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

**Reading Materials**

(asterisk\* denotes mandatory reading)

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| **S/N** | **Description** | **Object** |
| LEGISLATION | | |
| 1. | Administration of Muslim Law Act (Chapter 3) (Rev. Ed. 2009) (see in particular: ss 35A, 42, 43B, 46, 46A, 46B, 50, 53A)\* |  |
| 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)\* |  |
| CASES | | |
| ***Substituted service*** | | |
| 2. | ***BC v BD* (2011) 6 SSAR 96, [2011] SGSAB 10 \***  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.  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.  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 the material time. The Husband, however, did not produce his passport to prove this.  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.  This case is useful in understanding the evidence required to obtain an order of substituted service. |  |
| ***Amendment of pleadings (e.g. case statements)*** | | |
| 3. | ***Appeal No 11 of 2018\****  [Case summary written by Ms Lim Hui Min, Director of Legal Aid)  This involved an appeal from a Syariah Court decision on, *inter alia*, 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).  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, *inter alia*, 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.  The appellant appealed on the basis of, *inter alia*, the respondent's failure to plead for the orders she had been given by the Syariah Court.  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.)  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).  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. |  |
| ***Applicability of civil law in SYC cases*** | | |
| 4. | ***Shazia Husain v Imran Nawaz s/o Muhammad Nawaz and another appeal [2015] SGSAB 2***  The Husband sought to adduce fresh evidence on appeal in relation to the division of matrimonial assets. The Appeal Board endorsed the principles in *Ladd V Marshall* [1954] 1 WLR 1489, which sets out the 3 preconditions before fresh evidence can be admitted:   1. It must be shown that the evidence could not have been obtained with reasonable diligence for use at the trial; 2. Evidence, if given, must have important influence on the result of the case; 3. The evidence must be credible, though it need not be incontrovertible.   The Appeal Board was not satisfied that the Husband had fulfilled the preconditions, and accordingly, dismissed his applications to introduce fresh evidence.  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. |  |
| 5. | ***Abdul Jabar bin Johar v Saripah bte Latiff* [2013] SGSAB 8**  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. |  |

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| ***Admitting evidence for hearing purposes*** | | |
| 6. | ***AO v AP (2012) 6 SSAR 228* \***  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.  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”.  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.  This case shows the importance of evaluating the objectivity of the evidence and the weight the Court is likely to accord to the evidence. |  |
| ***Cases concerning procedures relating to appeals to the Appeal Board*** | | |
| 7. | ***Shajahan bin Aludin v Rezina Khan d/o Abdul Rahim* [2011] SGSAB 6**  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.  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. |  |

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| 8. | ***Omar bin Abdul Razak v Marilah bte Sukaimi* (2000) 4 SSAR 74; [2000] SGSAB 2**  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”).  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.  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.  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.  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.  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. |  |