

Topic 1: Muslim Family Law in Singapore

MUSLIM FAMILY LAW MODULE

SILE PART B 2024

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Core Knowledge

- Applicability of Muslim Family Law in SG
 - Administration of Muslim Law Act 1966 (“AMLA”)
- Civil (Personal/Family) Laws Applicable to Muslims
- Jurisdiction of the Syariah Court
 - Section 35 AMLA
- Powers of the Syariah Court
 - Section 53 AMLA
- Residual Jurisdiction and Concurrent Jurisdiction
 - Section 17A SCJA, Section 35A AMLA
- Enforcement of Syariah Court Orders in the Family Justice Courts

01 INTRODUCTION

Applicability of Muslim Family Law in SG

- Per Chan Sek Keong CJ in *Shafeeq bin Salim Talib v Fatimah bte Abud bin Taib [2010] 2 SLR 1123* at [19]-[20]- ‘The Second Charter of Justice 1826 introduced the entire corpus of English law (common law and English statutes) to Singapore ... subject to the customs and personal laws of the inhabitants...’
- **1880 Mohammedan Marriage Ordinance (MMO)** – first time that the British colonial authorities officially recognised, through legislation, the status of personal law in Singapore.
- **1957 Muslim Ordinance** – establishment of Syariah Court
- 1966 Administration of Muslim Law Bill was passed.
- 1968 Administration of Muslim Law Act (“AMLA”) came into effect.

02 AMLA

ADMINISTRATION OF MUSLIM LAW ACT 1966 (“AMLA”)

AMLA

Preamble : '*An Act relating to Muslims and to make provisions for regulating Muslim religious institutions and to constitute a council to advise on matters relating to the Muslim religion in Singapore and a Syariah Court.*'

AMLA

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

It is **not** a codified set of Muslim laws.

Key institutions:-

- **MUIS (Islamic Religious Council of Singapore)**
- **Syariah Court**
- **ROMM (Registry of Muslim Marriages).**

Applicability of AMLA

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)

- **Section 2 AMLA –** a ‘Muslim’ means ‘a person who professes the religion of Islam’.
- **Sections 3(2), (2A) of the Women’s Charter –** “ Parts 2 to 6 ...do not apply to any person who is married under Muslim Law’.
- **Section 3(4) of the Women’s Charter –** No marriage between persons who are Muslims shall be solemnized or registered under this Act.
- **Section 2 of the Intestate Succession Act 1967 –** “Nothing in this Act shall apply to the estate of any Muslim or shall affect any rules of the Muslim law in respect of the distribution of the estate of any such person.”
- **Wills Act 1838**

Civil (Personal/Family) Laws Applicable to Muslims

- **Women's Charter** – Maintenance of wife during marriage, Children, PPO
 - Except provisions specifically excluding Muslims .
- **Guardianship of Infants Act** – where there is no divorce proceedings
- **Adoption of Children Act** – but children do not become beneficiaries
- **Probate & Administration Act 1934** – but asset distribution is governed by Muslim Law
 - Where the deceased is Muslim, they must obtain an Inheritance Certificate issued by the SYC (**section 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)** – *only as to formalities*

03 JURISDICTION OF THE SYARIAH COURT

Jurisdiction of the Syariah Court

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.

Jurisdiction of the Syariah Court

Requirement of Domicile and Habitual Residence

Section 35(3) AMLA –

since 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.

Types of Jurisdiction

Types of Jurisdiction

- Personal jurisdiction – **section 35(2) AMLA**
- Subject-matter jurisdiction – **section 35(2) AMLA**
- Territorial jurisdiction – **section 35(3) AMLA**
- Concurrent jurisdiction with the civil courts – **section 17A SCJA and section 35A AMLA**

Personal Jurisdiction

Personal Jurisdiction

The Syariah Court only exercises personal jurisdiction over parties who are Muslims or who married under Muslim law (s 35(2) AMLA).

Jurisdiction

35.—(1) The Court has jurisdiction throughout Singapore.

(2) 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.

[33/2017]

Personal Jurisdiction

1) Who is a Muslim ?

- Section 2 AMLA – “Muslim” means a person who **professes the religion of Islam**.

2) What are the essential requirements for a Muslim marriage?

- ***Yeo Pei Chern (Yang Peizhen Freda) v Seow Zheng Xin, Isa (alias Mohammed Isa Abdullah) (2007)*** 4 SSAR 146

3) For parties who may have undergone both the ROM and ROMM marriages, a decree of divorce from the Syariah Court will dissolve the civil marriage too.

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

Personal Jurisdiction

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Personal Jurisdiction

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

Yeo Pei Chern (Yang Peizhen Freda) v Seow Zheng Xin, Isa (alias Mohammed Isa Abdullah) (2007) 4 SSAR 146

- 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

(3) For parties who may have undergone both the ROM and ROMM marriages, a decree of divorce from the Syariah Court will dissolve the civil marriage too.

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

Personal Jurisdiction

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

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.
- Foreign marriages
 - SYC does not accept a foreign or customary Muslim marriage certificate as conclusive proof of a valid Muslim marriage. Needs to be proven (Affidavit of foreign marriage) .
- Foreign divorces
 - See ***ED v EE (2021) 8 SSAR 292*** and ***TMO v TMP [2017] 1 SLR 585*** – once there is a recognised divorce overseas, SYC will not have jurisdiction over the divorce save for nafkah iddah and mutaah.

Subject-Matter Jurisdiction

Subject-Matter Jurisdiction

Section 35(2) AMLA: the Court has jurisdiction to hear and determine all actions and proceedings ...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.

Concurrent Jurisdiction with Civil Courts

Concurrent Jurisdiction of FJC and SYC

1999 AMLA Amendments

AMLA amended to provide for concurrent jurisdiction over most matters except disputes relating to marriage, divorce betrothal, nullity of marriage or judicial separation.

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.**

Concurrent Jurisdiction

TMO v TMP [2017] SGCA 14 – “residual jurisdiction”.

- This is a must-read.
- Where there is NO specific exclusion and NO separate Muslim law, Civil Courts (especially FJC) have “residual jurisdiction” over Muslims.
- E.g. if the Muslim couple have been divorced overseas, and there are unresolved issues on assets which SYC lack jurisdiction to hear – either party must commence an ‘Application for Financial Relief after Overseas Divorce’ under section 121B of the Women’s Charter (see ***UJM v UJL [2021] 2 SLR 1467***).

Concurrent Jurisdiction of FJC and SYC

Section 17A (2) 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.”

What is the test for
obtaining leave from
SYC?

CONCURRENT JURISDICTION

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

Obtaining leave from SYC - the “**balancing of interests**” test in **AK v AL [2012] 6 SSAR 184**.

Whether granting leave :

- (a) will allow for the more expedient resolution of the relevant issues and whether such expediency is necessary;
- (b) may lead to/prevent the unnecessary duplication of legal proceedings in respect of the relevant issues;
- (c) 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) 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.”

Points to Note on Concurrent Jurisdiction

- Children's issues – parties can start civil proceeding before or after there is divorce proceeding in SYC. FJC will stay action once it is made aware there are SYC proceedings. Need leave to commence or continue FJC proceeding as **section 35A AMLA** applies.
- FJC does not have jurisdiction to deal with application for division of assets involving parties in Muslim marriage. Only when in exercise of residual jurisdiction (**TMO v TMP** situation).

Continuing Civil Proceedings 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**. But must :

- attend counselling
- obtain certificate of attendance

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

POWERS OF THE SYARIAH COURT

Powers of SYC

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

ENFORCEMENT OF SYC ORDERS IN THE FJC

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

Enforcement in FJC: 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 – enforcement mechanism (Part IX of WC) available to SYC order: some examples

- attachment of earnings order, garnishee order
- imprisonment
- recover outstanding sum as debt
- Financial counselling
- Statutory Declaration when getting married - whether he/she owes any arrears - **section 17(2A) SCJA**.

Enforcement in FJC: Orders on Children, 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 in FJC: VFU v VFV [2020] SGHCF 3

Jurisdiction of FJC and SYC Orders made by SYC

Enforcement in SYC

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
- Issue letter of demand to defaulting party
- Affidavit to show default.

Thank you

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