole trustee.**

4.2.3 It is noted that very few, if any, trustees are presently appointed at the age of 21 years. It is suspected that even fewer will be appointed at 18 years of age. However the Commission makes this recommendation for the sake of uniformity.

4.2.4 The Commission wishes to record the dissenting view of one Commission member so far as the recommendations in paragraph 4.2.2 relate to acting as personal representative or sole trustee. A distinction was drawn by the dissenting member as to capacity to deal with one's own property or estate and being permitted to be responsible for the property or estate of others, particularly where the interests of other young persons were involved. The dissenting member considered that 21 years was the minimum age at which such responsibilities should be permitted to be assumed.

## Chapter 5

### Medical law: Consent to surgical, medical and dental treatment

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#### 5.1 The law at present

5.1.1 A medical practitioner requires the consent of a conscious patient before rendering treatment or examining a patient so as to avoid the risk of an action for battery or trespass to the person.

5.1.2 What is consent? Consent is permission to carry out the treatment which a medical practitioner has advised. In serious cases, the treatment is often undertaken with the advice of more than one doctor.

5.1.3 Consent is not a request for medical treatment, nor is it a demand which can be enforced. By giving consent, a patient does not relieve a doctor of his duty of care to the patient to carry out his professional activity with an appropriate degree of skill. Consent by a patient does not present a bar to an action in negligence. Even if a written consent is so worded that it expresses or infers a waiver of liability on the part of the doctor, he will still be liable for his negligent acts.

5.1.4 How is age relevant? Where a person is below an age at which he can understand the nature of the procedure to which he is consenting or the consequences of the consent, the person cannot alone consent. In these cases the person or persons who have guardianship of the patient may give consent. In most cases parents have joint guardianship so either may consent. A person who is not a parent but who has custody of a patient may consent. An appointed guardian may also consent.

5.1.5 In the case of emergencies, where it is necessary to administer treatment, including emergency surgery, in order to save life or prevent serious injury to health, consent is not necessary. It is stated in the Latey Committee Report -

*"It is clear that in cases of emergency or, unconsciousness all considerations regarding consent will be set aside and doctors will do whatever is necessary to save the life of a patient (infant or adult), to save him from permanent disability or from unnecessary pain and suffering. In this they can only be guided by their professional conscience, and will be acting as agents of necessity." (Report of the Committee on the Age of Majority; 1967, London, Cmnd 3342 at para. 475, page 116).*



5.1.6 Is there any reason for bringing an action for battery or trespass to the person rather than for negligence? Clerk and Lindsell on Tort (15th Ed. at para. 14-79 page 697) state "Apart from any special damages alleged and proved, e.g. medical expenses, damages are at large. Where liberty has been interfered with, damages are given to vindicate the plaintiff's rights even though no pecuniary damage has been suffered. The time, place and manner of the trespass and the conduct of the defendant may be taken into account and the court may award aggravated damages on these grounds".

5.1.7 Although the law of negligence has been greatly developed, plaintiffs still chose to frame their actions in battery rather than negligence because the battery action greatly favours the plaintiff. There is the question of who bears the burden of proof. In negligence, the burden of proving lack of consent lies on the plaintiff, whereas for battery the plaintiff need only establish the harmful contact, and the defendant must then establish consent as a defence. Nor is battery concerned with the nebulous concept of reasonableness. Were the plaintiff to bring the action in negligence, it would be necessary to show that in providing the information leading to the consent the doctor had fallen below the standard of the reasonable doctor. This can be a considerable hurdle. In the battery action however, the plaintiff need only establish the objective fact of the battery, for battery is not concerned with standards of care.

5.1.8 Yet another advantage of the battery action to the plaintiff is that battery does not require proof of damage, for battery is actionable per se. While in negligence the value of the damage suffered must be proved, in battery and trespass to the person cases, damages can be awarded even if no measurable injury is suffered. The award of damages may be given in favour of the patient to recognise that interference arising from the battery or trespass has taken place.

5.1.9 Where there has been a failure to warn of risks of which the patient only becomes aware after the surgery, the patient can recover in battery for any humiliation, loss of dignity, frustration or concern he might suffer at finding he has undergone such risk. Negligence of course, requires proof of damage before it becomes actionable.

5.1.10 The fact that negligence requires proof of damage leads to yet a greater difficulty; that of establishing that the doctor's failure to disclose actually caused the plaintiff's damage. If the action is to be brought in negligence the wrongful act must be considered to be not the medical treatment itself but the failure to give sufficient information. Thus to establish causation the plaintiff must show that if sufficient information had been provided, consent would have been refused and thus the damage would not have been suffered. In practice this could be difficult, particularly in cases of emergency treatment where the risks might well have been worth taking. Such problems do not arise if battery is the cause of action because in battery the wrongful act is not the failure to give information, but rather the contact itself, unaccompanied by proper consent. The plaintiff need only establish

the contact, and if no defence of consent is established, there will be recovery for any damage which is a direct result of the contact. There is thus no need in a battery action to ask whether the plaintiff would have consented to the treatment had the risks been explained.

5.1.11 A final advantage of the battery action over the negligence action to the plaintiff is that damages in battery are not limited by the principle of remoteness. If the action is framed in negligence, only foreseeable types of damage will be recoverable.

5.1.12 The comments with respect to consent to treatment by a doctor apply equally to consent to treatment by a dental practitioner.

## **5.2 The problems perceived**

5.2.1 Uncertainties about the level of consent needed to provide a defence to actions in negligence or battery perplex even lawyers: pity the layman or the medical practitioner who is faced with these problems where there are complex social implications. Further, while a young person may understand the nature of a particular procedure, he or she may not appreciate the social support that may be required after treatment.

5.2.2 The practice in Hong Kong : Although the law generally allows doctors to accept the consent of a minor if the minor understands the nature of the treatment to be undertaken, there are many instances in practice where both doctors and hospitals set procedures which impose higher or other standards. This can give rise to uncertainty in the minds of some doctors and hospital administrators as to their power to accept consent. Such procedures are not restricted to Hong Kong and have been noted in Singapore (see Annexure 8A at paras. 47 and 48). It should be noted that although a defence that the minor understood the nature of the treatment and consented to it would succeed in trespass, it might not do so in negligence. The courts construe the defence of 'volenti non fit injuria' very narrowly and may not consider the defence available in respect of a young minor.

5.2.3 The practice as to obtaining consents in Hong Kong varies from hospital group to hospital group and almost from doctor to doctor. Perhaps the best starting point is the procedure followed by government hospitals. A copy of the Medical and Health Department's Circular No. 79/75 is at Annexure 4A.

5.2.4 From Annexure 4A it can be seen that at least the Government sector of the medical profession has taken a conservative approach in the case of minors.

5.2.5 Many doctors apparently believe Annexure 4A to be the law rather than merely a set of guidelines. It is read by doctors as a regulation requiring parental consent for treatment of anyone under 21 years of age.

These beliefs are wrong. Doctors have the necessary protection from actions in battery and trespass in most instances where an adolescent gives consent.

5.2.6 There are separate procedures for the administration of anaesthetics and surgical operations on the one hand and for conducting examinations on the other. A written consent is normally obtained when a patient is admitted to a hospital. This consent is general in nature and covers all physical examinations carried out in the course of diagnosis and treatment. When surgery is to be performed, a specific written consent is obtained to cover that particular surgical operation.

5.2.7 When a patient is treated in an outpatient's clinic or a doctor's surgery, written consents are not commonly obtained as the presence of the patient and his submission to examination implies consent.

### **5.3 Reform in England**

5.3.1 In England, section 8 (1) of the Family Law Reform Act 1969 has in effect created a presumption of ability to give a valid consent at the age of 16 years. Section 8(1) provides -

*"The consent of a minor who has attained the age of 16 years to any surgical, medical or dental treatment which, in the absence of consent, would constitute a trespass to his person, shall be as effective as it would be if he were of full age; and where a minor has by virtue of this section given an effective consent to any treatment it shall not be necessary to obtain any consent for it from his parent or guardian."*

### **5.4 Social issues**

5.4.1 In the treatment of medical cases, there is often a need for parental or social support. As a simple example, if a child complains of a toothache at night and by morning it has disappeared, the child may consider the matter closed. However, a parent may reasonably insist on the child's attendance at a dental clinic to discover the cause.

5.4.2 Many medical conditions have much graver consequences than a toothache. One major area of concern is the lawful termination of pregnancy. This caused the Commission to look closely at the adoption in the United Kingdom of 16 years as the age for consent to medical procedures to see if that age was appropriate for Hong Kong.

5.4.3 The Commission considered section 47A of the Offences against the Person Ordinance (Cap. 212) and noted that sub-section (2A) deals with the lawful termination of pregnancy for women under the age of 16 years. That sub-section provides that where there may be doubt as to

whether the continuation of a pregnancy for a young woman under 16 years of age would involve a risk of injury to her physical or mental health, there is a legal presumption that the continuation of the pregnancy would constitute a risk of injury that would be greater than if the pregnancy were terminated.

5.4.4 On attaining 16 years of age that statutory presumption ceases and it may be inferred that the law makers presumed that at that age a young woman has reached a level of maturity which is significantly higher than that of a person under that age.

5.4.5 The question which causes most concern is the degree of support that a patient requires after a termination. The young person may understand that she personally has a problem and may see it being solved by the surgical operation without appreciating that she may be subsequently subjected to social and psychological pressures which will require strong support from her immediate family or closest friends.

5.4.6 The Commission sees termination of pregnancy as one of the most complex medical treatments that can face a young person. There are others, such as whether to amputate a limb where cancer is present, which are major decisions affecting the person's future. None however has the same social, moral and psychological questions combined in the one decision.

5.4.7 These moral, social and psychological issues are matters about which a child is unlikely to be able to make reasonable and rational decisions. As the child becomes a young person and grows towards adulthood, he or she assumes some and eventually all of these decisions in life. The more major decisions should be made when a point of maturity is reached where the young person is capable of assuming responsibility.

5.4.8 In taking these major decisions, a sign of maturity would be the reliance for advice on those who are going to be required to give support before, during and after the treatment is given.

5.4.9 The Commission did not believe that it was its brief to consider generally the law relating to abortion. A separate survey in respect of attitudes to the age of consent for abortion was not in its opinion warranted; as abortion, when compared with many other surgical procedures, is a comparatively minor one, it should not be differentiated from other medical procedures. The Commission considered that its brief was to decide on the age at which a person could be presumed to give a valid consent to medical treatment. In reaching its decision the Commission has relied in part on the results of the survey conducted among all sections of the community including relevant medical bodies, consultants and hospitals. For that reason, the Commission considered it unnecessary to conduct a further survey among medical practitioners as to termination of pregnancy.

## **5.5 Recommendations generally**

**5.5.1** The Commission considered that it was desirable that there should be a provision similar to the English provision in order to clear away any misconceptions as to the validity of the consent. The question however is "At what age should it be presumed that a person is able to give a valid consent?"

**5.5.2** Two ages were seriously considered by the Commission, namely 16 and 18 years. The Commission took into account the survey results (Annexure 7) and the potential seriousness of medical treatment as already discussed, and in particular that attending a termination of pregnancy.

**5.5.3** The Commission in considering 18 years as the age to be recommended was conscious of the difficulties that the adoption of such an age could create in certain circumstances for a young woman of 16 or 17 years.

**5.5.4** Having taken account of all this and of the survey results in Annexure 7 and the correspondence received from the Director of Medical and Health Services contained in Annexure 4B, and having discussed the significance of the House of Lords' decision of *GILLICK v WEST NORFOLK and WISBECH AREA HEALTH AUTHORITY AND THE DEPARTMENT OF HEALTH AND SOCIAL SECURITY* (Times Law Report 18/10/1985) the Commission unanimously recommends that 18 years should be the age to be inserted in the proposed statutory provision creating a presumption of ability to give a valid consent to medical treatment.

**5.5.5** It should be noted that the statutory provision which is to provide the legal basis for the acceptance of a person's consent to medical procedures, should be declaratory. It should provide a legal presumption that a consent given by an 18 year old can be regarded as effective. The provision should not and should not be intended to render ineffective a consent given by a person who is under the age of 18 years if he or she is able to understand the nature of the treatment so that doctors would still be able to accept a consent from persons below 18 years of age.

## **5.6 Recommendations as to age of consent for blood donation**

**5.6.1** The Commission recommends that the age at which a person should be presumed to be capable of validly consenting to donate blood should also be 18 years. The Commission noted however that the present practice is to allow blood to be donated by persons over 16 years of age provided that parental consent is given and the Commission can see no reason why this practice should not be allowed to continue (see Annexure 4C).

## Chapter 6

### Family law - wardship and custody

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#### 6.1 The law at present

6.1.1 There are five means by which court orders can be made relating to the custody, care and control, education, welfare and upbringing of a child. They are :

- (1) Under the wardship jurisdiction of the High Court as provided for in the Supreme Court Ordinance (Cap. 4) and in particular by section 26.
- (2) By custody orders in matrimonial proceedings under the Matrimonial Causes Ordinance (Cap. 179) and the Matrimonial Proceedings and Property Ordinance (Cap. 192).
- (3) Under the Guardianship of Minors Ordinance (Cap. 13).
- (4) Under the Protection of Women and Juveniles Ordinance (Cap. 213).
- (5) Under the summary jurisdiction vested in district judges, equivalent to that of Magistrates Courts in England, by the Separation and Maintenance Orders Ordinance (Cap. 16).

In the context of this report "custody" refers to the civil right to custody and does not refer to any right of the State to detain people in custody for criminal actions.

6.1.2 **Wardship.** In wardship the High Court retains custody of the minor. This derives from the ancient notion that each child in the kingdom is in the custody of the Sovereign (**parens patriae**). Orders made under this power are limited to vesting the care and control of the minor in a specified person. Thus in wardship all important decisions relating to the child should be referred to the Court. It is for this reason that in an application for wardship, the jurisdiction under the Guardianship of Minors Ordinance (Cap. 13) should also be invoked so that, if it is thought desirable, custody to a parent or other fit person, rather than care and control, can be awarded.

6.1.3 The number of wards of the Supreme Court in Hong Kong is minimal. In the five years up to 1982, 193 children were made wards while 113 orders were discharged during the same period.

6.1.4 **Protection of Women and Juveniles Ordinance (Cap 213).**

Under the Protection of Women and Juveniles Ordinance the Director of Social Welfare can become legal guardian to children in need of care and protection. In the seven years to March 1985 a total of 873 persons were brought under the care of the Director in this way. Applications for 'care and protection orders' can be made in respect of children and young people under the age of 18 years.

6.1.5 The maximum age at which children are subject to the Protection of Women and Juveniles Ordinance was raised from 16 years to 18 years in 1978.

6.1.6 **Civil and criminal juvenile jurisdictions compared.** It may be noticed, in context, that in the criminal jurisdiction, juveniles cease to be so classified at 16 years of age. There is thus a five year gap between the time that a child loses the protection of the juvenile court and its procedures by which he is sheltered both from contact with hardened criminals and from publicity, and the age at which, as the law stands at present, he achieves the age of majority at which no order can be made in relation to his custody. 'Care and protection orders' cease at the age of 18 years.

### ***Custody generally***

6.1.7 As the law stands, custody continues until 21 years of age as it did in England until the Family Law Reform Act 1969.

6.1.8 However, well before the English enactment, the courts there were reluctant to award custody against the wishes of a child; the weight given to such wishes increasing with the age of the child.

6.1.9 In Hall v. Hall ([1945] 62 TLR 151, CA.) Mr. Justice Tucker said that both the authorities and the practice showed that an order for the custody of a child who was over 16 years of age should only be made in exceptional circumstances. This case followed Mozley-Stark v. Mozley-Stark ([1910] P. 190) where an order for custody of a child over 16 was set aside by the Court of Appeal with the dictum that no order could be made which would bind a child over 16 years of age. Both of these cases purported to set limits of age over which the Court would not normally make an order.

6.1.10 In a later case, *Hewer v. Bryant* ([1969] 3 All ER 578) Lord Denning said :

*"The legal right of a parent to the custody of his child .... is a dwindling right which the courts will hesitate to enforce against the wishes of a child, the older he is. It starts with a right of control and ends with little more than advice".*

In this case the Court was considering when it could reasonably make an order contrary to the wishes of the child.

6.1.11 These are, of course, all English cases. Leonard Pegg in "Family Law in Hong Kong" (1981 edition page 149) notes that the child's own wishes may be considered, but will only prevail where the court considers it is in his interests to give effect to them.

6.1.12 The Separation and Maintenance Orders Ordinance (Cap. 16) provides that a custody order may be made in respect of a child up to 16 years of age and may continue in effect until the child reaches 21 years of age.

6.1.13 In matrimonial causes and guardianship proceedings, custody orders may, and usually do, have effect in respect of children up to the age of 21 years.

## **6.2 Application for wardship**

6.2.1 Wardship and custody are different concepts in law and the number of wardship cases are few. The general power to make a young person a ward of court is normally exercised on the application of a private individual rather than on the application of the Director of Social Welfare. It has already been noted that the Director has powers and rights under the Protection of Women and Juveniles Ordinance (Cap. 213).

## **6.3 Recommendations**

6.3.1 It seems essential for the High Court to retain the general power to make wardship orders contained in section 26 of the Supreme Court Ordinance (Cap. 4). However, as regards all other powers for making orders pertaining to the custody or care and control of individuals outside the ambit of the criminal law, a separate single ordinance is to be preferred to the present division of those powers between the five separate ordinances referred to in paragraph 6.1.1.

**6.3.2 The Commission recommends that a consolidation of those provisions should be considered with a view to reducing the number of ordinances dealing with the topic.**

**6.3.3 The Commission regards 18 years of age as a reasonable age at which custody and wardship orders should cease to be made and to have effect. It recommends that each of the relevant ordinances be amended to provide that no order shall be made, or if already made, shall have effect, in respect of any person who has attained the age of 18 years.**



## **Chapter 7**

### **Family law - Maintenance Orders**

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#### **7.1 The law at present**

7.1.1 The law recognises the obligation of parents to maintain their children. Under Section 5 of the Separation and Maintenance Orders Ordinance (Cap. 16), an order for maintenance of a child may be made and may continue until the child is 16 years of age or until the child is 21 years of age if receiving full time education or suffering from a mental or physical disability. Section 10 of the Matrimonial Proceedings and Property Ordinance (Cap. 192) provides for maintenance until the child attains 21 years of age or such later age as circumstances such as study or physical or mental incapacity require. Sections 10 and 11 of the Guardianship of Minors Ordinance (Cap. 13) provide for orders for maintenance of minors i.e. persons under 21 years of age. The orders do not automatically lapse but application may be made to vary or discharge the orders. It may be said that as the orders are for the maintenance of minors, the rights cease on the child attaining majority, i.e. at 21 years of age.

#### **7.2 Principles applied depend on need not maturity**

7.2.1 The Commission examined the provisions relating to maintenance of children. It found that the basic principles do not vary because of a recognition of maturity but depend upon need.

#### **7.3 The child's wishes**

7.3.1 It has been noted that the courts are reluctant to make orders with respect to a child without having regard to the wishes of the child (paras. 6.1.8 et seq above). A very young child however may not have the capacity to gauge what is best for himself. Thus the court will, if it is in the best interests of the child, make an order contrary to the child's wishes.

7.3.2 As a child matures, so the court will be increasingly influenced by the child's wishes as to the person with whom he wants to live. Another factor also becomes relevant. As a child develops, he becomes increasingly independent. Control becomes difficult if the order is contrary to the wishes of an independently minded child. That stage can be reached quite early in some cases. Courts rarely act contrary to a child's wishes after the child has reached 16 years of age.

## **7.4 Survey results**

7.4.1 The survey showed that while 41% overall of the persons responding favoured retaining the age of 21 years as the age at which custody orders should cease to be made or have effect, 40% favoured an age of less than 21 years. The Commission noted that over 80% of the group of Chinese lawyers who were polled took notice of the way in which the courts exercise their jurisdiction and recommended a lowering of the age to 18 years or less.

## **7.5 Recommendations**

7.5.1 In line with recommendations made with respect to other related matters, maintenance orders for a child should -

- (a) not automatically extend beyond 18 years of age;
- (b) continue beyond 18 years of age by direction of the court if the child is undergoing full time education or is otherwise in need, as is presently provided for children over the age of 21 years.

## Chapter 8

### Family law - Marriage

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#### 8.1 The law at present

8.1.1 In Hong Kong, section 13 of the Marriage Ordinance (Cap. 181) prevents the issue of a licence by the Governor or a certificate by the Registrar of Marriages where either party to the intended marriage is under 16 years of age. Under Section 27(2) a certificate or licence is required before a marriage can be regarded as valid. The minimum age for marriage is, therefore, 16 years of age.

8.1.2 Section 14 of the Ordinance requires the consent of the father of a party to an intended marriage where the party is under 21 years of age. If the father is dead or of unsound mind, the consent of the mother is required, or if both parents are dead or of unsound mind, the consent of the lawful guardian is required before a licence or certificate can be issued.

8.1.3 Where the Director of Social Welfare is the guardian of a party to an intended marriage, his written consent is sufficient without the consent of a living, sane parent.

8.1.4 Under Section 15 of the Marriage Ordinance the Registrar may, in certain circumstances, consent where parents or guardians are not resident in Hong Kong.

8.1.5 Section 16 of the Marriage Ordinance gives a person whose consent is required under section 14 the right to forbid the marriage. Sections 17 and 18 provide a procedure for enquiring into cases where the right to forbid is exercised.

#### 8.2 Marriage statistics

8.2.1 Statistics on the number of marriages in Hong Kong between 1976 and 1984, provided by the Census and Statistics Department, are set out in Annexure 11. The Commission noted (from Annexure 11A) the steady reduction over that period in the number of marriages in which one of the parties was under 21 years (9.73% of all first marriages in 1984 as compared to 21.55% in 1976). In the same period, a similar reduction occurred in the number of marriages in which one of the parties was under 21 years but both were over 18 years of age (Annexure 11B).

8.2.2 In 1984, the latest year for which figures are available, out of 4,247 marriages involving a party under 21 years (Annexure 11A) , the great majority (3,720) occurred between parties both of whom were over 18 years (Annexure 11B).

### **8.3 Chinese tradition**

8.3.1 Marriage has always played an important role in the traditional Chinese family. The concept most commonly held of the traditional family was that of the members of the family living together. The head of the family maintained a close relationship with his sons and their families and his unmarried daughters. Under arrangements of this type his married daughters became part of their husbands' families. If living together was not possible then residence in close proximity to the head of the family was a common feature. The picture of the traditional Chinese family was one of shared meals taken regularly or on special occasions. However today it is recognized that these concepts are disappearing.

8.3.2 Another striking feature of the traditional Chinese family was the strong regard had for filial piety i.e. a child's respect for and obedience to his parents' requests, requirements and wishes. These strong bonds in the traditional family have led to a reliance upon the advice and consent of the head of the household in major matters.

8.3.3 The Commission noted that it is still quite common for a newly married couple to share accommodation with parents. This arises from several factors. It is a Chinese tradition. It gives young couples the opportunity of becoming established before starting a new house. Other reasons include the location of suitable housing.

8.3.4 The strong bonds of the traditional Chinese family know no age limits. Although under the present law a person is required to obtain the father's consent to marriage if the person is under 21 years of age, the Commission feels that an age limit is of no great significance in the circumstances of traditional Chinese family life, since it is usual to obtain parental approval to marriage at any age.

### **8.4 Public opinion**

8.4.1 The respect for parental advice in major matters such as marriage was seen as relevant. Accordingly, the Commission did not find it surprising that the majority of people saw the need to retain parental consent to marriage up to the age of 21 years. Nor was the Commission surprised by similar views expressed on 'City Forum' on Sunday 3 June 1984. This programme was an RTHK Television production on which public opinion was aired.

8.4.2 **Survey results in detail.** The survey results set out in Annexure 7 are an analysis of the answers given in the 1587 completed questionnaires which were returned. A copy of the questionnaire is at Annexure 5. One of the questions asked was -

*"(c) Should the age of 21 years below which a person requires parental consent to marry be changed and, if so, to what age?"*

The analysis of the answers to that question are set out at page 7-4 in the Annexures. It will be seen that overall 55% of those polled favoured retaining the age at 21 years whereas only 24.7% were in favour of reducing the age to 18 years. Surprisingly, amongst the students polled, over 60% favoured retaining 21 years while only 26.3% favoured reducing the age to 18 years. Those polled in the legal profession however were overwhelmingly for reducing the age to 18 years (83.4% as against 8.4% in favour of leaving it at 21 years). Indeed, all the groups whose opinions were sought, except the legal profession, favoured leaving the age at 21 years rather than reducing it to 18 years. The other groups consulted were social services, religious bodies, the medical profession, commercial organisations, students and the general public.

8.4.3 The Hong Kong Federation of Youth Groups was separately consulted. Its General Secretary reported that she supported the recommendation for the age to be lowered from 21 years to 18 years. However, the Social Services Co-ordinator of the Hong Kong Children and Youth Services considered that the age should be left at 21 years.

## **8.5 The position in neighbouring countries**

8.5.1 A commentary, with table, of the law in neighbouring countries is set out in Annexure 8. From this annexure it will be seen that parental consent to marriage is required up to the age of 21 years in Japan, South Korea and for non-muslims in Malaysia. In Singapore, and for muslims in Malaysia, the age is 18 years. In both Taiwan and Thailand parental consent to marriage is required up to the age of 20 years. The position differs between the sexes in three countries. In the People's Republic of China, without exception, males must be at least 22 years and females 20 years of age before marriage is permitted at all. In the Philippines, parental consent is required for women up to the age of 18 years and for men up to 20 years of age. In Indonesia, the minimum age for marriage for young men is 19 years unless the court grants exemption at the request of the parents : for young women the minimum age is 16 years.

## **8.6 The arguments for each main view**

### **8.6.1 The case for 21 years**

The following can be urged in support of leaving 21 years as the age up to which parental consent to marry is required -

- (1) There is a high failure rate in marriage for those who marry young.
- (2) To lower the age would undermine parental authority.
- (3) Young people are not themselves demanding that the age be lowered.
- (4) It would be a test of maturity on the part of the young to have to convince their parents of the wisdom of an early marriage.
- (5) A delay of three years is not long and would help to test the strength of the relationship.
- (6) The survey results clearly show that public opinion is against any change.

### **8.6.2 The case for 18 years**

- (1) Young people today mature earlier both physically and mentally.
- (2) Absolute parental vetos tend to harden family relationships.
- (3) Removing the need for consent would help both parents and children to discuss marriage more profitably.
- (4) Parental pressure is in fact more important than what the law might say.
- (5) Although many young people between the ages of 18 and 21 years will still be living at home, some will already be working by the time they are 16 years. These young people mature very quickly and their earning power makes them feel more in charge of their lives.
- (6) It is unrealistic on the one hand to give important rights and responsibilities to 18 year olds and on the other to continue to deny them the right to marry without parental consent.
- (7) The law should allow for developments in social attitudes.
- (8) If custody and wardship orders are not to be made or to have effect after 18 years of age (see para. 6.3.3 post) then it would

be illogical to continue the power to withhold marriage consent until 21 years.

- (9) If despite the withholding of parental consent, the parties live together, any resulting offspring would be illegitimate and , would never be legitimated unless the parties later married.
- (10) Young people who have attained 18 years of age can be presumed to appreciate the seriousness of marriage.
- (11) Uniformity, or consistency, with other recommendations made in this report.
- (12) Singapore and Malaysia (for muslims) have adopted the 18 years of age rule.

## **8.7 Divided opinions**

8.7.1 Opinions in both the Commission and the main sub-committee which considered the matter were divided. The majority view in both was in favour of what was seen as a progressive step namely of reducing the age to 18 years but it was noted that public opinion was currently against such a view.

## **8.8 Recommendations as to consent**

**8.8.1 A majority of the Commission considers that the age that the law should impose for obtaining a father's consent (or other parental or guardian's consent as required under the Marriage Ordinance (Cap. 181)) should be 18 years and the Commission so recommends.**

8.8.2 However, if despite the Commission's majority recommendation, it is decided that the present age of 21 years should remain, the Commission notes that, because of other recommendations relating to custody, wardship and guardianship, if those other recommendations are implemented, some provision may have to be made for the person who has no parent or other legal guardian and who wishes to marry during the period from 18 years to 21 years of age.

8.8.3 At present, the Director of Social Welfare may become guardian under the Protection of Women and Juveniles Ordinance (Cap. 213). This, of course, may be affected by our other recommendations. It would seem that the Director, rather than, say, the Registrar who is given certain restricted powers under the Marriage Ordinances, has the potential role to assist and advise in this area.

8.8.4 In 1984 out of a total of 53,410 marriages (Annexure 11B), 4,247 involved a party under 21 years of age (Annexure 11A). Of these, only 114

required the Registrars' or Directors' consent. The problem is not large but it is important for those affected by it.

**8.8.5** If the age is maintained at 21 years the Commission recommends that the Director of Social Welfare should be empowered to consent to the marriage of a person who has not attained the age of 21 years and for whom there is no parent or guardian who can consent under the Marriage Ordinance. This power should not require the Director to be formally appointed as guardian which might be seen as giving other residuary guardianship powers to the Director. The enabling provision in the law should provide that where the Director is satisfied that there are no parents or legal guardians resident in Hong Kong who can consent and that both parties are willing to enter into marriage, he may consent to the marriage where a party to the proposed marriage is under 21 years of age.

**8.8.6** In exercising any discretion mentioned in the previous paragraph the Director would be expected to look into the proposed marriage in the context of a reasonable parent and would look at all relevant related matters. Reasons for refusal should be given, if the Director decides to refuse consent, and there should be a right of appeal to a Judge of the High Court.

## **8.9 Recommendations as to minimum age for marriage**

**8.9.1** In Hong Kong, there is no power to lower the minimum age for marriage under current legislation. This can be done in special circumstances in certain other jurisdictions which the Commission considered. In the Commission's opinion there is little need to alter the law. While some enquiries are made from time to time by concerned younger people who may wish to avoid the birth of a child out of wedlock, the Legitimacy Ordinance (Cap. 184) assists in the solution of some of the legal problems. As to the social problems, a marriage of a very young person under 16 years of age without a proper period to prepare for a life-time commitment could give rise to great social problems in the longer term.

**8.9.2** The survey indicated that some people (approximately 23%) favoured increasing the minimum age for marriage to 18 years. This was considered. However, the Commission considered that no change was called for. **The Commission recommends that the minimum age remains unchanged at 16 years.**



## Chapter 9

### Family law – Adoption

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#### 9.1 The law at present

9.1.1 The Adoption Ordinance (Cap 290) governs adoption in Hong Kong and allows the court to sanction the adoption of an infant. In the Ordinance, "infant" is defined as "a person under 21 years of age, but does not include a person who is or has been married". The court's powers to make adoption orders in respect of "infants" under the Ordinance are restricted in certain cases by reference to the age of the adoptor.

9.1.2 By section 5(1) of the Ordinance, an infant can be adopted by an applicant who is the mother or father of the infant, whatever the age of the applicant. However, if the applicant is not the mother or father of the infant but is merely a relative, as defined in the Ordinance, the applicant must have attained the age of 21 years. If the applicant is not a relative, he or she must have attained the age of 25 years.

9.1.3 Under section 5(2) of the Ordinance, an adoption order may be made in respect of an infant on the joint application of 'two spouses' (presumably if married to each other) if either of the applicants is the mother or father of the infant, without age restriction, or if one of the applicants is a relative of the infant, where both applicants have attained 21 years of age. If both of the spouses are strangers to the infant, at least one of them must have attained the age of 25 years and the other must be at least 21 years of age.

9.1.4 An overseas adoption, whatever the ages of the adoptor or adoptee, which is valid according to the law of the place where the adoption was made, and which satisfies other conditions set out in section 17 of the Ordinance, has the same legal effect as an adoption order made under the Ordinance in Hong Kong.

#### 9.2 Chinese tradition

9.2.1 Section 25(1) of the Ordinance provides that after the 31 December 1972, an adoption in Hong Kong may be effected only in accordance with the Ordinance. Section 25(2) however preserves the status and rights of a person adopted in Hong Kong under Chinese law and custom before the 31 December 1972.

9.2.2 As a result of the provisions of section 25 (1) of the Ordinance, Chinese traditional or customary adoptions in Hong Kong after 31 December 1972 have no legal effect.

## **9.3 Public opinion**

9.3.1 The questionnaire set out at Annexure 5 which was circulated to the persons and organisations set out in Annexure 6 contained the following question :-

*"(d) The usual minimum age at which a person may adopt another person is 25 years and, in the case of the adoption of a relative, 21 years. Should either of these ages be changed and, if so, to what age?"*

Reform in connection with the age of the adoptee was not canvassed.

9.3.2 The results of the survey carried out by means of the questionnaire are set out in Annexure 7 at pages 7-5 and 7-6.

9.3.3 It will be seen from Annexure 7 at page 7-5 that overall the greatest weight of opinion of those polled (69.4%) favoured leaving the minimum age of a stranger-adopter at 25 years as at present. Reducing the age to 21 years was favoured overall by 10% of those polled whereas increasing the age beyond 25 years was favoured overall by only 8.2%.

9.3.4 Annexure 7 at page 7-6 shows that overall the majority (66.1%) of those completing the questionnaire again favoured no change in the present law which provides for the minimum age of an adoptor to be 21 years where the infant is a relative. Only 4.7% thought that the age should be lowered to 18 years but 16.6% thought that the minimum age should be raised above 21 years. It is interesting to note that of the 437 students polled, over a fifth were in favour of raising minimum age of a relative-adopter to above 21 years.

## **9.4 Singapore**

9.4.1 The law in Singapore applies similar age restrictions to adoptor and adoptee to those presently applying in Hong Kong for adoptions by strangers, i.e. 25 years for an adoptor and 21 years maximum age for an adoptee (para 49 Annexure 8A-9).

## **9.5 Rationale of age restrictions in adoption**

9.5.1 The rationale behind the age restrictions on adoptors in the Adoption Ordinance would appear to be to ensure that an adoptor is of sufficient maturity (i.e. at least 25 years of age) to be able properly to carry out his or her responsibilities to the child adopted. The exceptions made to this general rule would appear to flow more from family necessity than from considerations of maturity. The two exceptions are where the child adopted is

a relative, when the adoptor must be at least 21 years of age, and where the adoptor is a parent of the child, when there is no age restriction on the adoptor.

9.5.2 The reason for the maximum age restriction on an adoptee, fixed at 21 years, would appear to be that that was the age of majority in family law when the Adoption Ordinance came into force.

9.5.3 The fundamental reasoning behind the age restrictions in the Ordinance appears sound in principle. However, the question remains, if other family law age restrictions are to be changed, will the ages stipulated in the Ordinance still be appropriate or should they also be changed?

## **9.6 The possibilities explored**

9.6.1 Having regard to the Commission's previous recommendations on family law and to the weight of public opinion as disclosed by the survey results, the Commission considered three courses. The first, in accordance with the weight of public opinion, was to recommend that there should be no change in the present law. Stranger-adoptors would therefore continue to have to be at least 25 years of age and adoptors of a relative at least 21 years of age. The maximum age of an adoptee would continue to be 21 years.

9.6.2 The second course of action considered was to reduce the age for stranger-adoptors to 22 years, for relative-adoptors to 18 years and to re-define 'infant' as meaning 'a person under 18 years of age, but does not include a person who is or has been married'.

9.6.3 The third course was to leave the age for stranger-adoptors at 25 years but to reduce the other age restrictions in the Ordinance from 21 years to 18 years. These possible courses of action are briefly argued below.

### **9.6.4 No change**

#### **9.6.4.1 The case for no change**

- (a) To leave the present age restrictions on adoptors as they are at present would be in accordance with the weight of public opinion as disclosed by the survey results.
- (b) In the interests of the adoptee the law should seek to ensure that prospective adoptors have reached sufficient age of maturity.
- (c) Even if the age of majority in other areas of family law is reduced to 18 years, there could be circumstances where it might be desirable for the court to permit an adoption where the adoptee has attained 18 years but has not attained 21 years of age. This reasoning is an argument for allowing the adoption of a person at any age.

#### 9.6.4.2 **The case for change**

- (a) It would be inconsistent to change the age restrictions in other areas of family law but to retain all of the existing age restrictions in adoption law.
- (b) If young persons do mature more quickly today than heretofore so as to warrant a reduction in the age of majority from 21 years to 18 years. the reasoning is equally valid in relation to adoption.
- (c) If the court's maintenance, wardship and custody powers are generally to cease in respect of young persons at the age of 18 years, if parental rights in relation to consent to the marriage of a child are to cease when the child attains 18 years of age, and if a young person is to be treated in law as an adult when he turns 18, it would seem logical to continue the existing policy of not permitting the adoption of an adult.

#### 9.6.5 **Reduce all ages by 3 years**

If young people mature younger nowadays so as to generally warrant a reduction of 3 years in the age at which adulthood is attained, and since additional maturity is at present required in the case of a prospective adoptor who is not related to the adoptee, the respective age limits of related adoptors, unrelated adoptors and adoptees could all be reduced by the same amount, namely 3 years. In view of the Commission's other recommendations it is the most logical course of action although it would go against the weight of public opinion as disclosed by the survey results.

#### 9.6.6. **Stranger-adoptors to be at least 25 years**

This possible course envisages leaving the minimum age for stranger-adoptors at 25 years but reducing the other age restrictions in the ordinance to 18 years. The advantages of this course are that it would accord in some respects with public opinion and would be more consistent with the Commission's other family law recommendations. The disadvantage is that it would increase the age difference between prospective adoptors who are and are not related to the adoptee.

### **9.7 Recommendation**

9.7.1 The Commission considers that any change in the law of adoption could have far-reaching social implications. Different considerations arise from those in other areas of family law. Public opinion is against change in this area. The apparently logical course of recommending the lowering of all the ages in the Adoption Ordinance may not necessarily be the correct course to follow. There could be circumstances where it might be desirable and in the interests of a young person for the court to be able to sanction an

adoption where the adoptee is over the age of 18 years, or even over 21 years.

**9.7.2 The Commission therefore recommends that, without detailed study of the social implications referred to earlier, there should be no change in the present age restrictions on adoption.**

# Chapter 10

## Company law : Directors

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### 10.1 Company directors : the present position

10.1.1 Section 157 of the Companies Ordinance (Cap 32) prohibits a person under 21 years of age from acting as a director. This provision was introduced as recently as 1984. Previously there was no prohibition on a minor acting as a director. There is presently no express prohibition on a minor acting as partner or sole trader although contractual incapacity would severely limit a minor's ability to act as such. Section 157 was introduced in implementation of a recommendation of the Companies Law Revision Committee.

10.1.2 There are a number of other provisions in the Companies Ordinance which are intended to prevent unsuitable persons from acting as directors, for example -

- section 156 – undischarged bankrupts
- section 157E –
  - a person who has been convicted of an offence involving fraud or dishonesty
  - a person who has recklessly, conducted the management of a company
  - a person who has been guilty of fraud or breach of duty in the management of a company
- section 157F – a person who has been the director of two insolvent liquidated companies within a period of 5 years and is unfit to be concerned with the management of a company.

10.1.3 The Commission believes that the reason for selecting the age of 21 years in section 157 was that this was the age of majority at the time the legislation was introduced (see Annexure 9: Companies Law Revision Committee's Second Report April 1973, extract of para. 7.26).

### 10.2 Recommendations

10.2.1 **It is recommended that the age at which a person may become a director of a company be lowered from 21 years to 18 years. It is also recommended that the Companies' Law Revision Standing Committee be requested to reconsider generally the age restriction on company directors as contained in section 157 of the Companies Ordinance (Cap.32).**

# Chapter 11

## Tax

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### **11.1 The present law - personal assessment - Part VII Inland Revenue Ordinance (Cap 112)**

11.1.1 An 'individual' can claim personal tax assessment. This may in certain circumstances lead to a lower tax liability. Until 1969, section 41(4)(b) of the Inland Revenue Ordinance provided that an 'unmarried minor' was not an 'individual' and could not therefore validly claim for personal assessment under Part VII of the Ordinance. However, an amending ordinance in 1969 replaced paragraph (b) of subsection (4) with "a person under the age of 18" thus removing the restriction so far as persons who had attained such an age were concerned. This amendment followed a recommendation for such a change by the Inland Revenue Ordinance Review Committee in 1967 (see Annexure 10). In 1983 another amending ordinance moved the definition of 'individual' without altering it from section 41 to section 40B where it remains today. The present situation is therefore that a "person under the age of 18" (presumably 18 years) cannot claim a personal assessment under Part VII of the Ordinance.

11.1.2 The purpose behind having a restriction on a minor's election for personal assessment is to circumvent any attempt by parents to make their minor children business partners or joint property owners so as to reduce the parents' total tax. Without such a restriction, parents could artificially arrange their business affairs in this way thus enabling them to claim personal assessments on each of the children's shares of the income.

11.1.3 The present law however could work an injustice in a case where, for example, both parents had died and a minor was left with a small business. Tax in such a case would be assessed in full and no personal assessment allowances could be permitted. Although the purpose behind the restriction is as valid today as it was in 1969, the Commission sees no reason why an orphan minor who has inherited a business or an income producing asset, should not be able to make a valid claim for personal assessment under Part VII of the Ordinance. The age of 18 (years) mentioned in section 40B falls in line with other recommendations made in this report.

### **11.2 Recommendation**

11.2.1 **The Commission recommends that a proviso be added to the definition of "individual" in section 40B of the Inland Revenue Ordinance (Cap 112) so as to enable an orphan minor who has inherited a business or an income producing asset, to make a valid claim for**

**personal assessment under Part VII of the Inland Revenue Ordinance (Cap 112). The Commission also recommends that the age mentioned in section 40B remain unchanged except for the addition of the word "years" after "18".**



## Chapter 12

### Alcohol and gambling

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#### 12.1 Consumption of alcohol : recommendation

12.1.1 It is an offence to serve any intoxicating liquor in any licensed premises to a person under the age of 18 years (see rule 28 of the Dutiable Commodities (Liquor) Regulations made under Cap. 109).

12.1.2 This age limit accords with the Commission's general views and **it therefore recommends no alteration to the present legislation.**

#### 12.2 Gambling

12.2.1 Gambling in Hong Kong is unlawful except to the extent that it may be authorised by the Gambling Ordinance (Cap. 148), the Television Ordinance (Cap. 52), the Betting Duty Ordinance (Cap. 108) and the Government Lotteries Ordinance (Cap. 334).

12.2.2 Broadly speaking gaming (as opposed to betting and participating in lotteries) is lawful if it takes place :-

- (a) on a social occasion on private premises;
- (b) on a society's or licensed restaurant's premises and if not conducted as a business;
- (c) on specially licensed premises or the gaming itself is specially licensed (for example, a tombola).

12.2.3 The prescribed conditions upon which a majong or tin kau licence is granted provide that no person under the age of 18 years shall be permitted to play such games in premises to which the licence relates (see section 22(3) Gambling Ordinance (Cap. 148) and Form 5A Gambling Regulations) .

12.2.4 The licences required for a tombola, amusements with prizes, or a trade promotion competition do not prevent participation by a person on the basis of age.

12.2.5 The Royal Hong Kong Jockey Club and any other social or sporting club may conduct betting on horse racing with the written permission of the Chief Secretary which may be granted subject to such conditions as he may see fit (see sections 2 & 3 of the Betting Duty Ordinance (Cap. 108)).

The Royal Hong Kong Jockey Club does not accept bets from persons under 18 years of age. This results from a restrictive condition imposed by Government which was implemented by the Club in June 1978. Betting Rules incorporate the restriction which are enforced by the Club.

12.2.6 Lotteries are legal only if authorised by the Betting Duty Ordinance, the Government Lotteries Ordinance or the Gambling Ordinance. There appears to be no age restriction upon a person participating in a lottery.

**12.3 Recommendation as to gambling : the Commission recommends that the status quo remains unchanged.**

## Chapter 13

### Minimum age employment conventions

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13.1           **International conventions on employment** : There are certain international conventions dealing with minimum ages in employment which apply to Hong Kong without modification. A summary is set out at Annexure 3A.

13.2           There are other such conventions which apply with modification and a summary of those appears at Annexure 3B.

# Chapter 14

## Minor's position in tort

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### 14.1 Minor's liability

14.1.1 The Commission considered the question of a minor's liability for a civil action in tort. The general rule in tort, unlike contract, is that minority is no defence in itself and that a child can be liable in tort in the same way as an adult. This is subject to the proviso however that in certain torts, where a specific intent is required, the court has to be satisfied that the child was capable of forming that intent. This is a question of fact to be decided in the circumstances of each case. In negligence the question is whether the court will hold in a particular case that the particular child in that case ought reasonably to have foreseen the likelihood of damage and acted reasonably, having regard to his age and experience.

### 14.2 Minor suing

14.2.1 In relation to a minor suing, the only area of difficulty arises where a defence of consent is raised, when the question to be answered is whether the particular child suing could validly have given such consent. The law adopts a flexible test (see also Chapter 5 in relation to consent to medical treatment).

### 14.3 Recommendation

14.3.1 **Having considered the present position of minors in tort, the Commission recommends that the present law in relation to tort should not be changed except as has already been suggested in Chapter 5 on Medical Law.**

## Chapter 15

### Matters for further consideration

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#### 15.1 Introduction

15.1.1 The third paragraph of the terms of reference requested the Commission to report if it appeared that further consideration should be given as to whether any changes might be desirable in any law relating to the age at which a person's legal rights were affected. The Commission in this connection reports as follows.

#### 15.2 The right to vote and stand for election in civic elections

15.2.1 Section 18(1) of the Electoral Provisions Ordinance (Cap. 367) provides -

*"..... any person ..... shall be qualified for nomination as a candidate if he is entitled to be and is registered as an elector"*

15.2.2 Section 9 of that Ordinance provides :

*"No person shall be entitled .... to vote at an election who .... has not attained the age of 21 years.... "*

15.2.3 Neighbouring countries: The Commission notes that the electoral franchise is acquired at 18 years of age in the Peoples' Republic of China whereas in both Singapore and Malaysia the relevant age is 21 years.

15.2.4 The age of 21 years specified in the Electoral Provisions Ordinance accords with the present position in Hong Kong that generally 21 years is the age at which a person acquires full capacity in civil law. In view of the Commission's earlier recommendations that in general the age of full capacity should be lowered to 18 years, logically the Commission sees no reason for an exception in the case of voting. However, lowering the age of entitlement to vote from 21 to 18 years would substantially increase the number of voters and make a significant shift in the political influence of the community. This raises political and constitutional implications which would be better considered in a wider context.

15.2.5 **Accordingly, the Commission makes no recommendation on the age of the entitlement to vote or stand for election in civic elections.**

## **15.3 References to age in Hong Kong ordinances**

15.3.1 Annexure 2 lists a number of references to minimum and maximum ages in Hong Kong ordinances which affect a person's rights, such as the qualifications needed to obtain a driver's or pilot's licence, or a certificate of competence under the Merchant Shipping Ordinance (Cap 281) or to become an apprentice. While some may be readily disregarded e.g. Rule 21 of the Prison Rules (made under Cap. 234) or section 8 of the Pensions Ordinance (Cap. 89), many of the references should be reviewed if the other recommendations contained in this report are adopted. **It is recommended that these references should be circulated to the appropriate branches of the Government Secretariat for consideration.**

## **15.4 Terminology**

15.4.1 The Commission noted that there were various descriptive terms found within the law to express a reference to a person's age. The use of terms such as "juvenile", "young person" and "a child of tender years" have a degree of emotive element which sometimes sits uneasily within the framework of an ordinance.

15.4.2 **In Hong Kong's ordinances, there are many different expression used to denote categories of age for young persons. With the exception of the term "minor" for a person under a certain age, the Commission considers that the law would be better expressed in each case without description or definition, as "a person under years of age". The Commission recommends that in future legislation there should be a consistent use of terminology.**

# Chapter 16

## Summary of recommendations

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### 16.1 Contracts and property

16.1.1 The common law rule that a person attains a certain age at the first moment of the day preceding his birthday should be displaced in Hong Kong. A provision similar to section 9 of the Family Law Reform Act 1969 should be enacted so that a person attains a particular age expressed in years at the commencement of the relevant anniversary of the date of his birth (para. 2.2.4).

16.1.2 Section 17 of the Credit Unions Ordinance (Cap. 119) should remain in force (para. 3.1.7).

16.1.3 Section 46 of the District Court Ordinance (Cap. 336) should be repealed (Paras. 2.3.10 - 2.3.13, 3.6.1- 3.6.3 and 3.7.1).

16.1.4 For the purposes of liability at law under contract a person should normally be fully liable at 18 years of age and not 21 years as at present (Paras. 3.4.1 and 3.7.2).

16.1.5 Minors' contracts :

- (a) The law of minors' contracts should not be codified (para. 3.8.2).
- (b) The law governing minors' contracts should continue to be based on the principle of "qualified unenforceability" (para. 3.8.3).
- (c) New legislation on minors' contracts should be confined to the few aspects of the existing law which are likely, in practice, to cause difficulties or to lead to injustice (para. 3.8.4).
- (d) The common law rules governing guarantees of a minor's contract should be displaced by a statutory provision providing that such guarantees can be enforced against the guarantor even though the contract is unenforceable against or is repudiated by the minor (para. 3.8.5).
- (e) The common law rules governing the sale of property or goods to a minor should be partly replaced by statute so that a minor can be required by a court to transfer to the supplier any property acquired by the minor under an unenforceable or repudiated contract (para. 3.8.6).

- (f) The reforms recommended as to guarantees and empowering the court to order the transfer of property by a minor to the supplier should not apply to contracts entered into before the amended law comes into force (para. 3.8.7).

## **16.2 Wills, trustees and personal representatives**

16.2.1 The law should be amended to allow a person who has attained the age of 18 years to make a valid will (para. 4.2.1).

16.2.2 Section 39 of the Probate and Administration Ordinance (Cap. 10) and rules 31 and 32 of the Non-Contentious Probate Rules should be amended to allow a person to be a personal representative at the age of 18 years (para 4.2.2(a)). The dissenting view of one Commission member is noted at para. 4.2.4.

16.2.3 The Trustee ordinance (Cap. 29) should be amended to permit a person who has attained the age of 18 years to be a sole trustee (para. 4.2.2(b)). The dissenting view of one Commission member is noted at para. 4.2.4.

## **16.3 Medical treatment**

16.3.1 There should be a statutory provision specifying the age at which a person should be presumed to be able to give a valid consent for medical treatment (para. 5.5.1).

16.3.2 The presumption of ability to give valid consent to medical treatment should arise at 18 years of age. (para. 5.5.4)

16.3.3 The legislation which provides the basis for the acceptance of a person's consent to medical treatment should :

- (a) be declaratory;
- (b) provide a legal presumption that consent given by an 18 year old is effective;
- (c) not render ineffective a consent given by a person who is under 18 years of age if he or she is able to understand the nature of the treatment (para. 5.5.5).

16.3.4 The age at which a person should be presumed to be capable of validly consenting to donate blood should also be 18 years. However, the present practice is to allow blood to be donated by persons over 16 years of age if parental consent is given. This practice should be allowed to continue (para. 5.6.1).



## **16.4 Wardship and custody**

16.4.1 A consolidation of the provisions pertaining to the custody and care and control of children should be considered with a view to reducing the number of ordinances dealing with the topic (para. 6.3.2).

16.4.2 The age at which custody and wardship orders should cease to be made and to have effect should be lowered from 21 years to 18 years (para. 6.3.3).

## **16.5 Maintenance orders**

16.5.1 Maintenance orders for a child should :

- (a) not automatically extend beyond 18 years of age;
- (b) continue beyond 18 years by direction of the court if the child is undergoing full time education or is otherwise in need, as is presently provided for children over the age of 21 years (para. 7. 5.1 ) .

## **16.6 Marriage : consent**

16.6.1 The age at which consent for marriage is no longer required should be lowered from 21 years to 18 years (para. 8.8.1).

16.6.2 If the age of 21 years is retained, the Director of Social Welfare should be empowered to consent to the marriage of a person who has not attained the age of 21 years and for whom there is no parent or guardian who can consent to the marriage (Paras. 8.8.5 and 8.8.6).

## **16.7 Marriage : minimum age**

16.7.1 The present minimum age of 16 years for marriage should be retained (para. 8.9.2).

## **16.8 Adoption**

16.8.1 There should be no change in the present age restrictions on adoption without detailed study of the social implications (present ages applying: stranger-adopter minimum 25 years, relative-adopter minimum 21 years and maximum age for adoptee 21 years of age) (para. 9.7.2).

## **16.9 Company law : directors**

16.9.1 The age at which a person may become a director of a company should be lowered from 21 years to 18 years. The Companies' Law Revision Standing Committee should be requested to reconsider generally the age restriction on company directors as contained in section 157 of the Companies Ordinance (Cap. 32) (para. 10.2.1).

## **16.10 Tax**

16.10.1 The present position under the Inland Revenue Ordinance (Cap. 112) whereby only persons of 18 years or older can claim a personal tax assessment under Part VII of the Ordinance, should not be changed except that the definition of "individual" in section 40B of that Ordinance should be amended so as to enable an orphan minor who has inherited a business or an income producing asset, to make a valid claim for personal assessment under Part VII of the Ordinance (para. 11.2.1).

## **16.11 Alcohol**

16.11.1 It is at present an offence to serve any intoxicating liquor in any licensed premises to a person under the age of 18 years and this present position should not be changed (para. 12.1.2).

## **16.12 Gambling**

16.12.1 No change is recommended in the existing law which permits 18 year olds to play majong or tin kau and place bets with the Royal Hong Kong Jockey Club (para. 12.3).

## **16.13 Minors' position in tort**

16.13.1 The present law in relation to tort which does not impose any rigid age restrictions should not be disturbed except as has already been recommended in relation to medical law and consent (para. 14.3.1).

## **16.14 Voting age**

16.14.1 In the light of the Commission's view that the age of voting raises political and constitutional implications better considered in a wider context, no recommendation is made on the age of entitlement to vote or stand for election. That age at present is 21 years (para. 15.2.5).

## **16.15 References to age in Hong Kong ordinances**

16.15.1 These references should be circulated to the appropriate branches of the Government Secretariat for consideration and comment (Annexure 2 and para. 15.3.1).

## **16.16 Terminology**

16.16.1 Where it is desired in legislation to denote a category of age for young persons, with the exception of the term 'minor' to denote a person under a certain age, the law would be better expressed in each case without description or definition, as 'a person under years of age'. There should be a consistent use of terminology in future legislation (para. 15.4.2.).

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** Commission Member	

**REFERENCES TO AGE IN HONG KONG'S ORDINANCES**

<u>ORDINANCE</u>	<u>SECTION</u>	<u>REMARKS</u>
Interpretation and General Clauses Ordinance (Cap. 1)	S. 3	"Infant" and "minor" defined
Jury Ordinance (Cap. 3)	S. 4	Age limits for jury service viz. 21 to 60 years
Supreme Court Ordinance (Cap. 4)	S. 26	Reference to the power to make infants "wards of the court"
Supreme Court Rules (Cap. 4, sub. leg.)	Rule 90	Rules of court relating to infants
Evidence Ordinance (Chapter 8)	S. 3	Exclusion of evidence of children under 7 years of age
	S. 4	Restrictions on evidence of "a child of tender years"
Probate and Administration Ordinance (Cap. 10)	S. 25(1)	Special requirements for personal representatives where there is a minority interest
	S. 39	Restrictions on an infant being a sole executor
Guardianship of Minors Ordinance (Cap. 13)	Whole Ordinance	The whole Ordinance relates to minors
Separation and Maintenance Orders Ordinance (Cap. 16)	Ss. 5 & 7	Orders for maintenance of a child continue until child reaches 16 years of age
	S. 12	In certain instances orders may continue until the child reaches 21 years of age

<u>ORDINANCE</u>	<u>SECTION</u>	<u>REMARKS</u>
Sale of Goods Ordinance (Cap. 26)	S. 4	Statement of the common law on the sale of necessaries to a minor or infant
Trustee Ordinance (Cap. 29)	S. 2	A minor is excluded from the definition of a "Person of unsound mind"
	S. 33	Power to apply income for maintenance of a minor beneficiary
	S. 37	Appointment of new or additional trustees where a trustee is an infant
	S. 47	Infant mortgagee
	S. 54	Vesting of an infant's beneficial interest
		Generally the Ordinance deals with property held on trust which is a common method of holding property for minors
Wills Ordinance (Cap. 30)	S. 4	Restriction on persons under 21 making a will
	S. 6	Removal of S.4 restrictions on servicemen and mariners in certain circumstances
Apprenticeship Ordinance (Cap. 47)	S. 2	Definition of "young person" as being over 14 years and under 19 years
	Ss. 6 & 7	Employment of young persons as apprentices
	S. 10	Apprentice and guardian to be bound until apprentice attains 21 years



<u>ORDINANCE</u>	<u>SECTION</u>	<u>REMARKS</u>
	S. 44	Power for Governor to extend age in the definition of a "young person" in Section 2 from 18 years (sic) to an age not exceeding 21 years
Apprenticeship Regulations (Cap. 47, sub. leg.)	Regs. 8 & 9	Regulates the hours of work for apprentices of varying ages with specific restrictions capable of variation if the apprentice is 16 years of age or older
Professional Accountants Ordinance (Cap. 50)	S. 24	A person is to be 21 years of age before he can qualify for registration as an accountant
Professional Accountants By-laws (Cap. 50, sub. leg.)	By-law 31	A person wishing to register as a student must be 16 years of age  There are exemptions for persons over 25 years of age from some of the other registration requirements
Employment Ordinance (Cap. 57)	S. 2	"Child" is defined as a person under the age of 15 years  "Young person" is defined as a person who has attained 15 years of age but not yet attained 18 years

<u>ORDINANCE</u>	<u>SECTION</u>	<u>REMARKS</u>
Employment of Children Regulations (Cap. 57, sub. leg.)	Reg. 4	Prohibition on employment of a child under 13 years or in an industrial undertaking as defined in the Factories and Industrial Undertakings Ordinance (Cap. 59) whether operated for trade or profit or not
	Reg. 5	Form III graduates may work subject to restrictions if they have attained the age of 13 years
	Reg. 6	Children of 13 years who have not finished Form III may work part time subject to restrictions
	Reg. 8	Records of child employment to be produced
	Reg. 9	Offences in relation to child employment
Women and Young Persons (Industry) Regulations (Cap. 57, sub. leg.)	Reg. 3	Non-application of regulations to young persons employed in clerical positions, non-profit or non-trading undertakings, agriculture or restaurant business
	Reg. 4	Prohibition on a young person working in underground mining, quarrying or tunnelling
	Reg. 5	Restriction on employment of young persons in dangerous trades
	Reg. 6	Restriction on duties of young persons-in industrial undertakings

<u>ORDINANCE</u>	<u>SECTION</u>	<u>REMARKS</u>
	Reg. 8	Conditions as to hours of work for young persons
	Reg. 11	Restrictions on shift work for young persons
		Generally these regulations govern working conditions of persons up to 18 years of age
Employment of Young Persons at Sea Ordinance (Cap. 58)	S. 2	Restriction on employing a child under 15 years on certain vessels
	S. 3	Requirement to keep a register of all persons under 16 years employed on a vessel
Factories and Industrial Undertakings Regulations (Cap. 59, sub. leg.)	Reg. 2	"Woman" is defined as a woman who has reached 18 years of age
	Regs. 16D & 16E	Exemption from medical examination in limited circumstances for persons who are 21 years of age and who work in mines, quarries or underground tunnelling operations
	Reg. 25	Prohibition on young persons cleaning machinery while it is in operation
Quarries (Safety) Regulations (Cap. 59, sub. leg.)	Reg. 4	Requirement for a supervisor to be not less than 30 years of age
	Reg. 6	Requirement for a deputy supervisor to be not less than 25 years of age

<u>ORDINANCE</u>	<u>SECTION</u>	<u>REMARKS</u>
Factories and Industrial Undertakings (Woodworking Machinery) Regulations (Cap. 59, sub. leg.)	Reg. 9	Restriction on persons under 16 years of age using a wood-working machine
Construction Sites (Safety) Regulations (Cap. 59, sub. leg.)	Reg. 46	Prohibition on young persons cleaning plant or machinery while it is in motion
Factories and Industrial Undertakings (Guarding and Operation of Machinery) Regulations (Cap. 59, sub. leg.)	Reg. 7	Restrictions on young persons working at machines
Factories and Industrial Undertakings (Cartridge Operating Fixing Tools) Regulations (Cap. 59, sub. leg.)	Reg. 16	Prohibition on persons under 18 years of age using a cartridge operating fixing tool
Intestate Estates Ordinance (Cap. 73)	S. 5	Statutory trusts for minor beneficiaries to be held on trust until they reach 21 years of age
Contracts for Overseas Employment Ordinance (Cap. 78)	S. 12	Restriction on persons under 18 years on entering into overseas employment contracts
Widows' and Children's Pensions Ordinance (Cap. 79)	S. 2(5)	A male child deemed to be in "childhood and full-time education" for the purposes of the Ordinance if he is - (a) under 18 years; or (b) under 23 years and still in full-time education and a female child is deemed to be in "childhood and full-time education" for the purposes of

<u>ORDINANCE</u>	<u>SECTION</u>	<u>REMARKS</u>
		Ordinance if she is unmarried and is - (a) under 21 years; or (b) under 23 years and still in full-time education
Widows' and Children's Pensions Ordinance (Cap. 79)	S. 7	Minimum benefits calculated with reference to 55 years of age
	S. 15	Requirement to advise of the adoption of persons under 23 years of age
Pensions ordinance (Cap. 89)	S. 6	Age limits for pensions to be granted
	S. 8	Compulsory retirement of Government employees at 55 years subject to certain qualifications
	S. 18	Pensions for dependent children up to 23 years
Legal Aid Ordinance (Cap. 91)	S. 8	Application for an infant to be made by his guardian
Legal Aid Regulations (Cap. 91, sub. leg.)	Reg. 4	Applications on behalf of an infant
Widows and Orphans Pension Ordinance (Cap. 94)	S. 19	Pensions to orphaned male to cease on (Cap. reaching 18 years and an orphaned female on reaching 21 years or marriage
	Ss. 27 & 28	Payment to a person for and on behalf of a minor
Fire Services (Installation Contractors) Regulations (Cap. 95, sub. leg.)	Reg. 3	A registered contractor must be 21 years of age
New Territories Ordinance (Cap. 97)	S. 18	When land is vested in a minor, the Land Officer may appoint a trustee

<u>ORDINANCE</u>	<u>SECTION</u>	<u>REMARKS</u>
Ferry Services (HYF Co. Ltd.) (Determination of Fares) Order (Cap. 104, sub. leg.)	Order 3	Child means a person under 12 years of age
Ferry Services (The "Star" Ferry Co. Ltd.) (Determination of Fares) Order (Cap. 104, sub. leg.)	Order 3	Child means a person under 12 years of age
Tramway Ordinance (Alteration of Fares) Notice (Cap. 107, sub. leg.)	Schedule	Child under 12 years
Dutiable Commodities (Liquor) Regulations (Cap. 109, sub. leg.)	Reg. 28	Offence to permit persons under 18 years to drink on licensed premises.
	Reg. 29	Prohibition on employing any person under 15 years of age and restrictions on the working hours of persons under 18 years of age.
Estate Duty Ordinance (Cap. 111)	S. 7A	Presumption on certain deaths.
Inland Revenue Ordinance (Cap. 112)	S. 40B	"Individual" is defined so as to exclude people under the age of 18 years.
Miscellaneous Licences Regulations (Cap. 114, sub. leg.)	Reg. 63	Prohibition on employment of persons under the age of 18 years and admission of persons under 16 years in public dance halls.
	Regs. 113 and 113A	Similar prohibition as in Regulation 63 with respect to dancing schools.
Credit Unions Ordinance (Cap. 119)	S. 17	A minor may be admitted to membership of a credit union but cannot vote at annual or special meetings under 16 years of age. Minority is not a defence to an action in contract by the credit union.

<u>ORDINANCE</u>	<u>SECTION</u>	<u>REMARKS</u>
Hawker By-Laws (Cap. 132, sub. leg.)	By-law 6	Prohibition on issue of a licence to persons under 18 years.
Pleasure Ground By-laws (Cap. 132, sub. leg.)	By-law 24	Access to children's playground may be restricted.
Public Cleansing and Prevention of Nuisances By-laws (Cap. 132, sub. leg.)	By-law 15	Children under 16 years of age not to be employed to carry waste.
Public Cleansing and Prevention of Nuisances (New Territories) Regulations (Cap. 132, sub. leg.)	Reg. 15	Children under 16 years of age not to be employed to carry waste.
Public Swimming Pools By-laws (Cap. 132, sub. leg.)	By-law 6	Restrictions on persons over 14 years in children's pools.
	By-law 7	Prohibition on persons over 8 years in dressing rooms reserved for the opposite sex.
Public Swimming Pools (New Territories) Regulations (Cap. 132, sub. leg.)	Reg. 6	Restriction on persons over 14 years in children's pools.
	Reg. 7	Prohibition on persons over 8 years in dressing rooms reserved for the opposite sex.
Library By-laws (Cap. 132, sub. leg.)	By-laws 10 & 11	Borrowers under 21 years require a guarantor.
	By-law 14	Fees differ for person over and under 21 years of age.
Library (New Territories) Regulations (Cap. 132, sub. leg.)	Regs. 10 & 11	Borrowers under 21 years require a guarantor.
	Reg. 14	Fees differ for persons over and under 21 years of age.

<u>ORDINANCE</u>	<u>SECTION</u>	<u>REMARKS</u>
Pleasure Grounds (New Territories) Regulations (Cap. 132, sub. leg.)	Reg. 24	Access to children's playgrounds may be restricted.
Places of Amusement By-laws (Cap. 132, sub. leg.)	By-law 7	Applicant for a licence to be 21 years of age.
Places of Amusement (New Territories) Regulations (Cap. 132, sub. leg.)	Reg. 7	Applicant for a licence to be 21 years.
Merchant Shipping (Recruitment of Seamen) Ordinance (Cap. 135)	S. 7	Seamen to be 17 years of age to be registered
Mental Health Ordinance (Cap. 136)	S. 30	Voluntary patients under 16 years require parental consent to be admitted or discharged.
Midwives Registration Ordinance (Cap. 162)	S. 7	A midwife is required to be 21 years of age before being entitled to registration.
Nurses Registration Ordinance (Cap. 164)	S. 8	A nurse is required to be 21 years of age before being entitled to registration.
	S. 14	An enrolled nurse is required to be 21 years of age
Registration of Persons Ordinance (Cap. 177)	S. 1A	"Family" and "Head of a family" defined in relation to persons between 11 and 18 years of age.
	S. 5	Persons 11 years of age and up are to use registered name.
Registration of Persons Regulations (Cap. 177, sub. leg.)	Reg. 5	Form of I.D. Card to vary for persons 18 years and over and persons under 18 years.
Matrimonial Causes Ordinance (Cap. 179)	S. 20	Marriage null and void if not complying with the Marriage Ordinance concerning age.



<u>ORDINANCE</u>	<u>SECTION</u>	<u>REMARKS</u>
	SS. 48-48C	Protection of children
Matrimonial Causes Rules (Cap. 179, Sub. leg.)	Rules 92-97	Applications relating to children
Marriage Ordinance (Cap. 181)	S. 27(2)	Marriage invalid if either party under the age of 16 years
	S. 29	Marrying minor without proper consent is an offence
Married Persons Status Ordinance (Cap. 182)	S. 15	Married infants having same power as adult in giving receipts.
Application Proceedings Ordinance (Cap. 183)	SS. 15-16	Power of court in relating to custodian of child
Legitimacy Ordinance (Cap. 184)	SS. 10-12	Rights and legitimacy of children of void of voidable marriages.
British Nationality (Miscellaneous Provisions) Ordinance (Cap. 186)	S. 2	Definition of minor
Matrimonial Proceedings and Property Ordinance (Cap. 192)	Whole Ordinance	Definition of child and ancillary and other relief in matrimonial causes relating to him
Royal Hong Kong Auxiliary Air Force Regulations (Cap. 198, Sub. leg.)	Reg. 11	Restrictions on enlistment of persons under 17 and over 45.
Royal Hong Kong Auxiliary Air Force (Reserve of Officers and Members) Regulations (Cap. 198, Sub. leg.)	Reg. 8	Age of retirement is 65
Crimes Ordinance (Cap. 200)	S. 48	Incest by women of or over 16
	Part XII	Various sexual offences relating to young girls and children

<u>ORDINANCE</u>	<u>SECTION</u>	<u>REMARKS</u>
Offences against the Person Ordinance (Cap. 212)	Ss. 46-48	Offences where the victims are children consent by person under 13 is not defence to indecent assault
Protection of Women and Juveniles Ordinance (Cap. 213)	Whole Ordinance	Various sections concerning young offenders and victims
Road Traffic (Driving Licences) Regulations (Cap. 220, sub. leg.)	Reg. 12	No driving licence to be issued to a person under 18
Criminal Procedure Ordinance (Cap. 221)	S. 70	Restriction on imposition of death penalty on offenders under 18
	S. 106A	Presumption and determination of age
	S. 107	Court's power to permit conditional release of offenders having regard to age, etc
	S. 109A	Restriction on imprisonment of prisoners between 16 and 21 years of age
	S. 109AA	Supervision order on release of offenders under 25
	S. 109AB	Recall orders in relation to S. 109AA
Legal Aid in Criminal Cases Rules (Cap. 221, Sub. leg.)	Form 1, Schedule	Heading 11 - applicant under 21
Corporal Punishment Ordinance (Cap. 222)	S. 3	Caning to be imposed on male persons of or over 16

<u>ORDINANCE</u>	<u>SECTION</u>	<u>REMARKS</u>
	S. 4	Enforcement of corporal punishment to be subject to the Juvenile Offenders Order for offenders under 16 and to the Training Centres Ordinance for offenders under 21
	S. 5	Number of strokes of caning to vary with age
Reformatory Schools Ordinance (Cap. 225)	S. 12	"child" defined as persons under 14. "Young person" defined as persons between 14 and 16. "Youthful offenders" defined as persons between 7 and 16
	S. 16	Youthful offenders to be detained in reformatory schools.
	S. 37	Order not to be invalidated by subsequent proof of age
Juvenile Offenders Ordinance (Cap. 226)	S. 2	The whole Ordinance relates to the sentencing of juvenile offenders under 16, etc
Magistrates' Ordinance (Cap. 227)	S. 36	Power to permit conditional release of offenders having regard to age, etc
	S. 96	Supplementary powers of magistrates over persons under 16
Prison Rules (Cap. 234, sub. leg.)	Rule 21	Children of female prisoners may be received and kept in prison until 9 months old, etc
Detention Centres Ordinance (Cap. 239)	S. 2	"Young offender" defined as persons between 14 and 25
	Ss. 4-6	Detention order, supervision order, and recall order for persons over and under 21

<u>ORDINANCE</u>	<u>SECTION</u>	<u>REMARKS</u>
Child Care Centres Ordinance (Cap. 243)	Whole Ordinance	The whole Ordinance relates to the registration, control and supervision of child care centres for children under 6
Compulsory Services Ordinance (Cap. 246)	S. 4	Application of the Ordinance to male Hong Kong residents between 18 and 60, and female residents between 21 and 50
	S. 6	Different age limits for compulsory service for various services
Perpetuities and Accumulations Ordinance (Cap. 257)	S. 7	Presumptions and evidence as to future parenthood : for male - above the age of 14 for female - between the age of 12 and 55
	S. 9	Reduction of age, etc. to avoid remoteness
Marriage (War Period) (Validity) Ordinance (Cap. 258)	S. 5	Prevailing grounds of invalidity e.g. one of the parties being under 16. Age limits for "nursery education"
Education Ordinance (Cap. 279)	S. 2	"Kindergarten education", "primary education", "secondary education" and "post secondary education" given "Pupil's association"
	S. 74	Application of Part VII limited to "child" as defined
Training Centres Ordinance (Cap. 280)	S. 4	Sentence of detention in a training centre of persons between 14 and 21
	S. 4A	Remand or committal to custody in a training centre of persons between 14 and 21

<u>ORDINANCE</u>	<u>SECTION</u>	<u>REMARKS</u>
	S. 7	Transfers from prison to training centre and vice versa of persons over or under the age of 21
Merchant Shipping (Launches and Lorry Vessels) Regulations (Cap. 281, sub. leg.)	Reg. 18	No local certificates of competency to be issued to person under 21
Merchant Shipping (Lifeboatmen and A.B. Certificates of Competency Examinations) Rules (Cap. 281, sub. leg.)	Rules 8-9	Certificate of competency as an able bodied seaman is not to be issued to person under 18
Merchant Shipping (Miscellaneous Craft) Regulations (Cap. 281, sub. leg.)	Reg. 48B	No local certificate of competency to be issued to person under 18 in relation to a fishing vessel, and in relation to other vessel under 21
Merchant Shipping (Pleasure Vessels) Regulations (Cap. 281, sub. leg.)	Reg. 8	No local certificate of competency to be issued to person under 18
Adoption Ordinance (Cap. 290)	S. 2	"Infant" means a person under 21
	S. 5	Restrictions on making adoption order unless the applicant is over 25, etc
Occupiers Liability Ordinance (Cap. 314)	S. 3	Children may be less careful than adults
Post Secondary Colleges Regulations (Cap. 320, sub. leg.)	Reg. 6	Admission and age of entry of students to be at least 17
Drug Addicts Treatment and Rehabilitation Ordinance (Cap. 326)	S. 2	"Young person" defined as a person under 19
	S. 8	Transfer of young persons from 1 centre to another

<u>ORDINANCE</u>	<u>SECTION</u>	<u>REMARKS</u>
	S. 10	Period of detention and recapture of young persons
District Court Ordinance (Cap. 336)	S. 46	Infancy no defence
District Court Civil Procedure (General) Rules (Cap. 336, sub. leg.)	Rule 17	Service on infants
	Rule 32	Actions by and against infants
	Rules 61D-61G	Applications relating to children
Limitation Ordinance (Cap. 347)	S. 22	Extension of limitation period in case of disability
Pneumoconiosis (Compensation) Ordinance (Cap. 360)	S. 2	"Dependants" defined to include "illegitimate child"
	First Schedule	Amounts of compensation to vary with age
Merchant Shipping (Safety) Ordinance (Cap. 369)	S. 2	"Passenger" defined not to include children under 1 year old
Kowloon-Canton Railway Corporation By-laws 1985 (L.N. 51/85 made under Cap. 372)	By-law 8	Surcharge for children under 12 years of age travelling without ticket etc half of adult surcharge
	By-law 24(1)	Up to two children under 3 years of age accompanying each adult passenger carried free of charge if not occupying seats required for other passengers
	By-law 24(2)	Children under 3 years of age exceeding two in number accompanying adult passenger liable to pay half of adult fare

<u>ORDINANCE</u>	<u>SECTION</u>	<u>REMARKS</u>
	By-law 24(3)	Children aged over 3 years but under 12 years pay half adult fare
Road Traffic (Driving Licences) Regulations (Cap. 374, sub. leg.)	Reg. 7	Persons under 18 not entitled to the issue of driving licences
Chinese Young Men's Christian Association Ordinance (Cap. 1013)	Schedule	Para. 4, Art. II limits membership in the Association to Chinese male Christians over 18
Church of England Trust (Church Councils) Regulations (Cap. 1014, sub. leg.)	Reg. 16	Qualified electors of church council are to be of or over 18
Hong Kong Baptist Church Incorporation Ordinance (Cap. 1078)	S. 2	"Members" defined as adults who have been baptised in and admitted to the church, etc
Society for the Relief of Disabled Children Incorporation Ordinance (Cap. 1087)	Whole Ordinance	The whole Ordinance relates to the relief of disabled children
Hong Kong Tramways Educational Trust Fund Ordinance (Cap. 1091)	S. 7	The fund is to be directed for promotion and encouragement of education particularly of children of employees of the Hong Kong Tramways Ltd.
Air Navigation (Overseas Territories) Order 1977 (S. 11977 No. 422)	Art 20 and Schedule 9	The minimum age for certain categories of pilot's licence is 17 years.

**Summaries Of Conventions Relevant To Hong Kong  
Conventions Applied To Hong Kong Without Modification**

**(1) Minimum Age (Industry) Convention, 1919 (No. 5)**

**Main provisions**

No children under 14 are permitted to be employed in an industrial undertaking with the exception of those engaged in work done in an undertaking in which only members of the same family are employed or in technical schools approved and supervised by public authority.

**Application**

The provisions of this convention are applied by :-

- (i) the Factories and Industrial Undertakings Ordinance, Chapter 59;
- (ii) the Employment Ordinance, Chapter 57, the Employment of Children Regulations and the Women and Young Persons (Industry) Regulations made thereunder;
- (iii) the Apprenticeship Ordinance, Chapter 47, and subsidiary legislation made thereunder;
- (iv) the Mining Ordinance, Chapter 285, and Regulations made thereunder;
- (v) the Education Ordinance, Chapter 279, and Regulations made thereunder;
- (vi) the Registration of Persons Ordinance, Chapter 177, and the Registration of Persons Regulations; and
- (vii) the Births and Deaths Registration Ordinance, Chapter 174.

**(2) Minimum Age (Sea) Convention, 1920 (No. 7)**

**Main provisions**

No children under 14 are permitted to be employed or work on any vessel with the exception of school-ships or training-ships approved and supervised by public authority and ships on which only members of the same family are employed.



### **Application**

The provisions of this convention are applied by the Employment of Young Persons and Children at Sea Ordinance, Chapter 58.

### **(3) Minimum Age (Trimmers and Stokers) Convention, 1921 (No. 15)**

#### **Main provisions**

No person under 18 are permitted to be employed on any vessel with the exception of school-ships or training-ships approved and supervised by public authority and vessels mainly propelled by other means than steam.

### **Application**

The provisions of this convention are applied to United Kingdom and Hong Kong registered ships by the United Kingdom Merchant Shipping (International Labour Conventions) Act, 1925 and the Merchant Shipping (Hong Kong) Order made under Section 6(1) of the Act.

### **(4) Minimum Age (Sea) Convention (Revised), 1936 (No. 58)**

This convention revises the Minimum Age (Sea) Convention, 1919. (No. 7)

#### **Main provisions**

No children under the age of 15 should work or be employed on any vessel, other than vessels upon which only members of the same family are employed.

Provisions are made for children of not less than 14 to be employed on board a vessel for educational or other special purposes approved by the authority.

### **Application**

The provisions of this convention are applied by the Employment of Young Persons and Children at Sea Ordinance, Chapter 58.

### **(5) Medical Examination of Young Persons (Underground Work) Convention, 1965**

#### **Main provisions**

Details of medical examinations required to be carried out are set out in the convention.

The convention also makes it obligatory for employers to be responsible for the expenses incurred in such examinations.

### **Application**

The provisions of this convention are applied by the actions and Industrial Undertaking Regulations made under Factories and Industrial Undertakings Ordinance, Chapter 59. Young persons under the age of 21 years are required to be medically examined periodically at the expense of the employer.

**Summaries of Conventions Relevant to Hong Kong  
Conventions applied to Hong Kong with Modification**

**(1) Minimum Age (Agriculture) Convention, 1921 (No. 10)**

**Main provisions**

No children under 14 should be allowed to work in any public or private agricultural undertaking outside school hours.

**Application**

This convention is applied to Hong Kong with modification in respect of Article 1 that children under the age of 14 years but who have attained the age of 13 years and have completed Form III of Secondary education may, with the written consent of one of their parents, be employed, under certain conditions designed to protect their health, welfare and morals, in agricultural undertakings which do not come within the definition of an industrial undertaking under the Factories and Industrial Undertakings Ordinance. The provisions of this convention are applied by :

- (i) the Employment Ordinance, Chapter 57; and the Employment of Children Regulations made thereunder;
- (ii) the Education Ordinance, Chapter 279, and subsidiary legislation made thereunder ;
- (iii) the Registration of Persons Ordinance, Chapter 177, and subsidiary legislation made thereunder; and
- (iv) the Births and Deaths Registration Ordinance, Chapter 174.

**(2) Minimum Age (Industry) Convention (Revised), 1937 (No. 59)**

This convention revises the Minimum Age (Industry) Convention, 1919. (No. 5)

**Main provisions**

No children under 15 should be employed or work in any public or private industrial undertakings, or in any branch thereof with the exception of those engaged in work done in technical schools approved and supervised by public authority or an undertaking in which only members of the same family are employed if the nature of the circumstances of the occupation are not dangerous to the life, health or morals of the persons employed therein.

Special provisions are made in the convention for Japan, India and China.

## **Application**

This convention is applied to Hong Kong with the following modification :

### **Article 2**

The minimum age of employment in industry is 15 years. However, children who have attained the age of 14 but are under 15 may be employed as registered apprentices under the Apprenticeship Ordinance.

The provisions of the convention are applied by :

- (i) the Factories and Industrial Undertakings Ordinance, Chapter 59 and its subsidiary legislation;
  - (ii) the Employment Ordinance and its subsidiary legislation;
  - (iii) the Mining Ordinance, Chapter 285, and its subsidiary legislation;
  - (iv) the Education Ordinance, Chapter 279, and its subsidiary legislation;
  - (v) the Apprenticeship Ordinance, Chapter 47, and its subsidiary legislation;
  - (vi) the Registration of Persons Ordinance, Chapter 177, and the Registration of Persons Regulations made thereunder and
  - (vii) the Births and Deaths Registration Ordinance, Chapter 174.
- (3) **Night Work of Young Persons (Industry) Convention (Revised), 1948 (No. 90)**

This convention revises the Night Work of Young Persons (Industry) Convention, 1919. (No. 6)

## **Main provisions**

Amendments are suggested to some of the articles of the two conventions which are listed in the schedule to Convention No. 83.

The two conventions are -

- (i) Night Work of Young Persons (Industry) Convention, 1919 (No. 6); and
- (ii) Night Work (Women) Convention (Revised), 1934 (No. 41).

The amendments aim at clarifying some of the details contained in these two conventions.

### **Application**

This convention is applied to Hong Kong with the following modification -

#### **Article 3(1)**

Young persons of or over the age of 15 years and under 18 years may be employed in an industrial undertaking during the night -

- (a) in a clerical or managerial capacity or in any health or welfare service connected with the undertaking;
- (b) in cleaning the premises, or any part thereof, of an undertaking, otherwise than in cleaning which is incidental to or connected with any process; or
- (c) solely as caretakers in the premises of the undertaking.

The provisions of the convention are applied by :

- (a) the Factories and Industrial Undertakings Ordinance, Chapter 59;
- (b) the Employment Ordinance, Chapter 57, and its subsidiary legislation;
- (c) the Apprenticeship Ordinance, Chapter 47, and its subsidiary legislation; and
- (d) administrative measures by the Labour Department.

**M. & H.D. Circular No. 79/75**  
**Consent for operation, anaesthetics and examinations**

This circular supplants M. & H.D. Circular No. 123 of 1967.

**I. Responsibility for operation, anaesthetics and examinations**

An operation must never be undertaken without the consent of the patients. If the patient is a minor, the guidelines in para. 2(b) below should be followed. In urgent cases, an operation may have to be performed without consent, and if it can be shown to be necessary to save the life of the patient, no action for damages will lie. The surgeon is well advised to have a general consent, for in many cases, the operation has to be more extensive than was at first supposed.

2. The position may be explained more fully as follows :-

(a) Normal consent. In the first place the personal signed consent of the patient on M.D. form 55 or 55A must be obtained.

(b) Minors

(i) Where the patient is a minor i.e. under 21 years as far as the statute law in Hong Kong is concerned, consent may be given by the parent or legal guardian;

(ii) However, there is no age limit below which a minor cannot give valid consent to medical procedure. If it is shown to the doctor that the minor does possess the intellectual capacity to understand the nature and consequence of giving consent to medical procedure, then the consent of the parent or guardian will not be required, but for reasons of ethics and prudence, the doctor should make contact with the parent or guardian of a minor in every case and, possible obtain his consent as well;

(iii) Where the minor's consent only is given, the nature and extent of the proposed treatment must be explained to the minor patient by a doctor and it should be so stated in the Consent Form (MD 55B) and signed by the doctor that this has been done;

(iv) Where it appears to the doctor that the minor is dependent on the parent not just financially but also for the making of important decisions, there is a less likelihood of his ability to understand the nature and consequence of giving consent, in which case, the

Consent Form must be signed by the parent or guardian;

- (v) Where the minor appears to be capable of giving a valid consent, he should be asked to do so in addition to requiring the parent or guardian to sign the Consent Form. This is because there is no precise definition of the age below which a parent or guardian's consent alone is valid.
- (c) Insanity. Where the patient is incapable, by reason of mental abnormality, of giving consent, in the case of a minor this must be obtained from the parent or legal guardian. In the case of an adult, and certified patient, the Medical Superintendent of the Mental Hospital is commonly regarded as the legal custodian. If he is for the time being on leave from the Mental Hospital, the Mental Hospital authorities should be consulted. For voluntary patients in a Mental Hospital, it is always necessary to obtain their consent to operation. For suspected mental cases their refusal to be operated one would have to be accepted until they are certified.
- (d) Unconscious patients. When a patient is unconscious and therefore only temporarily without the capacity to consent the relative or other person in charge of the patient does not have the same powers as a parent has in respect of a child. They may only give consent to such emergency measures as may be necessary to save life and restore consciousness; thereafter the patient's own consent must be sought.
- (e) Emergency operation without consent. If it is deemed necessary in an emergency to operate or otherwise act on the unconscious body without consent, the doctor in charge must do so on his own authority. If he cannot restore consciousness and ask for consent, he may have to decide first whether the patient will die or suffer very serious consequences if nothing at all is done. If the answer to this question is in the affirmative the doctor may volunteer his efforts. If his decision to operate or treat was based on a reasonable appreciation of the emergency, and having fairly assessed his own skill he uses all his skill and care, the Court will not normally hold him liable for assault criminally or civilly. It is of course assumed that he had no ulterior motive other than to aid the patient. In such cases the doctor is well advised to obtain the written opinion of a colleague and of the Medical Superintendent of the hospital as well if possible.
- (f) Prisoners. It should be noted that these rules apply to prisoners equally with other persons.

3. When Form 55 or 55B are presented for signature, the nature of the operation and the risks involved must be carefully explained. In the event of another operation having been actually carried out because of unforeseen

or peculiar circumstances, even though a general consent has been obtained, every effort must be made to inform the patient or the parent and legal guardian and at the earliest opportunity. Attention is drawn particularly to cases in which the loss of a functional part of the body, or an organ has resulted.

## **II. Consent for examination**

No doctor can make an examination of any person at the instance of any employer, police official or any other person, without the free consent of the patient. Even a formal order of a magistrate is useless. Consent must be first obtained, or the medical man is liable to be proceeded against for assault. The police can give no legal authority to examine, and if this is done by threat or intimidation it is an assault. It should be noted that the consent of a husband in respect of his wife or vice versa is also quite useless.

2. If mental abnormality is suspected, the consent of the parent or legal guardian should be obtained in case of a minor, before examination is carried out, and for an adult, the need of having him observed in a mental hospital under Forms 1 and 2 should be considered.



**Annexure 4B**

23 August 1984

Mr. A.N. Watson-Brown,  
Secretary,  
Legal Effects of Age sub-Committee,  
The Law Reform Commission of Hong Kong,  
Attorney General's Chambers,  
Central Government Offices,  
Main Wing,  
Hong Kong.

Dear Mr. Watson-Brown,

Legal Effects of Age

Thank you for your letter of 8th August 1984.

This department has studied your draft report with special reference to the chapter on consent to surgical, medical and dental treatment. As I have indicated our reasons for recommending the age of 16 to be the legal age for consent for medical treatment in my memo of reference (10) in GR MD 277/52 II dated 2nd May 1984, I believe that your sub-committee has carefully considered and taken into account our views before finally arriving at the age of 18. Under such circumstances, we would have no objection to the sub-committee's recommendation that the 'Age of Majority' should be 18 years of age.

We also agree with the view that the operation for termination of pregnancy involves social, moral and psychological matters, and that the age of consent to this procedure should remain at 18. However, we are of the opinion that 16 is a generally suitable age for consent for all other general medical procedures and wonder whether we could have a separate legal age of consent for general medical treatment except for the procedure for the termination of pregnancy. The lowering to the age of 16 for general medical treatment will no doubt remove the many practical difficulties doctors experience in their daily attendance to the public.

Yours sincerely,

(Dr. Kathleen So)  
for Director of Medical & Health Services

Legal Effect of Age

Our reasons for recommending the age of 16 are:-

- (a) In our experience, minors at the age of 16 are mature enough to understand the nature and consequences of medical procedures.

The existing practice in our Forensic Pathologist's Unit when dealing with criminal cases is that all victims and suspects can give consent or refuse medical examination, including blood grouping examination, as long as they are over 16 years of age and understand the nature of the examination. This has been the procedure for many years and no question has been raised by the Court on this aspect.

Further, under Section 30(2) of the Mental Health Ordinance a voluntary patient at 16 and above can leave the hospital on his own accord without the necessity of obtaining the consent of the parents or the guardian.

- (b) The existing legal situations in Hong Kong being:
- (i) 16 is the age of consent for sexual intercourse;
  - (ii) 16 is the age where any person can enter into a valid marriage with the consent of the parents or guardian. Any marriage of any person under the age of 16 renders the marriage null and void;
  - (iii) Under the Offences against the Person Ordinance Cap. 212 Section 47A(2A)(a), a doctor can take into account the age of the woman to determine whether a pregnancy is to be terminated if she is under 16. By fixing the legal age of consent to 16, a woman could then give consent to the operation independently and her decision would not be overruled by a dissenting parent.
  - (iv) Any person between the age of 16 to 18, can apply for a passport by filling in the application forms themselves but with the consent of the parents. Any person under 16 cannot fill in the application forms which must be completed by their parents.
- (c) The procedure presently followed by the Red Cross Blood Transfusion Service is that blood could be accepted from a minor of the age of 18 without the consent of the parents. The lowering of the age of consent to 16 would definitely overcome the difficulties encountered by the Red Cross Blood donation

campaigns among school children. In our opinion, school children over the age of 16 would in normal circumstances be sufficiently developed to consent validly to the giving of blood.

(Kathleen So)  
for Director of Medical & Health Services



**The Hong Kong Medical Association**

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FOUNDED IN 1920 . INCORPORATED IN 1960  
MEMBER OF: CONFEDERATION OF MEDICAL ASSOCIATIONS IN ASIA & OCEANIA WORLD MEDICAL ASSOCIATION  
FOUNDER MEMBER OF THE FEDERATION OF MEDICAL SOCIETIES OF HONG KONG

7 May 1985

Your Ref: LRC/TOP/11 V

Secretary  
Legal Effects of Age Sub-committee  
The Law Reform Commission of Hong Kong  
Attorney General's Chambers  
Central Government Offices  
Main Wing  
Hong Kong

Dear Sir,

Thank you for your letter of 25 April 1985 asking us for our views on the age limits below which a person should not be able to consent to the donating of blood.

It is the practice of the Hong Kong Red Cross Blood transfusion Service that people under the age of 16 are not allowed, for medical reasons, to donate blood while those between the age of 16 to 18 can only donate blood if they have written consent from their parents or guardians.

There is presently no justification to change this practice on medical grounds. Therefore the Hong Kong Medical Association would like to recommend that the age of consent for blood donation be 18.

With regard to a survey of opinions among our members, the Council is of the opinion that in this matter of age consent to blood donation, the general medical practitioners are guided by expert opinion, and little is to be gained from such a general survey.

If you still want our members' address, please give a call to our Administrative Secretary, Miss Y.M. Chow, 5-278285.

Yours faithfully,

Dr. Patrick W.I. Pau  
Hon. Secretary

PWIP/YMC/dh

# HONG KONG RED CROSS BLOOD TRANSFUSION SERVICE

---

15, King's Park Rise  
Kowloon  
Hong Kong

Telephone : 3-7101333  
Telegram : BLOODTRANS  
Telex : 52704 RCBTS HX

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13th May, 1985

Mr. N.T. Macpherson,  
Secretary,  
Legal Effects of Age Sub-Committee,  
The Law Reform Commission of HK,  
Attorney General's Chambers,  
Central Offices, Main Wing,  
Hong Kong.

Dear

Report on  
Legal Effects of Age

In response of your letter of 25th April 1985 my organization wishes to express the following views :-

(1) On Medical Grounds

The criteria for selection of blood donors is based and regulated on international standards set by the International Society of Blood Transfusion.

(2) Establishment of Minimal and Maximum Age Limits

The current working rule of Hong Kong Red Cross Blood Transfusion Service is : - minimal age at 16 years and maximum age at 65 years for both sexes.

If age is between 16 and 18 years, a written parental/guardian approval is required before he/ she is accepted as a blood donor.

Although some countries accept donors up to 70 years, we in Hong Kong accept up to 65 years provided he/she is in good health.

(3) This organization does not wish to limit blood donors from minors or from seniors on legal grounds ; the rationale is that blood donation is a free gift to the community. Blood is donated voluntarily with no

remuneration, and therefore, each individual is free to choose for himself/herself without any form of constraint.

With many thanks and appreciation for your interest,

Yours sincerely,

Dr. S. Leong  
Director

SL/rl

# BRITISH MEDICAL ASSOCIATION

HONG KONG BRANCH  
DUKE OF WINDSOR BUILDING, 4TH FLOOR,  
15 HENNESSY ROAD, HONG KONG.  
TEL: 278898

Your Ref: LRC/TOP/11 V

**President:**

Dr. Timothy S.C. Teoh

**Vice-President:**

Dr. Sung Wing Choon

**Hon. Treasurer:**

Dr. Lawrence K.C. Li

**Hon. Secretary:**

Dr. Stanley W.S. Wang

**Council Members:**

Sister Mary Aquinas

Dr. William S.C. Chao

Dr. Chiu Hin Kwong

Dr. Chow Shew Ping

Dr. Zoltan Lett

Dr. Henry F.K. Li

Col. T. Sanderson

17th May 1985.

Mr. Neill T. Macpherson,  
Secretary,  
Legal Effects of Age Sub-Committee,  
The Law Reform Commission of Hong Kong,  
Attorney General's Chambers,  
Central Government Offices, (Main Wing),  
Hong Kong.

Dear Mr. Macpherson,

Re: Report on Legal Effects of Age

Your letter addressed to the President of the British Medical Association (Hong Kong Branch) dated 25th April 1985 has been discussed at the Council meeting on 16th May 1985.

The age below which a person should not be able to consent to the donating of blood and other medical and surgical procedure should be 18 and the person must be mentally stable. That is the view the Council unanimously held.

The name of the members at Council have been listed on the left-hand side of this notepaper. There is an excellent mailing service provided by the Federation of Medical Societies of Hong Kong at:

4th Floor,  
Duke of Windsor Building  
15 Hennessy Road,  
Wanchai, Hong Kong.

Please by all means use the mailing service.

Yours Sincerely,

Stanley W. S. Wang  
Honorary Secretary

**QUESTIONNAIRE**

- (a) At what age should a person be able to consent to treatment to himself recommended by a registered medical practitioner?
- (b) Should the age of 16 years below which a person cannot marry be changed and, if so, to what age?
- (c) Should the age of 21 years below which a person requires parental consent to marry be changed and, if so, to what age?
- (d) The usual minimum age at which a person may adopt another person is 25 years and, in the case of the adoption of a relative, 21 years. Should either of these ages be changed and, if so, to what age?
- (e) The courts may make orders with respect to the custody of person up to the age of 21 years. Should this age be changed and, if so, to what age?
- (f) The usual minimum age for making a will is 21 years. Should this age be changed and, if so, to what age?
- (g) At what age should a person be permitted by law to enter into a binding agreement by himself to borrow money?
- (h) At what age should a person be permitted by law to enter into a binding agreement by himself to rent a flat?
- (i) At what age should a person be permitted by law to enter into a binding agreement by himself to buy a flat?
- (j) At what age should a person be permitted by law to enter into a binding agreement by himself to buy shares, stocks or other investment commodities?



## Annexure 6

### List of organisations/schools/individuals to whom the questionnaire was sent (those who responded are marked\*)

\*Buddhist Sin Tak College

Chan Shu Kui Memorial School

\*Delia Memorial School

\*Diocesan Girls' School

\*La Salle College

\*Ming Yin College

\*Queen Elizabeth School

\*Clementi Middle School

\*Kei Chi Middle School

\*St Paul's Co-Educational College

\*Maryknoll Convent School (Secondary)

\*Maryknoll Sisters School

St. Joseph's College

\*Island School

Hong Kong International School

\*Federation of Hong Kong Industries

\*Hong Kong General Chamber of Commerce

Chinese Manufacturers' Association of Hong Kong

Far East Exchange Ltd.

\*Dr. Keith-Legg

The Director

Hong Kong Polytechnic

\*The Rt. Rev. Peter K.K. Kwong

Diocese of Hong Kong & Macau

\*The Secretary  
The Union Church

The Secretary  
Methodist Church Hong Kong

Hon. P.C. Woo

The Officer Commanding  
The Salvation Army

The Secretary  
Hong Kong Youth Club

\*Mr. Chu Heung Ming  
The Chairman  
Hong Kong Students Drama Association

\*Mr. Lam Kwok Wai  
The Chairman  
Joint School Biology Society

Mr. Sha Lee Kwou  
The Chairman  
Joint School Photographic Society

\*Mr. Samuel Lau  
The Director  
Joint School Conservancy Clubs' Liaison Board

\*Mr. Lee Ching Fung  
The Vice-Chairman  
Joint School Chess Association

Mr. Lim Moon Yuan  
The Vice-Chairman  
Joint School Translation Society

Mr. Edward Chung  
The Chairman  
Joint School Electronics Society

\*Mr. Chan Poon Lap  
The Chairman  
Joint School Science Test Committee

Mr. Chan Kim Hung  
The Chairman  
Joint School Conservancy Clubs' Liaison Board

Mr. Cheung Tat Ming  
The Chairman  
Joint School Chess Association

Mr. Jat Lew Tong  
The Chairman  
Joint School Translation Society

\*Mr. Leung Hoi Tin  
The Chairman  
16th Joint School Science  
Exhibition

\*Mr. Lai Siu Hung  
The Chairman  
Council of Joint School Social Service

Mr. George Ho  
The Chairman  
Joint School Biology Field Trip  
Organizing Committee

Mr. Paul Shieh  
The Chairman  
Hong Kong Joint School Debating Society

\*Mr. Fung Sik Hee  
The Chairman  
Joint School Mathematics Association

\*Mr. William Ho  
The Chairman  
Hong Kong Joint School Astronomical Society

Mr. Leung Wai Kwok  
The Chairman  
Committee on Secondary Students  
Hong Kong Federation of Students

Mr. Tsang Hin Ki  
The Chairman  
Joint School Meteorological  
Geographical Society

Miss Tsang Yuk Fung  
The Chairman  
Joint School Art Society

\*Miss Lilian Cheng  
The Chairman  
Joint School Geography Society

Miss Cheung So Man  
The Chairman  
Hong Kong Students Press Group

\*The Manager  
Hong Kong Bank Trustee Ltd.

\*The Manager  
The Chartered Bank Hong Kong Trustee Ltd.

\*The Manager  
Hang Seng Bank (Trustee) Ltd.

\*The Director of Social Welfare  
Social Welfare Department

\*The Director of Education  
Education Department

\*Secretary for Home Affairs

\*Medical and Health Department

Deputy Financial Secretary

\*The Registrar  
The Supreme Court

\*The Chairman  
The Securities Commission

\*The Secretary  
The Law Society of Hong Kong

The Secretary  
Hong Kong Bar Association

\*The Director  
Hong Kong Management Association

Head of Department of Sociology  
University of Hong Kong

The Head  
School of Social Work  
Hong Kong Polytechnic

The Secretary  
Students' Union (Chinese University)

The Secretary  
Hong Kong University Students' Union

\*The Secretary  
The Students' Union  
Hong Kong Polytechnic

The Student Welfare Officer  
Hong Kong Polytechnic

\*The Dean of Students  
Chinese University of Hong Kong

\*The Principal  
Hong Kong Baptist College

\*City District Officer  
Central and Western Division

\*City District Officer  
Wan Chai Division

City District Officer  
Southern Division

City District Officer  
Eastern Division

City District Officer  
Yau Ma Tei Division

City District Officer  
Sham Shui Po Division

\*City District Officer  
Mong Kok Division

City District Officer  
Kowloon City Division

\*City District Officer  
Wong Tai Sin Division

City District Officer  
Kwun Tong Division

\*District Officer  
Islands Division  
District Officer  
North Division

\*District Officer  
Sai Kung Division

District Officer  
Sha Tin Division

\*District Officer  
Tai Po Division

\*District Officer  
Tsuen Wan Division

\*District Officer  
Tuen Mun Division

\*District Officer  
Yuen Long Division

\*The Dean of Students  
University of Hong Kong

The Secretary  
The Hong Kong Council for the Church of Christ in China

\*Hong Kong Family Welfare Society

\*The Secretary  
Hong Kong Buddhist Association

\*The Secretary  
The Family Planning Association of Hong Kong

The Secretary  
Diocesan Welfare Council Sheung Kung Hui

\*The Director  
Hong Kong Christian Council Communications Dept.

\*The Chairman  
Tung Wah Group of Hospitals

\*The Director  
Po Leung Kuk

Anthony R. Dicks Esq.  
Barrister-at-Law

Patrick L.W. Woo, Esq.  
Barrister-at-Law

\*The Chairman  
Y.M.C.A. (Chinese)

\*The Chairman  
Y.M.C.A.

Y.W.C.A.

The Secretary  
Hong Kong Society for the Blind

The Secretary  
Hong Kong Society for the Protection of Children

\*The Director  
Caritas - Hong Kong

The Secretary  
Hong Kong Islamic Youth Association

The Secretary  
Hong Kong Christian Industrial Commission

\*The Director  
The Consumer Council

The Director  
'Breakthrough' Magazine

\*The Director  
Marriage Guidance and Family Counselling Service

The Director  
Against Child Abuse

The Chief Priest  
Hindu Temple

The Director  
Seventh-Day Adventists' Hong Kong and  
Macao Mission Schools and Colleges

\*The Secretary  
The India Association of Hong Kong

\*Rev. David Hirschberg  
Jewish Recreation Club

\*The Secretary  
The Hong Kong Medical Association

\*The Director  
Hong Kong Red Cross

\*Dr. C.L. Law  
The Hon. Secretary  
The Obstetrical & Gynaecological  
Society of Hong Kong

The Chairman  
New Territories Heung Yee Kuk

\*The Rt. Rev. Bishop John B. Wu

The Secretary  
Hong Kong Confucius Young Men's Association

The Principal  
Confucius Hall Middle School

\*The Secretary  
Hong Kong Taoist Association

\*The Secretary  
The Church of Jesus Christ of  
Latter Day Saints

Mr. P.H. O'Donnell  
The Chairman  
Magistrates' Association of Hong Kong

Dr. L.Y.Y. Ko  
Consultant Paediatrician

The Director  
Yang Memorial Social Service Centre

\*The Medical Superintendent  
Queen Mary Hospital

\*The Medical Superintendent  
Queen Elizabeth Hospital



\*The Medical Superintendent  
Princess Margaret Hospital

The Medical Superintendent  
Kowloon Hospital

\*The Medical Superintendent  
Hong Kong Buddhist Hospital

The Medical Superintendent  
Castle Peak Hospital

The Director  
Prince Phillip Dental Hospital

The Medical Superintendent  
Canossa Hospital

\*The Medical Superintendent  
Grantham Hospital

The Medical Superintendent  
Hong Kong Adventists Hospital

\*The Medical Superintendent  
Hong Kong Central Hospital

\*The Medical Superintendent  
Alice Ho Miu Ling Nethersole Hospital

\*The Medical Superintendent  
Baptist Hospital

\*The Medical Superintendent  
Hong Kong Sanatorium & Hospital

\*The Medical Superintendent  
Matilda & War Memorial Hospital

\*The Medical Superintendent  
St. Paul's Hospital

The Medical Superintendent  
St. Teresa's Hospital

\*The Medical Superintendent  
Tung Wah Hospital

\*The Medical Superintendent  
Kwong Wah Hospital

\*The Medical Superintendent  
Tung Wah Eastern Hospital

\*The Medical Superintendent  
United Christian Hospital

\*The Medical Superintendent  
Yan Chai Hospital

\*The Medical Superintendent  
Pok Oi Hospital

\*The Medical Superintendent  
Nam Long Hospital

\*The Medical Superintendent  
Our Lady of Maryknoll Hospital

\*The Medical Superintendent  
Ruttonjee Sanatorium

The Chairman  
Aplichau Kaifong Association

The Chairman  
Happy Valley and Canal Road District  
Kai Fong Welfare Association

The Chairman  
North Point Kaifong Association

The Chairman  
Shamshuipo Kaifong Welfare  
Advancement Association

\*Dr. Grace Tang  
Department of Obstetrics & Gynaecology  
University of Hong Kong

The Chairman  
Tse Wan Shan Kaifong Welfare Association

\*The Chairman  
Wanchai Kaifong Welfare Association

The Chairman  
Yau Ma Tei Kaifong Welfare Association

\*The Secretary  
The Hong Kong Federation of Youth Groups

The Secretary  
'Young Observers'

\*The Secretary  
The Hong Kong Association of Banks

The Secretary  
Hong Kong Stock Exchange Ltd. Trading Hall

The Secretary  
Hong Kong Stockbrokers Association Ltd.

The Secretary  
The Real Estate Developers' Association of Hong Kong

The Secretary  
Kam Ngan Stock Exchange Ltd.

The Principal  
Baptist English College

The Secretary  
Baptist College Student Union

The Principal  
Hong Kong Buddhist College

Hong Kong Teachers' Association  
National Court

The Principal  
Confucian Sam Lok Chow Mud Wai School

\*The Principal  
Confucian Tai Shing Secondary School

The Principal  
Hong Kong Theological Seminary

\*The Principal  
Carmel Pak U Secondary School

\*The Principal  
Chan Sui Ki (La Salle) College

\*The Principal  
Cheng Chek Chee Secondary School

The Principal  
De La Salle Secondary School

\*The Principal  
Ebernezer School & Home for the Blind

\*The Secretary  
The English Schools Foundation

The Principal  
French International School

The Principal  
German Swiss International School

\*The Principal  
Diocesan Girls' School

\*The Principal  
Hoi Ping Chambers of Commerce Secondary School

\*The Principal  
Ng Yuk Secondary School

The Principal  
William Booth Secondary School

\*The Principal  
Sheng Kung Hui Secondary School

The Principal  
Wah Yan College  
Hong Kong

The Principal  
Wah Yan College  
Kowloon

The Principal  
Yuen Long Chamber of Commerce Secondary School

\*The Secretary  
Sham Shui Po District Board

The Secretary  
District Board (Central & Western)

\*The Secretary  
Wan Chai District Board

\*The Secretary  
Southern District Board

\*The Secretary  
Eastern District Board

\*The Secretary  
Yau Ma Tei District Board

\*The Secretary  
Mong Kok District Board

\*The Secretary  
Kowloon City District Board

The Secretary  
Wong Tai Sin District Board

\*The Secretary  
Kwun Tong District Board

The Secretary  
Islands District Board

\*The Secretary  
North District Board

The Secretary  
Sai Kung District Board

\*The Secretary  
Sha Tin District Board

\*The Secretary  
Tai Po District Board

\*The Secretary  
Tsuen Wan District Board

The Secretary  
Tuen Mun District Board

The Secretary  
Yuen Long District Board

\*The Director  
Hong Kong Council of Social Service

**ANNEXURE 7**  
**SURVEY RESULTS**

**LEGAL EFFECT OF AGE**  
**QUESTIONNAIRE RESULTS**

The following analysis has been compiled from the answers provided in 1,587 questionnaires completed in response to a request from the Law Reform Commission Secretariat. The figures have been divided into responses suggesting 16 (or below) to 25 (and above).

Q. (a) At what age should a person be able to consent to treatment to himself recommended by a registered medical practitioner?

Group	General Public	Students	Commercial Organizations	Legal Profession	Medical Profession	Religious Bodies	Social Services	Overall
Total	1,014	437	64	24	22	13	13	1,587
Age								
16 or below	7.3%	14.2%	17.1%	33.3%	27.3%	38.5%	46.2%	10.5%
17	1.8%	1.2%	-	-	9.1%	-	-	1.6%
18	43.0%	28.1%	54.7%	40.7%	40.9%	53.8%	46.2%	39.4%
19	6.3%	0.7%	-	3.7%	-	-	7.6%	4.3%
20	6.3%	4.3%	-	-	-	-	-	5.2%
21	20.2%	18.1%	6.3%	7.4%	4.5%	-	-	18.3%
22	0.7%	0.2%	-	-	-	-	-	0.5%
23	0.4%	-	-	-	-	-	-	0.3%
24	0.2%	-	-	-	-	-	-	0.1%
25	1.4%	0.5%	-	-	-	-	-	1.0%
Above 25	1.2%	0.2%	-	-	-	-	-	0.8%
No Opinion	11.2%	32.5%	21.9%	14.9%	18.2%	7.7%	-	18.0%

- Quite a few people (including a medical practitioner) seem to interpret “treatment” as meaning “surgery”.
- Most agreed that in emergency situations, there should be no age limit in this respect.
- Suggested age range = from 10 to 60 in this respect.

Q. (b) Should the age of 16 years below which a person cannot marry be changed and, if so, to what age?

Group	General Public	Students	Commercial Organizations	Legal Profession	Medical Profession	Religious Bodies	Social Services	Overall
Total	1,014	437	64	24	22	13	13	1,587
Age 16 or below	51.3%	55.0%	62.5%	77.8%	81.8%	61.5%	64.2%	53.8%
17	4.2%	0.2%	-	-	9.1%	-	-	2.8%
18	20.4%	31.1%	15.7%	7.4%	4.5%	23.1%	21.4%	22.8%
19	2.3%	0.5%	-	-	-	-	7.2%	1.6%
20	3.0%	0.9%	1.6%	-	-	-	-	2.1%
21	8.0%	4.6%	-	-	-	-	7.2%	6.4%
22	0.6%	0.2%	-	-	-	-	-	0.4%
23	0.5%	-	-	-	-	-	-	0.2%
24	0.3%	-	-	-	-	-	-	0.2%
25	0.3%	0.2%	-	-	-	-	-	0.2%
Above 25	0.5%	-	-	-	-	-	-	0.3%
No Opinion	8.6%	7.3%	20.2%	14.8%	4.6%	15.4%	-	9.2%

- Lowest age suggested 14



Q. (c) Should the age of 21 years below which a person requires parental consent to marry be changed and, if so, to what age?

Group	General Public	Students	Commercial Organizations	Legal Profession	Medical Profession	Religious Bodies	Social Services	Overall
Total	1,014	437	64	24	22	13	13	1,587
Age								
16 or below	0.5%	1.2%	-	-	-	-	-	0.6%
17	-	0.5%	-	-	-	-	-	0.1%
18	21.3%	26.3%	29.7%	83.4%	45.5%	38.5%	30.8%	24.7%
19	6.7%	0.9%	1.6%	4.1%	-	-	7.7%	4.7%
20	3.1%	3.0%	-	4.1%	-	-	-	2.8%
21	54.8%	60.2%	42.2%	8.4%	50.0%	53.8%	53.8%	55.0%
22	0.1%	-	-	-	-	-	-	0.1%
23	0.6%	0.7%	-	-	-	-	7.7%	0.6%
24	0.1%	-	-	-	-	-	-	0.1%
25	0.2%	-	-	-	-	-	-	0.1%
Above 25	0.3%	-	-	-	-	-	-	0.2%
No Opinion	12.3%	9.9%	26.5%	-	4.5%	7.7%	-	11.0%

- Lowest age suggested : 14

Q. (d) The usual minimum age at which a person may adopt another person is 25 years and, in the case of the adoption of a relative, 21 years. Should either of these ages be changed and, if so, to what age?

(i) Adoption of a Stranger

Group	General Public	Students	Commercial Organizations	Legal Profession	Medical Profession	Religious Bodies	Social Services	Overall
Total	1,014	437	64	24	22	13	13	1,587
Age								
16 or below	0.1%	-	-	-	-	-	-	0.1%
17	-	-	-	-	-	-	-	-
18	2.9%	1.4%	1.6%	-	-	-	-	2.3%
19	0.7%	-	-	-	-	-	-	0.4%
20	0.5%	0.5%	-	-	-	-	-	0.4%
21	11.9%	4.8%	1.6%	8.3%	4.5%	-	23.1%	10.0%
Above								
21	0.7%	1.4%	-	-	-	-	7.7%	0.8%
25	64.1%	83.2%	71.9%	87.5%	86.4%	92.3%	61.5%	69.4%
Above								
25	9.0%	8.7%	1.6%	-	-	-	7.7%	8.2%
No Opinion	10.1%	-	23.3%	4.2%	9.1%	7.7%	-	8.4%

Q. (d) (ii) Adoption of a Relative

Group	General Public	Students	Commercial Organizations	Legal Profession	Medical Profession	Religious Bodies	Social Services	Overall
Total	1,014	437	64	24	22	13	13	1,587
Age								
16 or below	0.2%	2.1%	-	-	-	-	-	0.7%
17	-	-	-	-	-	-	-	-
18	5.1%	4.1%	1.6%	12.5%	-	-	-	4.7%
19	1.2%	-	-	-	-	-	-	0.8%
20	0.5%	0.7%	-	-	-	-	-	0.5%
21	67.1%	63.6%	48.4%	83.3%	81.8%	92.3%	76.9%	66.1%
Above								
21	16.0%	22.2%	-	-	9.1%	-	23.1%	16.6%
No Opinion	9.9%	7.3%	50.0%	4.2%	9.1%	7.7%	-	10.6%

Q. (e) The courts may make orders with respect to the custody of person up to the age of 21 years. Should this be changed and, if so, to what age?

Group	General Public	Students	Commercial Organizations	Legal Profession	Medical Profession	Religious Bodies	Social Services	Overall
Total	1,014	437	64	24	22	13	13	1,587
Age								
16 or below	1.4%	5.3%	3.1%	4.2%	13.6%	-	-	2.7%
17	0.2%	-	-	-	4.5%	-	-	0.2%
18	24.9%	34.6%	39.1%	79.2%	59.2%	61.5%	38.5%	29.8%
19	7.0%	0.7%	1.6%	4.2%	-	-	7.7%	4.9%
20	3.1%	1.1%	-	-	-	-	-	2.3%
21	49.1%	25.9%	48.4%	8.3%	22.7%	23.1%	53.8%	41.5%
22	0.2%	-	-	-	-	-	-	0.1%
23	0.2%	-	-	-	-	-	-	0.1%
24	0.1%	-	-	-	-	-	-	0.1%
25	0.5%	1.6%	-	-	-	-	-	0.8%
Above 25	0.4%	0.9%	1.6%	-	-	-	-	0.5%
No Opinion	12.9%	29.9%	6.4%	4.1%	-	15.4%	-	17.0%

Q. (f) The usual minimum age for making a will is 21 years.  
Should this age be changed and, if so, to what age?

Group	General Public	Students	Commercial Organizations	Legal Profession	Medical Profession	Religious Bodies	Social Services	Overall
Total	1,014	437	64	24	22	13	13	1,587
Age								
16 or below	0.8%	3.0%	1.6%	8.3%	-	-	-	1.5%
17	-	0.2%	-	-	-	-	-	0.1%
18	19.2%	23.1%	37.5%	75.0%	45.5%	77.0%	38.5%	22.9%
19	4.6%	0.9%	1.6%	4.4%	-	-	7.7%	3.4%
20	2.2%	1.6%	-	-	-	-	-	1.8%
21	53.0%	53.8%	37.5%	8.3%	54.5%	15.4%	46.1%	51.6%
22	0.2%	-	-	-	-	-	-	0.1%
23	0.3%	-	-	-	-	-	7.7%	0.3%
24	0.3%	-	-	-	-	-	-	0.2%
25	3.3%	2.7%	-	-	-	-	-	2.8%
Above								
25	4.3%	1.4%	-	-	-	-	-	3.1%
No Opinion	11.8%	13.3%	21.8%	-	-	7.6%	-	12.2%

Q. (g) At what age should a person be permitted by law to enter into a binding agreement by himself to borrow money?

Group	General Public	Students	Commercial Organizations	Legal Profession	Medical Profession	Religious Bodies	Social Services	Overall
Total	1,014	437	64	24	22	13	13	1,587
Age								
16 or below	0.4%	1.8%	1.6%	4.2%	-	-	-	0.9%
17	0.2%	0.5%	-	4.2%	-	-	-	0.3%
18	22.8%	22.7%	45.3%	70.8%	50.0%	23.1%	30.8%	24.8%
19	5.9%	1.4%	1.6%	4.2%	-	-	7.7%	4.3%
20	4.4%	3.4%	-	-	-	-	-	3.7%
21	37.0%	47.4%	45.3%	12.5%	50.0%	69.2%	53.8%	40.4%
22	0.5%	0.2%	-	-	-	-	-	0.4%
23	1.0%	0.9%	-	-	-	-	7.7%	0.9%
24	0.9%	0.5%	-	-	-	-	-	0.7%
25	7.6%	9.8%	-	-	-	-	-	7.7%
Above								
25	4.2%	0.2%	-	-	-	-	-	2.7%
No Opinion	15.1%	11.2%	6.2%	4.1%	-	7.7%	-	13.2%

- Most people who opt for 18 or 19 seem to emphasize the fact that most youths at 18 or 19 have completed secondary education and financial independent to a certain degree

Q. (h) At what age should a person be permitted by law to enter into a binding agreement by himself to rent a flat?

Group	General Public	Students	Commercial Organizations	Legal Profession	Medical Profession	Religious Bodies	Social Services	Overall
Total	1,014	437	64	24	22	13	13	1,587
Age								
16 or below	0.6%	4.1%	1.6%	4.2%	-	-	-	1.6%
17	0.7%	0.5%	-	4.2%	-	-	-	0.6%
18	26.3%	41.0%	60.9%	79.0%	59.1%	46.2%	61.5%	33.3%
19	6.4%	1.2%	1.6%	4.2%	-	-	-	4.5%
20	4.9%	2.5%	-	-	-	-	-	3.8%
21	36.1%	34.6%	35.9%	8.4%	36.4%	46.2%	38.5%	35.7%
22	1.0%	1.4%	-	-	-	-	-	1.0%
23	0.6%	0.2%	-	-	-	-	-	0.4%
24	0.3%	-	-	-	-	-	-	0.2%
25	5.8%	6.6%	-	-	-	-	-	5.5%
Above 25	2.8%	-	-	-	-	-	-	1.8%
No Opinion	14.5%	7.9%	-	-	4.5%	7.6%	-	11.6%

Q. (i) At what age should a person be permitted by law to enter into a binding agreement by himself to buy a flat?

Group	General Public	Students	Commercial Organizations	Legal Profession	Medical Profession	Religious Bodies	Social Services	Overall
Total	1,014	437	64	24	22	13	13	1,587
Age								
16 or below	0.5%	1.6%	1.6%	3.7%	-	-	-	0.9%
17	0.3%	0.2%	-	3.7%	-	-	-	0.3%
18	24.0%	28.4%	46.9%	63.0%	54.6%	23.1%	38.5%	27.3%
19	6.0%	1.4%	1.6%	3.7%	-	-	-	4.3%
20	3.9%	2.5%	-	-	-	-	-	3.2%
21	36.5%	45.5%	46.9%	11.1%	40.9%	69.2%	53.8%	39.6%
22	1.1%	1.4%	-	-	-	-	-	1.1%
23	1.1%	0.5%	-	-	-	-	7.7%	0.8%
24	0.6%	0.5%	-	-	-	-	-	0.5%
25	6.3%	10.5%	-	-	-	-	-	6.9%
Above								
25	5.2%	0.7%	-	-	-	-	-	3.5%
No Opinion	14.5%	6.8%	4.4%	14.8%	4.4%	7.7%	-	11.6%



Q. (j) At what age should a person be permitted by law to enter into a binding agreement by himself to buy shares, stocks or other investment commodities?

Group	General Public	Students	Commercial Organizations	Legal Profession	Medical Profession	Religious Bodies	Social Services	Overall
Total	1,014	437	64	24	22	13	13	1,587
Age								
16 or below	0.4%	1.8%	3.1%	4.2%	-	-	-	0.9%
17	0.4%	0.2%	-	4.2%	-	-	-	0.4%
18	23.1%	23.1%	46.9%	74.8%	54.6%	23.1%	61.5%	25.5%
19	6.4%	0.9%	1.6%	4.2%	-	-	-	4.5%
20	4.7%	3.2%	-	-	-	-	-	3.8%
21	35.7%	43.9%	29.7%	12.6%	45.4%	69.2%	38.5%	37.7%
22	0.8%	1.2%	-	-	-	-	-	0.8%
23	1.1%	1.6%	-	-	-	-	-	0.8%
24	0.8%	1.2%	-	-	-	-	-	0.8%
25	6.5%	13.3%	-	-	-	-	-	7.8%
Above 25	5.8%	1.4%	-	-	-	-	-	4.1%
No Opinion	14.3%	8.2%	18.7%	-	-	7.7%	-	12.9%

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## LAW OF OTHER COUNTRIES : COMMENTRY

### COMPARATIVE LAW

#### **Introduction**

1. The sub-committee has reviewed the latest information available on the laws of other countries to determine how they deal with the legal effect of age. A table comparing these provisions is contained in Annexure 8B. This annexure provides an outline of the current situation in various jurisdictions, based on resources which in some cases were limited.

#### **Indonesia**

##### ***Consent to medical procedure***

2. No information was available to the sub-committee.

##### ***Wardship and custody***

3. A child is a person under the age of 21 years who has not married. No further information was available.

##### ***Marriage***

4. The minimum age for marriage for women is 16 years, and for men, 19 years. Exemption from this requirement may be granted by the Court at the request of the parents.

##### ***Contracts***

5. Generally, an unmarried person who has not attained 21 years does not have capacity to contract

##### ***Wills***

6. No information was available to the sub-committee.

## **Japan**

7. The age of majority is, generally speaking, 20. A minor who is legally married is deemed to have attained the age of majority.

### ***Consent to medical procedure***

8. Under Japanese law, no specific age limit is set for consent to medical treatment. In most circumstances, the minimum age specified for entering into contracts would govern. As discussed below, a person must be twenty years of age before being capable of entering into a legally binding contract.

### ***Wardship and custody***

9. A court may make an order concerning custody of a person until the time such person reaches twenty years of age unless he or she is married.

10. Any person who has attained the age of majority may adopt another person.

### ***Marriage***

11. A male child may not marry unless he is at least eighteen years of age. In the case of a female child, the minimum age is sixteen.

12. A child under the Age of 21 must generally obtain the consent of either of his or her father or mother to marry, although it is the general practice to require the consent of both parents.

### ***Contracts***

13. A minor must obtain the consent of his or her legal representative in order to enter into any contract unless it is a contract merely to acquire a right or to be released from an obligation. A contract entered into without such consent is voidable.

14. A minor who has been permitted by persons in parental authority to carry on a business has, in relation to such business, the same capacity as a person of legal age. However, if indications are that the minor is not yet capable of carrying on the business, his or her legal representative may revoke or restrict his earlier permission.

## ***Wills***

15. Any person who has reached his fifteenth birthday may make a Will.

## **Malaysia**

16. Reference material available in Hong Kong is scarce. However, the following is offered as a limited summary :-

17. Section 2 of the Age of Majority Act 1971 (Act No. 21) provides:

"Subject to the provisions of section 4, the minority of all males and females shall cease and determine within Malaysia at the age of eighteen years and every such male and female attaining that age shall be of the age of majority."

18. Section 4, however, provides:

"Nothing in this Act shall affect -

- (a) the capacity of any person to act in the following matters, namely, marriage, divorce, dower and adoption;
- (b) the religion and religious rites and usages of any class of persons within Malaysia;
- (c) any provision in any other written law contained fixing due age of majority for the purposes of that written law."

19. It should be noted that Malaysia is a plural society in which Islam is the State religion. One's status as a Muslim and the school of law relevant to such status will determine legal capacity in certain circumstances.

## ***Consent to medical procedure***

20. A person who is over 18 years of age, can consent to medical procedures.

## ***Wardship and custody***

21. Under the Shafii school of law, where parents have separated and the mother has not remarried, custody of a female child remains with the mother until she remarries and that of a male child until the end of his seventh year, at which time custody passes to the father.

22. A child of either sex who has reached the age of discernment has the right to choose to live with either of his or her parents, provided the mother has not remarried.

23. The father of an infant generally acts as the child's guardian. If the child has no father, then the mother is guardian, until the child attains the age of 18.

24. For non-Muslims, the paramount consideration for custody is welfare of the child. In the case of a divorce custody will usually be awarded to the mother.

### ***Marriage***

25. For Muslims, legal capacity for marriage purposes varies according to the school of Muslim law to which they belong. There is generally no minimum age of marriage under Islamic law and minors of either sex may marry with the consent of their guardian (usually the father, until the minor reaches the age of 18).

26. In the case of non-Muslims, any person under the age of eighteen years is prohibited from marrying, although a female over sixteen years may be granted a special dispensation. Parental consent must be obtained in all cases for minors under twenty-one years of age.

### ***Contracts***

27. In Peninsular Malaysia, Sabah and Sarawak, every person who has attained the age of majority according to the law to which he is subject is competent to enter into any contract. The law applies to Muslims and non-Muslims.

### ***Wills***

28. Muslims who have attained the age of majority may validly make a Will.

29. In the case of non-Muslims, the minimum age for making a Will is 21.

## **The People's Republic of China**

30. The Chinese Government has not stipulated an overall age of majority although the Chinese Constitution allows all citizens who have reached the age of 18 to vote and stand for election.

### ***Consent to medical procedure***

31. A person who is over 18 years of age can consent to medical procedures.

### ***Wardship and custody***

32. On divorce, the mother has custody of a child who still has to be weaned. In other cases, the People's Court will rule on custody if the parents cannot agree as to who should have custody.

33. On the death of both parents, both sets of grandparents and adult brothers and sisters have a duty to rear minor grandchildren/siblings. Although it is not explicitly stated, it is assumed they will also have custody.

### ***Marriage***

34. Without exception, males must be at least 22 and females 20 before they can marry.

### ***Contract***

35. The concept of disposing capacity is generally unknown and for all intents and purposes irrelevant in China.

36. The basis of the socialist system is public ownership of the means of production. Land, for example, is owned by the state or the collectives. No individual may appropriate, buy, sell or lease land or transfer land in any way.

37. There are no provisions governing the sale of personal property or personal services contracts. The Economic Contracts Law (1981) applies to enterprises only.

### ***Wills***

38. Personal property can be inherited by intestacy. We understand that provisions are contemplated to introduce legislation pertaining to inheritance.

## **Philippines**

39. The age of majority in the Philippines at which a person is considered competent to perform all acts of civil life is 21 years.

### ***Consent to medical procedure***

40. Philippine law considers consent to medical procedure as a contract which can be entered into by persons at least 21 years of age as well as by emancipated minors who, although below 21, become qualified to perform acts of civil life upon marriage or by concession by the father or mother exercising parental authority. Minors who can be emancipated by concession are those between the ages of 18 and 21. Minors emancipated by marriage are those between the ages of 16 to 20 for the male and 14 to 18 for the female.

41. Notwithstanding that a contract for medical procedure may involve performance of certain acts over a child's person, parental consent is not necessary as long as such contract is entered into by a person of the foregoing age qualifications.

### ***Wardship and custody***

42. Wardship, or Guardianship under the Rules of Court includes both minors and incompetents. A minor is a person below 21 and an incompetent, as defined, can be a person of any age.

43. For purposes of custody, the law requires that the person for whom custody is sought should not be over 21 years.

### ***Marriage***

44. Parental consent is necessary for a male who marries between the ages of 16 and 20 and for a female who marries between the ages of 14 and 18. By deduction, males over 20 and females over 18 can contract marriage without parental consent. Marriages contracted below the ages of 16 for the male and 14 for the female, even with parental consent, are void.

### ***Contracts***

45. Persons of at least 21 years of age and emancipated minors, as mentioned above, have full capacity to enter into contractual relationships.



## ***Wills***

46. The minimum age requirement for execution of Wills is 18 years. Any Will executed by a person under 18 is void.

## **Singapore**

### ***Consent to medical procedure***

47. Singapore law is unclear in this area. However, it appears that a person who is 18 or over can consent to medical procedure and parental consent is not required.

48. A practice has, nevertheless, evolved among medical practitioners that if the operation is serious and the patient is under 21, parental consent will generally be sought.

### ***Wardship, custody and adoption***

49. Persons under the age of 21 can be made subject to custody orders. Similarly, guardianship and adoption orders may also be made in respect of persons under the age of 21. It should be noted that a person applying to adopt an infant (defined in the Adoption of Children Act as a person under the age of 21) must be over the age of 25.

### ***Marriage***

50. The minimum age for marriage in Singapore is 18 years. If either of the parties intending to marry is below the age of 18, then parental consent is necessary before the relevant Minister of State will grant consent by way of a special licence.

51. Muslims are governed by different rules and, generally, the minimum age for a Muslim is 16 years. In special circumstances, if a Muslim girl is under the age of 16 but has attained puberty, she may be permitted to marry.

### ***Contracts***

52. It is not clear whether the age of majority in Singapore is 18 or 21 in mercantile matters, although most authorities are of the view that it is 18.

53. In the most recent decision (1980) on the question the Supreme Court held that the age of majority for contracts contemplated by Section 5(1)

of the Civil Law Act (Cap. 30), is 18 by virtue of the application of the English Family Law Reform Act, 1969.

54. It would, however, not appear prudent to assume that the age of majority for all contracts is now 18. Arguably mortgages, leases and sale and purchase contracts, for example, are outside the terms of Section 5(1) and in such cases, the law would seem to be that the age of majority is 21.

### ***Wills and succession***

55. Wills made by persons under the age of 21 are regarded as invalid. For the purposes of intestate succession, a person is considered to be a minor if under the age of 21.

## **South Korea**

56. The age of majority and related legal effects of age are dealt with under the Civil Code which provides that majority is reached on attaining 21 years of age.

### ***Consent to medical treatment***

57. Hospitals will generally consider that serious operations or blood donations by a minor require the consent of a parent or guardian, as the parents or guardians have the right and duty to protect their minor children.

### ***Wardship and custody***

58. A minor whose parents are deceased will be appointed a guardian to act as his legal representative.

59. Any person who has attained the age of majority may adopt another person. The consent of a parent or guardian of the person to be adopted is required if such person is under 15 years.

### ***Marriage***

60. A male must have reached 19 years and a female 17 years before being capable of marrying.

61. Any person who is a minor requires parental consent to be able to marry. If the parent is unable to give consent, the consent of a guardian is required.

### ***Contracts and property rights***

62. A minor requires the consent of his legal representative to perform any legal act, except where the legal act is one merely to acquire a right or to be released of an obligation. Any act carried out without such consent is voidable.

### ***Wills***

63. Persons under 17 years of age may not make a Will.

## **Taiwan**

### ***Introduction***

64. The age of majority in Taiwan is 20. Minors below the age of 7 have no disposing capacity and any declaration of intention is void. Minors between the ages of 7 and 20 have limited disposing capacity and must act through a statutory agent. Parents are statutory agents for their minor children.

65. A married minor has full disposing capacity.

### ***Consent to medical procedure***

66. No information was available to the sub-committee.

### ***Wardship***

67. A minor will be given an appointed guardian where he has no parents or his parents cannot discharge their responsibilities. This provision does not apply to a married minor.

### ***Marriage***

68. Male minors must be at least 17 and female minors 15 before they can make an agreement to marry.

69. Subject to the foregoing, minors entering into an agreement to marry need the consent of their statutory agent.

70. Male minors must be at least 18 and female minors at least 16 before they can conclude a marriage. A minor concluding a marriage needs to obtain the consent of his statutory agent.

### ***Contracts***

71. A contract entered into by a minor of limited disposing capacity is valid if the minor's statutory agent approves or ratifies such contract.

### ***Wills***

72. A minor who is below the age of 16 cannot legally make a Will.

## **Thailand**

73. Under Thai law, a person attains full legal capacity when he or she reaches 20 years of age. A person below 20 years of age will also attain full legal capacity if married in accordance with the stipulations referred to below. Prior to attainment of full legal capacity, a person is considered a minor.

### ***Consent to medical procedure***

74. There appears to be no express legal provision or judicial decision on this question. Below the age at which a person attains full legal capacity, acceptance or rejection of consent will very much depend on the discretion of the medical practitioner. However consent from the parents or from a guardian will generally be required for medical procedure. Further, the consent of a minor who is considered by the medical practitioner as sufficiently intelligent to comprehend the nature of the treatment will be required, regardless of whether consent of his parents or guardian has been obtained.

### ***Wardship and custody***

75. A minor is subject to parental control until he attains the age of 20. In the absence or incapacity of either the father or mother, the minor will be subject to the control of the other parent. Where a minor has no parents or his parents cannot exercise parental authority, the minor will normally be appointed a guardian until he attains full legal capacity.

## **Marriage**

76. The minimum legal age for marriage is 17 years for both male and female. However, in appropriate cases, marriage can take place before attaining such age if authorised by court order.

77. Between the ages of 17 and 20 for both sexes, consent from the parents or from the guardian, as the case may be, must be obtained prior to marriage. The law also makes provision for the minor to seek permission to marry from the court in cases where the minor has no parents or guardian or such persons are not in a position to give consent for whatever reason.

## **Contracts**

78. A person who has not yet attained full legal capacity can only contract after he has obtained the consent of his parents or guardian, as the case may be. A contract entered into by a minor without such consent is voidable. However, in the following cases, consent is not required:

- (1) A contract by which a minor merely acquires a right or is released from an obligation,
- (2) A contract which is suited to his condition in life and actually required for his reasonable needs, for example, to purchase food, clothes or other necessities.

## **Wills**

79. A minor who is at least 15 years of age is capable of making a Will. Wills executed by minors under the age of 15 are void.

**LAW OF OTHER COUNTRIES**

<u>Country</u>	<u>Consent to Medical Procedure</u>	<u>Ward &amp; Custody</u>	<u>Marriage</u>	<u>Contracts</u>	<u>Wills</u>
Indonesia	-	Child defined as person under 21 & unmarried	Women - 16 Men - 19  Exemption at request of parents	Generally an unmarried person under 21 cannot enter a contract	-
Japan	No specific age limit set. Most cases minimum age specified for contracts governs  i.e. Age 20	Order may be made for person under 20 and unmarried	Women - 16 Men - 18  Under 21 child must obtain consent of one parent, although in practice, usually two.	Minor must have consent of legal rep unless contract merely to acquire right or release from obligation.	May make a will at age 15
Malaysia	Age 18 - 'Age of Majority Act 1971'	<u>Non-Muslim</u> – welfare of child paramount consideration - usually mother in divorce. <u>Muslim</u> - female child remains with mother until remarriage & male until 7 years, at which time custody passes to father, at age 18 a child may choose where to live	<u>Non-Muslim</u> – not allowed under 18 – special allowances for female over 16 Parental consent under 21 years <u>Muslim</u> - No minimum age but consent of guardian under age of 18 generally.	Applicable to Muslim and Non-Muslim any person of age of majority of their law may enter a contract  i.e. 18  *There are different laws under the main Islamic law	At age of majority may make a will, i.e. 18 (21 for non-Muslim)

8B-1

Annexure 8B

<u>Country</u>	<u>Consent to Medical Procedure</u>	<u>Ward &amp; Custody</u>	<u>Marriage</u>	<u>Contracts</u>	<u>Wills</u>
People's Republic of China	A person over 18 years of age can consent to medical procedure	Mother, until child weaned. Then peoples court rule. On death of both parents, grand-parents & brothers have duty to rear & it is assumed they have custody although not written	Female - 20 Male - 22	For all intents & purposes irrelevant in China. Socialist system = public ownership.  The Economic Contracts law (1981) applies to enterprise only.	No provisions Personal property can be inherited by intestacy
Philippines	Age 21 or an emancipated minor either by concession between ages of 18 & 21 or by marriage between 16 & 20 for a male and 14 to 18 for a female	Includes minors & incompetents.  Under 21 years of age & incompetent	Female - 18 Male - 20  Marriages below the ages of 16 for male & 14 for the female are void even with parental consent.	A 21 year old or an emancipated minor may enter into a contract	May make a will at 18
Singapore	Law unclear but appears that over 18 can consent. However doctors tend to seek parental consent for serious operations under 21 years	Persons under 21 can be made subject to custody orders.  Person adopting must be over 25.	Minimum age is 18 for both sexes.  Muslims, the age is 16 and less if achieved puberty & parents consent	Unclear whether 18 or 21 for mercantile matters. Section 5(1) of the Civil Law Act suggests 18 but Mortgages, sale & purchase and lease contracts are outside Section 5(1)	May make a will at 21. For purposes of intestate succession, a person is a minor under 21

8B-2

<u>Country</u>	<u>Consent to Medical Procedure</u>	<u>Ward &amp; Custody</u>	<u>Marriage</u>	<u>Contracts</u>	<u>Wills</u>
South Korea	Age 21 (The age of majority as in the Civil Code)	A minor (under 21) will be appointed a guardian as his legal rep. Any person of 21 or over may adept but for minor of 15 or less consent of a parent or guardian required	Female - 17 Male - 19  Consent of parent or guardian required for minors (under 21)	Minor must have consent of legal rep unless contract merely to acquire right or release from obligation	May make a will at 17
Taiwan	-	Minor will be given any appointed guardian where he has no parents or parents cannot discharge their responsibilities.  (Minor under 20) Does not apply to a married minor	Female - 15 Male - 17  The above ages to make an agreement to marry with parents or guardian consent. Female - 16 Male - 18  To <u>conclude</u> a marriage with above consent.	Age 20 but a minor of limited disposing capacity can enter a contract if statutory agent (parent or guardian) approves or ratifies.	May make a will at 16
Thailand	No express legal provision and at doctors discretion, consent way or may not be sought for a minor (a person who has not reached the age of full legal capacity (20))	Subject to parental control until 20. Will be appointed a guardian if parents dead or incapable.	For both sexes minimum age is 17. Authorisation by a court order can be obtained in certain cases. Until 20 consent must be granted by parent or guardian or the court if above are not in a position to do so.	Consent must be obtained for a minor (under 20) except when the minor merely acquires a right or released from an obligation or when the contract is suited to his condition in life and required for his needs. i.e. purchase food, cloths.	May make a will at 15.



**Extract**

**COMPANIES LAW REVISION COMMITTEE'S**

**SECOND REPORT, APRIL 1973**

**Minimum age limit for directors**

7.26 Just as there is no maximum age limit laid down for directors, so is there no minimum age limit laid down. We think, however, that there should be a minimum age for appointment as director. The need for this is illustrated by a case in England which has been brought to our attention in which the three directors of a company were the wife and two sons, aged fourteen and seventeen, of an undischarged bankrupt. We therefore recommend that no person should be capable of being appointed a director of a company unless he has attained the age of twenty-one.

**EXTRACT**

**REPORT OF THE INLAND REVENUE ORDINANCE**

**REVIEW COMMITTEE, 25 AUGUST 1967 - PART I**

**MINORS**

97. A further representation has been made to extend Personal Assessment to unmarried minors who derive income, chargeable to Profits Tax, from various occupations either as genuine proprietors or partners in business or as actors or entertainers. It seemed to us unfair to deny them the benefit of Personal Assessment because of their age and we considered that at least those who had reached the age of eighteen should be allowed Personal Assessment. We appreciated that the reason for the restriction on minors electing Personal Assessment was to circumvent any attempt by parents to make their minor children partners in a business or joint owners of their property so as to reduce their total tax by use of Personal Assessment on the children's share of income. To allow minors aged 18 to elect would admittedly leave more room for tax avoidance by this means than arises under the present requirement that they be either married or have reached the age of 21. Nevertheless, we consider that the relaxation in the age limit is justified in order that the particular class of minors whose case has been presented to us may obtain the relief provided under Personal Assessment.

**98. WE RECOMMEND that Section 41(4)(b) be amended by replacing the words 'an unmarried minor' by the words 'a person under the age of 18'.**

### HONG KONG MARRIAGE STATISTICS

	I	II	III	IV	V	VI	VII
	No. of marriages (either party over 18 but under 21)	No. of marriages (either party under 18)	Total of I & II  ***	Out of III, No. of marriages without parental consent*	Total No. of <u>1st</u> marriages per year (at all ages)	Percentage of III to V	Percentage of IV to III
1976	6637	1108	7410(335)	215	34378	21.55	2.9
1977	6835	1257	7702(390)	177	34519	22.31	2.3
1978	6097	1056	6807(346)	161	34530	19.71	2.4
1979	6114	923	6747(290)	137	38510	17.52	2.0
1980	6515	944	7146(313)	176	42724	16.73	2.5
1981	5861	940	6476(325)	195	41190	15.72	3.0
1982	4853	718	5340(231)	152	41554	12.85	2.8
1983	4153	657	4597(213)	192	36537	12.58	4.2
1984	3891	527	4247(171)	114	43660	9.73	2.7

\* These marriages are celebrated with the Registrar's or the Director of Social Welfare's consent provided under Section 14 or 15 of the Marriage Ordinance (Cap. 181)

\*\*\* Figures obtained after deduction of double counting in I & II

( ) Figures of "double-count" marriages

Annexure 11A  
Hong Kong Marriage  
Statistics

11A-1

**HONG KONG MARRIAGE STATISTICS**

	<u>BOTH PARTIES OVER 18 YEARS</u>		Total number of marriages per year (at all ages)
	number of Marriages where one party is over 18 but under 21, but the other party may be over 21 years	number of Marriages where both parties are over 18 but under 21 years	
1976	6302	711	39700
1977	6445	777	40383
1978	5751	713	40400
1979	5824	648	45222
1980	6202	715	50845
1981	5536	649	50756
1982	4622	545	51467
1983	3940	494	47784
1984	3720	416	53410

11B-1

Annexure 11B

Hong Kong Marriage Statistics

## HONG KONG MARRIAGE STATISTICS

1976 - 1984

### Number of first marriages showing age of bridegroom against age of bride

<u>Year</u>	<u>Age of bridegroom</u>	<u>Age of bride</u>			<u>Total</u>
		<u>Under 18</u>	<u>18-20</u>	<u>21 and over</u>	
1976	Under 18	50	31	3	84
	18-20	304		293	1 308
	21 and over	720	5 298	26 968	32 986
	Total	1 074	6 040	27 264	34 378
1977	Under 18	59	39	6	104
	18-20	351	777	324	1 452
	21 and over	802	5 344	26 817	32 963
	Total	1 212	6 160	27 147	34 519
1978	Under 18	44	20	9	73
	18-20	326	713	303	1 342
	21 and over	657	4 735	27 723	33 115
	Total	1 027	5 468	28 035	34 530
1979	Under 18	37	28	9	74
	18-20	262	648	297	1 207
	21 and over	587	4 879	31 763	37 229
	Total	886	5 555	32 069	38 510

Annexure 11C  
Hong Kong Marriage  
Statistics

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**Age of bride**

<u>Year</u>	<u>Age of bridegroom</u>	<u>Under 18</u>	<u>18-20</u>	<u>21 and over</u>	<u>Total</u>
1980	Under 18	45	26	7	78
	18-20	287	715	365	1 367
	21 and over	579	5 122	35 578	41 279
	Total	911	5 863	35 950	42 724
1981	Under 18	70	26	9	105
	18-20	299	649	296	1 244
	21 and over	536	4 591	34 714	39 841
	Total	905	5 266	35 019	41 190
1982	Under 18	38	22	5	65
	18-20	209	545	256	1 010
	21 and over	444	3 821	36 214	40 479
	Total	691	4 388	36 475	41 554
1983	Under 18	42	26	5	73
	18-20	187	494	250	931
	21 and over	397	3 196	31 940	35 533
	Total	626	3 716	32 195	36 537
1984	Under 18	36	14	4	54
	18-20	157	416	204	777
	21 and over	316	3 100	39 413	42 829
	Total	509	3 530	39 621	43 660

## **Annexure 12**

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