


Children's issues in mediation and Child inclusive mediation



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Family Mediation



- Facilitated Negotiation by a neutral third party (“the mediator”) on issues about children and/or finances in Separation or Divorces
- Mediation Co-ordinator at the Family Court
- Tin Shui Wai Death Inquest and Domestic Violence – social and legal empowerment
- Children’s voices and needs vs. parents’ needs (i.e. Housing and \$ from Govt. subsidies)
- Mediating children’s issues under the shadow of the law
- Child inclusive mediation – How to bring the child’s voice into the mediation session?

Family Law in Hong Kong

- S. 19 Matrimonial Proceedings and Property Ordinance, Cap. 192:
- (1) The court may make such order as it thinks fit for the custody and education of any child of the family who is under the age of 18 (a) in any proceedings for divorce, nullity of marriage or judicial separation, before, by or after the final decree;

General principles under s.3 of the Guardianship of Minors Ordinance, Cap. 13

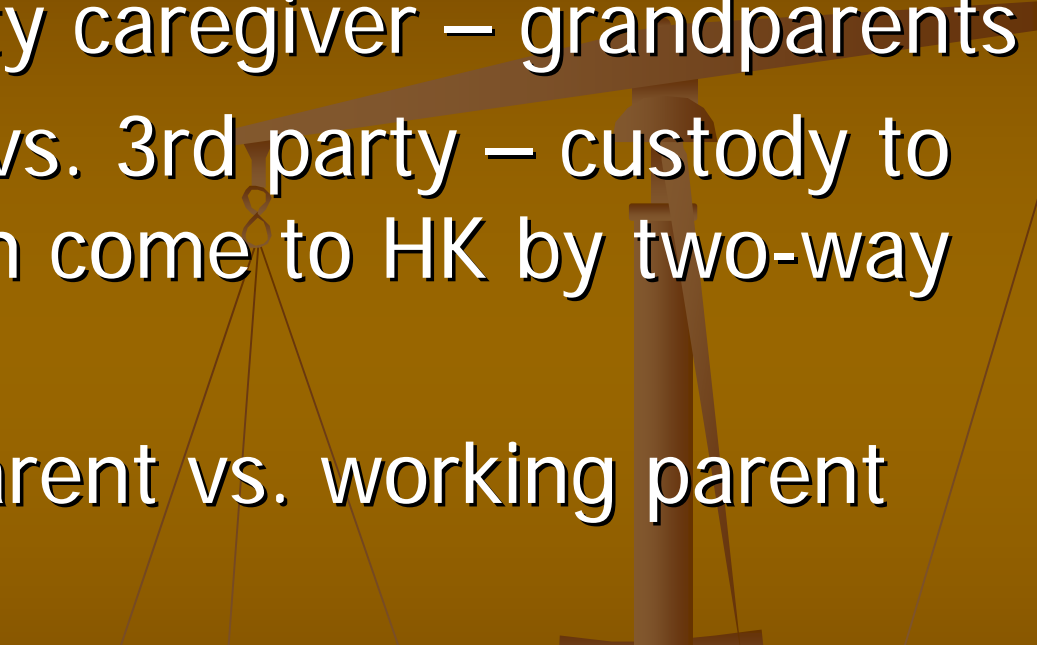
- In relation to the custody or upbringing of a minor, and in relation to the administration of any property belonging to or held in trust for a minor or the application of the income of any such property
- (a) in any proceedings before any court (whether or not a court as defined in section 2) the court – (i) shall regard the welfare of the minor as the first and paramount consideration and in having such regard shall give due consideration to –
- (A) the wishes of the minor if, having regard to the age and understanding of the minor and to the circumstances of the case, it is practicable to do so; and
- (B) any material information including any report of the Director of Social Welfare available to the court at the hearing;

For the avoidance of doubt, s. 48 C Matrimonial Causes Ordinance Cap. 179: section 3 of the Guardianship of Minors Ord. (Cap.13) (which provides that the welfare of the minor shall be the first and paramount consideration) shall apply in relation to any order for the custody care or supervision of a child which may be made under this Ord. or the Mat. Proceedings and Property Ord. (Cap.192).

Reform Commission's Report on Child custody and access (7th March, 2005).

- **'Custody'** comprises the bundle of rights that parents have over their children. This includes the right to 'care and control' and the right to make all important decisions affecting the child, such as decisions regarding his education, religion and medical treatment. –
“parental responsibilities – How to share parenting?”
- **On Joint Custody:** ‘Such order symbolizes divorced or separated parents playing a joint role in the upbringing of the child and neither is excluded.’ – “How to co-parent effectively?”
- **'Access'** is the right to have contact with the child, such as through letters, e-mails, telephone calls, visiting the child, taking him out or having him to stay from time to time.’ - “child's right to have contact with both parents - How to share time with the child?”
- **'no order'** principle when both parties consent to no order would be in the best interest of the child

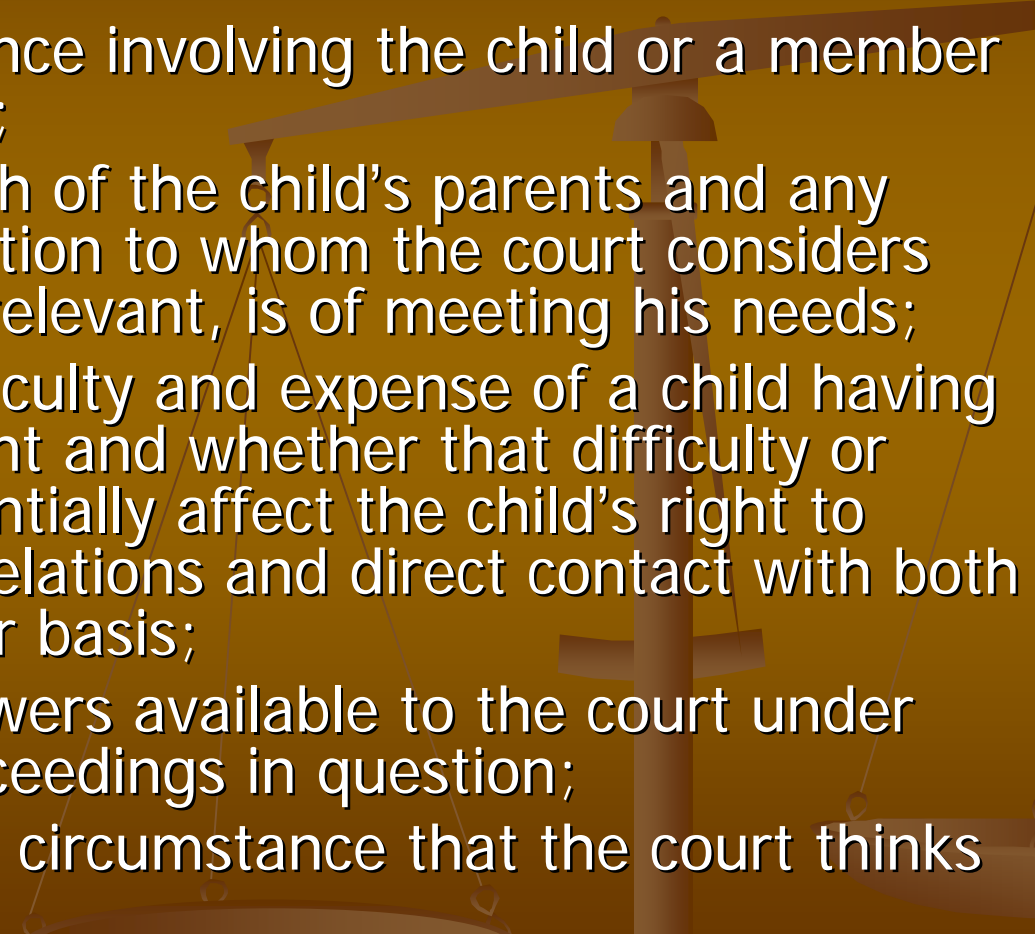
Factors to be taken into consideration when discussing child issues

- Role of 3rd party caregiver – grandparents
 - Natural parent vs. 3rd party – custody to mother who can come to HK by two-way visa
 - Non-working parent vs. working parent
 - Status quo
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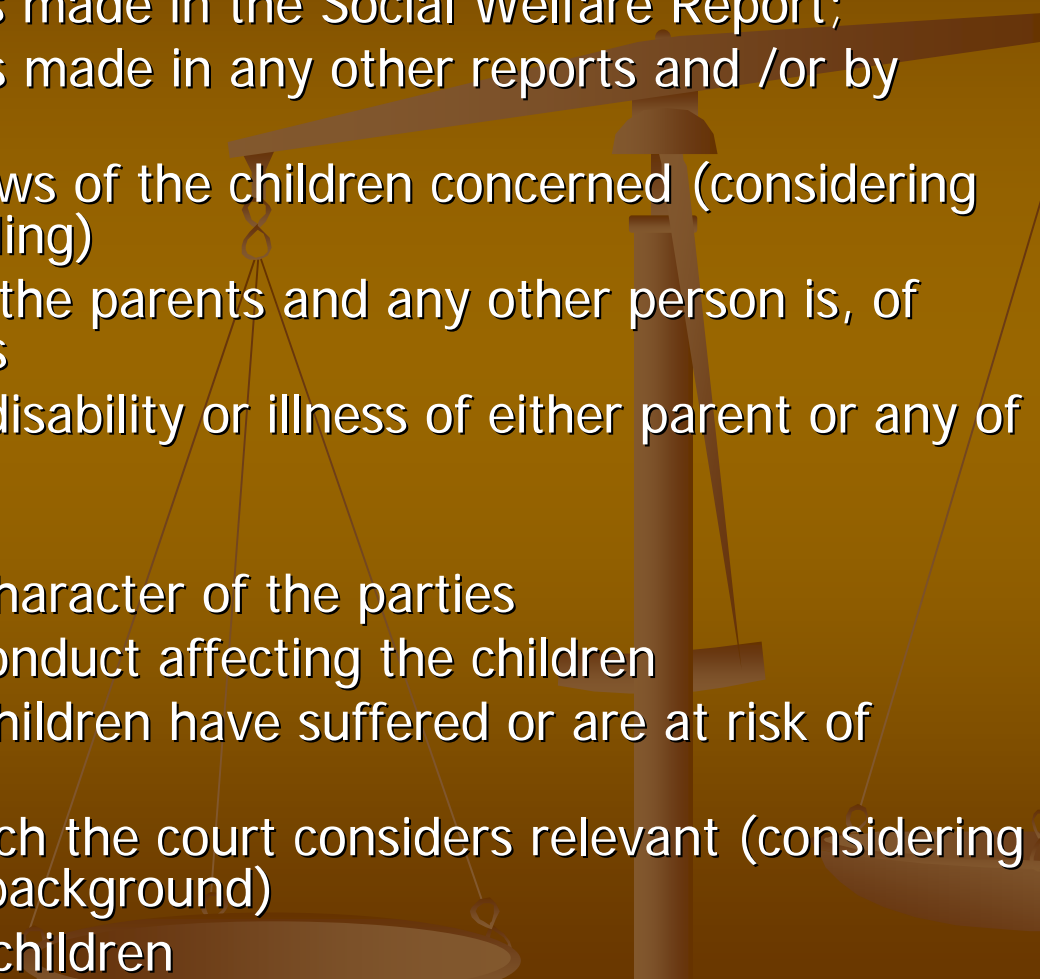
General Principles and Guidelines

- Best Interests vs. Welfare
- Check list of factors based on s. 1(3) of the English Act 1989 and s. 68F(2) of the Family Law Act 1975 in Australia:
 - (a) the ascertainable wishes and feelings of the child considered in the light of his age and understanding;
 - (b) the child's physical, emotional and educational needs;
 - (c) the nature of the relationship of the child with each of the child's parents and with other persons;
 - (d) the likely effect on the child of any change in the child's circumstances;
 - (e) the child's age, maturity, sex, social and cultural background and any other characteristics which the court considers relevant;
 - (f) the attitude to the child, and to the responsibilities of parenthood, demonstrated by each of the child's parents;

General Principles and Guidelines (cont.)

- (g) any harm which the child has suffered or is at risk of suffering;
 - (h) any family violence involving the child or a member of the child's family;
 - (i) how capable each of the child's parents and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs;
 - (j) the practical difficulty and expense of a child having contact with a parent and whether that difficulty or expense will substantially affect the child's right to maintain personal relations and direct contact with both parents on a regular basis;
 - (k) the range of powers available to the court under this Ord. in the proceedings in question;
 - (l) any other fact or circumstance that the court thinks is relevant.
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Checklist in the English Children Act 1989.

- (a) the recommendations made in the Social Welfare Report;
 - (b) the recommendations made in any other reports and /or by other experts
 - (c) the ascertainable views of the children concerned (considering their age and understanding)
 - (d) how capable each of the parents and any other person is, of meeting the child's needs
 - (e) any physical/mental disability or illness of either parent or any of the children
 - (f) sibling unity
 - (g) the personality and character of the parties
 - (i) any matrimonial misconduct affecting the children
 - (j) any harm which the children have suffered or are at risk of suffering
 - (k) any other factors which the court considers relevant (considering the child's age, sex and background)
 - (l) the status quo of the children
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Benjamin & Irving (Conflict Resolution Quarterly, 2005)

- Mediatable 'parental frames' to define the problem in mediating a parenting plan - parents' common interest : best interest of the child
- - shared responsibility for parents
- - parents are the executive directors
- - family boundaries rules apply to both parents' households
- - shifting between spousal to parental roles
- - sharing of facts, feelings, thoughts & needs
- - getting the message across – parenting coordinator/child expert with authority from court

Parenting Plan

- Shared Parenting Agreement
- Residence
- Holidays and School Vacations
- Major Decisions- education, religion & medical
- Maintaining Activities
- Attendance at Important Events
- Communication
- Modifying the Parental Agreement
- Moving

