



## C7 Legitimacy and Legitimation

Family Law (Universiti Malaya)

## C7: LEGITIMACY & LEGITIMATION

scope:

*Legitimacy:*

- [1] common law
- [2] EA 1950 S.112
- [3] void/voidable

*Legitimation:*

- [1] Legitimacy Act 1961
- [2] Adoption Act 1951
- [3] LRA 1976

### Legitimacy

#### 1. Common Law

- a) conceived and born **during valid marriage** (lawful wedlock)
- b) **conceived before** valid marriage, **born during** marriage
- c) conceived **during valid marriage** but born within reasonable time period after parents **separated**, or **father died**

#### 2. Evidence Act 1950

S.112 EA: Presumption of legitimacy.

Legitimate if -

- 1-- born **during valid marriage**, or
- 2-- within **280 days** after dissolution of marriage & **mother remains unmarried**,

**unless** (rebuttable):

- 3-- parties to the marriage have **no access** to each other at any time when the child could have been begotten.

*how to prove:*

- i. Parties **physically separated**  
e.g. abroad, stay apart from spouse for employment etc
- ii. Husband **impotent/incapacitated**

#### *Ah Chuck v Needham*

- Mrs Hedges gave birth to a child whose features do not reflect those of his parents. His parents are Caucasian, but he has Mongoloid features. Ah Chuck, a market gardener frequently visited the house when Mr Hedges is absent.
- court:
  - Since husband and wife living together and child born during subsistence of marriage, **legitimate**. Presumption *cannot be rebutted*.
  - No proof that husband and wife did not have intercourse at period of conception. Even *if* wife committed adultery, **husband must be deemed to be father of child**.
  - Proof that it was a natural impossibility:  
[1] separated by distance/ [2] impotent/incapacity on husband

#### *Ainan bin Mahmud v Syed Abu Bakar bin Habib Yusoff*

- Child born 6 months after solemnisation of marriage.
- court:
  - Evidence Ordinance (EA 1950) is statute of general application, applicable to all inhabitants of FMS.
  - Since child born during continuance of valid marriage, presumption of legitimacy applies
- Critics:
  - Legitimacy matters for Muslims are governed by **state enactments/legislative assemblies**: EA *should not* apply when there are statutes e.g. S.110 to 119 Islamic Family Law (Federal Territory) Act 1984
  - Presumption of legitimacy is substantive and *not* procedural law

### 3. Void/voidable marriages

a) void

\*CL position: **illegitimate** (*void ab initio*)

S.75(2) LRA:

Child of void marriage shall be treated as legitimate child of parent if at the **time of solemnisation of marriage**, both or either parties **reasonably believed** the marriage is valid

*only applies if*

S.75(3) LRA:

a) Father **domiciles in Malaysia** at time of marriage

b) voidable

\*CL position: **legitimate until decree of nullity** (with annulment of marriage, marriage = void from the date of marriage is solemnised - ***Dredge v Dredge***).

S.75(1) LRA:

Any child of that annulled marriage will be deemed legitimate.

*when does it applies?*  
when a child is born  
before biological parents get married.

### **Legitimation**

#### 1. Legitimacy Act 1961

S.2(1) LA prescribed date

#### **S.4 LA: Legitimation by subsequent marriage of parents**

prove:

- 1-- father **domiciled in Malaysia** at date of marriage
- 2-- subject to S.3: Marriage **solemnised** under S.3 LA 1961

\*reference can be made to **S.35(2) of Interpretation Act 1967**:

“when a written law has been repealed/made law again, reference in (any other written law to the repealed law) will be read as (reference to the new law).”

deemed to refer to **LRA 1976**

S.3 LA 1961

### **S.5 LA Declarations of legitimacy of legitimated persons**

S.5(1):

- 1-- A person **may petition** to HC for a decree declaring that petitioner is a legitimate child of the parent *or* that his parent/remoter ancestor was legitimate.
- 2-- HC have **jurisdiction** to hear and determine decree declaratory of legitimacy.
- 3-- Decree is **binding** to all intents and purposes.

S.5(2): affidavit

S.5(3): Courts full power to award costs.

S.5(4): A copy of petition & affidavit must be delivered to AG *not less than* one month before filing.

S.5(5): cited/summoned & permitted to become parties and oppose application.

S.5(6): prejudice

### **S.6 LA Rights of legitimate persons to take interest in property**

S.6(1): A legitimated person & spouse, children/ more remoter issue entitled to take interest *as if* born legitimate...

- (a) in estate of an intestate dying after date of legitimation.
- (b) under any disposition coming into operation after date of legitimation.

S.6(2): rank *as if* he is born on legitimised date, and between themselves

### **S.7 LA Succession on intestacy of legitimated persons and their issue**

When a legitimated person/his child/remoter issue **dies intestate**, the same persons entitled to take same interest *as if* legitimated person born legitimate.

### **S.8 LA Application to illegitimate person dying before marriage of parents**

If illegitimate person dies before marriage of parents leaving spouse/child/remoter issue living, **interest of property, succession** will apply *as if* legitimated.

\*date of parents' marriage = date of legitimation

### **S.9 LA Personal rights and obligations of legitimated persons**

A legitimated person has same rights and obligations on **maintenance** and support of himself/another person *as if* he is born legitimate.

### **S.10 LA Persons legitimated by extraneous law**

S.10(1):

- 1-- Father's domicile **not Malaysia**. The country must **allow** legitimation by subsequent marriage.
- 2-- Child legitimated: from prescribed date/date of marriage (*if living*)

S.10(2): property

### **S.11 LA Right of illegitimate child and mother of illegitimate child to succeed on intestacy of the other**

S.11(1): mother of illegitimate child dies **intestate**, does **not leave legitimate issue**, illegitimate child can take *as if* he is born legitimate

S.11(2): illegitimate child dies **intestate**, his mother entitled *as if* the child is legitimate and as sole parent.

## **2. Adoption Act 1952**

### **S.9 Effect of Adoption order**

- 1-- Upon order, all right, duties, obligations, and liabilities of parents/guardians (in maintenance, education...) distinguished.
- 2-- Such rights enforceable against adopter *as if* adopted child born to adopter in lawful wedlock.  
\*from date of adoption order

## **3. Law Reform (Marriage and Divorce) Act 1976**

**S.75(1)** voidable: legitimate

**S.75(2)** void: legitimate (2 conditions)