



Sentencing in Hong Kong, I Grenville Cross, SC, and Patrick WS Cheung, (in collaboration with Elaine YL Tsui) [Hong Kong: LexisNexis Butterworths, 2007, 657pp, hardback, HK\$1800, US\$230] ISBN 978 962 8937 65 3

Sentencing in Hong Kong is now in its 5th edition. It remains an invaluable tool for practitioners working in the area of criminal law and for law students seeking to understand this most fundamental of skills. The book has become a classic in legal circles, explaining and illustrating the art of sentencing in a clear and concise manner. The authors, I Grenville Cross, SC, The Director of Public Prosecutions for Hong Kong and Patrick WS Cheung, Deputy Principal Government Counsel, are responsible for this excellent work which they have developed from a first edition in 1994, comprising 198 pages, to the 646 page tome it represents today. Those of us who work in crime are very grateful for their efforts.

The 5th edition continues to reference not only Hong Kong judgments but, also where appropriate, decisions of Australian, Canadian and UK courts. This useful practice ensures principles from outside Hong Kong which can be considered instructive can also be considered by the practitioner preparing his case.

The current edition of the book has added domestic violence, fraud, pick pocketing and triad activity to the list of aggravating factors taken into account by a court in determining the seriousness of an offence and the calculation of a sentence.

Domestic violence in our community has attracted a large share of media attention and public outcry in recent months, and the authors' reference to recent decisions from Australia and Hong Kong highlights the likelihood that offenders will receive both specific and generally deterrent sentences.

The aggravating factors identifiable in cases of fraud are described with reference to recent Hong Kong cases. Whilst common sense would generally indicate the likely factors which would aggravate a fraud sentence, it is useful to have guidance cases cited by the authors for a practitioner to refer to on a plea.

The guideline tariff for pick pocketing is provided along with a useful list of aggravating features. The case law cited underscores the Court of Appeal's insistence that repeat offending is a relevant and important aggravating feature in sentencing.

The 5th edition also expands the list of mitigating factors which might be used by the defence practitioner to argue for a lesser sentence. The list now also addresses addiction, age of offence, claustrophobia, media coverage, mercy, mistaken belief in the nature of drugs, profit of crime and voluntary repayment.

Whilst the Hong Kong appellate courts have not commented on whether addiction motivation should be viewed as a mitigating feature of an offence the authors have provided an English authority which suggests any practitioner relying on a client's addiction to try to minimize his sentence would be better to think twice.

The authors clarify that the previous sentencing climate which existed at the time of an offence, which has been slow to come to prosecution, should be used to determine the appropriate penalty. Where however, such reconstruction is not possible the authors provide authority for current guidelines to be used.

Whilst claustrophobia has been argued as a mitigating feature in Australia the authors note it has yet to feature in the Hong Kong plea in mitigation. The authors do however, consider other pre existing conditions which may legitimately effect sentencing under the category of ill health. Where ill health is brought on by extensive media coverage of the offender's case the authors suggest that the detrimental effects of adverse publicity should not cancel out the use of appropriate punishment.

Whilst an adjustment to sentence on mercy grounds is uncommon, the authors cite examples of cases from Australia, UK and Hong Kong, where acts of mercy have reduced sentences.

Mistake as to the nature of the offending drug is regarded in Hong Kong as a mitigating factor but the authors note that where the Court is convinced the mistake was genuine the offender should only receive a reduction from the correct tariff, he will not be entitled to be sentenced on the basis that the drugs were, in fact, what he mistakenly believed them to be.

Clearly where voluntary repayment of otherwise unrecoverable proceeds is made by the offender the authors note the usual one third discount on a plea of guilty may be increased.

For those in practice it is usually the Appendix to the book which is of most assistance. The Appendix provides the key tariffs for most criminal acts in Hong Kong and in the 5th edition the list of offences has been substantially expanded. The list now includes assaulting/resisting a police officer, conspiracy to defraud, construction site safety, counterfeiting notes and coins, criminal damage, false imprisonment and social welfare fraud.

In addition whilst the Court of Appeal has yet to provide appellate guidance on the appropriate tariff for child pornography the authors usefully note the guidance provided by English cases.

In recent years those prosecuted for running illegal medical practices have been ordered to serve terms of imprisonment and 5th edition provides tariff guidance for the offences of managing an unregistered clinic,

possession of part 1 poisons and practising medicine or surgery without registration.

The 5th edition of the book was published before the Court of Appeal handed down the judgment de-linking the tariff for trafficking in ketamine from ecstasy (*SJ v Hii Siew Cheng*, AR 7/2006, June 6 2008) but the authors noted the impending change and provided a caveat to practitioners.

As far as criticisms go, the chapters are alphabetically listed which might prove troublesome for a reader with little experience in criminal practice but the method has been used in all previous editions and has become as much a feature of the book as the series of apt quotations which appear under the title of each chapter. Further, despite the number of chapters (50 in total) there is very little overlap in subject matter and the authors have continued to deal with each topic in a succinct but sufficient manner.

Various sentencing dispositions such as community service orders, probation orders, discharge orders, hospital orders and suspended sentences are described in detail with reference to the critical principles of sentencing which can be drawn from recent examples of each. The options for detention of young offenders; detention centre, rehabilitation centre, training centre and reform school are carefully detailed, allowing the practitioner to determine the best option for his client and tailor his plea accordingly.

General principles of sentencing such as the relevance of a clear record, concurrent and consecutive sentencing, disparity in sentence and totality are all addressed in the comprehensive manner to be expected from authors and practitioners of this experience.

The ancillary orders, which play an increasingly important role in modern sentencing are also addressed and defined. Orders for compensation, forfeiture, criminal bankruptcy, and restitution are considered and practitioners dealing with cases involving property should regard these chapters as essential reading.

The 5th edition of *Sentencing* is as impressive as ever. It provides a comprehensive overview of sentencing practice in Hong Kong and remains an essential cornerstone of every criminal practitioner's library.

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