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FAMILY LAW AND YOU

Part One of Three

(i) MARRIAGE
(ii) DIVORCE

Mediation And Law Awareness Campaign

A Public Service Initiative of : The Bar Council.
No. 13, 15 & 17, Leboh Pasar Besar,
50050 Kuala Lumpur, Malaysia.
Tel : 03-2031 3003
Fax : 03-2026 1313, 2034 2825, 2072 5818
E-mail: council@malaysianbar.org.my
www.malaysianbar.org.my

This pamphlet provides some information on Family Law and you.

LAW REFORM (MARRIAGE AND DIVORCE) ACT 1976 ("the Act")

The following provisions under the Act on marriage, divorce, judicial separation and nullity are applicable to all persons in Malaysia and to all persons domiciled in Malaysia but are residents outside Malaysia EXCEPT:

(a) Muslims or any person who is married under Muslim law;
(b) Natives of Sabah and Sarawak; and
(c) Any aborigine of West Malaysia whose marriage and divorce is governed by native customary law or aboriginal custom UNLESS:
  (i) he/she elects to marry under the Act; or
  (ii) he/she contracted his/her marriage under the Christian Marriage Ordinance or the
  (iii) Church and Civil Marriage Ordinance.

SECTION 1

MARRIAGE

1.1 *EVERY MARRIAGE MUST BE REGISTERED IN ACCORDANCE WITH THE ACT*

1.1.1 A marriage which is valid under any law, religion, custom or usage under which it was solemnised prior to 1st March 1982 is deemed registered under the Act.

1.1.2 After 1st March 1982, every marriage must be registered in accordance with the Act by a Registrar/Assistant Registrar. No marriage under any law, religion custom or usage may be solemnised except in accordance with the Act.

1.1.3 A person who is lawfully married before 1st March 1982 is not lawfully allowed to marry any other person after that date. Such person's spouse will be regarded as lawfully wedded and will have the right to inheritance regardless of whether the marriage was registered or not.

1.1.4 Once a marriage is registered or deemed to be registered under the Act, it will be a legal and binding monogamous marriage which will continue until :
  (a) one of the parties dies; or
  (b) a divorce or nullity decree is granted by a court of competent jurisdiction.

  Neither party can marry again until the marriage is terminated by death, divorce or a decree of nullity.

1.1.5 If during the continuance of such marriage, a party marries again, then he/she will be deemed to have committed the offence of bigamy under the Penal Code for which he./she may be liable to a fine and imprisonment of up to a maximum of seven (7) years.

The subsequent marriage is also deemed null and void.

1.2 *REQUIREMENTS FOR MARRIAGE*

12.2.1 You must be at least eighteen (18) years old.
  (a) If you are a female who is under eighteen (18) years old but above sixteen (16) years old, you can marry if you are able to obtain a special marriage licence granted by the Chief Minister.
  (b) If you marry without such a special marriage licence, then your marriage is void.
  (c) To qualify for a special marriage licence :
    (i) there must be no legal obstacle to the marriage; and
    (ii) you must have the consent of your parents/guardian.

1.2.2 If you are above eighteen (18) but below twenty-one (21) years of age, you must also have the consent of your parents or guardian.
  (a) If such consent is not or cannot be given, you can apply to the High Court for the consent of the Court.
  (b) No such consent is required if you have been previously married.

1.2.3 Both parties must be unmarried.

1.2.4 Both parties must not be in certain prohibited close family relationships.

1.2.5 There must be no other legal obstacle to the marriage.

1.2.6 Both parties must consent to the marriage.

1.3 *PROCEDURES TO GETTING MARRIED*

1.3.1 You have a choice of three (3) different procedures to getting married. All three (3) have the same legal effect.
  (a) Marriage at the office of the Registrar of Marriages;
  (b) Marriage through a religious ceremony, custom or usage such as a temple or church where the temple/church official is an appointed Assistant Registrar; or
  (c) Marriage by special licence from the Chief Minister.

1.3.2 Marriage at the Registrar's Office
  (a) Both of you must give notice of marriage in the prescribed form to the Registrar of Marriages of your marriage district in which you have been resident at least seven (7) days before the giving of such notice.
  (b) The Registrar will put it up on the notice board of the Registry until he/she grants his/her certificate for marriage or until three (3) months have elapsed, whichever is earlier.
  (c) If both of you have been residents for the required period in the same marriage district, only such notice is required.
  (d) Both of you must also sign a written declaration in the prescribed form stating that you have complied with all the requirements and that there are no legal obstacles.
  (e) When the notice has been on the board for at least twenty-one (21) days, the Registrar shall, upon payment to him/her of the prescribed fee, issue his/her certificate for marriage.
  (f) You must then make a date for the marriage to be solemnised by the Registrar. This has to take place within six (6) months from the date of notice.
  (g) If the marriage does not take place within the specified period, a fresh notice has to be given.
  (h) After the marriage at the Registry, you will be legally married.
  (i) You may go through a customary ceremony if you wish but you are required to produce your certificate of marriage to the person officiating the ceremony.

1.3.3 Marriage through a religious ceremony, custom or usage
  (a) You may have your marriage solemnised in accordance with your religion, custom or usage by your clergyman, minister or priest.
  (b) The clergyman, minister, priest, or person solemnising your marriage must have duly been appointed Assistant Registrar of Marriages and has the power to conduct marriages.
  (c) Before the marriage is solemnised, you must deliver to the Assistant Registrar of Marriages the prescribed statutory declaration signed by both of you saying that you have complied with all the requirements and that there are no legal obstacles.

1.3.4 Marriage by licence
  (a) If you are a female between sixteen (16) and eighteen (18) years of age, OR you wish to have your marriage solemnised at a place other than the office of a Registrar OR at some other time than the prescribed time, then you must get a special marriage licence from the Chief Minister for such purpose.
  (b) In such a case, you do not have to give notice or obtain a certificate for marriage but you have to produce a statutory declaration that all requirements have been complied with and that there are no legal obstacles to the marriage.
  (c) The licence is valid for only one (1) month and you must get married within that period.

1.4 *MARRIAGE ABROAD*

1.4.1 You may also have your marriage solemnised abroad by the Registrar-General of Marriages at the Malaysian Embassy, High Commission or Consulate in any country in question if:
  (a) One or both of you to the marriage is/are a citizen(s) of Malaysia.
  (b) Each of you have the capacity to marry according to the Act.
  (c) Where either of you is not domiciled in Malaysia, the proposed marriage, if solemnised, will be regarded as valid in the country where such party is domiciled.
  (d) (i) Notice of the marriage has been given not less than twenty-one (21) days and not more than three (3) months before the marriage;
    (ii) The notice has been published both at the office of the Registrar in the Embassy, High Commission or Consulate where the marriage is to be solemnised and at the Registry of the Marriage district in Malaysia where each party to the marriage was last ordinarily resident; and

(iii) There is no caveat or notice of objection to the marriage.

1.4.2 Registration of foreign marriage by person citizen of or domiciled in Malaysia

(a) If you are a citizen of or are domiciled in Malaysia and have married abroad without registering the marriage with the Malaysian Embassy, High Commission or Consulate you MUST:-

(i) within six (6) months after the date of such marriage, appear before the nearest Registrar abroad or in Malaysia; and

(ii) register such marriage.

(b) In order to register the above marriage you must:-

(i) produce to such Registrar your certificate of marriage or any other satisfactory evidence of marriage;

(ii) give the necessary particulars as required by the Registrar; and

(iii) fill in the prescribed form and affirm the declaration in it.

(c) Both of you must be present at the said registration unless there exists good and sufficient reason for the absence of one party.

(d) Failure to register the foreign marriage within six (6) months is an offence and late registration will only be allowed upon application but will be penalised.

1.4.3 Recognition of marriage contracted abroad

(a) A marriage contracted outside Malaysia other than a marriage solemnised according to Section 1.4.1 shall be recognised as valid if:

(i) it was contracted in a form required or permitted by the law of the country where it was contracted;

(ii) each of the parties had capacity to marry under the law of the country of his/her domicile; and

(iii) where either party is a citizen of or is domiciled in Malaysia, both parties have capacity to marry according to the Act.

1.5 *CAVEATS*

1.5.1 Any person who wishes to object to a marriage may, upon payment of a prescribed fee, enter a caveat with the Registrar.

1.5.2 The caveat must contain the name and place of residence of the person entering the caveat and the grounds of objection and must be signed by the person entering the caveat.

1.5.3 If a caveat is entered, the Registrar will only issue a certificate for the marriage if:

(a) after enquiring into the objection, he is satisfied that it ought not to prevent the issue of such certificate for the marriage; or

(b) the caveat is withdrawn by the person who entered it.

1.5.4 If the Registrar is in doubt, he/she shall refer the matter of such caveat to the Court for a decision.

1.5.5 If the Registrar has refused to issue the certificate for marriage, the person applying for such certificate has a right to appeal to the Court.

1.5.6 If the Court declares the grounds of objections to be frivolous, the person entering the caveat will be liable for costs of all related proceedings and to damages to be payable to the party against whose marriage such caveat was entered.

SECTION 2

DIVORCE

A divorce of a marriage may be granted only by a court of competent jurisdiction. You may petition for a divorce:

(a) by mutual consent, i.e., both parties consent to the divorce, by way of a joint petition; or

(b) if there is no mutual consent, by way of a contested petition.

2.1 *DIVORCE BY MUTUAL CONSENT*

2.1.1 Before you can joint petition for a divorce by mutual consent, the following requirements must be fulfilled:

(a) The marriage must have been registered or deemed registered under the Act or a law that provides for monogamous marriage.

(b) Both of you must be domiciled in Malaysia at the time you present your petition for divorce.

(c) You must have been married at least two (2) years at the time you present your petition for divorce, unless the Court grants you special permission.

You may apply to Court for such special permission but you must show that your case is one of exceptional circumstances or hardship.

(d) You must show in your petition that your marriage has irretrievably broken down.

To show such irretrievable breakdown, you must prove at least one of the following facts:

(i) your spouse has committed adultery and you find it intolerable to live with your spouse;

(ii) your spouse has behaved in such a way that you cannot reasonably be expected to live with him/her;

(iii) your spouse has deserted you for a continuous period at least two (2) years before the date of your petition; or

(iv) both of you have lived apart from each other for a continuous period of at least two (2) years before the date of your petition.

(a) Reference to a Conciliatory Body, as stated in Section 2.2.2 is not required.

2.2 *CONTESTED PETITION TO DIVORCE*

2.2.1 The requirements under Sections 2.1.1(a),(b) and (c) are also applicable in the case of a petition filed by one party (i.e., where there is no mutual consent).

2.2.2 In addition, you must have referred your matrimonial problems to a Conciliatory Body at the Registry of Marriages in the district you reside and the Conciliatory Body must have certified that it has failed to reconcile both of you.

(a) The Conciliatory Body will call both parties for meetings and try to resolve your matrimonial difficulties within six (6) months, failing which it will issue you a Certificate of Reference to enable you to petition for a divorce.

(b) You may apply to Court to be exempted from referring your case to the Conciliatory Body if:

(i) you allege that you have been deserted by and do not know the whereabouts of your spouse;

(ii) your spouse is residing abroad and it is unlikely that he/she will enter Malaysia within six (6) months after the date of petition;

(iii) your spouse has been required to appear before a Conciliatory Body and has wilfully failed to attend;

(iv) your spouse is imprisoned for a term of five (5) years or more;

(v) you allege that your spouse is suffering from an incurable mental illness; or

(vi) the Court is satisfied that there are exceptional circumstances which make reference to a Conciliatory Body impracticable.

2.3 *DIVORCE ON GROUNDS OF CONVERSION TO ISLAM*

2.3.1 You may petition for divorce if your spouse has converted to Islam.

2.3.2 The petition can only be presented three (3) months from the date of the conversion. However, you need not have been married for at least two (2) years.

2.4 *ADDITIONAL JURISDICTION IN PROCEEDINGS BY WIFE*

2.4.1 A wife may petition for divorce in Malaysia even though her husband is not domiciled or resident in Malaysia if:

(a) she has been deserted by her husband and her husband was before the desertion domiciled in Malaysia;

(b) her husband has been deported from Malaysia and her husband was before the deportation domiciled in Malaysia;

(c) she is a resident in Malaysia and has been ordinarily a resident in Malaysia for two (2) years immediately before she commenced the petition for divorce.

2.5 *PROCEEDINGS BASED ON PRESUMPTION OF DEATH AND DIVORCE*

2.5.1 If you allege that there is reasonable grounds to suppose that your spouse is dead, you may present a petition:

(a) to have it presumed that your spouse is dead; and

(b) to a divorce.

2.5.2 If the Court is satisfied that such reasonable grounds exist, it may make a decree nisi of presumption of death and of divorce.

2.5.3 The fact that for a period of more than seven (7) years, your spouse has been continually absent from you and that you have no reason to believe that your spouse has been living within that time, is evidence that he/she is dead unless it is proven otherwise.

2.6 *GENERAL*

2.6.1 Before granting a divorce, the Court will consider all the circumstances of the case including the conduct of both parties and how the interests of any child or children will be affected if the divorce is granted. The Court may grant a decree subject to such terms and conditions as it thinks necessary.

2.7 *PROCEDURE*

2.7.1 Either see a lawyer of your own choice or an officer of the Legal Aid Bureau or Legal Aid Centre (if you qualify for legal aid) who will advise you on whether you have legal ground(s) for divorce.

2.7.2 When the divorce petition is filed:

a) in the case of a divorce by mutual consent (joint petition), the Court will fix a hearing date and both parties must be present at the hearing.
There is no requirement to serve the joint petition and other related cause papers on each other.

(b) in the case of a contested petition, the matter will follow a procedure (which includes) service off the divorce petition and other cause papers on the respondent (other party) leading to a Court hearing.

(i) You, as the petitioner, must be present at the hearing.

(ii) It is up to the respondent (other party) who has been served with the divorce petition and duly informed of the hearing date, whether or not he/she wishes to be present.

(iii) The Court may, in his/her absence and upon being satisfied that he/she has been duly served with the relevant cause papers and informed of the hearing date, grant the decree nisi for the divorce.

2.7.3 In a divorce petition, the parties may apply for:

(a) divorce;

(b) custody of and access to the children;

(c) maintenance for the wife and the children;

(d) division of matrimonial property; and or

(e) costs of the proceedings.

2.8 *CONSEQUENCES OF A DIVORCE*

2.8.1 At the hearing of your divorce petition, if the judge is satisfied that you have legal ground for divorce, he/she will grant you a Decree Nisi which will be made absolute after a certain period which is usually in three (3) months.

The Decree Nisi will set out the terms and conditions of the divorce.

2.8.2 During this three-month period:

(a) you cannot re-marry; and or

(b) either party can still show cause why the marriage should not be dissolved.

2.8.3 At the end of the three-month or such period as the Court orders, if no such cause is shown, the Decree Nisi is made absolute and your marriage is thereby legally dissolved and you are free to remarry if you so desire.

A Public Service Initiative of : The Bar Council.
No. 13, 15 & 17, Leboh Pasar Besar,
50050 Kuala Lumpur, Malaysia.
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E-mail: council@malaysianbar.org.my
www.malaysianbar.org.my