

- **Introduction.**

- The statute that will govern non-Muslim marriage in Malaysia is Law Reform (Marriage & Divorce) Act 1970.
- Gazetted in 1976 but coming into force on 1st of March 1982.
- Before the LRA, spouses are not obliged to register their marriage. But since there were so many issues with this, the act was passed.
- The act provides for monogamous marriages and the solemnization and registration of such marriages and related matters (divorce, custody, etc..)

- **Important Section in LRA 1976.**

- 1) Section 3(1): Application of the act.
- 2) Section 3(3): Doesn't applies to Muslim
- 3) Section 3(4): Doesn't apply to native of Sabah, Sarawak, and aboriginal people in Peninsular (unless they choose to marry under LRA) (Refer cases below)

- **Nancy Kual v Ho Than On:**

- Facts: The plaintiff sought a declaration that she was the legal wife of the defendant and that the native customary marriage entered into between them on 24 June 1990 was valid at law. The plaintiff was a Kadazan Tatana and a native of Sabah whilst the defendant was born a Chinese. On 5 May 1990, both P and D went to a tea ceremony to celebrate their marriage according to Chinese custom. P and D were cohabited as husband and wife. On 24 June 1990, they went to another celebration according to Kadazan Tatana customs at the P's father residence. During this celebration, P and D served rice wine to the chief of Kuala Penyu (witness of marriage) and continued to cohabit until they encountered problems in their marriage. The marriage was not registered under LRA.
- Judgment: Although Section 5(3) allows marriage under any law, religions, customs or usage after the appointed date, that marriage must be solemnized as provided in Part III of LRA. It means, if a Chinese customary marriage is to be solemnized after 1 March 1982, the parties must fulfill requirements set under Part III of LRA then they can have the tea ceremony, or vice versa (buat tea ceremony dulu baru fulfill requirement). Dalam kata lain, the most important celebration that gives rise to a valid marriage, is the one set under Section 23, not the tea ceremony.
- The judge in Nancy's case also referred to Section 3(4) and was questioned whether the fact that the D was not a native is material or not. He said it was not material because as long as one of the parties in marriage was a native, it is considered as a valid marriage under that particular custom. Moreover, the judge found support from Native Courts Ordinance and Native Courts Enactment where the native court has jurisdiction even if only one party of marriage is a native.

→ The judge further held and concluded that even though the defendant was not a native but the plaintiff was, the marriage should be recognized as valid under Kadazan Tatana custom and therefore valid according to Section 3(4) of LRA.

- **Marriage Before Law Reform (Marriage & Divorce) Act 1976.**

- 1) Statutory Marriages.

- Peninsular Malaysia:

- Civil Marriage Ordinance 1952.

- Christian Marriage Ordinance 1956.

- Sarawak:

- Church and Civil Marriage Ordinance of Sarawak.

- Sabah:

- Christian Marriage Ordinance 1953.

- The Marriage Ordinance 1959.

- 2) Customary Marriages.

- Chinese Marriage:

- Chinese marriage can be proved when parties have been cohabited for a long time and continuous. Also, when there is an intention for a fixed marriage.

- **Dorothy Yee Yeng Nam v Lee Fah Kooi:**

- Principle: The courts in effect had given judicial recognition to certain customs prevalent and thought to be prevalent among persons of Chinese race irrespective of their domicile or religion. They have set up a sort of common law affecting Chinese race and the case is the same in those portions of the former Federated Malay States.

- **Re Lee Siew Kow:**

- Principle: The ingredients of a valid Chinese customary marriage was a marriage based on mutual consent. The requirement of ceremony, contract, and repute of marriage were only evidentiary and not essential for the validity of marriage.

- **Yeap Leong Huat v Yeap Leong Soon: TAK FAHAM SGT NNTI TANYA DR**

- Facts: The Supreme Court had to decide whether the two plaintiffs were the children of Datuk Yeap Hock Hoe and Hooi Sooi Wan, his principal wife. If so, they are entitled to the share in the $\frac{1}{2}$ part of the income of the estate of their deceased grandfather. The grandfather had stated in his will that 'male' means any children of Datok Yeap, or male children born whether in his lifetime or after his deceased with his wife Kim Lian or his principal wife. Kim Lian argued that she became the principal wife after the death of Datuk Yeap principal wife, Kum Chee. Kum Chee and Datuk Yeap lived together at the grandfather's house until Kum Chee's death but Kim Lian never lived at the grandfather's house. After

Kum Chee's death, Datuk Yeap married Kum Chee's sister, Hooi Sooi Wan in 1951. The marriage was done according to Chinese rites and customs. The bride was given a signed certificate of marriage and Kim Lian also received it and was involved in the ceremony.

- Judgment: Held that the plaintiffs were the children of Datuk Yeap and Hooi Sooi Wan for three reasons and entitled to the share of estate. First, it was not unusual for a Chinese man to marry the younger sister of his deceased wife because after a man's wife died, his new wife is called 'Tien Fang' (to fill the room). Kim Lian was considered to remain as the secondary wife, not principal wife. Second, the residence was not critical or not important when establishing a principal wife. Third, if the parents agreed for a son and his principal wife could live outside the house, there was no evidence that the grandfather had agreed to the agreement because Datuk yeap continues to live at his parent's home.

→ **Cheang Thye Pin v Tan Ah Loy:**

- Principle: Although some sort of ceremony was usual when a secondary wife was taken, proof of the performance of a ceremony was not essential to establish the relationship.

→ **Er Gek Chong v Ho Ying Seng:**

- Principle: Held that principles applicable to secondary wives were applicable to the principal wife as well.

→ **Re Lee Gee Chong v Tan Lian Cheow:**

- Principle: The evidence tendered by the respondents in respect of the requirement to fulfill vital elements of Chinese marriage such as tea ceremony and burning of joss sticks as a blessing to the bridegroom's ancestors are only ceremonies to evidence intention of parties to be married. Besides these, intention can be implied or expressed in a clearer form such as formal contract in writing.

- Hindu Marriages:

→ **Nagapushani v Nesaratnam:**

- Facts: The issue of a lawful Hindu marriage between the plaintiff and the first defendant. The plaintiff claimed that she married the first D on 30 April 1942 according to Hindu rites. The priest who performed the ceremony could not be located but P described the ceremony in detail. She also produced a 'thali' (golden chain) which she claimed that the first D had tied around her neck during the wedding ceremony as a symbol of marriage. Evidence was also adduced to indicate repute of marriage between the parties.
- Judgment: Held that based on the evidence, P and first D had gone through a ceremony of marriage in 1942 according to Hindu rites, cohabited for years and enjoyed the reputation of husband and wife.

→ **Parameswari v Ayadurai:**

- Facts: The petitioner had to prove that she and the respondent were parties to a valid and binding monogamous marriage. Evidence was given by the priest who performed the marriage ceremony between the petitioner and the respondent. Also, an expert witness had also given expert evidence on the traditional features of a marriage between Ceylon Tamil Hindus and had given his opinion on what were the essential parts of such a ceremony.
- Judgment: The judge was satisfied that the essential parts of such a ceremony were present and performed by the priest including the testification by the expert witness about the monogamous marriage and held the marriage was valid and binding on the parties.

→ **Ramasamy v PP:**

- Principle: Cussen J agreed that in criminal cases such as these, the marriage must be strictly proved. In determining the sufficiency of evidence, 2 matters must be satisfied, namely, what the actual ceremony was and whether it constitutes a valid marriage. The judge in this case was satisfied that there was a valid marriage.

3) Common Law Marriages.

- **Hyde v Hyde:**

- Principle: Marriage under the common law was described as the voluntary union between a man and a woman for life to the exclusion of all others.
- In Malaysia, common law marriages refer to two persons cohabiting for a long period accompanied by the reputation and presumption of marriage, although the initial ceremony was not complete and defective. (sometimes no ceremony at all).

- **Carolis De Silva v Tim Kim:**

- Facts: Carolis and the respondent, together with some friends, had gone to a Chinese temple, where they burned the joss sticks and candles. They worshiped and announced that they will be a husband and wife. After that they threw a feast for their friends.
- Judgment: The court accepted the marriage as valid even though the ceremony of marriage wasn't according to any customs and wasn't perfectly done as long there is a presumption of contract of marriage by the evidence of cohabitation and repute of matrimony.

- **Tan Soo Eng v Isaac Penhas:**

- Issue: Regarding mixed marriage between inhabitants of different religious beliefs or races could validly be contracted in Singapore. The issue was whether a marriage celebrated in Singapore between a Jew and a non-Christian Chinese in a modified form constituted a valid marriage according to the law in Singapore.

- Facts: The deceased and the respondent were Singapore residents. They had undergone a marriage ceremony where the respondent had worshiped with joss sticks and the deceased had placed a handkerchief over his head when he and the respondent stood before an old Chinese man who solemnized the marriage. After that, both of them served tea to the respondent's mother according to Chinese custom. They can't marry in a synagogue (rumah ibadat) because non-Jews were not allowed to enter it so the marriage was held at the respondent's house. There were two children from the marriage and the respondent was introduced by the deceased to the pastor in a church as his wife. Their second child was baptized by the same pastor.
- Judgment: Held that although there was no form of a ceremony, they have adopted a composite ceremony when the wife worshiped according to her custom and the deceased according to the Jewish custom. Therefore, such a form of ceremony was intended by the parties to constitute a valid marriage. Moreover, there are several other reasons, namely, the wishes expressed by the respondent and her mother for a church marriage, the modified Chinese ceremony, the presence of Jewish friends at the ceremony, the words spoken by Chinese old man who performed the ceremony, the cohabitation as a man and wife until the deceased death, and the introduction by the deceased to the christian pastor including the baptism of their children as christians with approval of their father indicate that the spouses intended to contract a common law monogamous marriage. The judge was satisfied that there was a common law monogamous marriage.

- **Current Position for Marriage in Malaysia for Non-Muslim.**

- **Section 4 of LRA:**

- S4(1) - Any marriage done before the appointed date which was 1st of March 1982, and was done accordingly under any law, religion, custom or usage, will be deemed as valid.
- S4(2) - Such marriage that was done under any law, religion, custom or usage, before the date, will be deemed as registered under LRA.
- S4(3) - Such marriage will be continued until dissolved under 3 circumstances such as death of one of the parties, by order of court with competent jurisdiction, and by a decree of nullity by court with competent jurisdiction.

- **Section 5 of LRA**

- **Section 6 of LRA**

- **Condition to Marry Under LRA.**

- 1) Age: **Section 10 of LRA.**

- For male, Must be 18 years of age.
- For female must also be 18 years of age but if she wants to marry at the age of at least 16, she must get a license from the Chief Minister as per Section 21(2).

2) Prohibited Relationship: **Section 11 of LRA.**

- In general, parties that want to marry must not marry their **grandparent, parent, child or grandchild, sister or brother, great-aunt or great-uncle, aunt or uncle, niece or nephew, and great-niece or great-nephew.**
- However, there are exceptions for **Hindu** where a man can marry his sister's daughter (niece) or her mother's brother (uncle).
- Only bapa saudara kahwin dengan anak sedara perempuan je la yang boleh and must only the maternal line not paternal line.
- Example: Kavi and Pravina ada anak nama Yash. Kavi ada abang nama Thiva and Pravina pon ada abang nama Vashan. So, mengikut maternal line (belah ibu), Yash sebagai anak saudara perempuan hanya boleh kawin dengan Vashan je which is her uncle belah mak tak boleh dengan Thiva sebab Thiva ni uncle belah bapa (paternal line).
- **S11(2)(3):** A man or a female can't marry his or her former spouse's grandparent or parent, and grandchild or child even if they have already separated.
- **S11(4):** A man and a woman also can't marry their adopted parents or children.
- **S11(6):** Chief Minister can use his discretion to grant a license for a marriage that involves such mentioned prohibited relationship, if he is satisfied that such marriage is allowed under such custom or religion and if it is allowed, the marriage will be valid.

3) Consent: **Section 12 of LRA.**

- **S12(1):** For person below 21 years of age, must get consent in writing to marry from several parties such as:
 - Father or mother for a legitimate person.
 - Mother for an illegitimate person.
 - Adopted father or adopted mother for adopted person.
 - Guardian of the person if his or her parent (natural or adopted) has died.
- If already at 21 years of age, no consent needed.
- **S12(2):** If those mentioned parties didn't want to give consent without reasonable excuses, or maybe those parties are already dead, or it is impracticable to obtain permission, the court will grant the consent and the consent will have the same effect as if those parties are giving it.
- **S12(5):** If the person who is minor and below 21 has previously married, he or she no need to get consent anymore from anyone if he or she wants to marry again.

4) Must Be A Male and A Female Only: **Section 69(d) of LRA.**

- A marriage after the appointed date shall be void if the parties are not respectively male and female.
- The gender must be determined at the time of birth, not the time when he or she changed his or her gender by operation and so on.

- **Corbett v Corbett:**

- Facts: A man has changed his gender into a woman and married another man without telling him the truth. When the husband knew about the truth, he brought an action to annul their marriage because his wife was of a male sex previously.
- Judgment: Held the respondent was not a woman for the purposes of marriage but was a biological male and had been so since birth. The marriage was held to be void.

5) Consent for Solemnization of Marriage: **Section 22(6) of LRA.**

- Both parties must not be forced to marry.

● **Solemnization of Marriage (Where?).**

1) **S22(1)(a)** At the office of a Registrar.

- **Section 14:** Parties to marriage must sign and serve a 7 days notice in prescribed form to the Registrar of marriage district where the parties have been resident for the last 7 days.
- **Section 16:** Must have notice of consent known as a written declaration which contain of saying that the parties were resident in the district for the last 7 days, the parties were a major or minor, there is no lawful impediment and neither of the parties were married to another person under any law religion or custom.
- **Section 15:** The notice will be published at a place visible to the public at the Registrar office until he grants certificate (S17) or after 3 months.
- **Section 17:** After the Registrar is satisfied with the requirement of declaration given under S16, he must grant the certificate of marriage within 21 days after the publication of notice as per S15.
- **Section 18:** After the publication of notice, the parties must get married within 6 months or else, the notice will be void.
- **Section 19/20:** Caveat can be filed if there is issue with the intended marriage.

- **Section 22(4):** Every marriage solemnized in Malaysia must have the certificate issued by the Registrar or Chief Minister or statutory declaration and has been delivered to the Registrar or Assistant Registrar, or else, it shall be void.
- **Section 22(5):** Solemnized the marriage in front of at least 2 credible witnesses besides the Registrar at the office.
- **Section 23:** The actual solemnization procedure of marriage at the office.
- **Section 25:** After solemnization, the Registrar must enter the prescribed particular into the marriage register, and the parties will sign, including the witnesses will also sign and then signed by the Registrar.

2) **S22(1)(b)** At any place other than the office of the Registrar.

- **Section 21(1):** Parties must submit the statutory declaration (SD) to the Chief Minister containing that no lawful impediment and consent as per S12. If the CM is satisfied with the SD, he can just use the SD without the notice and certificate from parties, to grant the license to solemnize the marriage.
- **Section 21(2):** The CM may have discretion to grant license to authorize the solemnization if the female is under the age of 18 but has reached 16 years.
- **Section 21(3):** The CM will grant a license if he is satisfied to solemnize the marriage at a place other than the office of Registrar..
- **Section 21(4):** The CM will specify the place of solemnization other than the office of Registrar.
- **Section 21(5):** After getting the license, parties must solemnize the marriage within 1 month, or else the license will be revoked.
- **Section 23:** The actual solemnization procedure or marriage other than the office.
- **Section 25:** Make the registration. (Sama macam at the office of Registrar kt atas).

3) **S22(1)(c)** At any church, temple or any place permitted by religion or customs.

- **Section 24(1):** For marriage under religious law, any priest or clergyman in any temple or church, appointed by the Minister to act as Assistant Registrar to Marriage, must solemnize the marriage after they received the SD as per S22(3). Solemnize it according to the rites and ceremonies of the religion.
- **Section 24(2):** For marriage under customary law, any person that is appointed by the Minister to act as the AR of Marriage, must solemnize the marriage after he received the SD according to the custom or usage which the parties or either of them practices.
- **Section 24(4):** Tells us who the priest of temple and priest of church are.
- **Section 22(3)(a-c):** This is the requirement needed for SD if the parties are Hindu.

- **Section 22(3)(a-d):** The requirement needed for SD if the parties are Christian.
 - **Section 24(3):** AR will remind the parties of the monogamous element in marriage.
 - **Section 25:** Register the marriage. (Sama juga mcm step sebelum ni).
- 4) **Section 26: Solemnization in Malaysian Embassy in Other Countries. (Example: Malaysian Embassy in Russia).**
- **Section 28(4):** Any member of the diplomatic staff at the embassy will be the Registrar of Marriage.
 - **Section 26(1)(a-d):** The Registrar must be satisfied that:
 - ➔ a) Both or at least one of them are Malaysian
 - ➔ b) They must have the capacity to marry as per LRA
 - ➔ c) If one of the party is not domiciled in Malaysia, he or she must have capacity to marry under his or her country's act
 - ➔ d) Parties must then put one notice at the embassy and one notice at the district Registrar in Malaysia from where they come from to prevent caveat action by anyone.
 - **Section 26(2):** The procedure for solemnization and registration of marriage will be the same as how it is done in Malaysia except if the category falls under 26(1)(a and c).
 - The certificate of marriage will be granted by the Registrar who solemnized the marriage at the embassy.
- 5) **Section 104: Solemnization in Other Countries but Other than the Malaysian Embassy. (Example: In Russia but solemnized at the mosque etc..)**
- **Section 104(a):** The marriage is valid if it was contracted in a form required by the law of the country. (kena fulfill apa yg law negara tu dh tetapkan)
 - **Section 104(b):** The marriage is valid if each of the parties had the capacity to marry according to the country's law where they domicile.
 - **Section 104(c):** The marriage is valid if either of the parties is the citizen or domiciled in Malaysia, both parties had capacity to marry according to LRA. (means kena ada capacity like what LRA tetapkan jugak, bukan hanya ikot capacity yg negara tu tetapkan semata mata).

- **Registration of Marriage.**

- **Section 25:**

- **Section 27:** Any person who is a citizen of or resident abroad but a citizen of Malaysia or domiciled in Malaysia after the appointed date, they must register their marriage (wajib).
- **Section 31:** For those who married in another country but not at the Malaysian embassy, they must register their marriage within 6 months at the Malaysian Embassy Registrar.
- **Section 31(1A):** If the couple has already returned to Malaysia but still didn't register, upon their arrival in Malaysia, they must register their marriage within 6 months at the nearest Registrar office. (Means masih diberi lagi 6 bulan untuk daftar).
- **Section 31(1B):** To register the marriage, the parties must produce the certificate of marriage granted from the other country's registrar or if they don't have any, any type of proof (oral or picture) just to satisfy that they had undergone marriage.
- **Section 31(2):** If only 1 party can go to register, the Registrar may allow it only if there is a sufficient reason for the other party's absence and the Registrar will include the statement of reason of absence in the marriage register.
- **Section 31(4):** If the parties appeared late to register their marriage within the 6 months period, the marriage can still be registered by the Registrar, but only after the party paid the penalty as prescribed.
- **Section 35:** Omission to register the marriage will be liable to imprisonment for a term not exceeding 1 year or a fine not exceeding RM1,000 or both.
- **Section 4:** Stated that it is not material whether the marriage is registered or not, the marriage will still be deemed as valid. However, FC disagrees with this provision, so it is still important to register the marriage.
- **Section 33:** Voluntary registration for those who married prior/before 1/3/1982. Generally, they don't have to register if they don't want sebab this act belom come into force. But kalau nak, bole buat voluntary registration. If nak daftar, provide evidence of marriage. After the Registrar is satisfied, he will register it. Registrar will sign and then both parties will sign. If ada 1 party je, pon bole sign juga. For polygamy marriage prior to 1982, when they register, only the first wife will be recognized. Second, third, and fourth will be void under LRA.