



Division of property

Family Law (Universiti Malaya)

Division of Property

- Division of property acquired during the subsistence of a marriage between a man and a woman OR if property acquired prior to marriage, it has been substantially improved during such marriage

1. BEFORE LAW REFORM ACT 1982

Distribution of property before 1892 is regulated by **Sec 11 of Married Women Act**.

Application can be made to the court to determine to whom the title/possession of property belong

Chin Shak Len v Lin Fah

- ◇ In a purchase of an undivided interest land, the wife has provided RM 1,200 whereas the husband RM 400 – the wife says that she has the right to the land because she was told that she will be registered as the owner when she advanced that RM 1,200 to her husband – but the husband instead register himself as the owner
- ◇ The husband on the other hand claim that the money was given to him as a loan by the wife which he had since repaid – thus, she should have no interest in it

Held:	Where A and B advance money jointly to purchase a property and the purchase is made in the name of A only, this creates a trust in favour of B as to so much the money B had contributed Since the wife has contributed 75% of the payment, she is entitled to $\frac{3}{4}$ of the land
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Nagapushani v Nesaratnam

- ◇ D1 had transferred the disputed land to P wife – P then transferred back the land to D1 and D1 transferred the land to his mother D2
- ◇ The purchase of the land was actually funded by the money in the joint account of P and D1 – D1 was the one who open this account, deposited RM250 and subsequently various sums from time to time – P also had deposited her savings from the household allowance given by D1

Held :	Where a husband purchases/transfers a property in the name of his wife, it is presumed that such property will be a gift to the wife – can be rebutted by the words and actions of the parties made before, during and after the purchase/transfer When the land was given by D1 to P, it is presumed as a gift to her – but it was rebutted by the act of P transferring back to D1 Although the exact contribution of each party to the purchase of the land is uncertain due to the random deposits in the joint account by both parties, it would be equitable to divide the property into equal shares – thus P had half shares in that land and D1 is actually holding her interest in trust – P is entitled to half of the rent collected
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2. AFTER LAW REFORM ACT 1982

Distribution of matrimonial property upon divorce after 1982 is regulated by LRA. Few issues must be solved before the property may be disputed.

1. Whether both parties had obtained a decree of divorce/ judicial separation?
2. What amounts to matrimonial property?
3. Whether their matrimonial property is acquired by their joint effort or by sole effort of one party?

WHETHER BOTH PARTIES HAD OBTAINED A DECREE OF DIVORCE/ JUDICIAL SEPERATION

Manokaram Subramaniam v Ranjid Kaur Nata Singh

- ◇ An order for division of property upon divorce under s76(1) and (3) must be made during decree nisi (within 3 months) – no application for division of property may be made if the decree had become absolute

WHAT AMOUNTS TO MATRIMONIAL PROPERTY

Sec 76(5)	Assets acquired during a marriage includes assets owned before the marriage by one party which was later being substantially improved during the marriage by the other party or by their joint effort Matrimonial property = Asset acquired during marriage + Asset acquired before marriage but has been substantially improved during the marriage
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- Not all property belong to one party becomes matrimonial property – only those being substantially improved during the marriage becomes one
- If the property, let`s say the wife, was not substantially improved during the marriage or was improved by herself during the marriage, that property belongs solely to the wife and cannot be distributed in case of divorce (Married Woman Act 1957)

Lee Yu lan v Lim Thian Chye

- ◇ The husband bought a house which he himself pay for the monthly instalment. He later sold it and the wife claim a portion of the profit - reason being she had contributed to the matrimonial home by caring and rearing the children at home and taking care of the welfare of the home

Held	Court considered husband's debt and possibility of creditors pressing for payment for some of his liabilities. The wife is entitled to 1/3 of the purchase price
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Ching Seng Woah v Lim Shook Lin

- ◇ The house was purchased by the husband with his mother – the mother subsequently transfer her share to her son and this make the husband the sole owner
- ◇ The wife claim that she had contributed to the home by buying furniture and looking after house – the question is whether such actions of the wife falls under the meaning of ‘substantially improved’

Held :	The house owned by the husband is not a home – it was made a home when the wife bought furniture throughout their marriage, maintained and service
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	<p>it – the wife has ‘substantially improved’ the house</p> <p>It was shown that due to her maintenance and services, the value of the house is appreciated to a higher price – her effort should be acknowledged and thus she is entitled to 1/3 of the house</p>
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Wong Kim Fong v Teau Ah Kau

Held	<p>Shares are matrimonial assets. Division may be dependent upon the extent of the contribution made by each party. Wife was awarded 5 out of 17 lots shares</p>
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WHETHER THE MATRIMONIAL PROPERTY IS ACQUIRED BY THEIR JOINT EFFORT OR BY SOLE EFFORT OF ONE PARTY

Sec 76 of LRA provides 2 categories which are matrimonial property acquired by **joint effort** and by **sole effort of one party**

1. JOINT EFFORT

Sec 76(1)	<p>The court have power when granting a decree of judicial separation between the parties to order;</p> <ul style="list-style-type: none"> - Division of any assets acquired by them during the marriage - Division of assets from the proceeds of sale of any such assets
Sec 76(2)	<p>Factors the court taken into account when dividing the assets</p> <ul style="list-style-type: none"> a) The extent of contributions made by each party (money, property or work) towards the acquiring of the assets or payment for the benefit of the family b) Any debts owing by either party which were contracted for their joint benefit c) The needs of minor children of the marriage d) The duration of marriage

Yap Kim Swee v Leong Hung Yin

- ◇ Both parties contributed to the purchase of a matrimonial house and the house was registered in their names – it was undisputed that both parties holds half share each to the house
- ◇ The wife claims that apart from her half share, she is also entitled to the half share of her husband

Held	<p>To claim the half share of her husband, she need to prove that she had contributed towards the acquisition of that half share</p> <p>Court found that she had contributed her monthly salary into the joint account, lived together with the husband for 17 yrs and had been looking after the welfare of the family and home</p> <p>Thus, she was entitled to the 1/3 of the husband's half share</p>
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B Ravindran v Maliga

- ◇ Matrimonial home was jointly registered under the names of both the petitioner husband and the respondent's wife. The respondent applied, inter alia for the matrimonial home to be transferred to her as registered proprietor free for all encumbrances. She had contributed towards the initial payment of the home. In addition, she had surrendered her whole pay packer to the petitioner during the period she was working

Held	It is not appropriate to transfer the whole matrimonial home to the respondent. There could be a probability that if it is registered solely under her name, there would be nothing to stop her from selling it.
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Usha Rani b Sivanes Rajaratnam

- ◇ The petitioner wife sought a share inter alia in the clinic which was opened during the subsistence of her marriage with the respondent husband.
- ◇ She had contributed to the opening of the clinic, arranged for banking facilities and even stood as guarantor. About RM10,000 of their savings was used to open the clinic. The respondent had stopped contributing towards the household expenses during the initial years when the clinic was newly opened.

Held	The HC found that the petitioner had contributed financially and physically in the setting up of the clinic, thereby enabling the respondent to devote his energy to the running of the clinic. A lump sum of about one-third of the total earnings, less the amount of taxes to be paid, was awarded.
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2. SOLE EFFORT

Sec 76(1)	The court have power when granting a decree of judicial separation between the parties to order; <ul style="list-style-type: none">- Division of any assets acquired by them during the marriage- Division of assets from the proceeds of sale of any such assets
Sec 76(2)	Factors the court taken into account when dividing the assets <ul style="list-style-type: none">aa) the extent of contribution made by the other party who did not acquire the assets to the welfare of the family by looking after the home or caring for the familyb) Any debts owing by other either partyc) The needs of childrend) The duration of marriage

Chin Yook Woy v Loke Suat Choo

- ◇ Although the house was bought by the husband during the marriage, it was found that there has been a transfer of the house to the wife subsequent to the purchase to enable her to utilize her government housing loan – she has contributed to the title of the house and hence she is entitled to claim 1/2 share of the house

Lim Kuen Kuen v Hiew Kim Fook

- ◇ Issue whether the EPF contributios and gratuity payments are matrimonial assets

Held	Yes, they are assets acquired during the marriage by the sole effort of one party to the marriage
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N v C

- ◇ The petitioner wife and the respondent husband married in 1979. the house which they lived in from 1983 was purchased in 1979 and registered in the names of the resondent and his mother. His mother bought the house and placed his name as the owner of an undivided half share. Upon her death, his mother's share was transferred to him.
- ◇ His mother's share was not fall under sec 76(1) because it is a gift

Held	The petitioner be given half of the undivided half share of the house. It took consideration of one party's sacrifices and deprivation of benefit
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Lim Bee Cheng v Christopher Lee Joo Peng

Held	The court ruled that if the property in questions was acquired through sole efforts of the respondent, it is mandatory that a greater propotion should be given to him.
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Lee Yu Lan v Lim Thian Chye

- ◇ The husband bought a house which he himself pay for the monthly instalment – later sold it and the wife claim a portion of the profit – reason being she had contributed to the matrimonial home by caring and rearing the children at home and taking care of the welfare of the home

Held	The wife is entitled to 1/3 of the full purchase price
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HARTA SEPENCARIAN

Property acquired by the joint efforts of the parties during the marriage.

i.e: land, matrimonial homes

May also claims during the subsistence of a marriage

Roberts v Ummi Khaltom

- ◇ The plaintiff's husband raised RM 40 000 while she raised RM 1000 to the purchase of a house. The house is registered under the husband's name. Upon divorce, the wife claim to have equal share and never intended to make the house a gift for the defendant. It was only registered under the husband's name for convenience

Held	The property acquired by joint resources of the parties, therefore it was Harta Sepencarian
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Overseas Investments Pte Ltd v Anthony William O'Brien

- ◇ Widen the scope of a claim for Harta Sepencarian from only after a divorce upon the death of the party to include during the subsistence of marriage