








### SESSION 3 - MUSLIM FAMILY LAW IN SINGAPORE: PROCEDURE


#### Reading Materials

(asterisk\* denotes mandatory reading)


<u>S/N</u>	<u>Description</u>	<u>Object</u>
LEGISLATION		
1.	Administration of Muslim Law Act 1966 (2020 Revised Edition) (see in particular: ss 35A, 42, 43B, 46, 46A, 46B, 50, 53A)*	 Administration of Muslim Law Act 1966
2.	Muslim Marriage and Divorce Rules (MMDR) (see in particular, rr 8B, 9, 9A, 9B, 12, 14 15, 18, 18A, 20, 23, 24B, 25, 25A, 26, 29, 33, 34, 34A, 35, 37, 38, 29, 40, 41, 42, 44)*	 Muslim Marriage and Divorce Rules (2
CASES		
<u>Substituted service</u>		
3.	<p><b><i>BC v BD (2011) 6 SSAR 96, [2011] SGSAB 10 *</i></b></p> <p>In this case, the Husband (Defendant), amongst other things, argued that the substituted service of the OS for divorce was irregular, and therefore attempted to set aside the SYC Orders on the ancillary matters.</p> <p>The Wife (Plaintiff) applied for an application for substituted service of the OS by placing a notice in an issue of the Berita Harian. In her affidavit in support, she stated that sometime in March 2007, the Husband, via, a phone call, had informed her that he was no longer in Singapore but he did not disclose his exact whereabouts. He later sent her an SMS saying that he was in Melbourne with the 3 children. The Wife did not believe him as the Husband had no relatives and no means or resources to stay in Australia. The police, however, confirmed that the children had left the Woodlands Checkpoint with another adult (and not the Husband) in April 2007. They also informed her that the Husband could not have left Singapore as there was a warrant of arrest against him. The Wife was also unable to find out the Husband's whereabouts from her mother in law. The Wife did not think the Husband would have left Singapore because he was an undischarged bankrupt and had warrants of arrest issued against him.</p> <p>The Husband argued that the substituted service was irregular since it was obtained based on the Wife's "misrepresentation", as she knew that he was not in Singapore at the material time. He said that he was in Kuala Lumpur at</p>	 BC v BD.pdf

	<p>the material time. The Husband, however, did not produce his passport to prove this.</p> <p>The Appeal Board found that the order of substituted service was validly made. The Wife had sufficiently disclosed the attempts made to trace the Husband's whereabouts before applying for substituted service.</p> <p>This case is useful in understanding the evidence required to obtain an order of substituted service.</p>	
<b><u>Amendment of pleadings (e.g. case statements)</u></b>		
4.	<p><b><i>CJ v CK (2019) 7 SSAR 146; [2019] SGSAB 1</i></b></p> <p>This involved an appeal from a Syariah Court decision on, <i>inter alia</i>, the division of matrimonial assets after divorce. The main asset was the HDB flat. At the time of the divorce, the 5-year minimum occupation period was not up. The wife respondent had filed a case statement which did not claim any of the appellant's assets. Even when she amended her case statement, she did not make a claim on the appellant's assets. She amended the statement a second time, but once again, did not claim for the appellant's assets or make any claim in respect of the matrimonial home (the HDB flat).</p> <p>However, in her affidavits in support of the case statement, she asked for a share of the matrimonial assets, including the HDB flat and the appellant's CPF monies. The appellant objected to this, since her claims were not in her case statement. However, the respondent said she wanted to amend her case statement again to include these claims, and the Syariah Court summarily allowed the amendments through an oral application, without giving the respondent leave to file an affidavit in reply. The parties then made arguments on the substantive issues. The Syariah Court then ordered, <i>inter alia</i>, that the matrimonial flat be sold and split 70:30 in the respondent's favour and that the appellant should transfer \$25,000 of this CPF monies to the respondent. It said that it allowed the respondent to amend her case statement orally because to require her to amend her pleadings would be "unnecessary and a mere formality". It was of the view that the respondent had provided adequate notice to the appellant before the hearing.</p> <p>The appellant appealed on the basis of, <i>inter alia</i>, the respondent's failure to plead for the orders she had been given by the Syariah Court.</p> <p>The Appeal Board allowed the appeal. It said that as was the case in civil law proceedings, there was a need to balance the desire to amend pleadings against the justice of the case. The respondent had not given any evidence that she had made a mistake in the case statements she filed earlier. There was no basis for allowing the amendments, and letting her do so would be giving her an undeserved second bite of the cherry. The Appeal Board made other orders (in particular it ordered the HDB flat to be surrendered, since the minimum occupation was not up and neither party could take over the flat.)</p>	 CJ v CK (2019) 7 SSAR 0146_2019 SGSAB 1 <hr/>  9905_23 Muslim Law (Published on e 


	<p>On the amendment of pleadings point, the court needs to ask whether such amendments would cause prejudice to the other party in a way that could not be compensated financially, and secondly, whether the amendments amount to giving a second bite of the cherry. It would certainly have to be a compelling reason to allow an amendment of pleadings in the middle of the trial (though not impossible).</p> <p>Moral of the story: as far as possible, do your case statement properly so it doesn't have to be amended, but if it does, then do the amendment as soon as possible.</p>	
<b><u>Proof of breach of taklik</u></b>		
5.	<p><b><u>Appeal No 3 of 2021 (unreported)</u></b></p> <p>Where witnesses for the grounds for divorce must provide oral testimony, the Syariah Court generally requires that the witnesses be Muslim and male. Nevertheless, the Appeal Board has held in this case that there is no requirement under Muslim law for a breach of <i>taklik</i> to be proved with two witnesses – it can be proved on a balance of probabilities but without the strict need for corroboration by other witnesses.</p> <p>The Board accepted that the wife's earlier report of domestic violence to the police made independent of the divorce proceedings was of corroborative value to prove the breach of <i>taklik</i>.</p>	 Appeal No. 3 of 2021.pdf
<b><u>Applicability of civil law in SYC cases</u></b>		
6.	<p><b><u>Shazia Husain v Imran Nawaz s/o Muhammad Nawaz and another appeal [2015] SGSAB 2</u></b></p> <p>The Husband sought to adduce fresh evidence on appeal in relation to the division of matrimonial assets. The Appeal Board endorsed the principles in <i>Ladd V Marshall</i> [1954] 1 WLR 1489, which sets out the 3 preconditions before fresh evidence can be admitted:</p> <ul style="list-style-type: none"> <li>(a) It must be shown that the evidence could not have been obtained with reasonable diligence for use at the trial;</li> <li>(b) Evidence, if given, must have important influence on the result of the case;</li> <li>(c) The evidence must be credible, though it need not be incontrovertible.</li> </ul> <p>The Appeal Board was not satisfied that the Husband had fulfilled the preconditions, and accordingly, dismissed his applications to introduce fresh evidence.</p>	 (2015) 6 SSAR 0399.pdf

	This case illustrates that in the absence of express provisions in the AMLA, the SYC/Appeal Board may have regard to civil law provisions/case law regarding procedure.	
7.	<p><b><i>Abdul Jabar bin Johar v Saripah bte Latiff</i> [2013] SGSAB 8</b></p> <p>In this case, the Appeal Board was concerned with the issue of abridgment of time under ss 102 and 107 of the AMLA. The Appeal Board, citing rule 44 of the MMDR, stated that where the AMLA is silent, the Appeal Board may refer to civil rules and procedure. The Appeal Board went on to consider s 7 of the of the Supreme Court of Judicature Act and the Singapore Civil Procedure 2007 (White Book) before making a decision in the matter.</p>	 (2013) 6 SSAR 0323.pdf


**Admitting evidence for hearing purposes**


8.	<p><b>AO v AP (2012) 6 SSAR 228 *</b></p> <p>This matter concerned an appeal on orders relating to the custody of, and access to parties' 3 children. Parties, by consent, were previously awarded joint custody of their 3 children. 5 months later, the Wife successfully applied to vary the joint custody order to sole custody to her. She also reduced the Husband's access to the children. The Husband then appealed against the variation orders.</p> <p>In the variation proceedings, the Wife had included handwritten notes from her 3 children in support of her application – in the notes, the children said they were “feeling really scared”, “being continually bullied and pushed around” and that being with their father “was like a torture”.</p> <p>The Appeal Board found the procurement and submission of handwritten notes of the children attacking their father as a serious matter and very troubling. The Appeal Board stated that it was not sure who suggested writing the notes, and if the children were properly counselled when the notes were written. The Appeal Board gave little weight to the evidence since there was no examination or cross examination of the child witnesses during the hearing. The court then allowed the appeal on custody and maintained the initial joint-custody order.</p> <p>This case shows the importance of evaluating the objectivity of the evidence and the weight the Court is likely to accord to the evidence.</p>	 AO v AP.pdf
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**Intervener Applications**

9.	<p><b>EB v EC (2021) 8 SSAR 284</b></p> <p>Notably, the Syariah Court does not have jurisdiction to determine substantive claims for or against an intervener as it has nothing more than a matrimonial jurisdiction exercisable between the spouses.<sup>1</sup> However, in this case, the Appeal Board took a pragmatic approach and allowed both the wife and intervener to enter into a consent order which in effect constituted a variation of the original Syariah Court order.</p> <p>The original order stated that the flat was to be transferred within six months from the date of the order to the former husband (now deceased) and a nominee upon full required CPF refunds being made to the wife's CPF account, failing which the flat was to be surrendered.</p> <p>On appeal, the intervener (who had been appointed administrator of the deceased husband's estate) and the wife were allowed to enter into a consent</p>	 EB v EC (2021) 8 SSAR 284_2021 SGS/
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<sup>1</sup> See s 52(7) of the Administration of Muslim Law Act 1966 (2020 Rev Ed), which describes the Syariah Court's power, in particular, that “the Court shall have power to order the disposition or division *between the parties*” [emphasis added in italics]. See also *DA v DC* (2020) 8 SSAR 72 and *DD v DF* (2020) 8 SSAR 95.

	order for the flat to be sold in the open market and the net sales proceeds to be divided equally, after accounting for the costs and expenses of sale.	
<b><u>Procedures relating to appeals to the Appeal Board</u></b>		
10.	<p><b><u>Originating Summons No. 54398 / Application No. 54398/VO/03/NA/01</u></b></p> <p>In this case, the Syariah Court considered:</p> <p>(a) Whether the SYC has a power to revisit an order it has made; and</p> <p>(b) Whether the Appeal Board can remit a matter to the SYC for a Custody Evaluation Report (“CER”) to be directed.</p> <p>Parties were divorced. The Father subsequently applied to vary the SYC Order to obtain care and control of the 9 year old child of the marriage (“<b>Variation Application</b>”). The SYC allowed the Variation Application. The Mother then appealed against this decision. On appeal, the Appeal Board ordered for the matter to be “retried” at the SYC, and for the SYC to call for a CER to determine the child’s issues.</p> <p>Back at the SYC, the Registrar refused to order a “retrial” of the Variation Application, as the Registrar said that the SYC did not have the power to “revisit” the order, and there was no “trial” during the Variation Application. The Mother appealed against the Registrar’s decision. This appeal was dismissed.</p> <p><b><u>SYC’s power to revisit an earlier order:</u></b></p> <p>The Court held that once it had made the order in the Variation Application, it had become <i>functus officio</i> (i.e., the Court’s authority on the matter had ended as the Court had served its purpose, which was to determine the Variation Application). The Court therefore could not revisit the order it had made during the Variation Application, unless it was asked to provide clarifications or consequential directions in respect of that order. This ensured finality in litigation.</p> <p><b><u>Appeal Board’s power to remit a matter to the SYC</u></b></p> <p>Section 55(5) of the Administration of Muslim Law Act 1966 (“<b>AMLA</b>”) only allows the Appeal Board to order a retrial, and not remit a matter back to the SYC for a re-hearing. In this case, the Variation Application was heard in chambers by way of affidavit evidence (and not a trial). Hence, there was no reason to order a new trial.</p> <p><b><u>SYC’s observations on ordering a CER</u></b></p> <p>The SYC retains discretion on whether to call for a CER. This discretion is to be exercised judiciously to ensure that children are not subjected to excessive intervention by the Court or other agencies. The SYC will consider factors such as the benefit of a CER; the nature, quantity and severity of allegations levelled</p>	 <p>Application No 54398-VO-03-NA-01.</p>

	<p>(against a parent), and the time taken to conduct witness interviews when deciding whether to order a CER.</p> <p><b><u>Learning Points</u></b></p> <p>Instead of ordering a retrial, the Appeal Board could have decided, on the evidence available, whether the order on care and control given to the Father ought to be reversed;</p> <ul style="list-style-type: none"> <li>(a) There is a legislative gap as neither the AMLA nor the Muslim Marriage and Divorce Rules (“<b>MMDR</b>”) confers powers on the Appeal Board to remit a matter back to the SYC for re-hearing (as opposed to a re-trial), unlike the Family Justice Rules [see Rule 805(7)];</li> <li>(b) Like the FJC, the SYC is likely to order a CER only in exceptional cases (e.g., where the child issues are heavily contested and there are severe allegations against a parent). However, if you are of the view that your case requires a report on the child’s welfare, you should make the necessary application under Rule 25A of the MMDR. In this case, the Mother did not apply for a CER in the first place, and yet filed an appeal on the basis that a CER should have been ordered.</li> </ul>	
11.	<p><b><u>Appeal No. 8 of 2021</u></b></p> <p>The Husband appealed against the entirety of the SYC divorce orders (i.e. payment of nafaḥ iddah &amp; mutaah; custody, care and control of the parties’ 3 minor children, and the division of the matrimonial assets). The SYC proceedings were acrimonious. Parties had taken up several interlocutory applications against each other (including appealing against the decisions of those applications), and also adduced voluminous evidence such as WhatsApp exchanges, and video and audio recordings (e.g. the Husband adduced a video of the Wife allegedly praying hastily to show that she was not a good Muslim).</p> <p><b><u>Key issues</u></b></p> <ul style="list-style-type: none"> <li>• <b><u>Scope and extent of appellate jurisdiction</u></b></li> </ul> <p>In this case, the Appeal Board clarified the scope and extent of its intervention. It held that –</p> <ul style="list-style-type: none"> <li>(a) a party did not have a right of appeal simply because the party was personally dissatisfied that the SYC President had ruled against him/her;</li> <li>(b) there is a rebuttable presumption that the decision appealed against is correct;</li> <li>(c) it is not role of the Appeal Board to “...microscopically comb” through the appealed decision to pick holes and inconsistencies;</li> <li>(d) the Appeal Board would only intervene if it can be shown that the lower court made an error in law or principle or had failed to appreciate certain “material facts”. It must also be shown that the appealed decision was “clearly inequitable” or “plainly wrong” (this requirement appears to impose a high threshold for an appeal before the Appeal Board to succeed);</li> </ul>	 <p>Appeal 08 of 2021 (002).pdf</p>

	<p>(e) on matrimonial issues, especially those concerning the welfare of children, an appeal should not simply succeed because the Appeal Board preferred a solution which the lower court had not chosen.</p> <ul style="list-style-type: none"> <li>• <u>Application to adduce further evidence on appeal</u></li> </ul> <ul style="list-style-type: none"> <li>▪ On appeal, the Husband wanted to adduce new evidence such as WhatsApp messages showing the Wife's refusal to co-parent with him, and audio recordings showing the children's alienation towards him.</li> <li>▪ The Appeal Board took the opportunity to clarify rule 42(1) of the Muslim Marriage Divorce Rules and Rules (MMDR), and whether the "special grounds test" set out in <i>Ladd v Marshall</i> (i.e. firstly, the evidence could not have been obtained with reasonable diligence at trial; secondly, the evidence (if given) must have important influence on the outcome of the case; and thirdly, the evidence must be credible) applied to the rule.</li> <li>▪ The Appeal Board compared rule 42 of the MMDR and the corresponding provisions in the FJR (i.e. rule 42) and ROC (O55D, r11(1)). It then highlighted the differences between the provisions: <ul style="list-style-type: none"> <li>(a) Unlike the relevant provisions of the FJR and ROC, rule 42 of the MMDR <u>does not</u> differentiate between evidence occurring <i>before</i> and <i>after</i> the date the decision was appealed against.</li> <li>(b) Under the FJR and ROC, evidence occurring <i>before</i> the date of the decision appealed against could only be admitted on "special grounds". The "special grounds" test did not apply for evidence occurring <i>after</i> the date of the decision.</li> <li>(c) Rule 42 of the MMDR <u>does not</u> statutorily impose the "special grounds" test.</li> </ul> </li> <li>▪ Despite the above, the Appeal Board clarified that it had in several cases, applied the "special grounds" test in deciding whether to admit evidence occurring <i>before</i> the date of the decision appealed against. This is because the test served 2 primary objectives : (1) the need for finality in litigation; (2) incentivizing parties to lay all their cards on the table in the first instance. The Appeal Board therefore saw no purpose in departing from the "special grounds" test in this case.</li> <li>▪ The Appeal Board also cited civil cases like <i>BW v BX</i> [2018] SGSAB 2 and <i>Anan Group (Singapore) Pte Ltd v VTB Bank (Public Joint Stock Co)</i> [2019] 2SLR 341, and held that the requirements of the "special grounds" test may be relaxed "<u>... if doing so, will properly uncover the truth of the matter</u>". An example where the test could be relaxed, would be when parties seek to admit new evidence involving the welfare and custody of a child.</li> </ul>	
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	<ul style="list-style-type: none"> <li>▪ The Appeal Board, however, reiterated that parties <u>were expected to have laid out all, or at least the best, of their cards on the table at the first instance, and the upshot of this is that parties must live with the consequences of their tactical decisions of what they wish to present to the Court.</u> So it remains important to gather all relevant evidence at the first instance.</li> </ul>	
12.	<p><b><i>Shajahan bin Aludin v Rezina Khan d/o Abdul Rahim [2011] SGSAB 6</i></b></p> <p>In this case, the Husband appealed against the court's decision on the division of the matrimonial properties. The Wife filed a Respondent's Notice of Appeal under rule 39(11) of the MMDR to vary the Court's orders on nafkah iddah, mutaah and division of proceeds.</p> <p>The Appeal Board held that the Respondent's Notice of Appeal can only relate to orders appealed against (i.e. it is a cross-appeal on the same matter being appealed against), and the Wife had to file a separate Notice of Appeal to appeal against the orders on iddah and mutaah. Ultimately, the wife did not file a Notice of Appeal against the orders on iddah and mutaah and the Appeal Board only dealt with the division of the net proceeds arising from the sale of the matrimonial properties.</p>	 (2011) 6 SSAR 0057.pdf

13.	<p><b><i>Omar bin Abdul Razak v Marilah bte Sukaimi (2000) 4 SSAR 74; [2000] SGSAB 2</i></b></p> <p>The Husband made an application for an extension of time to file a Notice of Appeal against an Order of the SYC made in 1994 (“initial order”). The order was subsequently varied by consent in 1997 (“varied order”).</p> <p>The Appeal Board said that there must be some material (i.e. an explanation) before it, in order to exercise its discretion to grant an extension of time.</p> <p>In this case, the application for an extension of time was made after 6 years from the date of the initial order, and 2 years from the date of the varied order.</p> <p>In his application, the Husband stated that he was not aware of the law, and that the orders made were inequitable. He also alleged that an officer of the SYC had told him to agree to the Wife’s demands as it was for the benefit of the Wife and the children.</p> <p>The Appeal Board found that the Husband did not provide good reasons for the delay in filing the Notice of Appeal. The Court found that the Husband did not make any steps to rectify the orders, and instead chose to do nothing about them for long periods. The Appeal Board was also concerned with the genuineness of the application – the Husband had agreed to the variation application of the initial order instead of applying to set aside the initial order.</p> <p>On the Husband’s ignorance of the law, the court found that this was not a good reason as the Husband had the opportunity to request for legal advice.</p>	<div data-bbox="1356 201 1420 257" data-label="Image"></div> <div data-bbox="1300 268 1492 324" data-label="Text">(1988-2009) 4 SSAR 0074.pdf</div>
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