

Topic 2: Divorce and Ancillary Orders

PART B MODULE: MUSLIM FAMILY AND SUCCESSION LAW

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Core Knowledge

- Key Differences between the divorce process in the FJC and SYC
- Types of Orders made by the SYC in divorce proceedings
- Jurisdiction of the SYC to hear divorce applications
- Essential requirements of a valid Muslim marriage
- Grounds for divorce in the Syariah Court
- Types of Ancillary Orders
- Division of Matrimonial Assets
 - Similarities between section 52(8) AMLA and s 112(2) Women's Charter
 - Structured Approach in ANJ v ANK
 - What happens when there is third party interest?

INTRODUCTION

STRUCTURE OF SYARIAH COURT

MUIS APPEAL BOARD

LAWYERS AND LITIGANTS IN PERSON IN THE SYARIAH COURT

SYC and MUIS Appeal Board

SYARIAH COURT

- Senior President and Presidents – either civil law trained (from FJC) or from religious education track
- Ad-hoc Presidents
- 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) .

Lawyers and Litigants in Person

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 165 at [21]).
- Lawyers who appear at the SYC must be mindful of general rules of ethics and competency.

DIVORCE

Recap:

Jurisdiction of SYC 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).

What is a valid Muslim Marriage?

Essentials of Muslim Marriage

Marriage ceremony can take place anywhere (ROMM, home, mosque,hotel etc) . If the marriage is registered at the ROMM , there is no need to prove validity of marriage as the ROMM registration is accepted at face value by the SYC.

If the marriage (in Singapore) is not registered at ROMM, then section 109 applies ;
“ Nothing in this Act is to be construed to render valid or invalid merely by reason of its having been or not been registered....”

If the marriage is overseas, then the SYC is likely to require proof of validity of Muslim marriage at the time of filing for divorce application (not in the Act but based on caselaw)

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.

Parties were married in Boston civil registry, at an Islamic Bookstore in London and a Church in Singapore.

Essential elements of Valid Muslim Marriage :

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

In the Affidavit of Foreign Marriage, highlight these 5 elements and state whether the marriage is registered or not at the foreign country.

Divorce Process at SYC

Main Differences in Divorce Process

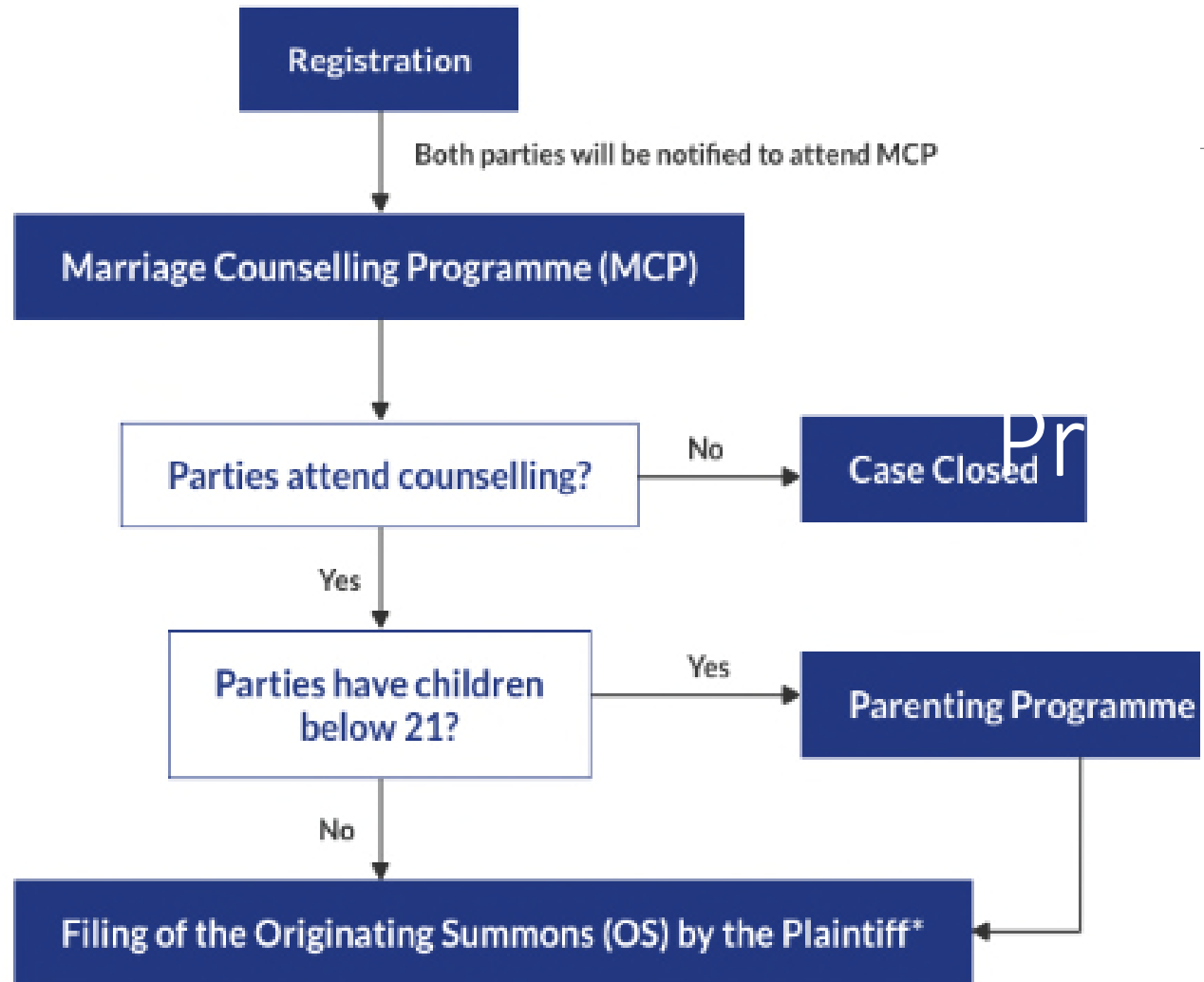
FAMILY JUSTICE COURTS

- 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) .

SYARIAH COURT

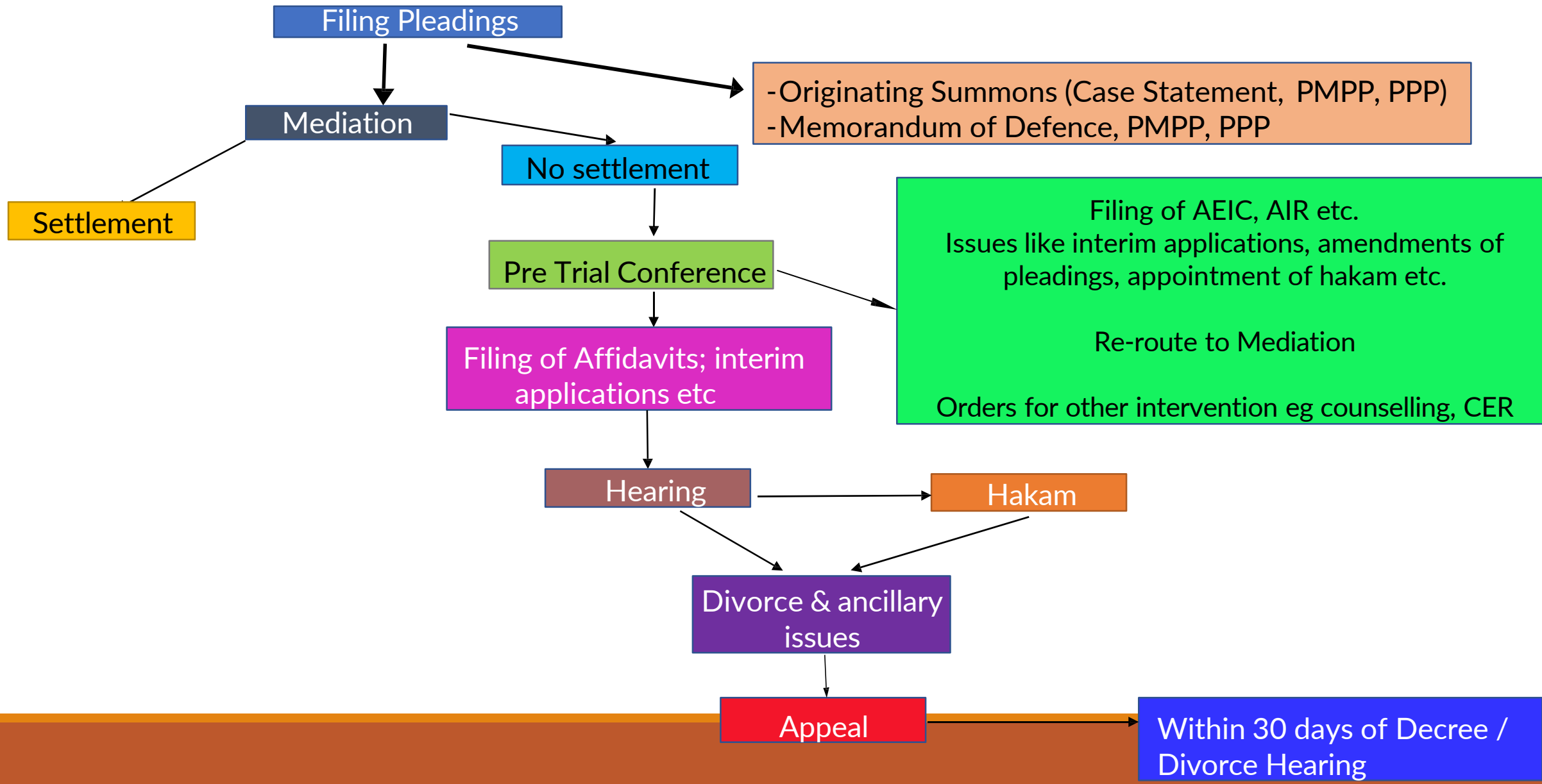
- Not a bifurcated system.
- Decree of Divorce and Ancillary Orders made together at same hearing.
- Divorce Certificate issued 3 months after date of divorce (expiration of wife's iddah period)

SYC Divorce Proceedings



*The party who initiates the divorce proceedings

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)

APPEALS AGAINST FINAL ORDERS OF SYARIAH COURT 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)

Orders made by SYC in Divorce

1. Dissolution of marriage (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

GROUNDS OF DIVORCE

Grounds of Divorce

WOMEN'S CHARTER – FJC

One ground under **section 95 of the Women's Charter** (Irretrievable Breakdown of Marriage) based on one of the following facts:

- a) Adultery
- b) Unreasonable behaviour
- c) Desertion
- d) Separation
- e) DMA (Divorce by Mutual Agreement) from 1 July 2024

MUSLIM FAMILY LAW – SYC

Divorce Application must be on one of the following basis:

- **Talak** (Pronouncement by husband, e.g. “I divorce you with one talak.”)
- **Taklik** (Breach of marriage conditions)
- **Fasakh** (applicable by wife under s 49 AMLA)
- **Khuluk** (divorce by redemption – agreed monetary sum from wife to husband)

Methods of Divorce under Muslim Law

Divorce by Husband: Talak

(PRONOUNCEMENT OF DIVORCE)

Talak (Pronouncement of divorce by husband)

Most common divorce is by way of the **husband pronouncing the talak (section 46B AMLA)**, usually “ I divorce you with one talak” . 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).
 - Divorce by one talak can be revoked if parties reconcile within 3 months. If more than 3 months, they will need to re-solemnize their marriage.
 - Note : If Husband HAS pronounced talak, wife can apply for SYC to record divorce under this ground

Other types of Divorce under Muslim Law

IF APPLICANT IS HUSBAND, HE APPLIES FOR DIVORCE BY TALAK.

IF WIFE IS THE APPLICANT, SHE CAN ALSO USE OTHER TYPES OF DIVORCE.

Divorce Application by Wife

Wife may apply for divorce on the basis of:

- i. Registration of the talak already pronounced by Husband or she can request husband to pronounce talak (**section 47 AMLA**)
- ii. Cerai taklik (divorce by breach of condition) (**section 48 AMLA**)
- iii. Fasakh (annulment or judicial dissolution based on grounds stipulated in **section 49 AMLA**)
- iv. Khuluk (divorce at request of wife by redemption **section 47(4) AMLA**)

Divorce by Wife: Breach of Taklik

BREACH OF CONDITIONS IN THE MARRIAGE CONTRACT

Divorce Application by Wife: Breach of Taklik

Taklik are conditions 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.

Divorce Application by Wife: Breach of Taklik (condition)

Taklik (condition) 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 (take note if you are acting for foreign clients)**
- **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 in an application for divorce under this ground. (That is why you need to peruse the marriage cert carefully) .

Divorce by Wife: Fasakh

(JUDICIAL DISSOLUTION OF MARRIAGE)

Divorce Application by Wife: Fasakh (Judicial Dissolution of Marriage)

Fasakh is judicial dissolution of the marriage on various grounds listed in **sections 49(1)(a) to (g) AMLA**:

- 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.
- 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).

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

Divorce by Wife: Khuluk

(DIVORCE BY REDEMPTION)

Divorce Application by Wife: Khuluk (Divorce by Redemption)

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 (since the wife can rely on other types of divorce)
- In Singapore, the amount is usually nominal (symbolic)
- A divorce by khuluk is irrevocable – cannot remarry each other .

ANCILLARY ORDERS

Nafkah Iddah

As a divorced wife is not permitted to re-marry during her ***iddah 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' social standing
- Provision of necessary clothing and suitable lodging.
- Cost and standard of living in Singapore.

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

Note: Iddah may also be spelt as “eddah”.

Mutaah

Upon divorce, a Muslim husband has to pay mutaah (consolatory gift) to his wife (sections 35(2)(e) and 52(3)(b) AMLA): 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
 - Mutaah is payable from the date of marriage until the date of divorce: **\$A x No. of days of marriage**
- SYC has repeatedly maintained that mutaah is an entitlement and **not based on conduct of wife (nusus)** . (**CQ v CR [2019] 7 SSAR 210 at [19]**)

ORDERS ON CHILDREN

Custody, Care and Control, Access

ORDERS ON CHILDREN

Children: Custody

AMLA does not codify principles under Muslim Law (as contrasted with Malaysia – eg. ss 81 to 85 Islamic Family Law (Federal Territories Act 1984))

➤ Not uncommon to refer to civil law authorities in SYC (See ***Zaini Bin Ibrahim v Rafidah Rahman* [2007] SGSAB 2 [2007] 3 SSAR 135**)

➤ ***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.

Children: Conduct of Parties

AE v AF [2011] 6 SSAR 65

- Husband (Turkish national) urged the Appeal Board to apply the Muslim rules on custody, in that by her adultery, the wife had lost her custody rights of their two children.
- **Appeal Board** commented:
 - *“In our view, the H’s submission, if accepted, can result in injustice to the infant child in a case where the spouse, who is given custody on the sole basis of the adultery of the other spouse, is shown to have no regard for the child’s welfare and ill-treats and abuses the child... Considering the circumstances of this case, **we do not think that the W’s adultery would have a detrimental effect on the children’s welfare. In short, even with the adultery, it did not necessarily mean that she was a bad mother to the children and therefore 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: 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.
 - 2011: father had obtained an order of divorce from the Phuket Provincial Court.
 - 2014: when she 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”.
- **SYC**: Senior President granted the care and control to the father with an added condition that *“the child was to attend Islamic religious classes so that she will gradually learn to appreciate the faith tradition”*

Children: Spiritual Interest

AY v YZ [2015] 386 overturned SYC order

➤ **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.
- While the child’s education would be disrupted in having relocated to Singapore, this should not be an obstacle to the requirement in law that the interest of the child is paramount to all other interests.
- Note: While the religion of the parent is important, it may not be the sole reason for awarding care and control(in relation to parties who have renounced the religion). SYC’s concern is on how child is to be brought up.

Access

ORDERS ON CHILDREN

Children: Access Orders

AI v AJ [2011] 6 SSAR 143

“The party with the daily care and control of the children must rise above the rancour of the divorce and embrace a spirit of magnanimity and goodwill in allowing access by the other parent to the children for their own sake.. Parties must recognise that by allowing access, it provides the children with the continued presence of a father or mother to provide guidance and support to them. This is a desirable objective and in the best interest of the child.”

- SYC orders on access generally similar with FJC .

Other Orders on Children

ORDERS ON CHILDREN

Children Orders cannot cover third parties

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

➤ 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.**
- Decision in line with ***UDA v UDB and another [2017] SGHCF 16*** - “*while an intervener has the right to be heard in an intervener’s application, that right does not extend to conferring substantive jurisdiction and power to make an order for or against the intervener*”.

Children: Judicial Interview

SYC has had a long-standing practice that children above 7 years old (age of discernment) will be interviewed in almost all cases where there is a dispute on care and control or access (and some disputes on custody).

AA v AB [2011] 6 SSAR 120

- The overriding principle is welfare of child.
- 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.

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

Children: CER and Other Reports

Appeal no. 8 of 2021

- Parties can ask Court to call for CER. Custody Evaluation Report (CER) is discretionary.
- Based on several factors:
 - The nature, quantity and severity of the allegations levelled
 - The length of time taken to conduct the witness interviews
 - The state of the parties and proceedings.

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

Children: CER and Other Reports

Absent a divorce hearing in SYC, the jurisdiction or power to hear and determine the issues of division of matrimonial assets cannot be invoked

➤ Section 35(2)(d) 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 — the disposition or division of property on divorce or nullification of marriage”

➤ See also Section 52(3)(d) AMLA

For parties who had already been divorced overseas, SYC has no jurisdiction to hear an application for child – based on ***TMO v TMP [2017] 1 SLR 585***.

ORDERS ON DIVISION OF MATRIMONIAL ASSETS

Types of Assets

ORDERS ON DIVISION OF MATRIMONIAL ASSETS

Division of Matrimonial Assets: Types of Assets

Matrimonial assets are statutorily defined in section 52(14) AMLA.

(Compare with section 112(10) of the Women's Charter)

“For the purposes of this section, “property” means —

*(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*

*(b) any other asset of any nature **acquired during the marriage** by one party or both parties to the marriage,*

*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.”*

Just and Equitable Division

ORDERS ON DIVISION OF MATRIMONIAL ASSETS

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.

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.

Structured Approach (ANJ approach)

ORDERS ON DIVISION OF MATRIMONIAL ASSETS

ANJ V ANK [2015] 4 SLR 1043

Division of Matrimonial Assets: Structured Approach (*ANJ v ANK*)

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.**

Stay of Proceedings when there is a third- party claim

ORDERS ON DIVISION OF MATRIMONIAL ASSETS

Division of Matrimonial Assets: Stay of Proceedings when there is a third-party claim

Court of Appeal (UDA v UDB [2018] SGCA 20, have held that a 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).

Similar cases – ***Safie bin Jantan v Zaiton bte Adom and another and another appeal [2023] SGHC(A) 8, DD and another v DF [2020] 8 SSAR 95 and EB (Intervener) v EC [2021] 8 SSAR 284***

Decision of SYC and Appeal Board to be Final

Decision of SYC and Appeal Board to be Final

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
