

Topic 1: Introduction to Muslim Family Law in Singapore

For Part B module: Family Law Practice (inclusive of Muslim Law)
Ahmad Nizam Abbas

Contents

1. Introduction

2. Applicability of AMLA

3. Jurisdiction of Syariah Court

4. Jurisdictional Issues

01

Introduction

Textbook

Textbook reference for Lecture 1:

Chapter 1 – Introduction to Muslim Law

Chapter 2 – Jurisdiction of the Syariah

Court/Concurrent Jurisdiction with civil courts

Muslim Family Law in Singapore

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SAL ACADEMY
PUBLISHING

AMLA

- Administration of Muslim Law Act 1966 replaced the Muslims ordinance 1957
- Preamble to AMLA :-
“an Act to repeal and re-enact law relating to Muslims and to make provisions regulating Muslim religious affairs and to constitute a Council to advise on matters relating to the Muslim’.

AMLA

- Tabled in 1965.
- Enacted 1966.
- Came into force 1968.

AMLA:

- Provided for the creation for the creation Islamic Religious Council (**MUIS**),
- Established powers and scope of the **Syariah Court**
- Established powers and scope of the **ROMM (Registry of Muslim Marriages (Singapore))**.

What is Muslim Law in Singapore context ?

- Muslim family law in Singapore is based on:
 - Substantive provisions of AMLA and Malay custom which Syariah Court may consider for modifications
(e.g. section 111 AMLA - “no Muslim shall dispose of his property by will except in accordance with the provisions of and subject to the restrictions imposed by the school of Muslim Law professed by him”.
 - Fatwas issued by MUIS – sections 31 to 33 AMLA (A fatwa is an expert opinion or religious ruling issued by a religious expert called a mufti) .

Sources of Muslim Law

In formulating an opinion on Muslim Law, the religious experts follow a hierarchy of sources

Primary sources:

- a) The Quran
- b) Sunnah and Hadith (acts and sayings of Prophet Muhammad PBUH)

Secondary sources:

- a) Qiyas (analogical reasoning)
- b) Ijma (consensus)

Schools of Muslim Law (Madzhab)

Muslims across the world - 2 main sects

- Sunni – most Muslims in Singapore are Sunnis
- Shia – only one mosque in Singapore

Sunni – 4 main schools

- Shafii
- Maliki
- Hanafi
- Maliki

*Although the Shafi'i school of thought is the most predominant in Singapore, the Syariah Court is not bound by it and may apply other schools of thought depending on the relevant facts (CM v CN (2019) 7 SSAR 190 at [193] and Textbook at 1.71)

Singapore Syariah Court's view on the application of the various *Mazhab*

CQ v CR (CS, intervener) (2019) 7 SSAR 210 at [214], the Judge noted that “*Syariah Court is not directed to follow tenets of Shafi'i school of thought.*”

CM v CN (2019) 7 SSAR 190 at [193], the Judge noted that “*Muslim law allows for adoption of valid alternative views subject to the relevant facts.*”

In **BQ v BR (2016) 7 SSAR 36** at [45], the Judge noted that classical Muslim jurists (of the *Hanbali*, *Hanafi*, *Shafi'i* and *Maliki* schools of thought) had differing views on whether a woman who has been divorced by *triple talak* is entitled to *nafkah iddah*. In making their decision, the Judge took into account the differing views of the various schools of thought.

02

Applicability of AMLA

Administration of Muslim Law Act 1966 ("AMLA")

All laws in Singapore apply to all persons in Singapore unless where there are statutory exceptions

Areas of personal laws specifically and exclusively apply to Muslims -

- Marriage – (if married under Muslim Law)
- Divorce
- Inheritance

Applicability of Muslim Law in Singapore

- AMLA , see Section 2 definition of 'Muslim' person who professes the religion of Islam
- Sections 3(2), (2A), and (4) of the Women's Charter 1961. some exclusions
- Section 2 of the Intestate Succession Act 1967.
- Wills Act 1838

Specific exclusion

- All laws of the land are applicable to Muslims in Singapore unless there is specific exclusion of its application to Muslims (or those married under Muslim law)

*For the historical background as to the development of Muslim law in Singapore, you can refer to the Textbook at 1.77.

Civil (Personal/Family) Laws Applicable to Muslims

Even though Muslims are governed by a separate and distinct legal regime in personal/family matters, there are many areas of non-Muslim (civil) personal laws which apply to Muslims:

- **Women's Charter 1961** – except provisions covered in section 3 WC
- **Maintenance of Parents Act 1995**
- **Guardianship of Infants Act 1934** (with exceptions)
- **Adoption of Children Act 1939**
- **Probate & Administration Act 1934**
 - Where the deceased is Muslim, they must obtain an Inheritance Certificate issued by the SYC (s 115 AMLA). The Inheritance Certificate sets out the identities of the *faraid* (Muslim law of Inheritance) beneficiaries and their share entitlement.
- **Wills Act 1838** (with exceptions)

Examples of exclusion

Women's Charter applies to Muslims unless expressly excluded.

- Section 3(2) WC excludes:
 - Parts II to VI (marriages, rights and duties of husband and wife) and
 - Part X (divorce, nullity, financial issues and children's issues in matrimonial proceedings) to those married under Muslim law.
 - [sections 181 and 182 WC also do not apply to those married under Muslim law].
provisions on marriages solemnised before 1961
- Section 3(4) WC prohibits a Muslim couple from solemnizing or registering their marriage under WC.
one muslim and one non-muslim = marry under the WC
- Section 3(2A) WC, amended in 2016 - excludes application to Muslims on provision for incapacitated husband applying for maintenance from the wife.

Examples of exclusion

Adoption of Children Act applies to Muslims but note that:

With regard to inheritance

- An adopted child cannot be a *faraid* beneficiary of his adoptive parents' estate.
- Adoptive parents cannot be *faraid* beneficiary of adopted child's estate.

With regard to Muslim marriage

- At the solemnisation of the adopted daughter's marriage, the adoptive father cannot be her *wali* (bride's lawful guardian).

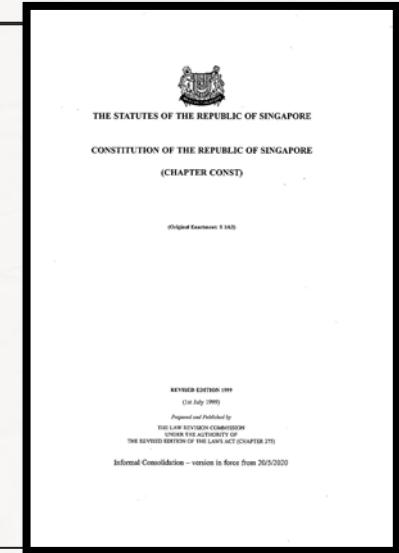


Examples of Exclusion

Legitimacy Act

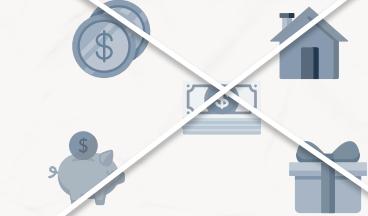
For Muslims:

- Illegitimate children cannot inherit father's estate.
- Illegitimate children can inherit mother's estate.
- Illegitimate child born in Singapore can acquire Singapore citizenship by birth only if mother or both parents are Singapore citizens: Singapore Constitution Art 121. (applies to both Muslims & non-Muslims)



Process of legitimation of child by marriage of child's parents - only where marriage is a non-Muslim marriage.

- Section 3 Legitimacy Act does not apply to Muslim parents married under Muslim law.



03

MOST IMPORTANT: S 35 (Jurisdiction) AND S 52 (Powers)

Jurisdiction:

1. Personal Jurisdiction
2. Territorial Jurisdiction
3. Subject-matter Jurisdiction
4. Concurrent Jurisdiction with Civil courts

Jurisdiction of Syariah Court

Jurisdiction and Scope

SYC is a creature of statute. It derives its jurisdiction and power from AMLA itself and any rules thereunder.

Section 35(2) AMLA states 'in which all the parties are Muslims or where the parties were married under the provisions of the Muslim law and which involve disputes relating to -'

- a) marriage;
- b) divorces known in the Muslim law as fasakh, cerai taklik, khuluk and talak;
- c) betrothal, nullity of marriage or judicial separation;
- d) the disposition or division of property on divorce or nullification of marriage; or
- e) the payment of emas kahwin, marriage expenses (hantaran belanja), maintenance and consolatory gifts or mutaah.

Common orders made by Syariah Court in a divorce case

1. Dissolution of marriage (confirmation of Talak)
2. Payment of Nafkah Iddah by Husband to Wife (maintenance of the wife during the 3-month period where she cannot remarry)
3. Payment of Mutaah by Husband to Wife (consolatory gift)
4. Custody, Care and control, and Access.
5. Division of Matrimonial Assets

Jurisdiction – over whom?

Section 35(3) AMLA – for actions/proceedings commenced on/after 22 October 2018, SYC has jurisdiction only if either party to the marriage is:

- a) Domiciled in Singapore; or
- b) Habitually resident in Singapore for at least 3 years prior.
- c) This shall be discussed in more detail later.

Types of Jurisdiction

- **Personal jurisdiction** over parties who are Muslims or who married under Muslim law
 - see section 35(2) AMLA
- **Subject-matter jurisdiction**, subject to certain limits
 - see section 35(2) AMLA
- **Territorial jurisdiction** throughout Singapore, subject to certain limits
 - see section 35(3) AMLA – domicile and habitual residence
- **Concurrent jurisdiction** with the High Court over certain issues
 - see section 17A Supreme Court of Judicature Act – maintenance, custody of children, disposition or division of property on divorce

Personal Jurisdiction

Jurisdiction of Syariah Court

Personal Jurisdiction

The Syariah Court only exercises personal jurisdiction over parties who are Muslims or who married under Muslim law.

There are several issues which have emerged from this, including:

1. How a person may be identified as Muslim (*who is a Muslim?*)
2. The requirements for a Muslim marriage (*what are the elements of a Muslim marriage and were they fulfilled?*)
3. For parties who may have undergone more than one marriage ceremony, whether a decree of divorce from either the Syariah Court or the Family Justice Courts can dissolve the marriage, so that the parties need not get a separate decree of divorce from different courts.

Personal Jurisdiction: (a) Religion of parties

In Singapore, both parties must be Muslim to solemnise and register a Muslim marriage (section 89 AMLA).

Court will have jurisdiction if the couple was both Muslim at the time of marriage, even if either become non-Muslim later

Conversion into Islam or renunciation from Islam can potentially raise jurisdictional issues.

- Section 126 AMLA provides for a mandatory registration of Muslim converts but does not provide for registration of renunciations.
- A plain reading of Section 35 AMLA suggests that even if one party has renounced Islam during marriage, SYC will continue to have jurisdiction if parties were found to be married under provisions of Muslim Law
- SYC will also have jurisdiction where parties first married under WC (because one of them was non-Muslim) and then later underwent solemnisation under Muslim rites upon the non-Muslim party's conversion to Islam
- If a Muslim entered into civil marriage with non-Muslim at ROM, the Family Justice Courts would have jurisdiction.

Personal Jurisdiction: (a) Religion of parties

If marriages were contracted overseas (especially in countries which have no formal requirements for registration of Muslim marriages):

- May be necessary for the Syariah Court to enquire into the capacity of the parties to enter into a Muslim marriage
- For example, whether they were both Muslim at the time of marriage) in order to determine whether the parties were in fact married under Muslim law

Personal Jurisdiction: (a) Religion of parties

Yeo Pei Chern (Yang Peizhen Freda) v Seow Zheng Xin, Isa (alias Mohammed Isa Abdullah)
(Appeal Case No. 23/2007):

- Parties had two marriage ceremonies in London and thus obtained two separate marriage certificates.
- In the first marriage certificate from the first marriage ceremony, the wife was stated to be a Christian.
- However, Husband claimed that at the second marriage ceremony solemnised by an Imam, the wife had converted to Islam; and that thus there was a valid Muslim marriage at the time of divorce proceedings.
- Wife claimed that she did not convert and that there was no valid Muslim marriage.

Personal Jurisdiction: (a) Religion of parties

Yeo Pei Chern (Yang Peizhen Freda) v Seow Zheng Xin, Isa (alias Mohammed Isa Abdullah)
(Appeal Case No. 23/2007):

- Syariah Court held that parties were validly married under Muslim law and that the SYC had jurisdiction to hear the divorce.
- On Appeal, the MUIS Appeal Board noted that they were “*gravely disturbed by the fact that the appellant had not appended her signature in the [conversion] certificate*, i.e., the space next to the words “Convert’s Signature” has been left blank” and considered this a strong indication that **she had not embraced Islam** at the time of marriage.
- The Appeal Board agreed with the wife that **there was no Muslim marriage** and held that the SYC thus had no jurisdiction. Consequently, the decree of divorce issued by the SYC was set aside.

Personal Jurisdiction: (b) Muslim marriage

- If the parties cannot establish that there is a valid subsisting Muslim marriage, there is nothing which allows the SYC to exercise its matrimonial jurisdiction, EVEN if both parties declare themselves to be Muslims at the time of commencement of the divorce proceedings.
 - If there had been no solemnization of a Muslim marriage, there is no Muslim marriage to dissolve.
- Suppose a Muslim and Non-Muslim first married under the Women's Charter, and then subsequently entered a valid Muslim marriage. If parties applied for divorce at the SYC and the SYC dissolved their marriage, would the parties also have to apply for divorce in the Family Justice Courts?
If it becomes a valid Muslim marriage, dissolving it at SYC is enough
 - See **Noor Azizan bte Colony (alias Noor Azizan bte Mohamed Noor) v Tan Lip Chin (alias Izak Tan)** [2006] 3 SLR(R) 707:
 - The effect of obtaining a Syariah Court divorce suffices to dissolve the marriage relationship between the parties without the need to also apply for a civil divorce.

Personal Jurisdiction: (b) Muslim marriage

Noor Azizan bte Colony (alias Noor Azizan bte Mohamed Noor) v Tan Lip Chin (alias Izak Tan) [2006] 3 SLR(R) 707 :

- Plaintiff wife (Muslim) married a non-Muslim man under the WC.
- Subsequently, the husband converted to Islam and the couple went through an ROMM Muslim marriage ceremony.
- The marriage broke down and the SYC issued a decree dissolving the marriage.
- Unsure of the effect of the SYC decree of divorce or the status of the marriage under the WC, the plaintiff-wife, with the defendant-husband's consent, applied to the High Court for the civil marriage to be dissolved or expunged from the records of the Singapore (Civil) Marriage Registry.
- High Court (per then Justice Tan Lee Meng) held that the SYC decree had dissolved the entire marriage relationship (whether under Muslim law or under the WC).

Territorial Jurisdiction

Jurisdiction of Syariah Court

Territorial Jurisdiction

- Starting from 22 October 2018, SYC has jurisdiction only if either party to the marriage is:
 - a) Domiciled in Singapore; or
 - b) Habitually resident in Singapore for at least 3 years prior.
- This amendment mirrored the domicile/habitual residence requirement under section 93(1) of Women's Charter
 - Need to check if there is a valid Muslim authority in that country
 - Likely file affidavits as to this
- Foreign marriages
 - SYC does not accept a foreign or customary Muslim marriage certificate as conclusive proof of a valid Muslim marriage. So, the SYC will still consider the validity of the Muslim marriage entered into a foreign country.

Territorial Jurisdiction: Foreign divorce

When SYC exercises jurisdiction in Multi-Jurisdiction Cases

ED v EE (2021) 8 SSAR 292:

- Defendant-husband applied for a stay of the divorce proceedings in Singapore commenced by wife on the basis that divorce had already been obtained in the Indonesian Courts.
- The SYC followed the Court of Appeal case of ***TMO v TMP [2017] 1 SLR 585.***
 - It was held in ***TMO v TMP*** that when a divorce was obtained in a foreign Syariah court, the ancillary matters that the SYC has jurisdiction to make orders on are only nafkah iddah and mutaah (wife maintenance and consolatory gift) .

Territorial Jurisdiction: Foreign divorce

When SYC exercises jurisdiction in Multi-Jurisdiction Cases

ED v EE (2021) 8 SSAR 292:

- SYC held that the issue of nafkah iddah and mutaah had not been dealt with by the Indonesian court (contrary to the foreign law expert's view).
- Husband's application for stay was dismissed by the SYC upon considering the:
 - (a) convenience and expense,
 - (b) availability of witnesses,
 - (c) governing law, and
 - (d) places where the parties reside or carried on business.
- Husband appealed but his appeal was dismissed.

Territorial Jurisdiction: Foreign divorce

When foreign court does not decide on all ancillary matters

In *TMO v TMP [2017] 1 SLR 585*:

- Court of Appeal held that parties married under Muslim law who obtain a divorce from a foreign court may seek relief from the Singapore civil courts for the division of matrimonial assets.
- SYC can make orders on nafkah iddah and mutaah.

See section 35 AMLA and section 17A SCJA.

Subject-Matter Jurisdiction

Jurisdiction of Syariah Court

Subject-Matter Jurisdiction: Overview

- Wife maintenance post-divorce
- Wife maintenance during the marriage
- Child maintenance
- Property in question must be covered under AMLA
- Properties situated outside Singapore
- Protection of family
- Injunctive relief

Subject-Matter Jurisdiction

Section 35(2) AMLA: Subject to subsection (3), the Court has jurisdiction to hear and determine all actions and proceedings in which all the parties are Muslims or where the parties were married under the provisions of the Muslim law and which involve disputes relating to –

- (a) marriage;
- (b) divorces known in the Muslim law as fasakh, cerai taklik, khuluk and talak;
- (c) betrothal, nullity of marriage or judicial separation;
- (d) the disposition or division of property on divorce or nullification of marriage; or
- (e) the payment of emas kahwin, marriage expenses (hantaran belanja), maintenance and consolatory gifts or mutaah.

SYC is a creature of statute, has NO
inherent jurisdiction

Thus its subject matter jurisdiction is only
as wide as its statutory powers

Powers of SYC

Can ONLY make orders on Childrens issues
or on assets, WHEN THERE IS A DIVORCE

Section 52(3)AMLA: Powers of SYC between parties upon divorce

The Court may, at any stage of the proceedings for divorce or nullity of marriage or after making a decree or order for divorce or nullity of marriage, or after any divorce has been registered under section 102 before 1 March 2009, on the application of any party, make such orders as it thinks fit with respect to –

- (a) the payment of emas kahwin and marriage expenses (hantaran belanja) to the wife;
- (b) the payment of a consolatory gift or mutaah to the wife;
- (c) the custody, maintenance and education of the minor children of the parties; and
- (d) the disposition or division of property on divorce or nullification of marriage.

Wife maintenance – section 51 AMLA

Post-divorce

- Ex-wife is entitled to maintenance after divorce for the duration of the period of iddah
- Iddah is defined under s 2 AMLA as the period within which a divorced woman or a widow is forbidden by the Muslim law to remarry

Situations where wife is not entitled to nafkah iddah or period of iddah has expired

- Where the wife was divorced by triple talak, she is not entitled to nafkah iddah
- Where the period of iddah has expired
- However, the ex-wife may apply to SYC for maintenance under s 51(3) AMLA.

Nafkah iddah

- Nafkah iddah refers to the maintenance payable to the ex-wife under Muslim law (usually for a fix period of about 3 months)
- Not the same as maintenance as it is understood in civil law, but Muslim women can apply to FJC for enforcement of an Order for nafkah iddah.

Wife's maintenance under Women's Charter

During the marriage

- A married woman may apply to SYC for maintenance during the marriage – section 51 (1) AMLA
 - However, in practice, it is more straightforward to obtain and enforce maintenance orders in the FJC – Part 8 and 9 WC are applicable to Muslim wives

SYC is a creature of statute, has NO inherent jurisdiction
Thus its subject matter jurisdiction is only as wide as its statutory powers

(lecture) SYC "CANNOT MAKE MAINTENANCE ORDERS DURING MARRIAGE"
(but what about 51(1) like this slide says? idk)
- so for this, Muslim wife will have to go under WC

Wife's maintenance under Women's Charter

What if husband pronounces talak? Would the wife still be entitled to maintenance?

See the *Chaytor Alan James v Zaleha bte A Rahman [2001] 1 SLR(R) 504*

- Wife applied for maintenance in District Court.
- Husband's argument was that he pronounced talak, therefore she was no longer a married woman.

Court held that the wife was still a married woman and entitled to maintenance

- A talak is only valid when the SYC confirmed the validity of the talak.
- Until then, the parties are still considered married under Muslim law.
 - Lai J also held that section 35(2) AMLA conferred jurisdiction on SYC to determine a valid Muslim divorce.
 - Lai J added that section 17A(1) of the SCJA, which states that jurisdiction over Muslim divorces lies solely in the SYC, exists for precisely this reason.

Child Maintenance

Although the SYC does have jurisdiction to hear child maintenance applications where there are divorce proceedings, pursuant to section 52(3)(c) AMLA, it does not do so in practice for the following reasons:

- FJC's enforcement mechanisms are wider and more efficacious than the breach of court order provision in section 52(13) of the AMLA.
- An order of one Court would not be reviewable in the other Court. It is therefore far more efficacious to allow the FJC to assume jurisdiction over the entire area of maintenance with regard to a particular family unit so that all the relevant considerations of the financial needs and capabilities of that family would be assessed in a single forum

Property

The property must be covered under AMLA

- SYC will not have jurisdiction where the asset is not covered under **section 52(14) AMLA** (which is pari materia to section 112 WC)

- SYC will not have powers to hear applications for the variation of consent orders where the subject matter concerned does not fall within **section 52(3) AMLA**

Properties outside Singapore

- SYC has jurisdiction to make orders in respect of properties situated outside Singapore upon a divorce

Khadijah bte Omar v Mohamed Yusoff B Seenir Rawther [2001] 3 SSAR 109: The Appeal Board was of the view that section 35 AMLA did not curtail the court's jurisdiction in respect of properties outside Singapore so long as the court exercises its functions in Singapore.

Injunctive relief

ER v ES [2021] 8 SSAR 389 – Mareva Injunction:

- Wife was a Singapore citizen. Husband was Moroccan. Wife sought a Mareva injunction in relation to the Husband's assets. Husband's long-term visit pass was expiring. Wife was concerned that if he returns to Morocco he would remove his assets from Singapore.

SYC held that there was no provision in AMLA conferring upon the SYC the jurisdiction or power to make an order for a Mareva injunction(upheld on appeal).

- In particular, injunctive relief was not provided for under sections 35 or 52(3) of the AMLA

SYC is a creature of statute. Only has jurisdiction if conferred by statute (section 35 AMLA).

- SYC does NOT have inherent jurisdiction. This is contrasted with FJC where there is **rule 958 FJR** which specially provides that FJC has inherent powers to make any order as may be necessary to prevent injustice or to prevent an abuse of the process of the Court.

04

Jurisdictional Issues

Between Syariah Court and FJC/High Court (Civil Court)

Residual Jurisdiction

Jurisdictional Issues between Syariah Court and FJC/High Court (Civil Court)

Residual Jurisdiction of Civil Courts

Laws apply to the general population (both Muslims and non-Muslims) unless there are specific exemptions for Muslims i.e. “where legislation specifically exempts Muslims from its operation.”

Non-Muslim law is general while Muslim family law is the exception.

Civil Courts (especially FJC) have “residual” jurisdiction over Muslims – where there is NO specific exclusion and NO separate Muslim law:

- **TMO v TMP [2017] SGCA 14**
- **UJM v UJL [2021] SGHC(A) 10 at [35]**

Residual Jurisdiction: *TMO v TMP*[2017] 1SLR 585

Parties married in Singapore according to Muslim laws

- Husband obtained divorce from Johor Sharia Court.
- Wife obtained orders on mutaah and nafkah iddah in SYC.
- SYC refused to hear her application on division of their matrimonial properties as SYC has no jurisdiction to do so as divorce was NOT obtained in SYC.
- Wife applied in FJC (section 121 WC – relief consequential on foreign divorce).
- FJC – No jurisdiction as section 3(2) WC excluded persons married under Muslim law. There is lacuna in the law.

Residual Jurisdiction: *TMO v TMP*[2017] 1SLR 585

Court of Appeal held that the High Court did have jurisdiction and power to grant the division order under **section 121G WC**.

- Significantly, the Court of Appeal noted that where a matter did not fall within the SYC's jurisdiction, the High Court retained residual jurisdiction over the matter pursuant to **sections 16 and 17 SCJA**

- Where SYC has no jurisdiction over a matrimonial dispute involving parties to a Muslim marriage (e.g. when there is a foreign divorce), civil court takes residual jurisdiction over the matter.

Concurrent Jurisdiction

Jurisdictional Issues between Syariah Court and FJC/High Court (Civil Court)

Concurrent Jurisdiction of FJC and SYC

1999 AMLA Amendments

Choice was given to Muslim parties to go to civil court or SYC on issues of:

- Children
- Disposition and/or division of matrimonial assets

Section 17A (2) Supreme Court of Judicature Act (“SCJA”):

“(2) Even though such matters come within the jurisdiction of the Syariah Court under section 35(2)(d) or (e), 51 or 52(3)(c) or (d) of the Administration of Muslim Law Act 1966, the General Division has jurisdiction as is vested in it by any written law to hear and try any civil proceedings involving matters relating to —
(a) maintenance for any wife or child;
(b) custody of any child; and
(c) disposition or division of property on divorce.”

To avoid multiplicity of actions, if SYC divorce proceedings has commenced, leave must be obtained (in SYC) to:

- Commence civil proceedings – section 35A(1) AMLA.
- Continue civil proceedings – section 35A(2) AMLA.

Note - there are two types of leave that can be obtained



Concurrent Jurisdiction: *BU v BV*[2018] 7 SSAR 64



- Nov 2016: The husband filed for a GIA application in FJC for joint custody, care and control of the children. Interim Consent Order made on 1 June 2017.
- 6 July 2017: H filed divorce originating summons in SYC.
- 20 July 2017: H applied for interim custody, care and control of children in SYC.
- 2 Aug 2017: W sought leave to continue civil proceedings in FJC on children. SYC granted leave.

The SYC, citing *AK v AL*, noted that continuance under section 35A(2) of the AMLA is limited only to the issue of custody, and granted leave for the wife to continue civil proceedings on the issue of child custody.

Concurrent Jurisdiction: *BU v BV*[2018] 7 SSAR 64

The court adopted the “balancing of interests” test in **AK v AL**, and the following considerations:

- (a) whether granting leave will allow for the more expedient resolution of the relevant issues and whether such expediency is necessary;
- (b) whether granting leave may lead to/prevent the unnecessary duplication of legal proceedings in respect of the relevant issues;
- (c) whether granting leave will result in any undue prejudice to the other party’s position in the ongoing Syariah Court proceedings or undermine the tenets of Syariah law; and
- (d) whether granting leave will affect the welfare of the children.

“Parliament has made the right of access available, it is not for this court to place undue burden to any applicant seeking leave”.

“what is required is for this Board to strike a sensible balance between the competing legitimate interests of the parties, ie, the wife wanting the case heard at the civil courts and the husband ensuring that he would not be unduly prejudiced by the application.”

Concurrent Jurisdiction: *BU v BV*[2018] 7 SSAR 64

It was undisputed that divorce proceedings at the Syariah Court only commenced after civil proceedings had commenced on matters relating to the child custody.

- The wife had shown that there was substantial development in the progress of the civil proceedings. (4 Status Conferences, mediation, counselling) Time, effort, and resources had been expanded in FJC
- However, this alone was insufficient to grant leave, as the court must also be convinced that the husband would not be unduly prejudiced with the grant of leave.

On the facts, the husband was unable to show that there was a “real risk of [him] being unduly prejudiced” if the application were allowed.

AK v AL [2012] 6 SSAR 184

Parties were divorced in SYC and ancillary orders on children and division of assets were made by SYC.

- Various post-divorce applications were made by both parties on the ancillary issues.
- While one of the post-divorce applications was still underway, husband made an application for leave for the FJC under section 35 AMLA to adjudicate on the ancillary issues on the children and division of assets.

SYC granted leave for the husband to commence proceedings in civil court.

- On appeal by the wife, the Appeal Board set aside the SYC order on the ground that the husband had opted for SYC to hear and adjudicate the ancillary issues and he is thus **estopped** from asking another forum (the civil court) to rehear and reopen or vary the ancillary order.
- Leave was thus not granted for the ancillary issues on the children (and division of matrimonial assets) to be brought to the civil court.

AK v AL [2012] 6 SSAR 184

2 scenarios relating to section 35A AMLA:

- (a) First, where civil proceedings on any matter relating to custody of any child have been instituted before the commencement of SYC divorce proceedings, any party who intends to continue the civil proceedings shall apply to the SYC for leave to continue the civil proceedings under section 35A(2) AMLA.
- (b) Second, where no civil proceedings have been instituted involving any matter relating to the disposition or division of property on divorce or custody of any child, leave to commence civil proceedings shall be made to the SYC under section 35A(1) AMLA.

The Board in **AK v AL** noted that there was no statutory provision which allowed parties to pursue civil proceedings after the SYC had decided and issued orders on the ancillary matters

AK v AL [2012] 6 SSAR 184

Other considerations:

- Husband's clarification during the appeal that he would be making a fresh application to the civil courts for new orders on the ancillary matters was "tantamount to having a **second bite of the cherry** and encouraging forum shopping".
- Mere fact that a litigant is no longer a Muslim is insufficient to justify the granting of leave under section 35A AMLA.
- Husband was **unable to show that he had suffered prejudice**. The mere fact that some of his applications had been dismissed did not show that there was prejudice caused to him. The proper recourse was to have appealed, which he failed to do.
- Where there has been substantial development in the progress of the civil proceedings, and there is no risk of prejudice with the grant of leave, leave will likely be granted.

Thameemul Ansari S/O Jainullabudeen v Farzana Begum D/O Ok Mohamed Haniffa [2009] 4 SSAR 175

If the SYC will ultimately be determining the issue of custody, leave will not likely be granted even if there had been a previous interim access application in the FJC

- The husband had wanted the SYC to allow the issue of access to continue to be determined by the FJC as there was already an interim order issued by the FJC.
- The SYC allowed the application for the issuance of a continuance certificate.
- At the appeal hearing, however, the Board held that as access is an integral part of custody and since the SYC was ultimately going to determine the issue of custody, the issue of access should be determined by the SYC. It thus held that the SYC's order for the issuance of the continuance certificate was wrong.

Ultimately, the question is what would be most expedient

- A new application for access would have to be made in either court so there was no reason to believe that the FJC proceedings would be more expedient

Pereira Dennis bhn Sunny v Faridah Bt Abdul Latiff [2016] SGHCR 9 -
is leave required if the civil action is PRIOR to commencement of the
SYC action ? When does SYC proceeding begin?

High Court held that the divorce proceeding in SYC commenced when wife issued the originating summons on 29 March 2016.

- **6 November 2015 :** Husband (H) commenced the High Court civil action against his wife (W) for declarations on his rightful beneficial shares in respect of four properties held in the parties' joint names.
- **29 March 2016 :** W issued divorce Originating Summons in SYC.

High Court: Since the civil proceeding was commenced before SYC divorce originating summons were issued, there is no basis for the court to invoke section 17A(3)(a) SCJA to order a mandatory stay of the civil proceedings.

Pereira Dennis bhn Sunny v Faridah Bt Abdul Latiff [2016] SGHCR 9 - is leave required if the civil action is PRIOR to commencement of the SYC action ? When does SYC proceeding begin?

- High Court held that the juxtaposition of subsection 35A (1) with subsection 35A (2) AMLA clearly showed that the civil proceeding should be stayed only if the civil proceedings are commenced after SYC divorce proceeding has been commenced.
- Chan J noted that the language of section 17A(2) read with section 17A(3) of the SCJA showed that what mattered was whether the civil proceeding was “commenced on or after the commencement of proceedings for divorce in the Syariah Court”
- According to him, the key date was thus the date of commencement of the divorce proceedings and not the actual date of divorce as declared by the Syariah Court

date of commencement in SYC is the date of issue of the divorce summons, after preliminary matters are done

Points to Note

- Children's issues - parties can start civil proceeding before or after there is divorce proceeding in SYC. Need leave to commence or continue FJC proceeding as section 35A AMLA applies.
- Disposition or division of assets - Need leave to commence civil proceeding only if a civil proceeding is commenced after there is a divorce proceeding in SYC as section 35A(1) AMLA applies. this is under general property law in the HC
- Section 59 WC does not apply to Muslim parties – exclusion via section 3 WC.

Points to Note

- FJC does not have jurisdiction to deal with application for division of assets involving parties in Muslim marriage.
- Section 17A(2) SCJA does not contemplate a situation where civil proceedings for disposition of assets are commenced BEFORE divorce proceeding starts in SYC (*Denis Pereira's case*).
- Muslim parties seeking determination of rights in matrimonial assets can file civil suit under general property law (NOT under WC in FJC).
- Section 35A(2) AMLA – refers to continuation of civil proceedings for the children. Contrast below; i.e. no need leave to continue civil proceedings on assets
- Section 35A(1) AMLA – refers to commencement of civil proceeding of assets or children.

Continuing Civil Proceeding by consent



Parties can agree for the civil proceeding in FJC to continue when a divorce proceeding is ongoing in SYC i.e. consent to continuation of civil proceeding – sections 35A(5), (6) & (7) AMLA.

- attend counselling
- certificate of attendance

Note: When assets and children issues are adjudicated and determined in civil proceeding by civil court, “non-Muslim” law will apply over the dispute – Section 17A(7) SCJA.

Jurisdiction of Family Justice Court, Civil Courts and SYC on orders made by SYC

Jurisdictional Issues between Syariah Court and FJC/High Court (Civil Court)

The FJC enforces SYC orders on nafkah iddah and mutaah akin to maintenance orders of the SYC (Section 53(1) of AMLA). However, the FJC cannot vary the Syariah Court in any way (Section 56A of AMLA).

Enforcement in Civil Courts: Orders on Mutaah and Nafkah Iddah

With 2008 AMLA amendments, section 53(1) AMLA provides for enforcement of orders on mutaah and nafkah iddah as if such orders were issued by FJC. Enforcement for non-compliance must be made in FJC (Court 1) – enforcement mechanism (Part IX of WC) available to SYC order:

- attachment of earnings order
- garnishee order
- imprisonment
- recover outstanding sum as debt
- Banker's guarantee
- Financial counselling
- Community Service
- report to credit bureau
- Statutory Declaration when getting married - whether he/she owes any arrears - s 17(2A).

To enforce SYC orders, don't just go back to the SYC. You need to see if it can be enforced in the SYC or if it must be at the FJC. If it's monetary order, go to FJC. It's only when you need proxy powers (eg. signature of SYC judge in xfer of property or sale) then you remain in SYC. Anything to do with money go to FJC.

Enforcement in Civil Courts: Orders on Children, Payment of Emas Kahwin, Marriage Expenses (Hantaran), Division of Assets etc.

2008 AMLA amendments: section 53(2) AMLA – SYC orders deemed to be civil court orders

There are several options: BOSCO (Breach of Syariah Court Orders – see FJC website)

- Complaint can be filed in FJC where parties will be asked to go through a mediation process before FJC judge.
- A private summons (Magistrate's Complaint) can be lodged in Crime Registry (in State Court): section 52(13) AMLA.
- Contempt proceedings can also be commenced.

Enforcement in Civil Courts: Orders on Children, Payment of Emas Kahwin, Marriage Expenses (Hantaran), Division of Assets etc.

- Contempt proceedings in FJC: **VFU v VFV [2020] SGHCF 3**
 - Parties married under Muslim law. 3 children (aged 10, 9 & 5 yrs).
 - Mother filed OS under GIA in FJC.
 - 9 March 2017: OS in FJC resolved by Consent Order.
 - 11 September 2018: Father filed divorce proceeding in SYC.
 - 4 July 2019: Father filed committal proceedings claiming mother breached consent access orders made in FJC.
 - 13 August 2019 and 27 August 2019: Interim orders made by SYC

Enforcement in Civil Courts: Orders on Children, Payment of Emas Kahwin, Marriage Expenses (Hantaran), Division of Assets etc.

Contempt proceedings in FJC: **VFU v VFV [2020] SGHCF 3**

- DJ hearing committal proceeding held : No jurisdiction without continuation certificate.
- High Court held : Continuation Certificate under s 17A SCJA is not required for committal proceedings heard in FJC.
 - OSG had concluded with Consent Order. No longer any “civil proceedings” to be stayed under s 17A(3) SCJA.
 - FJC (not SYC) has jurisdiction & powers to enforce custody orders made under OSG.

Note: On appeal by W in VFV v VFU [2021] SGHCF 23, her contempt was held to have been purged. Appeal was NOT on issue of whether leave from SYC is required for the contempt proceeding.

Jurisdiction of FJC/Civil Courts and SYC Orders made by SYC

Enforcement in Syariah Courts

1999 AMLA amendment: section 53A AMLA – proxy powers to SYC

- SYC can sign documents/instruments for transfer or sale of matrimonial property when one party defaults in doing so Only need to go back to SYC when it has to do with signing for transfer of property
- Issue letter of demand to defaulting party
- Affidavit to show default.
- Know the difference between REC 1 and REC2 (see SYC's website)



Topic 2: Divorces and Ancillary Orders

Family Law Practice (inclusive of Muslim Law)

Ahmad Nizam Abbas

Contents

1. Overview of SYC Divorce Process

2. Divorces

3. Ancillary Orders

SYARIAH COURT

- Senior President and Presidents who are either civil law trained (from FJC) or from religious education track
- Ad-hoc Presidents (who clear night court)
- Registrar and Deputy Registrar

MUIS Appeal Board

Members of Appeal Board panel are appointed by the President of Singapore , upon the advice of MUIS. (section 55(3) of AMLA .

Composition – Judges from the FJC and State Courts, legal service officers (DPPs) , legal officers in statutory boards, senior lawyers , prominent religious leaders .

Coram – any 3 members of the panel . The Chair is usually the one with legal background .

MUIS Appeal Board hears appeals from Syariah Court (section 55(1) AMLA) and ROMM (section 105 of AMLA) .

Syariah Court

Section 39 – “ Every party to any proceedings must appear in person or by advocate and solicitor or by an agent, generally or specially authorised to do so by the Court.”

- Lawyers need not be Muslims or have formal training in Islamic Law to appear before the Syariah Court (Jamal Mahammath v Zarina Majid [2008] 4 SSAR 22). So long as you have an active PC.
- Lawyers who appear at the SYC must be mindful of general rules of ethics and competency .

01

Introduction: Divorce Process

MAIN DIFFERENCE in DIVORCE PROCESS

FJC –

- bifurcated system.
- Interim Judgement first on the divorce,
- followed by Hearing on Ancillary Issues .
- Final Judgment extracted after all orders made (or 3 months after IJ if Consent Order on all issues) .

➤ **SYC** –

- not a bifurcated system.
- Decree of Divorce and Ancillary Orders made together at same hearing.
- Divorce Certificate issued 3 months after date of divorce (expiration of wife's iddah period)

Orders made by the Syariah Court in divorce

1. Dissolution of marriage (usually confirmation of *Talak*)
2. Ancillary Orders
 - a. Payment of *Nafkah Iddah* by Husband to Wife (maintenance of the wife during the 3-month period where she cannot remarry)
 - b. Payment of *Mutaah* by Husband to Wife (consolatory gift)
 - c. Custody, Care and control, and Access.
 - d. Division of Matrimonial Assets

SYC Jurisdiction to hear divorce applications

Before SYC can hear any divorce applications:

- 1) Both parties must be Muslims
- 2) There must be a valid Muslim marriage (sections 35(1) to (2) AMLA) (*Yeo Pei Chern (Yang Peizhen Freda) v Isa Seow Zheng Xin @ Md Isa Abdullah [2007] 4 SSAR 146*)
- 3) Connecting factor to Singapore – domicile or 3 years habitual residence (sections 35(2A)(a) to (b) AMLA).

Essentials of Muslim Marriage

“Location does not determine the validity of a Muslim Marriage”

– **Yeo Pei Chern v Isa Seow [2007] 4 SSAR 146** at para 30. Issue – was the purported muslim marriage in London valid ?

Essential elements of valid Muslim Marriage :-

- a. A male party
- b. A female party
- c. A wali (guardian of the bride)
- d. Two ^{male}_✓ witnesses
- e. The pronouncement of offer and acceptance .

The SYC will insist on **an Affidavit of Foreign Marriage**. Most foreign marriages are not governed by legislation. Mainly done by local syariah councils , mosques or privately at home.

Requirements to register Muslim Marriage at ROMM

This is for background info only as, in practice, the validity of a marriage registered at the ROMM is usually unchallenged at the SYC divorce proceedings and hence not an issue at the divorce hearing.

Very strict checks at ROMM on compliance with AMLA before marriage is allowed . Contrast with foreign marriages where there is no legislation .

- a) At ROMM, marriages are conducted by the Registrar/Deputy Registrars of Muslim Marriages) known as Kadi/Naib Kadis.
- b) Both parties must be Muslims (**sections 2 and 89 AMLA**)
- c) Parties must not be under 18 except where there are special circumstances.
- d) Consent of (i) Relevant Persons and (ii) Wali (guardian of the bride to be) (**sections 94B(1) to (4) AMLA**)
- e) Two male Muslim witnesses

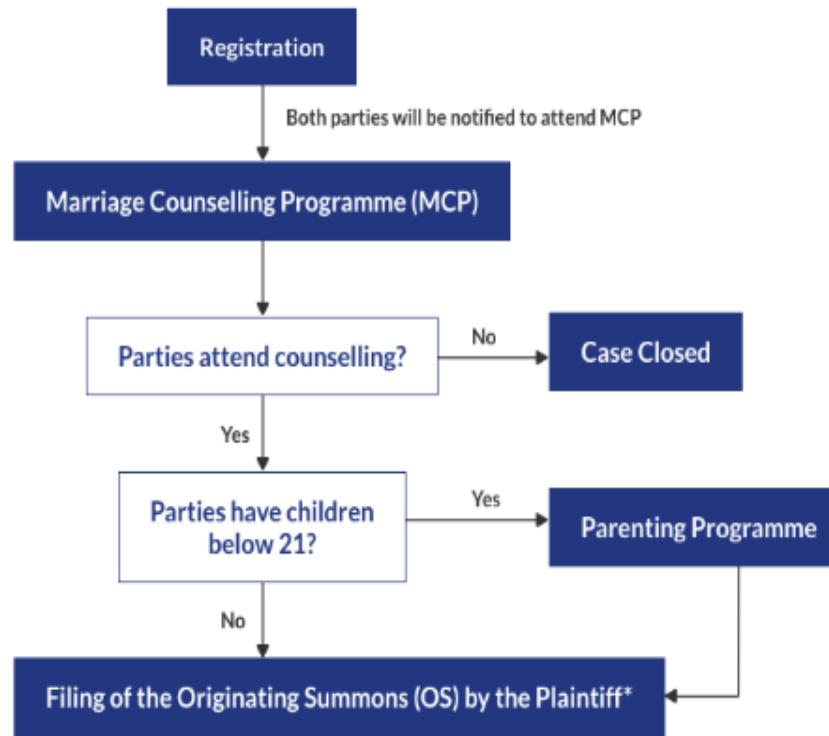
02

Divorce

SYC Process – AMLA and MMDR

Textbook reference : Chapter 4 of Muslim Family Law in Singapore.

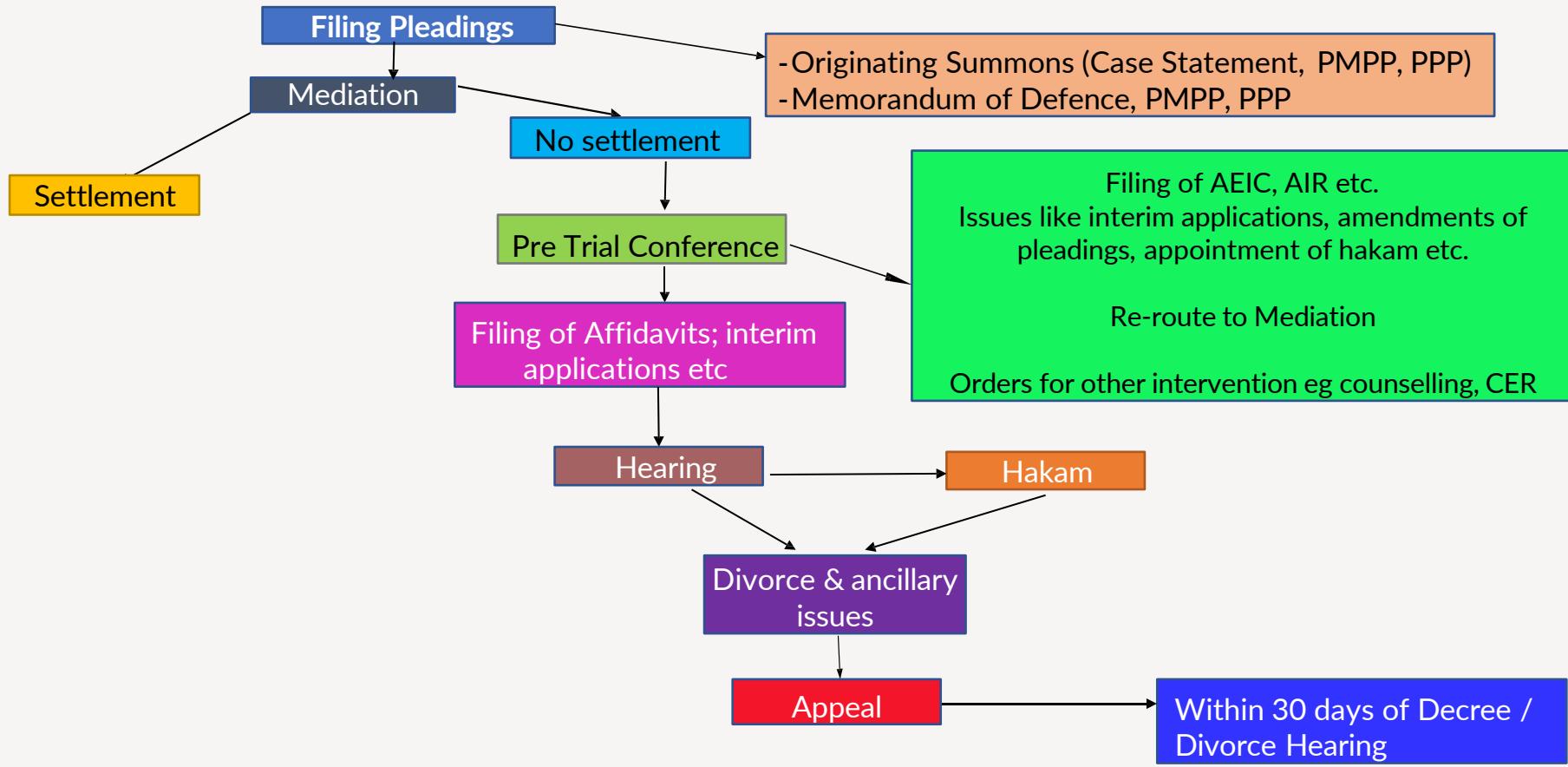
FYI ONLY: Pre-Divorce Requirements



Credit: SYC Website

*The party who initiates the divorce proceedings

FYI ONLY: SYC Divorce proceedings



Process: Appeal

Appeals against Direction/Order of Registrar

- Filing a **Notice of Appeal** in SYC no later than 14 days from date of the direction or order (Rule 38(2) MMDR)
- Appeal heard by President of SYC

Note: President's (appellate) order is final. No further appeal to Appeal Board (Rule 38(5) MMDR)

Appeal against Final Orders of SYC (President)

- Filing a **Notice of Appeal** with the MUIS Appeal Board within 30 days from the date of the decision of the SYC (Rule 39(2) MMDR)
- Appeal heard by MUIS Appeal Board

Note: If it is an appeal of a consent order, applicant would need leave of Appeal Board before appeal can be filed (section 55(2) AMLA)

Types of Divorces

There are 4 categories:



تعالیق

د تیف ۲ کالی سای

- ۱- متن مکالمه ایشانی را در کتاب اسرار سیاست بخوانید.
- ۲- دنی سپاهیان از این تبیق سلاسل امامت روان آنرا به، اتوه
- ۳- اتس او و دکل سای تبیق را تدقیق کنید. سلاسل شدیدگان ای طاعت کند سای، اتوه
- ۴- سایی ایکارون که همان سایر فرقه های مساجد را بپندان، اتوه مرسی علیکن هرت بپندان، اتوه
- ۵- میخواهیم که این مکالمه که دنی سپاهیان ایشانی را تبیق کنید مغایر باشد. ای دکن علیکم شریعه سرت دوافق فضادان ایت بدول
- ۶- سپاهیان که کفر رله طلاق اسراری ایت دنی طلاق ای سان

Special Conditions

On every occasion that I

- (1) Leave my wife _____ for a continuous period of four months or more, intentionally or unintentionally, or
(2) Fail to maintain her for the said period, whereas she is obedient to me, or
(3) Commit any action that causes injury to her body or damage to her property or causes her to lose self-respect, and my wife complains to the Shariah Court and if her complaint is proved, then she is divorced by one taklif.

Types of Divorces

Divorce Application by Wife

Wife may apply for divorce

- i. Register the talak pronounced by Husband (section 47 AMLA)
- ii. Cerai taklik (section 48 AMLA)
- iii. Fasakh (section 49 AMLA)
- iv. Khuluk (section 47(4) AMLA)

When filing for divorce, note that each type of divorce has a prescribed form .

Types of Divorces

Talak (MFLS, Chapter 4, pages 168 to 191)

The most common divorce is by way of the **husband pronouncing the talak** (section 46B AMLA) . It avoids need to have to prove fault .

- Divorce by talak will only be valid after the registration of divorce by SYC
- If pronouncement of talak is disputed by the wife, SYC will :
 - Hear the evidence of the parties and witnesses
 - Make a finding as to whether there is certainty in the words used (unequivocal, unambiguous).

Types of Divorces

Talak – Revocation of Talak

Can parties reconcile (*rujuk*) after Husband's pronouncement of Talak ?

- If revocation done within ***Iddah Period*** (3 months after pronouncement of talak), the divorce is annulled and parties remained lawfully wedded to each other.
- If revocation takes place after the ***Iddah Period***, they must undergo a fresh marriage or remarriage
- Revocation of divorce **must be registered at ROMM** - to ascertain whether the next talak is second or third talak.

Types of Divorces

Talak – Significance of First, Second and Third Talak

If divorce is 1st or 2nd talak, divorce is revocable and parties may reconcile and remarry.

If 3rd Talak, divorce is irrevocable .

- Parties cannot remarry unless wife has married to a 3rd party, consummated her marriage to that third party and divorced the third party (section 97(1)(c) AMLA)

Types of Divorces

Talak – First, Second or Third Talak

Re EJ and another [2021] 8 SSAR 320 – pages 184 to 186 of MFLS.

If Husband pronounced “ I divorce you with three talak ” or “talak, talak, talak” ; would that be one or three talak ?

Appeal board issued guidelines to ascertain validity of a triple talak

- Ascertain intention of H to effect a triple talak
- Does H understand fully nature & consequences of triple talak?
- Inquire into H's state of mind at the time of the pronouncement

- AB : if H did not have intention to divorce irrevocably, then it is only effective as a single , revocable talak.

Types of Divorces

Breach of Taklik (Marriage condition)

Taklik is the condition in the marriage contract.

In Singapore, taklik is printed in the marriage certificate, stipulating that if the husband should:

- (a) leave his wife for a continuous period of four months or more, intentionally or unintentionally; or
- (b) fail to maintain his wife for a period exceeding four months, whereas she is obedient to him; or
- (c) commit any action that causes injury to her body or damage to her property or causes her to lose self-respect,

the wife may apply to the Syariah Court and if her complaint is proved, then she is divorced by one talak.

Types of Divorces

Breach of Taklik – MFLS Chapter 4, pages 191 to 197

Taklik in Singapore marriage certificate - in standard form.

Taklik can differ from one country to another.

- Some countries - no taklik at all in the marriage certificate
- If there is no taklik, wife cannot apply for divorce on ground of breach of taklik – existence of a taklik has to be proven first before a divorce can be granted under this ground
- Section 48(2) AMLA . Court shall –
 - Examine the written taklik and make such enquiry as appears necessary into the validity of the divorce

Types of Divorces

Fasakh (Judicial dissolution)-MFLS, chapter 4, pages 197 to 200

Fasakh is judicial dissolution of the marriage on various grounds listed in sections 49(1)(a) to (g) AMLA. Usually applied when Husband has not pronounced takak or where Wife unable to use breach of taklik.

- a) Husband has neglected or failed to provide for her maintenance for a period of 3 months.
- b) Husband has been sentenced to imprisonment for a period of 3 years or upwards.
- c) Husband has failed to perform, without reasonable cause, his **marital obligations** for a period of one year.
refers to wife's "conjugal rights"
- d) Husband was impotent at the time of marriage and continues to be so.
- e) Husband is insane or is suffering from some chronic disease (which could be injurious to wife).

Types of Divorces

Divorce by Fasakh (Judicial dissolution of marriage)

- f) Husband treats the wife with cruelty, that is to say -
 - i. Habitually assaults her or makes her life miserable by cruelty of conduct
 - ii. Associates with women of ill repute or leads an infamous life
 - iii. Attempts to force her to lead an immoral life
 - iv. Obstructs her in the observance of her religious profession or practice
 - v. Lives and cohabits with another woman who is not his wife, or
 - vi. If he has more wives than one, does not treat her equitably in accordance with the requirements of the Muslim Law.

Adultery is not grounds in itself, unless shown to result in treating wife with cruelty

- g) On any other ground which is recognized as valid for the dissolution of marriage by fasakh under the Muslim Law (eg apostacy) .

Types of Divorces

Khuluk (divorce by redemption) – MFLS, Chapter 4, pages 200 to 202.

Khuluk - where the wife makes payment of an amount to be agreed by the parties or assessed by Syariah Court in return for granting her request for a divorce

- This is very rare in Sg. some kind of stigma
- In Singapore, the amount is usually nominal
- A divorce by khuluk is irrevocable – cannot remarry.

What if Husband refuses to pronounce Talak and Wife is unable to prove grounds of divorce

Hakam Session - MFLS , Chapter 4, pages 203 to 212.

Hakam (used to be called arbitrators) will be appointed (by agreement or by order of SYC) . (sections 50(1) to (7)AMLA). Each party will select a Hakam from a panel of hakam at the SYC. **Lawyers do not attend the hakam session.** As the Court hearing will take place immediately after the hakam session; lawyers will be at the SYC on day of hakam session.

Role of hakam: try to effect a reconciliation between the parties.

If the parties are unable to reconcile, the hakam will recommend to the Court that a divorce should be effected either through :

- The husband's pronouncement of talak
- The husband's hakam pronouncing the Talak on the wife
- The husband delegating to his wife his authority to divorce herself (*talak Tafwid*) .

03

Ancillary Orders

Textbook reference : **Chapter 5 of Muslim Family Law in Singapore.**

The main differences between divorce at FJC and SYC are the orders for nafkah iddah and mutaah at SYC against the maintenance order for wife at the FJC. Wives can apply for maintenance at the FJC during the marriage, but this order can be rescinded upon production of divorce certificate.

Nafkah Iddah (or Eddah) and Mutaah

Textbook reference : Chapter 5 of **Muslim Family Law in Singapore** . Pages 215 to 240.

Nafkah Iddah/Eddah

3 months

As a divorced wife is not permitted to re-marry during her **Eddah Period**, the husband is obligated to maintain her for that duration (sections 35(2)(e) and 51 AMLA)

Quantum of Nafkah Iddah – factors

- Husband's financial status/means
- Parties' standard of living
- Provision of necessary clothing and suitable lodging.
- Cost of living in Singapore.

- The norm for those earning below \$7,000 per month is between \$500 and \$1500 per month.

Mutaah (MFLSpages 224 to 241)

It is a consolatory gift by Husband to his wife (s 52(3)(b) AMLA). Primary purpose of muta'ah is to assist the wife to meet with the difficulties caused by the divorce .

Quantum of Mutaah is based on:

- Husband's financial status/means at the time of the divorce (not post-divorce)
- Both parties' standard of living before the divorce,
- Husband's capacity and capability to pay,
- Length of marriage
- The amount of Mutaah is calculated from the date of marriage until the date of divorce . The practice in SYC - \$x multiplied by number of days of marriage.

Nafkah Iddah & Mutaah

If parties have been divorced overseas, the Singapore Syariah Court can make orders for Husband to pay the Wife Nafkah iddah and mutaah under Section 52(2) AMLA, even though the SYC has no jurisdiction and power on other ancillary issues of children and matrimonial assets.

TMO v TMP [2017] 1 SLR 585 at [6]

UJM v UJL [2021] SGHC(A) 10 at [35]

Nafkah Iddah and Mutaah are not matrimonial assets

CPF Act allows the transfer of CPF monies from Spouse A to Spouse B in a division of matrimonial assets .

Nafkah iddah and muta'ah are NOT matrimonial assets. Court orders cannot contravene the CPF Act .

- E.g. court order **should not** provide for the **waiver of muta'ah** upon the transfer of CPF moneys from one spouse to another, or state that a particular clause **is in full and final settlement of muta'ah** upon a transfer of one party's share of a property to the ex-spouse with partial or no CPF refunds to be made to the ex-spouse.

The SYC Court does not make maintenance orders on children. By practice and convention, this is done at the FJC

Issues concerning Children

Textbook reference : Chapter 5 of **Muslim Family Law in Singapore** . Pages 242 to 264

Children Issues: Custody

AMLA does not codify principles under Muslim Law (cf in Malaysia – sections 81 to 85 Islamic Family Law (Federal Territories Act 1984))

- Not uncommon to refer to civil law authorities in SYC –'so long as it is not inconsistent with Muslim Law'.
- See *Zaini Bin Ibrahim v Rafidah Rahman [2007] 3 SSAR 135* – which 'adopted' the reasoning of the Court of Appeal in *CX v CY [2005] 3 SLR 690* on joint-custody.
- *BQ v BR [2016] 7 SSAR 36:*
 - "the paramount consideration is the best interest and welfare of the child..."
 - The Courts' primary goal is to protect the interests of the child rather than to benefit the parties or even to preserve a particular social order. " strict rule of muslim law vs best interests of child --> best interests of child prevail

Application of ‘best interests of the child’

AE v AF [2011] 6 SSAR 65

- Husband urged the Appeal Board to apply the strict Muslim rules on custody, in that by her adultery, the wife had lost her custody rights of their two children.
- Appeal Board commented:
 - “In short, even with the adultery, it did not necessarily mean that she was a bad mother to the children and therefore it would still be in the best interest of the children to remain with the W.”

See also **DH v DI [2021] 8 SSAR 1 – similar .**

Children Issues: Spiritual Interest

AY v YZ [2015] 386

- Child taken away by father when she was about one and a half years old, to Phuket, Thailand. In 2014, when child was about 12 years old, the mother brought the daughter back to Singapore. The mother sought custody, care and control of the child as the father was no longer a Muslim and had been bringing up the child in an “unIslamic way of life”.
- Appeal Board: “*the best interest of the child would not only cover the physical, material and emotional aspects but also the spiritual aspect*”
 - While the father was not averse to the daughter receiving Islamic teachings, the daughter’s upbringing as a Muslim child would be better attended to if she remained in Singapore under the care and control of the mother.

Children Issues: Judicial Interview

SYC has had a long-standing practice that children above 7 years old (age of discernment) will be interviewed.

AA v AB [2011] 6 SSAR 120

- While the interview has its value, it would have been preferable if greater caution was exercised before their wishes were accepted in to
- The wishes of the two daughters should not override the predominant consideration of the welfare of the children.

FYI : Since 2022, child interviews are conducted by the President with the assistance of a Child expert (seconded from CAPS – Counseling & Psychological Services of FJC) .

SYC orders on access generally similar with FJC .

Children Orders cannot cover third parties

DA and another (intervener) v DC [2020] 8 SSAR 72 – Wife was granted care and control upon divorce. She then passed away. Her parents took out application to vary order on children.

- Appeal Board:
 - Power to vary order is in section 52(3)(c) AMLA – only covers the married couple and does not extend to those who are not parties to the divorce .
 - This is in line with *UDA v UDB and another [2017] SGHCF 16* - divorce court does not have substantive jurisdiction and power to make an order for or against the intervener.

Children Issues: CER and other reports

Appeal no. 8 of 2021 (unreported)

- *Muslim Family Law in Singapore , Chapter 5, pages 257-258 at 5.96 and 5.97*
- Custody Evaluation Report (CER) is discretionary. Parties may request Court.
- Based on several factors:
 - The nature, quantity and severity of the allegations levelled
 - The benefits of such a report
 - The length and time taken to conduct the witness interviews
 - The state of the parties and proceedings.

FYI : Generally, the SYC engages the same DSSA agencies as FJC on children custody and access evaluation reports.

Comparison between SYC and FJC

Syariah Court	Civil Courts
<ul style="list-style-type: none">• Welfare of children paramount concern.• Joint custody as the norm.• Judicial interview of children to determine their views, as long as child is above seven years old and mature enough to express his or her views.• General principle that children below seven will be under the care of their mother, subject to the welfare of the children.• Mother's remarriage may affect her right to care and control, subject to the welfare of the children.• Application of Islamic principles and importance of spiritual upbringing: <i>AY v YZ</i> (2015) 6 SSAR 386.• Civil practice and procedure may be applicable, so long as it is not inconsistent with Muslim law.	<ul style="list-style-type: none">• Observations and concerns about interviewing children, namely that judges are not trained to ascertain the views of children and have not had time to establish a relationship of trust with the child, that the child might be intimidated by the court process and the children may be coached: <i>AZB v AZC</i> [2016] SGHCF 1.• However, civil courts may interview children where there are indications that the children wish to speak with the judge, are mature enough to express their views, and interviewing them would not be dragging them into the fray.• Islamic principles in relation to sensitive issues may be considered by the civil courts (though not binding) when all parties are Muslim (for example, <i>Re OK</i> [2006] SGDC 52).

Source : *Muslim Family Law in Singapore* (Academy Publishing) at page 264.

Division of Matrimonial Assets

Textbook Reference : Chapter 5 in **Muslim Family Law in Singapore** (pages 264 to 312)

Division of matrimonial assets: Jurisdiction and Power

- Absent a divorce hearing in SYC, the jurisdiction or power to hear and determine the issues of division of matrimonial assets cannot be invoked.
- For foreign divorces, SYC has no jurisdiction to hear an application for division of matrimonial assets – see **TMO v TMP [2017] 1 SLR 585** and **UJM v UJL [2021] SGHC (A) 10**
- Go to FJC – section 121A to G of Women's Charter – “ Chapter 4A. Financial relief consequential on foreign matrimonial proceedings’.

Type of Matrimonial assets

3 categories of matrimonial assets

- Assets acquired during marriage (e.g. immovable properties, moneys in bank accounts, CPF, stocks, shares, club memberships, vehicles)
- Assets acquired before marriage which have been substantially improved during marriage
- Gifts/Inheritance which have been substantially improved during the marriage

Comparison btw WC and AMLA

textual difference in statute, but treated the same by judges

Section 112(10) of the Women's Charter	Section 52(14) of AMLA
<p>In this section, "matrimonial asset" means –</p> <p>(a) Any asset acquired before the marriage by one party or both parties to the marriage –</p> <p>(i) ordinarily used or enjoyed by both parties or one or more of their children while the parties are residing together for shelter or transportation or for household, education, recreational, social or aesthetic purposes; or</p> <p>(ii) which has been substantially improved during the marriage by the other party or by both parties to the marriage; and</p> <p>(b) any other asset of any nature acquired during the marriage by one party or not parties to the marriage,</p> <p>But does include any asset (not being a matrimonial home) that has been acquired by one party at any time by gift or inheritance and that has not been substantially improved during the marriage by the other party or by both parties to the marriage.</p>	<p>For the purposes of this section, "property" means –</p> <p>(a) any asset acquired before the marriage by one party or both parties to the marriage which has been substantially improved during the marriage by the other party or by both parties to the marriage: and</p> <p>(b) any other asset of any nature acquired during the marriage by one party or both parties to the marriage,</p> <p>but does not include any asset (not being a matrimonial home) that has been acquired by one party at any time by gift or inheritance and that has not been substantially improved during the marriage by the other party or by both parties to the marriage.</p> <p>AM v AN [2012] 6 SSAR 202 – irrespective when it was acquired, if property is used as the matrimonial home, then it is a matrimonial asset.</p> <p>So while the 2 provisions may not be identical, caselaws show that the end result will be the same.</p>

Division of matrimonial assets: Principle of Just and Equitable Division

Starting point is Section 52(7) AMLA:

“... as the Court thinks just and equitable”

Court is guided by factors in section 52(8)(a) to (m) AMLA. Compare with Section 112(2) of WC.
They are identical .

However, do take note of the following:

- List of factors in AMLA is not exhaustive.
- It is a multi-factorial exercise – must be fact-sensitive.

CY v CZ [2020] 8 SSAR 38

- No reason why the structured approach in **ANJ v ANK [2015] 4 SLR 1043** cannot be applied in SYC as **it is not inconsistent with Muslim Law**.

Division of matrimonial assets: Stay of Proceedings when there is a third party claim

Court of Appeal (**UDA v UDB [2018] SGCA 20** : divorce proceeding must be stayed when there is a third-party claim to any of the matrimonial assets.

DA and another (intervener) v DC [2020] 8 SSAR 72

- Appeal Board : AMLA does not confer jurisdiction or power on the Court or the Appeal Board to determine substantive rights of “any interested person” other than the parties to the proceeding (i.e. husband and wife in the marriage).

Section 56A of AMLA

- Decision of Syariah Court or Appeal Board is final and cannot be challenged, appealed against , reviewed or called into question in any Court and may not be subject to any Quashing Order, Prohibiting Order, Mandatory Order or injunction in any court on any account.
- See **Mohamed Yusoff bin Mohd Haniff v Umi Kalsom bte Abas [2010] 3 SLR 481** - High Court dismissed application for judicial review of a Syariah Court order.

Thank You

Topic 3: Muslim Inheritance

Family Law Practice (inclusive of Muslim Law)

Ahmad Nizam Abbas

Contents

1. Introduction

2. Muslim Law of Inheritance (Faraid)

3. Muslim Wills

4. Muslim Inheritance in Civil Courts

**Textbook Reference : Muslim Family Law in Singapore
[2022], Academy Publishing] Chapter 8.**

01

Introduction

Course expectations. Core Knowledge .

Core Knowledge

1.

What you are expected to know :

- Who comes under Muslim law of Inheritance ? Is it mandatory for Muslims ?
- What is the difference between a Muslim Will with other Wills ? What are the basic restrictions?
- Which Court has jurisdiction over disputes in cases involving Muslim estates
- What is the approach taken by the Courts in handling such disputes especially on interplay between civil laws and Muslim law.

What you are Not expected to know :

- how to calculate the share apportionments between beneficiaries under Hukum Faraid
- drafting of muslim estate planning instruments

Inheritance laws in Singapore

Non-Muslim	Muslim
Intestate Succession Act	Administration of Muslim Law Act (AMLA)
Wills Act	Wills Act (only as to formalities)
Section 23 Civil Law Act	Not applicable to Muslim Wills
Probate & Administration Act	Applicable (on court application)
CPF Act	Applicable (on nominations)
Legitimacy Act	Children conceived out of marriage are not beneficiaries
Adoption Act	Adopted children do not inherit automatically
Inheritance (Family Provisions) Act	Not applicable to Muslims
Insurance Act on Revocable Nominations	Applicable (since 2017)

02

Muslim Law of Inheritance

(Hukum Faraid)

AMLA

LAST WILL AND TESTAMENT

Section 111 AMLA: Distribution by will ...to be in accordance with Muslim law

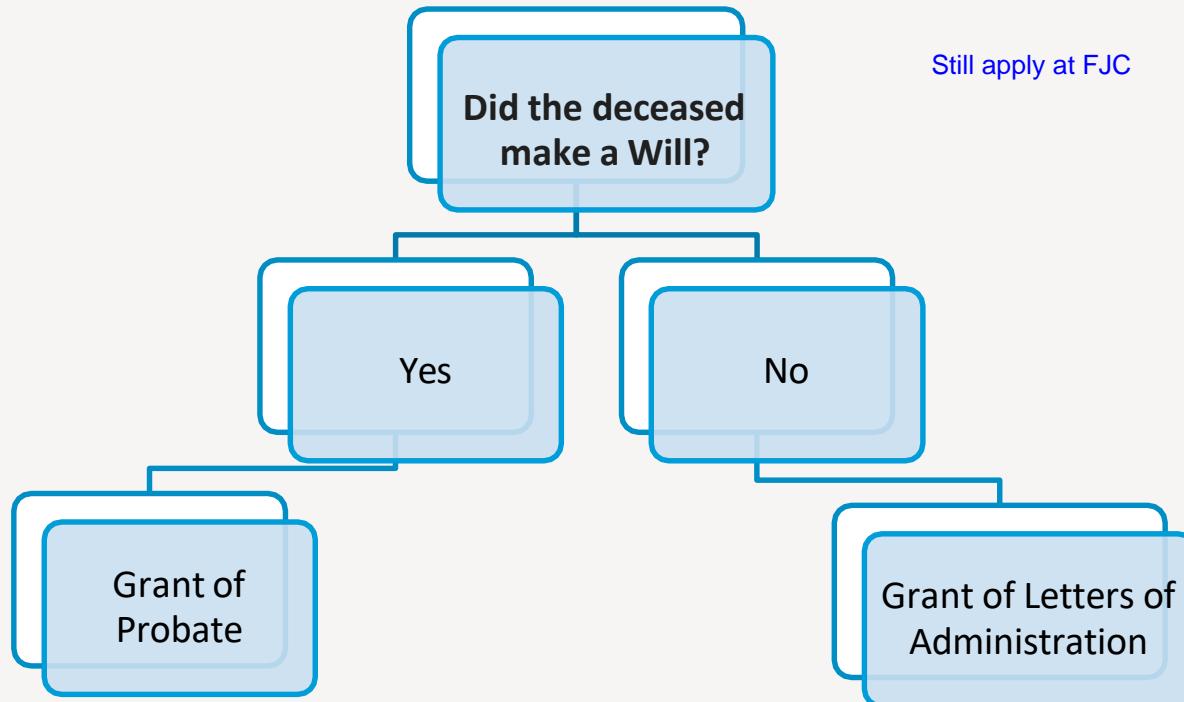
- (1) "... no Muslim domiciled in Singapore may, after 1 July 1968, dispose of his or her property by will except in accordance with the provisions of and subject to the restrictions imposed by the school of Muslim law professed by him or her.
- (2) Nothing in this section affects –
 - (a) the provisions of the Wills Act, other than s 3 thereof;
 - (b) the provisions of the Insurance Act;
 - (c) the provisions of the Probate and Administration Act; or
 - (d) the will of a Muslim dying before 1 July."

AMLA

Section 112 AMLA: Distribution of Muslim estate to be according to Muslim law

- (1) "In the case of any Muslim person domiciled in Singapore in Singapore dying intestate, the estate and effects shall be distributed according to the Muslim Law as modified, where applicable, by Malay custom.
- (2) This section shall apply in cases where a person dies partly intestate as well as in cases where he dies wholly intestate.
- (3) In the case of a Malay dying intestate, the Court may make an order for the division of the harta sepencarian or jointly acquired property in such proportions as to the court seems fit."

(Shafeeq Bin Salim Talib v Fatimah Bte Abud Bin Talib [2010] SGCA 11)



Application for Probate and Letters of Administration (for Muslim)

Section 113 AMLA: Application for probate and letters of administration

- "In all applications for probate and letters of administration the affidavit supporting the application shall, in the case of a deceased Muslim, state the school of law (Mazhab) which the deceased professed ..."

Need to apply to SYC for Inheritance Certificate to proceed with GOLOA or GOP from FJC

Section 115(1) AMLA: Inheritance Certificate

- The SYC will issue an Inheritance Certificate setting out the persons entitled to the estate of the deceased, and in what proportion.
- This Inheritance Certificate must be submitted with all other relevant documents when filing for Grant of Letters of Administration at the FJC.
- Online Application via www.syariahcourt.gov.sg (you can do a trial calculation at any time) .

Application for Probate and Letters of Administration (for Muslim)

FYI ONLY :

Documents required for an application of the Inheritance Certificate:

- Death certificate of Deceased
- Particulars of all beneficiaries (NRICs)
- Birth Certificates of beneficiaries (*note: adopted children aren't beneficiaries*)
- If parents are deceased, the death certificate.
- Marriage Certificate of Deceased's spouse
- Statutory Declaration of Applicant (usually the intended Administrator)

These documents are to prove the relationship between the deceased and beneficiary as well as to ascertain whether there are any possible beneficiary who may have been left out by the applicant, or included (eg adopted child) .

Who are the prescribed beneficiaries?

Prior to Islamic Law – based on cultures of ancient Arabs –

- Nearest male relatives
- Females excluded
- Descendants preferred to ascendants (ie. Parents excluded)

Under Islamic Law, main changes –

- Husband or wife entitled to inherit
- Females could inherit
- Parents could inherit

General Rule: a daughter is given $\frac{1}{2}$ of the share of a son.

Note: You are NOT required to know the exact shares entitlement of each beneficiary (father, mother, son, daughter, brother etc) as this can be done via the online calculator.

Faraid(distribution of Estate) FYI only

Based on:

- Quran - “ the male shall have equal portion of two females....and if he has parents, each of them shall have the sixth of what he has left if he has a child; but if he has no child and only his two parents to inherit from him, then his mother shall have the third'
- Hadiths - the Prophet said “Give the appointed portions to those entitled to them. Then whatever remains is for the nearest male”.

Source : MUIS website

Basis of Faraid

Male heirs generally receive more than the female heirs.

- But with rights, comes responsibility.

A male who chooses to accept the extra inheritance portion must realise that the rights, comes with added responsibility.

- This being the responsibility for the male member to provide for the female member's living and to secure their welfare.

One would argue then should the male not be ready to shoulder this right, they may consider renouncing their additional portion and instead share it with their female relatives.

- Such an act of renunciation and redistribution which is agreed upon by the heirs' consensus is allowed under Islamic law as declared by the Fatwa Committee of MUIS

Impediments to Inheritance- FYI only

Killing

- “One who kills a man cannot inherit from him” (Al-Timirdhi).

Difference in religion

- “a non-Muslim cannot be the heir of a Muslim” (Bukhari) .

Illegitimate children & adopted children may not inherit . Child born out wedlock does not inherit from natural father but does so from natural mother.

Solution : Provide for them in Wills (subject to the one-third rule).

(General Endowment Fund)

Baitulmal is the institution that acts as a trustee for the Muslims.

It looks after assets from which members of the Muslim public could benefit –

- Looks after assets from which members of Muslim public could benefit
- In Singapore , MUIS administers Baitulmal.

Circumstances where a share of the estate of a deceased person goes to Baitulmal:-

- No rightful beneficiary to estate
- No claimant to the estate
- Scenarios include a convert who dies leaving only non-Muslim heirs.

You can appeal. Based on hardship.

03

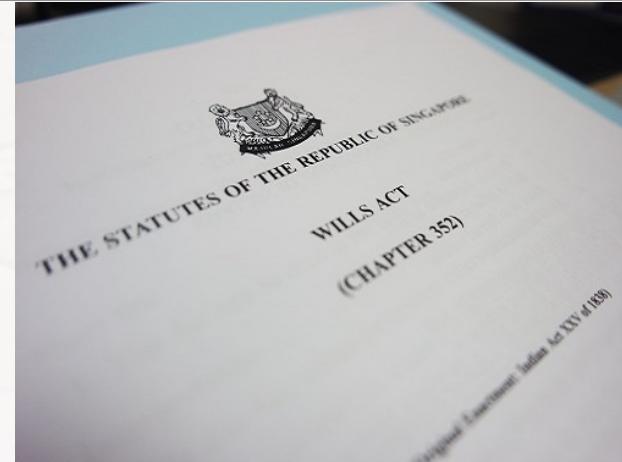
Muslim Wills

Formalities of Muslim Wills

Section 3(1) Wills Act does not apply to Muslims BUT **Muslim**

Wills must comply with the formalities in Wills Act:

- Section 4 – Capacity (above 21 years old except for soldier in actual military service or mariner/seaman as per section 27)
- Section 6 – Execution in Writing
- Section 10 – Witnesses cannot be a beneficiary or a spouse
- Section 13 – Revoked by marriage
- Section 16 – Alteration not valid
- Section 28 – Rectification of Will by Court based on clerical error or failure to understand Testator's intention



Formalities of Muslim Wills

Under Muslim Law

- Appointment of Executor and Trustee
 - Executor should be (1) Muslim; (2) Adult; (3) Sane; (4) Free of irreproachable character; and (5) Fit person to perform duties entrusted to him. (Note: so far, no challenge in Court on this)
- Witnesses
 - 2 witnesses who are Muslim males (no known challenge in Court)
- Quantum of assets and to whom
 - Can bequeath up to 1/3 of estate 2/3 of estate MUST go to Faraid beneficiaries exception when ALL Faraid beneficiaries consent
 - Must be to non-Faraid beneficiaries
 - Adopted children
 - Stepchildren/step-parents
 - Child out of wedlock *
 - Unrelated third parties (e.g. friends, charitable organizations)

Real examples of invalid Muslim Wills

- 1) "I give everything to my Wife , in accordance with Muslim Law"
cannot give everything to Wife
- 2) "If I do not return from Haj, my house shall belong to my adopted Daughter"
conditional - becomes invalid if sth happens
cannot give everything to daughter
- 3) "I give 1 house at Jalan Avocado to my first Daughter, my other house at Banana Road to my second Daughter and my condo at Coconut Drive to my only Son."
cannot give to those in the 2/3

04

Muslim Inheritance in Civil Courts

Some examples of how questions of Muslim law of inheritance have been treated

How do the Civil Courts approach Muslim Inheritance Issues

- Disputes on who are the lawful beneficiaries.
- Disputes on which assets fall within “the estate of a Muslim”.
- Disputes on how the assets are to be distributed.

What is the approach taken by the Civil Courts in dealing with Muslim Law of Inheritance issues.

LS Investments Pte Ltd v MUIS[1998] 3 SLR 369: Muslim Law is part of the law of the land

Property had been sold to LS Investments by a Trustee under the Will of Sharifah Shaikah Binte Omar Aljunied in 1930s.

- MUIS lodged a caveat on the grounds that property was a *wakaf* (gift to a charitable trust) and therefore, under sections 58 to 62 AMLA, the legal title to wakaf properties vested in MUIS

Section 59 AMLA: “*all property subject to section 58 shall if situate in Singapore vest in the Majlis*”

Issue: Whether the property was a wakaf. If it were, then the sale was invalid as no good title passed.

LS Investments Pte Ltd v MUIS[1998] 3 SLR 369

Elements required for a wakaf are:

- i. a dedication of property for pious, religious, or charitable purposes;
 - ii. inalienability of subject matter; and
 - iii. a permanent dedication.
-
- Court : whether or not it is a wakaf cannot be based on common law but on Muslim Law . This is because it is not the same as common law charitable trust.

Key point is HOW the court approached the issue: Need to approach based on Muslim law

LS Investments Pte Ltd v MUIS[1998] 3 SLR 369: approach of the Court

Court of Appeal :

- “Muslim Law need not be proved like foreign law. Muslim law is part of the law of the land which the Court would take cognizance”
 - Note : while the English translation of wakaf is a charitable trust, it is wrong to apply common law of trusts to a wakaf . Instead, as was done by Justice Judith Prakash at the High Court below, the Court must apply Muslim Law in determining whether a wakaf had been created .
- Approach in LS Investments followed Justice Aedit Abdullah in *MUIS v Saeed Salman and Another* [2016] SGHC 4.

Re Will of Shaikh Ahmad Bin Abdullah Wahdain Bashari/[2002] SGHC 165: Inheritance Certificate

Timeline:

- 1938: Deceased made Will in Singapore.
- 1953: Deceased passed away in Surabaya.
- 1974: Date of distribution of the Estate according to the Will.
- 1976: Public Trustee appointed trustee of the Will. Properties vested in the Public

2000: Inheritance Certificate issued by Syariah Court of Singapore as per the Indonesian Order	Grandchildren of other wives applied to High Court challenging the Inheritance Certificate
<ul style="list-style-type: none">• One wife and six children.	<ul style="list-style-type: none">• Five wives in his lifetime.• At time of death, only one surviving wife.• Total - 13 children

Re Will of Shaikh Ahmad Bin Abdullah Wahdain Basharil

[2002] SGHC 165: Inheritance Certificate

Issue: (Lee Sieu Kin JC) “The key issues is whether the testator had been married under the Muslim Law to the second to fifth wives”.

This is a question of fact . Question is whether the other wives were validly married - if they were then the claims would be valid.

Key observations :

- The Syariah Court’s role is to issue an Inheritance Certificate based on the information provided by an applicant . But if there is a challenge, then the High Court is the forum for adjudication .

High Court is the forum for adjudicating a dispute over an Inheritance Certificate

Shiraz Abidally Husain [2007] SGCA 16: Letter of Wishes and Deed of Family Arrangements

Timeline:

- **13 January 1992:** Deceased made a Will.
- **15 November 2000:** Deceased wrote a Letter of Wishes to give his monies equally to his six children (sons and daughters).
- **16 May 2003:** Passed away.
- **18 May 2003:** Children entered into a Deed, agreeing to comply with the Letter of Wishes.
- **19 May 2003:** The will was subsequently discovered.
- **21 May 2003:** The five siblings received their share of the monies in joint accounts based on the Letter of Wishes.
- **7 Aug 2003:** One of the children issued a Statement – “*It is my right to inherit as per the lawful and correctly drawn up will of my father, Abidally Abdul Husain, in accordance with the Islamic Law and I now exercise that right*”

Shiraz Abidally Husain [2007] SGCA 16: Letter of Wishes and Deed of Family Arrangements

Issue: Was the agreement of 18 May 2003 among the six children enforceable or not?

Court of Appeal (Chan Sek Keong, Chief Justice) :

- “there was an agreement among the six children on 18 May 2003 to distribute to themselves equally ... the bank accounts... Such an agreement was not inconsistent with Muslim law and was binding on them.”

Haja Maideen v Roshan Begum [2017] SGHC 164: HIBAH (GIFT)

HDB flat was solely owned by the Mother

- June 2011: the Mother passed away in India and left behind two sons and one daughter.
- Elder son wanted to sell the flat and divide the proceeds according to Hukum Faraid.
- Daughter refused to move out as she had been living in the flat.
- Daughter relied on Hibah signed by the Mother in India, giving her the entire flat.
- Elder son argued that the Hibah was invalid.

Issue:

- Whether a Muslim has made a valid inter vivos gift or *hibah*
- Whether the property was properly disposed has to be answered with reference to general law such as legislation and the common law

Hibah Ruqba (Gift)

Hibah ruqba - It is a gift conditional upon death.

- It is effected when the giver says, “*This property is yours as ruqba, if you should die before me, the property becomes mine and if I die before you, the property becomes yours*”.

Haja Maideen v Roshan Begum [2017] SGHC 164: *HIBAH(GIFT)*

Choo Han Teck J:

- Section 50 Housing and Development Act : no HDB flat shall be disposed of without the prior written consent of the HDB . Since HDB's consent was not sought, the transfer was therefore void .
- MUIS's opinion that the hibah was valid under Muslim Law was not binding on this court which had full jurisdiction to decide on the matter in issue.

Shafeeq Bin Salim Talib v Fatimah Bte Abud Talib [2010]

SGCA 11: Jbint Tenancy

Timeline:

- 1998 - Husband (H) and Wife (W) purchased property as Joint Tenants (JT) .
- 2005 - Upon H's death, W became sole owner.
- W then transferred property to herself and the 2 children.
- H's brother sued W for half of the property.
 - Relied on s 112 of AMLA and 2007 Fatwa – that joint tenancy is not recognised under Muslim Law (i.e. each co-owner of a joint property had a fixed share which should be distributed to his legal beneficiaries)

Issue: Whether the doctrine of the right of survivorship for properties held under a joint tenancy applied to Muslims

Shafeeq Bin Salim Talib v Fatimah Bte Abud Talib [2010]

SGCA 11: Joint Tenancy

At High Court:

- Land Titles Act applies to all properties in Singapore.
- Issue was not on a question of Muslim law, but as to whether the property formed part of the deceased's estate.
 - Muslim law not applicable – section 112 AMLA not applicable as said property was not within the deceased's estate to be distributed.
- Administrators appealed.
 - Argued that “*the concept of joint-tenancy and the operation of right-survivorship is repugnant to Muslim law as it increased her (deceased's wife) share in the estate*”.

Shafeeq Bin Salim Talib v Fatimah Bte Abud Talib [2010]

SGCA 11: Jbint Tenancy

At Court of Appeal:

- “We agree with the High Court’s view... but this does not mean that the Court does not have to take into account Muslim law...”
- “The question as to what assets constitute the estate and effects of a deceased Muslim has first to be determined according to his personal law, and not according to the common law.”
- There is no ‘passing’ of the property.
 - Instead, property had ‘morphed’ into sole-ownership , hence nothing to distribute.

Note : CA studied authorities on position of joint-tenancy in Muslim Law.

Found that JT is not inconsistent with Muslim law

The civil courts must apply Muslim Law for estates of Muslims, but for there to be effective transfer of the intended bequest, it cannot be inconsistent with other laws of the land.

Saniah Ali v Abdullah Ali [1990] 1SLR(R) 555: CPF Monies

The Deceased made a nomination under section 24(1) CPF Act (now section 25(1)) naming his stepsister, Saniah, to receive all his CPF monies on his death

- CPF monies duly paid to Saniah by CPF Board
- Under Faraid, the deceased's brother, Abdullah, was entitled to the whole of the deceased's estate. Abdullah obtained an inheritance certificate from SYC that he was entitled to the deceased's entire estate.

Issue: Whether Saniah was entitled to retain the entire amount of the deceased's CPF monies

- Abdullah's argument was that under section 112 AMLA, the estate of any Muslim dying intestate would be distributed in accordance with Muslim Law, which would mean that the CPF monies would form part of the assets of the Deceased. He relied on the then prevailing fatwa that a nominee holds the monies on trust of the Faraid beneficiaries.

Saniah Ali v Abdullah Ali [1990] 1SLR(R) 555: CPF Monies

Justice Thean: CPF moneys do not form part of the estate of the deceased and s 112 of AMLA is not applicable

- No conflict between the CPF Act and the AMLA.
- “moneys in the CPF ... are specifically excluded from the estate of the deceased, and that being so, the moneys do not form part of the estate of the deceased member and are therefore not subject to s 112(1) of the AMLA; in other words, that section does not apply to those moneys”.
- A Fatwa is merely an opinion of the Fatwa Committee of the Majlis (MUIS) and not binding on the Court

Revised Fatwa on CPF Monies

Fatwa on CPF was updated on 3 August 2010 to permit nomination as a new form of hibah (gift)

Under the new Fatwa , the CPF member could choose to nominate or distribute according to Faraid, or exercise both options together

- CPF nomination equals to hibah (gift)
- Must take into consideration the financial situation of his/her beneficiaries and who is in need of the money.
- Nomination cannot be made with the intention of denying the rights of other beneficiaries. (How would this apply in the Saniah situation)?
- If no nomination, Faraid applies.
- Nomination can be changed (divorce, death of nominee).

Maxims to remember for a Muslim in estate planning

- Wishes may not be carried out if the Will or other instruments (eg. Hibah/Nuzriah) does not comply with Muslim Law .
- Even if the wishes comply with Muslim Law, they need to be consistent with other laws of the land.

Thank You