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Act 164

LAW REFORM (MARRIAGE AND DIVORCE) ACT 1976

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ACT 1976**

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LAWS OF MALAYSIA

Act 164

LAW REFORM (MARRIAGE AND DIVORCE) ACT 1976

An Act to provide for monogamous marriages and the solemnization and registration of such marriages; to amend and consolidate the law relating to divorce; and to provide for matters incidental thereto.

**[Throughout Malaysia—1 March 1982,
P.U. (B) 73/1982]*

BE IT ENACTED by the Seri Paduka Baginda Yang di-Pertuan Agong with the advice and consent of the Dewan Negara and Dewan Rakyat in Parliament assembled, and by the authority of the same, as follows:

PART I

PRELIMINARY

Short title and commencement

1. This Act may be cited as the Law Reform (Marriage and Divorce) Act 1976 and shall come into force on such date as the Yang di-Pertuan Agong may, by notification in the *Gazette* appoint and different dates may be appointed for Peninsular Malaysia, Sabah and Sarawak.

Interpretation

2. (1) In this Act, unless the context otherwise requires—

“aborigine” has the same meaning assigned to it in section 3 of the Aboriginal Peoples Act 1954 [*Act 134*];

*NOTE—This Act is made applicable to the Federal Territory of Labuan *vide* Modification Order No. P.U. (A) 195/1985.

“appointed date” means the date of coming into operation of this Act;

“Chief Minister”, in relation to—

- (a) the States of Malaysia, means the Chief Minister or Menteri Besar of a State;
- (b) the Federal Territory means the Minister;
- (c) the Malaysian Embassy, High Commission or Consulate, means the Malaysian Ambassador, High Commissioner or Consul respectively;

“child of the marriage” means a child of both parties to the marriage in question or a child of one party to the marriage accepted as one of the family by the other party; and “child” in this context includes an illegitimate child of, and a child adopted by, either of the parties to the marriage in pursuance of an adoption order made under any written law relating to adoption;

“court” means the High Court or a Judge thereof or, where a Sessions Court Judge has jurisdiction by virtue of subsection (2), the Sessions Court or a Sessions Court Judge of that Court;

“marriage district” means an area which has been defined as a marriage district under subsection 28(5), or if no such area has been so defined in any State or Federal Territory, that State or Federal Territory;

“marriage register” includes—

- (a) any register of marriages kept under any written law relating to registration of marriages prior to the appointed date;
- (b) marriage registers constituted under subsection 46A(1) and section 46B; and
- (c) microfilms, computers and other forms of records made under subsection 46A(2);

“marriage with another woman” means marriage of any person, being married to any other woman during the life of the former wife, whether the second marriage has taken place within Malaysia or elsewhere;

“Minister” means the Minister charged with responsibility for the registration of marriages;

“minor” means a person who is under the age of twenty-one years and who is not a widow or widower;

“native”, in relation to Sabah and Sarawak, has the same meaning assigned to it in Clause (6) of Article 161A of the Federal Constitution;

“Registrar” means a Registrar of Marriages appointed under this Act and includes the Registrar General, an Assistant Registrar General, a Superintendent Registrar, a Deputy Registrar and an Assistant Registrar of Marriages;

“Registrar General” means the Registrar General of Marriages and includes a Deputy Registrar General of Marriages appointed under this Act.

(2) The Yang di-Pertuan Agong may, on the advice of the Chief Judge, by notification in the *Gazette*, confer upon any Sessions Court Judge jurisdiction to deal with any matter under this Act.

Application

3. (1) Except as is otherwise expressly provided this Act shall apply to all persons in Malaysia and to all persons domiciled in Malaysia but are resident outside Malaysia.

(2) For the purposes of this Act, a person who is a citizen of Malaysia shall be deemed, until the contrary is proved, to be domiciled in Malaysia.

(3) This Act shall not apply to a Muslim or to any person who is married under Islamic law and no marriage of one of the parties which professes the religion of Islam shall be solemnized or registered under this Act; but nothing herein shall be construed to prevent a court before which a petition for divorce has been made under section 51 from granting a decree of divorce on the petition of one party to a marriage where the other party has converted to Islam, and such decree shall, notwithstanding any other written law to the contrary, be valid against the party to the marriage who has so converted to Islam.

(4) This Act shall not apply to any native of Sabah or Sarawak or any aborigine of Peninsular Malaysia whose marriage and divorce is governed by native customary law or aboriginal custom unless—

- (a) he elects to marry under this Act;
- (b) he contracted his marriage under the Christian Marriage Ordinance [*Sabah Cap. 24*]; or
- (c) he contracted his marriage under the Church and Civil Marriage Ordinance [*Sarawak Cap. 92*].

Subsisting valid marriages deemed to be registered under this Act and dissoluble only under this Act

4. (1) Nothing in this Act shall affect the validity of any marriage solemnized under any law, religion, custom or usage prior to the appointed date.

(2) Such marriage, if valid under the law, religion, custom or usage under which it was solemnized, shall be deemed to be registered under this Act.

(3) Every such marriage, unless void under the law, religion, custom or usage under which it was solemnized, shall continue until dissolved—

- (a) by the death of one of the parties;
- (b) by order of a court of competent jurisdiction; or
- (c) by a decree of nullity made by a court of competent jurisdiction.

PART II

MONOGAMOUS MARRIAGES

Disability to contract marriages otherwise than under this Act

5. (1) Every person who on the appointed date is lawfully married under any law, religion, custom or usage to one or more spouses shall be incapable, during the continuance of such marriage or marriages, of contracting a valid marriage under any law, religion, custom or usage with any other person, whether the first mentioned marriage or the purported second mentioned marriage is contracted within Malaysia or outside Malaysia.

(2) Every person who on the appointed date is lawfully married under any law, religion, custom or usage to one or more spouses and who subsequently ceases to be married to such spouse or all such spouses, shall, if he thereafter marries again, be incapable during the continuance of that marriage of contracting a valid marriage with any other person under any law, religion, custom or usage, whether the second mentioned marriage or purported third mentioned marriage is contracted within Malaysia or outside Malaysia.

(3) Every person who on the appointed date is unmarried and who after that date marries under any law, religion, custom or usage shall be incapable during the continuance of such marriage of contracting a valid marriage with any other person under any law, religion, custom or usage, whether the first mentioned marriage or the purported second mentioned marriage is contracted within Malaysia or outside Malaysia.

(4) After the appointed date, no marriage under any law, religion, custom or usage may be solemnized except as provided in Part III.

Avoidance of marriage by subsisting prior marriage

6. (1) Every marriage contracted in contravention of section 5 shall be void.

(2) If any male person lawfully married under any law, religion, custom or usage shall during the continuance of such marriage contract another union with any woman, such woman shall have no right of succession or inheritance on the death intestate of such male person.

(3) Nothing in this section shall affect the liability of any person to pay such maintenance as may be directed to be paid by him under this Act or any other written law.

Offence

7. (1) Any person lawfully married under any law, religion, custom or usage who during the continuance of such marriage purports to contract a marriage under any law, religion, custom or usage in

contravention of section 5 shall be deemed to commit the offence of marrying again during the life-time of husband or wife, as the case may be, within the meaning of section 494 of the Penal Code [Act 574].

(2) Where an offence under section 494 of the Penal Code is committed by virtue of subsection (1) by any person in any place outside Malaysia he may be dealt with in respect of that offence as if it had been committed at any place within Malaysia at which he may be found or to which he may have been brought in consequence of any proceeding for his extradition to Malaysia from any place outside Malaysia:

Provided that any proceeding against any person under this subsection which would be a bar to subsequent proceedings against him for the same offence if the offence had been committed in Malaysia shall be a bar to further proceedings against him under the Extradition Ordinance 1958 [*Ord. 2 of 1958*]* or the Commonwealth Fugitive Criminals Act 1967 [*Act 54 of 1967*]* in respect of the same offence outside Malaysia.

Continuance of marriage

8. Every marriage solemnized in Malaysia after the appointed date, other than a marriage which is void under this Act, shall continue until dissolved—

- (a) by the death of one of the parties;
- (b) by order of a court of competent jurisdiction; or
- (c) by a decree made by a court of competent jurisdiction that the marriage is null and void.

PART III

MARRIAGE

Restrictions on marriage

Persons by whom marriages may be solemnized

9. A marriage under this Act may be solemnized only by a Registrar.

*NOTE—The Extradition Ordinance 1958 [*Ord. 2 of 1958*] and the Commonwealth Fugitive Criminals Act 1967 [*Act 54 of 1967*] has since been repealed by the Extradition Act 1992 [*Act 479*]*—see* section 54 of Act 479.

Avoidance of marriages where either party is under minimum age for marriage

10. Any marriage purported to be solemnized in Malaysia shall be void if at the date of the marriage either party is under the age of eighteen years unless, for a female who has completed her sixteenth year, the solemnization of such marriage was authorized by a licence granted by the Chief Minister under subsection 21(2).

Prohibited relationships

11. (1) No person shall marry his or her grandparent, parent, child or grandchild, sister or brother, great-aunt or great-uncle, aunt or uncle, niece or nephew, great-niece or great-nephew, as the case may be:

Provided that nothing in this subsection shall prohibit any person who is a Hindu from marrying under Hindu law or custom his sister's daughter (niece) or her mother's brother (uncle).

(2) No person shall marry the grandparent or parent, child or grandchild of his or her spouse or former spouse.

(3) No person shall marry the former spouse of his or her grandparent or parent, child or grandchild.

(4) No person shall marry a person whom he or she has adopted or by whom he or she has been adopted.

(5) For the purposes of this section, relationship of the half blood is as much an impediment as relationship of the full blood and it is immaterial whether a person was born legitimate or illegitimate.

(6) The Chief Minister may in his discretion, notwithstanding this section, grant a licence under this section for a marriage to be solemnized if he is satisfied that such marriage is unobjectionable under the law, religion, custom or usage applicable to the parties thereto and, where such marriage is solemnized under such licence, such marriage shall be deemed to be valid.

Requirement of consent

12. (1) A person who has not completed his or her twenty-first year shall, notwithstanding that he or she shall have attained the age of majority as prescribed by the Age of Majority Act 1971 [Act 21], nevertheless be required, before marrying, to obtain the consent in writing—

- (a) of his or her father;
- (b) if the person is illegitimate or his or her father is dead, of his or her mother;
- (c) if the person is an adopted child, of his or her adopted father, or if the adopted father is dead, of his or her adopted mother; or
- (d) if both his or her parents (natural or adopted) are dead, of the person standing in *loco parentis* to him or her before he or she attains that age,

but in any other case no consent shall be required.

(2) Where the court is satisfied that the consent of any person to a proposed marriage is being withheld unreasonably or all those persons who could give consent under subsection (1) are dead or that it is impracticable to obtain such consent, the court may, on application, give consent and such consent shall have the same effect as if it had been given by the person whose consent was required by subsection (1).

(3) An application to the High Court under this section shall be made to a Judge in chambers.

(4) When an application is made to the High Court in consequence of a refusal to give consent, notice of the application shall be served upon the person who refused to give consent.

(5) Notwithstanding anything to the contrary in this Part consent to the marriage of a minor shall not be necessary if the minor has been previously married.

(6) There shall be no appeal from an order of a Judge under this section.

Preliminaries to marriage

Non-application of sections 14 to 20 inclusive to certain parties to a marriage

13. Sections 14 to 20 inclusive shall not apply to parties to a marriage to be solemnized in accordance with section 24.

Notice of marriage

14. Whenever any person desire to marry in Malaysia each of the parties to the intended marriage shall sign and give a notice in the prescribed form in person to the Registrar of the marriage district in which such party has been resident for the period of seven days immediately preceding the giving of such notice:

Provided that when both the parties have been resident for the required period in the same marriage district only one such notice need be given by them.

Publication of notice

15. Upon receipt of such notice, the Registrar shall cause such notice to be published by posting a copy in a conspicuous place in his office visible to the public and shall keep the same so posted up until he grants his certificate under section 17 or until three months have elapsed, whichever is the earlier.

Declaration to accompany notice

16. (1) Every notice required to be given under section 14 shall be accompanied by a written declaration—

- (a) that one or both the parties to the intended marriage has been resident in the marriage district for the period of seven days immediately preceding the giving of such notice;
- (b) either—
 - (i) that each of the parties is twenty-one years of age or over, or, if not, is a widower or widow, as the case may be; or

- (ii) if either party is a minor who has not been previously married and the female party not under the age of sixteen years, that the consent of the appropriate person mentioned in section 12 has been given in writing, or has been dispensed with, or has been given by a court in accordance with the provisions of section 12;
- (c) that there is no lawful impediment to the marriage; and
- (d) that neither of the parties to the intended marriage is married under any law, religion, custom or usage to any person other than the person with whom such marriage is proposed to be contracted.

(2) Every such declaration shall be in writing in the prescribed form and shall be made by the person giving such notice in the presence of the Registrar who shall attest the same; if such person does not understand Bahasa Malaysia, the Registrar shall ascertain whether such person is cognisant of the purport of the declaration and, if not shall translate or cause to be translated in his presence the declaration to such person into the language which he understands and shall certify on the declaration that such translation has been duly made or is not required as the case may be.

Issue of certificate for marriage

17. The Registrar, on being satisfied that the declaration complied with the requirements stated in section 16, shall at any time after the expiration of twenty-one days from the date of publication of the notice under section 15 and upon payment to him of the prescribed fee, issue his certificate for marriage in the prescribed form.

Marriage to take place within six months

18. Subject to section 20, if the marriage does not take place within six months after the date of publication of the notice, the notice and all proceedings consequent thereon shall be void and fresh notice shall be given before the parties can lawfully marry.

Caveat

19. (1) Any person, on payment of the prescribed fee, may enter a caveat with the Registrar against the issue of a certificate for the

marriage of any person named in the caveat and notice of whose intended marriage has been given to the Registrar.

(2) A caveat entered under this section shall contain the name and place of residence of the person entering the caveat and the grounds of objection upon which the caveat is founded and shall be signed by the person entering the caveat.

Proceedings if caveat entered

20. (1) If a caveat is entered in accordance with section 19 the Registrar shall not issue a certificate for the marriage against which the caveat has been entered unless—

(a) after enquiring into the matter of the said 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:

Provided that in cases of doubt it shall be lawful for the Registrar to refer the matter of any such caveat to the High Court which shall decide upon the same.

(2) Where the Registrar has refused to issue the certificate for marriage the person applying for the same shall have a right of appeal to the High Court which shall thereupon either confirm the refusal or direct the grant of the certificate for marriage.

(3) The High Court may require proof of the allegations contained in the caveat in a summary way and may hear evidence in support of and in opposition to the objection.

(4) The proceeding under this section shall be before a Judge in chambers.

(5) There shall be no appeal from a decision of a Judge under this section.

(6) If a caveat is entered in accordance with section 19, then, notwithstanding section 18, no fresh notice need be given and the parties may lawfully marry within three months from the date on which the Registrar issues the certificate for marriage.

(7) If the High Court declares the grounds of objections to be frivolous and such as ought not to prevent the issue of the certificate for marriage the person entering the caveat shall be liable for the costs of all proceedings relating thereto and for damages to be recovered by suit or action by the party against whose marriage such caveat was entered.

Licence

21. (1) The Chief Minister, upon proof being made to him by statutory declaration that there is no lawful impediment to the proposed marriage, and upon his being satisfied that the necessary consent, if any, to such marriage has been obtained, or that the consent has been dispensed with or given under section 12 may, if he shall think fit, dispense with the giving of notice, and with the issue of a certificate for marriage, and may grant his licence in the prescribed form, authorizing the solemnization of a marriage between the parties named in such licence.

(2) The Chief Minister may in his discretion grant a licence under this section authorizing the solemnization of a marriage although the female party to the marriage is under the age of eighteen years, but not in any case before her completion of sixteen years.

(3) The Chief Minister on being satisfied, by statutory declaration or otherwise as to him seems proper, that it is more convenient that a marriage under section 23 be solemnized in some place other than in the office of a Registrar may issue a licence in the prescribed form for such purpose.

(4) A licence authorizing a marriage to be solemnized in a place other than the office of a Registrar shall specify the place in which such marriage may be solemnized.

(5) If the marriage authorized by a licence under this section is not solemnized within one month from the date of the licence the licence shall become void.

(6) (a) The Chief Minister may in writing delegate his power under this section to the Registrar General, Assistant Registrar General or Superintendent Registrar and may at any time revoke any such delegation.

(b) No delegation under paragraph (a) shall be deemed to divest the Chief Minister of his power under this section and he may, if he thinks fit, exercise such power notwithstanding any such delegation.

Solemnization of marriages

Solemnization of marriages

22. (1) Every marriage under this Act shall be solemnized—

- (a) in the office of a Registrar with open doors within the hours of six in the morning and seven in the evening;
- (b) in such place other than in the office of a Registrar at such time as may be authorized by a valid licence issued under subsection 21(3); or
- (c) in a church or temple or at any place of marriage in accordance with section 24 at any such time as may be permitted by the religion, custom or usage which the parties to the marriage or either of them profess or practise.

(2) A valid marriage may be solemnized under paragraph (1)(a) or (b) by a Registrar if a certificate for the marriage issued by the Registrar or Registrars concerned or a licence authorizing the marriage is delivered to him.

(3) A valid marriage may be solemnized under paragraph (1)(c) by an Assistant Registrar if he is satisfied by statutory declaration that—

(a) either—

- (i) each of the parties is twenty-one years of age or over, or, if not, is a widower or widow, as the case may be, or
- (ii) if either party is a minor who has not been previously married and the female party not under the age of sixteen years that the consent of the appropriate person mentioned in section 12 has been given in writing, or has been dispensed with, or has been given by a court in accordance with section 12;

(b) there is no lawful impediment to the marriage;

- (c) neither of the parties to the intended marriage is married under any law, religion, custom or usage to any person other than the person with whom such marriage is proposed to be contracted; and
- (d) in so far as the intended marriage is a Christian marriage and is to be solemnized in accordance with the rites, ceremonies or usages of a Christian religious denomination, the provisions of the canons of such religious denomination relating to the publication of banns or the giving notice of the intended marriage have been complied with or lawfully dispensed with in accordance with such canons.

(4) Every marriage purported to be solemnized in Malaysia shall be void unless a certificate for marriage or a licence has been issued by the Registrar or Chief Minister or a statutory declaration under subsection (3) has been delivered to the Registrar or Assistant Registrar, as the case may be.

(5) Every marriage shall be solemnized in the presence of at least two credible witnesses besides the Registrar.

(6) No marriage shall be solemnized unless the Registrar is satisfied that both the parties to the marriage freely consent to the marriage.

Solemnization of a civil marriage performed in office of a Registrar or elsewhere

23. The Registrar acting under paragraph 22(1)(a) or (b) shall, after delivery to him of a certificate for the marriage issued by the Registrar or Registrars concerned or a licence authorizing the marriage, address the parties in the following words, either directly or through an interpreter:

“Do I understand that you A.B. and you C.D. are here of your own free will for the purpose of becoming man and wife?”.

Upon their answering in the affirmative he shall proceed thus:

“Take notice then that, by this solemnization of your marriage before these witnesses here present according to law, you consent to be legally married for life to each other, and that this marriage cannot be dissolved during your lifetime except by a valid judgment of the court and if either of you shall, during the lifetime of the other, contract another marriage, howsoever and wheresoever

solemnized, while this marriage subsists, you will thereby be committing an offence against the law.”.

Next, the Registrar shall enquire of the parties, directly or through an interpreter, whether they know of any lawful impediment why they should not be joined together in matrimony. Upon their answering in the negative he shall enquire, directly or through an interpreter, of each of the parties whether he or she will take her or him to be his or her lawful wedded wife or husband. Upon their answering in the affirmative, the Registrar, the parties and the witnesses shall comply with section 25.

Solemnization of a marriage through religious ceremony, custom or usage

24. (1) Where any clergyman or minister or priest of any church or temple is appointed by the Minister to act as Assistant Registrar of Marriages for any marriage district, such clergyman or minister or priest may after delivery to him of a statutory declaration under subsection 22(3) solemnize any marriage, if the parties to the marriage or either of them profess the religion to which the church or temple belong, in accordance with the rites and ceremonies of that religion.

(2) Where any person is appointed by the Minister to act as Assistant Registrar of Marriages for any marriage district such person may after delivery to him a statutory declaration under subsection 22(3) solemnize any marriage in accordance with the custom or usage which the parties to the marriage or either of them practise.

(3) An Assistant Registrar solemnizing a marriage under this section shall in some part of the ceremony remind the parties that either of them shall be incapable during the continuance of the marriage of contracting a valid marriage with any other person and if either of them shall marry during the continuance of the marriage he or she shall commit an offence.

(4) In this section—

“priest of a temple” includes any member of a committee of management or governing body of that temple and any committee member of any religious association;

“priest of a church” includes any officer or elder of the church.

Entry in marriage register

25. (1) Immediately after the solemnization under section 23 or 24 is performed the Registrar shall enter the prescribed particulars in the marriage register.

(2) Such entry shall be attested by the parties to the marriage and by two witnesses other than the Registrar present at the solemnization of the marriage.

(3) Such entry shall then be signed by the Registrar solemnizing the marriage.

Solemnization of marriages in Malaysian Embassies, etc., abroad

26. (1) A marriage may be solemnized by the Registrar appointed under subsection 28(4) at the Malaysian Embassy, High Commission or Consulate in any country which has not notified the Government of Malaysia of its objection to solemnization of marriages at such Malaysian Embassy, High Commission or Consulate:

Provided that the Registrar shall be satisfied—

- (a) that one or both of the parties to the marriage is a citizen of Malaysia;
- (b) that each party has the capacity to marry according to this Act;
- (c) that, where either party is not domiciled in Malaysia, the proposed marriage, if solemnized, will be regarded as valid in the country where such party is domiciled; and
- (d) that notice of the proposed marriage has been given at least twenty-one days and not more than three months previously, which notice has been published both at the office of the Registrar in the Embassy, High Commission or Consulate where the marriage is to be solemnized and at the Registry of the marriage district in Malaysia where each party to the marriage was last ordinarily resident and no caveat or notice of objection has been received.

(2) The procedure for solemnization and registration of marriages at a Malaysian Embassy, High Commission or Consulate shall be similar in all respects to that which applies to marriages solemnized and registered in Malaysia under this Act as if the Registrar appointed for a foreign country were a Registrar in Malaysia.

(3) A marriage solemnized under this section shall, for the purposes of this Act, be deemed to be a marriage solemnized in Malaysia, and subsection 7(2) shall apply *mutatis mutandis* in relation to any offence under this Act, in respect of such marriage.

PART IV

REGISTRATION OF MARRIAGES

Registration

27. The marriage of every person ordinarily resident in Malaysia and of every person resident abroad who is a citizen of or domiciled in Malaysia after the appointed date shall be registered pursuant to this Act.

Appointment of Registrar General, Registrars and Assistant Registrars of Marriages

28. (1) The Yang di-Pertuan Agong may appoint any public officer to be Registrar General of Marriages for the purposes of this Act who shall have general supervision and control of Registrars and of the registration of marriages under this Act and any other public officer to be Deputy Registrar General of Marriages.

(2) The Minister may appoint so many public officers by name or by office, to be—

- (a) Assistant Registrar General of Marriages;
- (b) Superintendent Registrars of Marriages; and
- (c) Registrars of Marriages and Deputy Registrars of Marriages for such marriage district in any State and the Federal Territory as may be specified in the appointment.

(3) The Minister may, in addition, appoint by name or by office, any person whether public officer or not, to be Assistant Registrar

of Marriages in respect of any race, clan, association, church or temple, for such marriage district and for such term as may be specified in the appointment, and every such person so appointed and similarly every Registrar, Deputy Registrar and other Assistant Registrar, shall be deemed, to be a public servant within the meaning of the Penal Code:

Provided that such appointment shall be made on the recommendation or nomination of the recognised representatives of the race, clan, the committee of management of the association or the governing authority of any religious denomination, church or temple, as the case may be.

(4) The Minister may, by notification in the *Gazette*, appoint any member of the diplomatic staff of Malaysia in any country, either by name or by office, to be Registrar of Marriages for the purposes of this Act in that country.

(5) The Minister may, by notification in the *Gazette*, declare any area in a State and the Federal Territory to be a marriage district and define the boundaries of each district; and where an Assistant Registrar of Marriages is appointed under subsection (3), the Minister may define different areas to be marriage districts for any particular race, clan, association, church or temple.

(6) The Assistant Registrar General and the Superintendent Registrar may subject to any general or special direction of the Registrar General exercise any of the powers and duties of the Registrar General conferred and imposed by this Act.

Books and Registers to be kept of all marriages in Malaysia

29. Every Registrar shall keep a marriage register and such books as are prescribed by this Act or rules made thereunder and every marriage solemnized in Malaysia by the Registrar shall immediately after the solemnization thereof be registered by the Registrar in his marriage register.

Copies of entries to be sent to Registrar General

30. (1) The Registrar solemnizing the marriage shall deliver to the Registrar General the original and to the Superintendent Registrar

the duplicate of every entry made in the marriage register as attested by the parties to the marriage and by the witnesses and as signed by him.

(2) All such copies shall be kept by the Registrar General and the Superintendent Registrar in such manner as may be prescribed and shall constitute the marriage registers of the Registrar General and the Superintendent Registrar respectively.

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

31. (1) Where any person who is a citizen of or is domiciled in Malaysia has contracted a marriage abroad, not being a marriage registered under section 26, such person shall—

(a) within six months after the date of such marriage, appear before the nearest or most conveniently available Registrar abroad; and

(b) register such marriage.

(1A) Where before the expiry of six months under paragraph (1)(a), either or both parties return to Malaysia and the marriage was not registered, such person shall—

(a) within six months of arrival in Malaysia, appear before any Registrar; and

(b) register such marriage.

(1B) A person who applies to register a marriage under subsection (1) or (1A) shall—

(a) produce to such Registrar the certificate of such marriage or such evidence either oral or documentary as may satisfy the Registrar that such marriage took place;

(b) furnish such particulars as may be required by the Registrar for the due registration of such marriage; and

(c) apply in the prescribed form for the registration of the marriage to be effected and subscribe the declaration therein.

(2) A Registrar may dispense with the appearance of one of the parties to the marriage if he is satisfied that there exists good and sufficient reason for the absence of such party and in such case the entry in the marriage register shall include a statement of the reason for his or her absence.

(3) Upon the registration of any marriage under this section, the Registrar shall deliver the triplicate copy of the register to the parties to the marriage and the original to the Registrar General and the duplicate to the Superintendent Registrar who shall cause such copies to be bound together to constitute the Foreign Marriages Register.

(4) Where the parties to a marriage required to be registered under this section have not appeared before a Registrar within the period as prescribed in subsection (1), the marriage may, upon application to the Registrar, be registered by him on payment of such penalty as may be prescribed.

Unlawful registers

32. No person other than the Registrar General or a Superintendent Registrar appointed under this Act shall—

- (a) keep any book being or purporting to be a register kept in accordance with the provisions of this Act; or
- (b) issue to any person any document being or purporting to be a copy of a certificate of a marriage or a certificate of marriage registered by the Registrar.

Voluntary registration of marriages previously solemnized under religion or custom

33. (1) Notwithstanding section 4, the parties to any marriage solemnized under any law, religion, custom or usage prior to the appointed date may, if the marriage has not been registered, apply at any time to a Registrar in the prescribed form for the registration of the marriage.

(2) The Registrar may require the parties to the marriage to appear before him and to produce such evidence of the marriage, either oral or documentary, as he may require and to furnish such other particulars as may be required by him.

(3) The Registrar may on being satisfied of the truth of the statements contained in the application register the marriage by entering the particulars thereof in the marriage register prescribed for this purpose.

(4) The entry of the marriage in the marriage register shall be signed by the Registrar making the entry and by both the parties to the marriage, if available, otherwise, by whichever party shall appear before the Registrar for effecting registration of the marriage.

(5) Upon the registration of the marriage, the Registrar shall deliver the triplicate copy of the register to the parties to the marriage, the original to the Registrar General and the duplicate to the Superintendent Registrar.

(6) The Registrar shall not register a marriage under this section if he is satisfied that the marriage is void under this Act.

Legal effect of registration

34. Nothing in this Act or the rules made thereunder shall be construed to render valid or invalid any marriage which otherwise is invalid or valid merely by reason of its having been or not having been registered.

PART V

PENALTIES AND MISCELLANEOUS PROVISIONS RELATING TO THE SOLEMNIZATION AND REGISTRATION OF MARRIAGES

Omission to appear before Registrar within prescribed time

35. Any person who, being required by section 31 to appear before a Registrar, omits to do so within the prescribed time shall, on conviction, be liable to imprisonment for a term not exceeding one year or to a fine not exceeding one thousand ringgit or to both.

Contravention of section 32

36. Any person who contravenes section 32 shall, on conviction, be liable to imprisonment for a term not exceeding one year or to a fine not exceeding one thousand ringgit or to both; and for a

second or subsequent conviction shall be liable to imprisonment for a term not exceeding two years or to a fine not exceeding two thousand ringgit or to both.

Interference with marriage

37. Any person who uses any force or threat—

- (a) to compel a person to marry against his will; or
- (b) to prevent a person who has attained the age of twenty-one years from contracting a valid marriage,

shall be guilty of an offence and shall, on conviction, be liable to imprisonment for a term not exceeding three years or to a fine not exceeding three thousand ringgit or to both.

False oath, etc., for procuring marriage

38. Any person who for the purpose of procuring any marriage under this Act intentionally makes any false declaration or signs any false notice or certificate required by this Act shall be guilty of an offence and shall, on conviction, be liable to imprisonment for a term not exceeding three years or to a fine not exceeding three thousand ringgit or to both.

False allegation in caveat

39. (1) Any person who enters a caveat against the issue by a Registrar of a certificate for marriage and makes any false representation in or in support of the caveat knowing or believing such representation to be false or not having reason to believe it to be true, shall be guilty of an offence and shall, on conviction, be liable to imprisonment for a term not exceeding three years or to a fine not exceeding three thousand ringgit or to both.

(2) Any person who enters a caveat against the issue of a certificate for marriage and pretends or falsely represents himself to be a person whose consent to the marriage is required by law knowing or believing such pretence or representation to be false or not believing it to be true shall be guilty of an offence and shall, on conviction, be liable to imprisonment for a term not exceeding three years or to a fine not exceeding three thousand ringgit or to both.

Unauthorized solemnization of marriages

40. Any person who, not being authorized thereto under this Act, solemnizes or purports to solemnize any marriage, shall be guilty of an offence and shall, on conviction, be liable to imprisonment for a term not exceeding ten years and to a fine not exceeding fifteen thousand ringgit.

Offences relating to solemnization of marriages

41. (1) Any person who knowingly and contrary to this Act solemnizes or purports to solemnize or officiate at a marriage—

- (a) without first receiving a certificate for the marriage or a licence dispensing with such certificate;
- (b) otherwise than in the presence of at least two credible witnesses other than the person solemnizing the marriage; or
- (c) after the expiration of six months from the date of the notice of marriage given under section 14,

shall be guilty of an offence and shall, on conviction, be liable to imprisonment for a term not exceeding three years and to a fine not exceeding five thousand ringgit.

(2) Any Registrar who knowingly and contrary to this Act issues any certificate for marriage—

- (a) without publishing the notice of marriage as required by section 15;
- (b) when a caveat has been entered under section 19 without having first complied with section 20; or
- (c) contrary to section 16,

shall be guilty of an offence and shall, on conviction, be liable to imprisonment for a term not exceeding three years and to a fine not exceeding five thousand ringgit.

(3) Any person who marries or purports to marry or goes through a form of marriage with any person contrary to any of the provisions of Part III shall be guilty of an offence and shall, on conviction, be liable to imprisonment for a term not exceeding three years and to a fine not exceeding five thousand ringgit.

Destroying or falsifying register book

42. Any person who by himself or another—

- (a) wilfully destroys or injures any register of marriages or any certificate thereout, or any part thereof or any authenticated extract therefrom;
- (b) falsely makes or counterfeits any part of such register or certificate; or
- (c) wilfully inserts any false entry in any register or certificate or authenticated extract,

shall be guilty of an offence and shall, on conviction, be liable to imprisonment for a term not exceeding seven years and to a fine not exceeding ten thousand ringgit.

Sanction for prosecution

43. No prosecution for an offence punishable under this Act shall be instituted except with the authority in writing of the Public Prosecutor.

Correction of errors

44. (1) If the Registrar General is satisfied by statutory declaration or otherwise that any entry in a marriage register is erroneous in form or in substance, he may authorize to correct the error by entry in the margin, without altering the original entry.

(2) Every marginal entry so made shall be signed and dated by the Registrar.

(3) A copy of such correction shall be sent forthwith to the Registrar General or the Superintendent Registrar for a similar correction to be made in his marriage register.

Inspection and search

45. The Registrar General or the Superintendent Registrar may, on application made by any person who shall state his reason for

making the application and on payment of the prescribed fee, if he is satisfied with the reasons therefor—

- (a) allow the marriage register and index kept by him to be inspected;
- (b) furnish the applicant with an extract of any entry in the marriage register certified under his hand and seal of office.

Proof

46. Every marriage register kept under this Act and any copy of such entry certified by the Registrar shall be *prima facie* evidence of the dates and acts contained in such marriage register.

Damaged registers

46A. (1) The Registrar General may cause the entries of any marriage register found to be damaged, mutilated or illegible to be transferred to a new marriage register.

(2) The Registrar General may—

- (a) cause any or all marriage registers to be photographed on microfilms; or
- (b) cause particulars in any or all marriage registers to be recorded on computers or in any other manner or form he thinks fit, subject to such precautions as he considers necessary in the interest of its safety and the privacy of the information.

Missing register

46B. Where any marriage register is for any reason missing or destroyed and the Registrar General is satisfied from evidence adduced that any marriage was registered, he may cause such marriage to be re-registered.

PART VI**DIVORCE****Principles of law to be applied**

47. Subject to the provisions contained in this Part, the court shall in all suits and proceedings hereunder act and give relief on principles which in the opinion of the court are, as nearly as may be, conformable to the principles on which the High Court of Justice in England acts and gives relief in matrimonial proceedings.

Extent of power to grant relief

48. (1) Nothing in this Act shall authorize the court to make any decree of divorce except—

- (a) where the marriage has been registered or deemed to be registered under this Act; or
- (b) where the marriage between the parties was contracted under a law providing that, or in contemplation of which, marriage is monogamous; and
- (c) where the domicile of the parties to the marriage at the time when the petition is presented is in Malaysia.

(2) Nothing in this Act shall authorize the court to make any decree of judicial separation except—

- (a) where the marriage has been registered or deemed to be registered under this Act; or
- (b) where the marriage between the parties was contracted under a law providing that, or in contemplation of which, marriage is monogamous; and
- (c) where both the parties to the marriage reside in Malaysia at the time of the commencement of proceedings.

Additional jurisdiction in proceedings by a wife

49. (1) Notwithstanding anything to the contrary in paragraph 48(1)(c), the court shall have jurisdiction to entertain proceedings

by a wife under this Part, although the husband is not domiciled or resident in Malaysia if—

- (a) the wife has been deserted by the husband, or the husband has been deported from Malaysia under any law for the time being in force relating to the deportation of persons, and the husband was before the desertion or deportation domiciled in Malaysia; or
- (b) the wife is resident in Malaysia and has been ordinarily resident in Malaysia for a period of two years immediately preceding the commencement of the proceedings.

(2) In any proceedings in which the High Court has jurisdiction by virtue of this section, the issues shall be determined in accordance with the law which would be applicable thereto if the parties were domiciled or resident in Malaysia.

(3) In this section references to deportation from Malaysia shall be construed as including banishment or expulsion under any written law.

Restriction on petitions within two years of marriage

50. (1) Subject to subsection (2), no petition for divorce shall be presented to the court before the expiration of the period of two years from the date of the marriage (hereafter in this section referred to as “the specified period”).

(2) A Judge of the court may, on an application made to him, allow the presentation of a petition for divorce within the specified period on the ground that the case is one of exceptional circumstances or hardship suffered by the petitioner; but in determining the application the Judge shall have regard to the interests of any child of the marriage and to the question whether there is a reasonable probability of a reconciliation between the parties during the specified period.

(3) Nothing in this section shall be deemed to prohibit the presentation of a petition based upon matters which occurred before the expiration of the specified period.

Dissolution on ground of conversion to Islam

51. (1) Where one party to a marriage has converted to Islam, the other party who has not so converted may petition for divorce:

Provided that no petition under this section shall be presented before the expiration of the period of three months from the date of the conversion.

(2) The Court upon dissolving the marriage may make provision for the wife or husband, and for the support, care and custody of the children of the marriage, if any, and may attach any conditions to the decree of the dissolution as it thinks fit.

(3) Section 50 shall not apply to any petition for divorce under this section.

Dissolution by mutual consent

52. If husband and wife mutually agree that their marriage should be dissolved they may after the expiration of two years from the date of their marriage present a joint petition accordingly and the court may, if it thinks fit, make a decree of divorce on being satisfied that both parties freely consent, and that proper provision is made for the wife and for the support, care and custody of the children, if any, of the marriage, and may attach such conditions to the decree of divorce as it thinks fit.

Breakdown of marriage to be sole ground for divorce

53. (1) Either party to a marriage may petition for a divorce on the ground that the marriage has irretrievably broken down.

(2) The court hearing such petition shall, so far as it reasonably can, inquire into the facts alleged as causing or leading to the breakdown of the marriage and, if satisfied that the circumstances make it just and reasonable to do so, make a decree for its dissolution.

Proof of breakdown

54. (1) In its inquiry into the facts and circumstances alleged as causing or leading to the breakdown of the marriage, the court shall have regard to one or more of the following facts, that is to say:

- (a) that the respondent has committed adultery and the petitioner finds it intolerable to live with the respondent;
- (b) that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent;
- (c) that the respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition;
- (d) that the parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition.

(2) In considering whether it would be just and reasonable to make a decree the court shall consider all the circumstances, including the conduct of the parties and how the interests of any child or children of the marriage or of either party may be affected if the marriage is dissolved and it may make a decree *nisi* subject to such terms and conditions as the court may think fit to attach, but if it should appear to the court that in all the circumstances it would be wrong to dissolve the marriage it shall dismiss the petition.

Provisions designed to encourage reconciliation

55. (1) Provision may be made by rules of court for requiring that before the presentation of a petition for divorce the petitioner shall have recourse to the assistance and advice of such persons or bodies as may be made available for the purpose of effecting a reconciliation between parties to a marriage who have become estranged.

(2) If at any stage of proceedings for divorce it appears to the court that there is a reasonable possibility of a reconciliation between the parties to the marriage, the court may adjourn the proceedings for such period as it thinks fit to enable attempts to be made to effect such a reconciliation. The power conferred by the foregoing provision is additional to any other power of the court to adjourn proceedings.

Rules to provide for agreements to be referred to court

56. Provisions may be made by rules of court for enabling the parties to a marriage, or either of them, on application made either

before or after the presentation of a petition for divorce, to refer to the court any agreement or arrangement made or proposed to be made between them, being an agreement or arrangement which relates to, arises out of, or is connected with, the proceedings for divorce which are contemplated or, as the case may be, have begun, and for enabling the court to express an opinion, should it think it desirable to do so, as to the reasonableness of the agreement or arrangement and to give such directions, if any, in the matter as it thinks fit.

Contents of divorce petition

57. (1) Every petition for divorce shall contain—

- (a) particulars of the marriage between the parties and the names, ages and sex of the children, if any, of the marriage;
- (b) particulars of the facts giving the court jurisdiction;
- (c) particulars of any previous matrimonial proceedings between the parties;
- (d) a statement of the principal allegations which it will be sought to prove as evidence of the breakdown of the marriage;
- (e) the terms of any agreement regarding maintenance of the wife or dependent party and the children, if any, of the marriage, or the division of any assets acquired through the joint efforts of the parties or the sole effort of one party or where no such agreement has been reached, the petitioner's proposals; and
- (f) particulars of the relief sought.

(2) Every petition for a divorce shall state what steps had been taken to effect a reconciliation.

Damages for adultery may be claimed against co-respondent

58. (1) On a petition for divorce in which adultery is alleged, or in the answer of a party to the marriage praying for divorce and alleging adultery, the party shall make the alleged adulterer or adulteress a co-respondent, unless excused by the court on special grounds from doing so.

(2) A petition under subsection (1) may include a prayer that the co-respondent be condemned in damages in respect of the alleged adultery.

(3) Where damages have been claimed against a co-respondent—

(a) if, after the close of the evidence for the petitioner, the court is of the opinion that there is not sufficient evidence against the co-respondent to justify requiring him or her to reply, the co-respondent shall be discharged from the proceedings; or

(b) if, at the conclusion of the hearing, the court is satisfied that adultery between the respondent and co-respondent has been proved, the court may award the petitioner such damages as it may think fit, but so that the award shall not include any exemplary or punitive element.

Powers of court on claim to damages for adultery

59. (1) The court may award damages against a co-respondent notwithstanding that the petition against the respondent is dismissed or adjourned.

(2) The court shall have power, when awarding damages, to direct that such damages or any part thereof, be vested in trustees upon trust to pay the income or capital thereof for the benefit of the minor children, if any, of the marriage or, where the petitioner is required to pay maintenance to the respondent, in or towards the payment of such maintenance, and subject thereto in trust for the petitioner.

(3) Whenever in any petition presented by a husband the alleged adultery has been established against the co-respondent, the court may order the co-respondent to pay the whole or any part of the costs of the proceedings; provided that no such order for costs shall be made if the respondent was at the time of the adultery living apart from the husband and living the life of a prostitute or if the co-respondent had not at the time of the adultery reason to believe the respondent to be a married woman.

Hearing of petition

60. If in any proceedings for divorce the respondent alleges against the petitioner and proves any such fact as is mentioned in section

54 the court may give the respondent the relief to which the respondent would have been entitled if the respondent had presented a petition seeking that relief.

Decree *nisi* and proceedings thereafter

61. (1) Every decree of divorce shall in the first instance be a decree *nisi* and shall not be made absolute before the expiration of three months from its grant unless the court by general or special order from time to time fixes a shorter period.

(2) Where a decree *nisi* of divorce has been granted and no application for it to be made absolute has been made by the party to whom it was granted, then, at any time after the expiration of three months from the earliest date on which that party could have made such an application, the party against whom it was granted may make an application to the court and on that application the court may—

- (a) notwithstanding the provisions of the last foregoing subsection, make the decree absolute;
- (b) rescind the decree *nisi*;
- (c) require further inquiry; or
- (d) otherwise deal with the case as it thinks fit.

Remarriage of divorced persons

62. Where a decree of divorce has been made absolute and either—

- (a) there is no right of appeal against the decree absolute;
- (b) the time for appealing against the decree absolute has expired without an appeal having been brought; or
- (c) an appeal against the decree absolute has been dismissed,

either party to the former marriage may marry again.

Proceedings for decree *nisi* of presumption of death and divorce

63. (1) Any married person who alleges that reasonable grounds exist for supposing that the other party to the marriage is dead may present a petition to the court to have it presumed that the other party is dead and to have the marriage dissolved, and the court,

if satisfied that such reasonable grounds exist, may make a decree *nisi* of presumption of death and of divorce.

(2) In any such proceedings the fact that for a period of seven years upwards the other party to the marriage has been continually absent from the petitioner, and the petitioner has no reason to believe that the other party has been living within that time, shall be evidence that he or she is dead until the contrary is proved.

(3) Sections 61 and 62 shall apply to a petition and a decree under this section as they apply to a petition for divorce and a decree of divorce respectively.

Judicial Separation

Judicial separation

64. (1) A petition for judicial separation may be presented to the court by either party to a marriage on the ground and circumstances set out in section 54 and that section shall, with the necessary modifications, apply in relation to such a petition as they apply in relation to a petition for divorce.

(2) Where a court grants a decree of judicial separation it shall no longer be obligatory for the petitioner to cohabit with the respondent.

(3) The court may, on an application by petition of the spouse against whom a decree of judicial separation has been made and on being satisfied that the allegations in the petition are true, rescind the decree at any time on the ground that it was obtained in the absence of the applicant or, if desertion was the ground of the decree, that there was reasonable cause for the alleged desertion.

Judicial separation no bar to petition for divorce

65. (1) A person shall not be prevented from presenting a petition for divorce, or the court from pronouncing a decree of divorce, by reason only that the petitioner has at any time been granted a judicial separation upon the same or substantially the same facts as those proved in support of the petition for divorce.

(2) On any such petition for divorce, the court may treat the decree of judicial separation as sufficient proof of the adultery,

desertion, or other ground on which it was granted, but the court shall not pronounce a decree of divorce without receiving evidence from the petitioner.

(3) For the purposes of any such petition for divorce a period of desertion immediately preceding the institution of proceedings for a decree of judicial separation shall, if the parties have not resumed cohabitation and the decree has been continuously in force since the granting thereof, be deemed immediately to precede the presentation of the petition for divorce.

Property of wife after judicial separation

66. (1) The property of a wife who at the time of her death is judicially separated from her husband shall, in case she dies intestate, go as it would have gone if her husband had been then dead.

(2) Where, upon any such judicial separation, alimony has been decreed or ordered to be paid to the wife and the same is not duly paid by the husband he shall be liable for necessities supplied for her use.

Nullity of Marriage

Extent of power to grant relief

67. Nothing in this Act shall authorize the court to make any decree of nullity of marriage except—

- (a) where the marriage has been registered or deemed to be registered under this Act; or
- (b) where the marriage between the parties was contracted under a law providing that, or in contemplation of which, marriage is monogamous; and
- (c) where both the parties to the marriage reside in Malaysia at the time of the commencement of the proceedings.

Petition for nullity of marriage

68. Any husband or wife may present a petition to the court praying for a decree of nullity in respect of his or her marriage.

Grounds on which a marriage is void

69. A marriage which takes place after the appointed date shall be void if—

- (a) at the time of the marriage either party was already lawfully married and the former husband or wife of such party was living at the time of the marriage and such former marriage was then in force;
- (b) a male person marries under eighteen years of age or a female person who is above sixteen years but under eighteen years marries without a special licence granted by the Chief Minister under section 10;
- (c) the parties are within the prohibited degrees of relationship unless the Chief Minister grants a special licence under subsection 11(6); or
- (d) the parties are not respectively male and female.

Grounds on which a marriage is voidable

70. A marriage which takes place after the appointed date shall be voidable on the following grounds only, that is to say:

- (a) that the marriage has not been consummated owing to the incapacity of either party to consummate it;
- (b) that the marriage has not been consummated owing to the wilful refusal of the respondent to consummate it;
- (c) that either party to the marriage did not validly consent to it, whether in consequence of duress, mistake, unsoundness of mind or otherwise;
- (d) that at the time of the marriage either party, though capable of giving a valid consent, was (whether continuously or intermittently) a mentally disordered person within the meaning of the Mental Disorders Ordinance 1952 [*Ord. 31 of 1952*] of such a kind or to such an extent as to be unfit for marriage;
- (e) that at the time of the marriage the respondent was suffering from venereal disease in a communicable form;
- (f) that at the time of the marriage the respondent was pregnant by some person other than the petitioner.

Bars to relief where marriage is voidable

71. (1) The court shall not grant a decree of nullity on any of the grounds mentioned in section 70 if the respondent satisfied the court—

- (a) that the petitioner, with knowledge that it was open to him to have the marriage avoided, so conducted himself in relation to the respondent as to lead the respondent reasonably to believe that he would not seek to do so; and
- (b) that it would be unjust to the respondent to grant the decree.

(2) Without prejudice to subsection (1), the court shall not grant a decree of nullity on the grounds mentioned in paragraph 70(e) or (f) unless it is satisfied that the petitioner was at the time of the marriage ignorant of the facts alleged.

(3) Subsection (1) replaces, in relation to the grounds mentioned in section 70, any rule of law whereby a decree may be refused by reason of approbation, ratification or lack of sincerity on the part of the petitioner or on similar grounds.

Marriages governed by foreign law or celebrated abroad under Malaysian law

72. Where, apart from this Act, any matter affecting the validity of a marriage would fall to be determined (in accordance with the rules of Private International Law) by reference to the law of a country outside Malaysia neither section 69 nor section 70 shall—

- (a) preclude the determination of that matter as aforesaid; or
- (b) require the application to the marriage of the grounds there mentioned except so far as applicable in accordance with those rules.

Effect of decree of nullity in case of voidable marriage

73. (1) If the court finds that the petitioner's case has been proved it shall pronounce a decree of nullity.

(2) A decree of nullity granted after the appointed date on the ground that marriage is voidable shall operate to annul the marriage

only as respects any time after the coming into operation of the decree, and the marriage shall, notwithstanding the decree, be treated as if it had existed up to that time.

Collusion not to be bar to relief in cases of nullity

74. Collusion shall cease to be a bar to the granting of a decree of nullity.

Legitimacy where nullity decree made

75. (1) Where a decree of nullity is granted in respect of a voidable marriage, any child who would have been the legitimate child of the parties to the marriage if at the date of the decree it had been dissolved instead of being annulled shall be deemed to be their legitimate child.

(2) Subject to the provisions of this section, the child of a void marriage shall be treated as the legitimate child of his parent if, at the time of the solemnization of the marriage, both or either of the parties reasonably believed that the marriage was valid.

(3) Subsection (2) applies—

(a) only where the father of the child was domiciled in Malaysia at the time of the marriage; and

(b) in so far as it affects the devolution of any property only to children born after the appointed date.

(4) This section does not affect any rights under the intestacy of a person who died before the appointed date, and does not affect the operation or construction of any disposition coming into operation before the appointed date.

(5) Notwithstanding section 6 of the Legitimacy Act 1961 all children who are deemed legitimate at birth by virtue of the provisions of this section shall be so treated in all respects and not as persons legitimated at the date of the marriage or of the Legitimacy Act 1961 [Act 60] as provided therein.

(6) Any person claiming otherwise than in a petition for a declaration of nullity of the relevant marriage that a child shall be treated as the legitimate child of his parents by virtue of subsection (3) may apply for a decree to that effect and section 5 of the

Legitimacy Act 1961 shall apply *mutatis mutandis* to such petition but the court shall not make such a decree unless satisfied by the petitioner that both or either of the parties to the marriage reasonably believed that the marriage was valid as not being in any way contrary to section 71.

(7) In this section the following expressions have the meaning hereby assigned to them, that is to say—

“void marriage” means a marriage declared to be void under sections 6, 10, 11, subsection 22(4) or section 72;

“disposition” has the same meaning as in the Legitimacy Act 1961,

and any reference in this section to property is a reference to any real or personal property, or any interest in such property, which is limited by any disposition (whether subject to a preceding limitation or charge or not) in such a way as to devolve as nearly as the law permits, whether or not the property or some interest in the property may in some event become severed from it.

PART VII

MATTERS INCIDENTAL TO MATRIMONIAL PROCEEDINGS

Power for court to order division of matrimonial assets

76. (1) The court shall have power, when granting a decree of divorce or judicial separation, to order the division between the parties of any assets acquired by them during the marriage by their joint efforts or the sale of any such assets and the division between the parties of the proceeds of sale.

(2) In exercising the power conferred by subsection (1) the court shall have regard to—

- (a) the extent of the contributions made by each party in money, property or work towards the acquiring of the assets;
- (b) any debts owing by either party which were contracted for their joint benefit;
- (c) the needs of the minor children, if any, of the marriage,

and subject to those considerations, the court shall incline towards equality of division.

(3) The court shall have power, when granting a decree of divorce or judicial separation, to order the division between the parties of any assets acquired during the marriage by the sole effort of one party to the marriage or the sale of any such assets and the division between the parties of the proceeds of sale.

(4) In exercising the power conferred by subsection (3) the court shall have regard to—

- (a) the extent of the contributions made by the other party who did not acquire the assets to the welfare of the family by looking after the home or caring the family;
- (b) the needs of the minor children, if any, of the marriage;

and subject to those considerations, the court may divide the assets or the proceeds of sale in such proportions as the court thinks reasonable; but in any case the party by whose effort the assets were acquired shall receive a greater proportion.

(5) For the purposes of this section, references to assets acquired during a marriage include assets owned before the marriage by one party which have been substantially improved during the marriage by the other party or by their joint efforts.

Maintenance of spouse

Power for court to order maintenance of spouse

77. (1) The court may order a man to pay maintenance to his wife or former wife—

- (a) during the course of any matrimonial proceedings;
- (b) when granting or subsequent to the grant of a decree of divorce or judicial separation;
- (c) if, after a decree declaring her presumed to be dead, she is found to be alive.

(2) The court shall have the corresponding power to order a woman to pay maintenance to her husband or former husband where he is incapacitated, wholly or partially, from earning a livelihood by reason of mental or physical injury or ill-health, and the court is satisfied that having regard to her means it is reasonable so to order.

Assessment of maintenance

78. In determining the amount of any maintenance to be paid by a man to his wife or former wife or by a woman to her husband or former husband, the court shall base its assessment primarily on the means and needs of the parties, regardless of the proportion such maintenance bears to the income of the husband or wife as the case may be, but shall have regard to the degree of responsibility which the court apportions to each party for the breakdown of the marriage.

Power for court to order security for maintenance

79. The court may in its discretion when awarding maintenance order the person liable to pay such maintenance to secure the whole or any part of it by vesting any property in trustees upon trust to pay such maintenance or part thereof out of the income from such property and, subject thereto, in trust for the settlor.

Compounding of maintenance

80. An agreement for the payment, in money or other property, of a capital sum in settlement of all future claims to maintenance, shall not be effective until it has been approved, or approved subject to conditions, by the court, but when so approved shall be a good defence to any claim for maintenance.

Duration of orders for maintenance

81. Except where an order for maintenance is expressed to be for any shorter period or where any such order has been rescinded, and subject to section 82, an order for maintenance shall expire—

- (a) if the maintenance was unsecured, on the death of the husband or of the wife, whichever is the earlier;
- (b) if the maintenance was secured, on the death of the spouse in whose favour it was made.

Right to maintenance to cease on remarriage

82. (1) The right of any divorced person to receive maintenance from his or her former spouse under any order of court shall cease on his or her marriage to or living in adultery with any other person.

(2) The right of any divorced person to receive maintenance from his or her former spouse under an agreement shall cease on his or her marriage to or living in adultery with any other person unless the agreement otherwise provides.

Power for court to vary orders for maintenance

83. The court may at any time and from time to time vary, or rescind, any subsisting order for maintenance, whether secured or unsecured, on the application of the person in whose favour or of the person against whom the order was made, or, in respect of secured maintenance, of the legal personal representatives of the latter, where it is satisfied that the order was based on any misrepresentation or mistake of fact or where there has been any material change in the circumstances.

Power for court to vary agreements for maintenance

84. Subject to section 80, the court may at any time and from time to time vary the terms of any agreement as to maintenance made between husband and wife, whether made before or after the appointed date, where it is satisfied that there has been any material change in the circumstances and notwithstanding any provision to the contrary in any such agreement.

Maintenance payable under order of court to be inalienable

85. Maintenance payable to any person under any order of court shall not be assignable or transferable or liable to be attached, sequestered or levied upon for, or in respect of, any debt or claim whatsoever.

Recovery of arrears of maintenance

86. (1) Subject to subsection (3), arrears of unsecured maintenance, whether payable by agreement or under an order of court, shall be recoverable as a debt from the defaulter and, where they accrued due before the making of a receiving order against the defaulter, shall be provable in his or her bankruptcy and, where they accrued due before his or her death, shall be a debt due from his or her estate.

(2) Subject to subsection (3), arrears of unsecured maintenance which accrued due before the death of the person entitled thereto shall be recoverable as a debt by the legal personal representatives of such person.

(3) No amount owing as maintenance shall be recoverable in any suit if it accrued due more than three years before the institution of the suit.

PART VIII

PROTECTION OF CHILDREN

Meaning of “child”

87. In this Part, wherever the context so requires, “child” has the meaning of “child of the marriage” as defined in section 2 who is under the age of eighteen years.

Power for court to make order for custody

88. (1) The court may at any time by order place a child in the custody of his or her father or his or her mother or, where there are exceptional circumstances making it undesirable that the child be entrusted to either parent, of any other relative of the child or of any association the objects of which include child welfare or to any other suitable person.

(2) In deciding in whose custody a child should be placed the paramount consideration shall be the welfare of the child and subject to this the court shall have regard—

(a) to the wishes of the parents of the child; and

(b) to the wishes of the child, where he or she is of an age to express an independent opinion.

(3) There shall be a rebuttable presumption that it is for the good of a child below the age of seven years to be with his or her mother but in deciding whether that presumption applies to the facts of any particular case, the court shall have regard to the undesirability of disturbing the life of a child by changes of custody.

(4) Where there are two or more children of a marriage, the court shall not be bound to place both or all in the custody of the same person but shall consider the welfare of each independently.

Orders subject to conditions

89. (1) An order for custody may be made subject to such conditions as the court may think fit to impose, and subject to such conditions, if any, as may from time to time apply, shall entitle the person given custody to decide all questions relating to the upbringing and education of the child.

(2) Without prejudice to the generality of subsection (1), an order for custody may—

- (a) contain conditions as to the place where the child is to reside, as to the manner of his or her education and as to the religion in which he or she is to be brought up;
- (b) provide for the child to be temporarily in the care and control of some person other than the person given custody;
- (c) provide for the child to visit a parent deprived of custody or any member of the family of a parent who is dead or has been deprived of custody at such times and for such periods as the court may consider reasonable;
- (d) give a parent deprived of custody or any member of the family of a parent who is dead or has been deprived of custody the right of access to the child at such times and with such frequency as the court may consider reasonable;
or
- (e) prohibit the person given custody from taking the child out of Malaysia.

Declaratory order as to unfitness of parent to have custody

90. (1) The court may, when granting a divorce or judicial separation, or at any time thereafter, on the application of the father or the mother of any child of the marriage, make an order declaring either parent to be a person unfit to have the custody of the child and may at any time rescind any such order.

(2) Where an order has been made under subsection (1), and has not been rescinded, the parent thereby declared to be unfit shall not, on the death of the other person, be entitled to the custody of such child unless the court otherwise orders.

Custody of children deemed legitimate

91. When a child is deemed to be legitimate under section 75, the mother shall, in the absence of any agreement or order of court to the contrary, be entitled to custody of the child.

Duty to maintain children

92. Except where an agreement or order of court otherwise provides, it shall be the duty of a parent to maintain or contribute to the maintenance of his or her children, whether they are in his or her custody or the custody of any other person, either by providing them with such accommodation, clothing, food and education as may be reasonable having regard to his or her means and station in life or by paying the cost thereof.

Power for court to order maintenance for children

93. (1) The court may at any time order a man to pay maintenance for the benefit of his child—

- (a) if he has refused or neglected reasonably to provide for the child;
- (b) if he has deserted his wife and the child is in her charge;
- (c) during the pendency of any matrimonial proceedings; or
- (d) when making or subsequent to the making of an order placing the child in the custody of any other person.

(2) The court shall have the corresponding power to order a woman to pay or contribute towards the maintenance of her child where it is satisfied that having regard to her means it is reasonable so to order.

(3) An order under subsection (1) or (2) may direct payment to the person having custody or care and control of the child or trustees for the child.

Power for court to order security for maintenance

94. The court may, in its discretion, when ordering the payment of maintenance for the benefit of any child, order the person liable to pay such maintenance to secure the whole or any part of it by vesting any property in trustees upon trust to pay such maintenance or part thereof out of the income from such property, and subject thereto, in trust for the settlor.

Duration of orders for custody and maintenance

95. Except where an order for custody or maintenance of a child is expressed to be for any shorter period or where any such order has been rescinded, it shall expire on the attainment by the child of the age of eighteen years or where the child is under physical or mental disability, on the ceasing of such disability, whichever is the later.

Power for court to vary orders for custody or maintenance

96. The court may at any time and from time to time vary, or may rescind, any order for the custody or maintenance of a child on the application of any interested person, where it is satisfied that the order was based on any misrepresentation or mistake of fact or where there has been any material change in the circumstances.

Power for court to vary agreement for custody or maintenance

97. The court may at any time and from time to time vary the terms of any agreement relating to the custody or maintenance of a child, whether made before or after the appointed date, notwithstanding any provision to the contrary in any such agreement, where it is satisfied that it is reasonable and for the welfare of the child so to do.

Recovery of arrears of maintenance

98. Section 86 shall apply, *mutatis mutandis*, to orders for the payment of maintenance for the benefit of any child.

Duty to maintain child accepted as member of family

99. (1) Where a man has accepted a child who is not his child as a member of his family, it shall be his duty to maintain such child while he or she remains a child, so far as the father and the mother of the child fail to do so, and the court may make such orders as may be necessary to ensure the welfare of the child:

Provided that the duty imposed by this subsection shall cease if the child is taken away by his or her father or mother.

(2) Any sums expended by a man maintaining such child shall be recoverable as a debt from the father or mother of the child.

Court to have regard to advice of welfare officers, etc.

100. When considering any question relating to the custody or maintenance of any child, the court shall, whenever it is practicable, take the advice of some person, whether or not a public officer, who is trained or experienced in child welfare but shall not be bound to follow such advice.

Power for court to restrain taking of child out of Malaysia

101. (1) The court may on the application of the father or mother of a child—

- (a) where any matrimonial proceeding is pending; or
- (b) where, under any agreement or order of court, one parent has custody of the child to the exclusion of the other,

issue an injunction restraining the other parent from taking the child out of Malaysia or may give leave for such child to be taken out of Malaysia either unconditionally or subject to such conditions or such undertaking as the court may think fit.

(2) The court may, on the application of any interested person, issue an injunction restraining any person, other than a person having custody of a child, from taking the child out of Malaysia.

(3) Failure to comply with an order made under this section shall be punishable as a contempt of court.

Other reliefs

Power for court to set aside and prevent dispositions intended to defeat claims to maintenance

102. (1) Where—

- (a) any matrimonial proceeding is pending;
- (b) an order has been made under section 76 and has not been complied with;
- (c) an order for maintenance has been made under section 77 or 93 and has not been rescinded; or
- (d) maintenance is payable under any agreement to or for the benefit of a spouse or former spouse or child,

the court shall have power on application—

- (i) if it is satisfied that any disposition of property has been made by the spouse or former spouse or parent of the person by or on whose behalf the application is made, within the preceding three years, with the object on the part of the person making the disposition of reducing his or her means to pay maintenance or of depriving his or her spouse of any rights in relation to that property, to set aside the disposition; and
- (ii) if it is satisfied that any disposition of property is intended to be made with any such object, to grant an injunction preventing that disposition.

(2) For the purposes of this section—

“disposition” includes a sale, gift, lease, mortgage or any other transaction whereby ownership or possession of the property is transferred or encumbered but does not include a disposition made for money or money’s worth to or in favour of a person acting in good faith and in ignorance of the object with which the disposition is made;

“property” means property of any nature, movable or immovable, and includes money.

Injunction against molestation

103. The court shall have power during the pendency of any matrimonial proceedings or on or after the grant of a decree or divorce, judicial separation or annulment, to order any person to refrain from forcing his or her society on his or her spouse or former spouse and from other acts of molestation.

PART IX**MISCELLANEOUS****Recognition of marriage contracted abroad**

104. A marriage contracted outside Malaysia other than a marriage solemnized in a Malaysian Embassy, High Commission or Consulate under section 26, shall be recognised as valid for all purposes of the law of Malaysia if—

- (a) it was contracted in a form required or permitted by the law of the country where it was contracted;
- (b) each of the parties had, at the time of the marriage, capacity to marry under the law of the country of his or her domicile; and
- (c) where either of the parties is a citizen of or is domiciled in Malaysia, both parties had capacity to marry according to this Act.

Recognition of marriages contracted in Embassies, etc., in Malaysia

105. A marriage contracted in any foreign Embassy, High Commission or Consulate in Malaysia shall be recognised as valid for all purposes of the law of Malaysia if—

- (a) it was contracted in a form required or permitted by the law of the country whose Embassy, High Commission or Consulate it is, or in a form permitted under this Act;

- (b) each of the parties had, at the time of the marriage, capacity to marry under the law of the country of his or her domicile; and
- (c) where either of the parties is a citizen of or is domiciled in Malaysia, both parties had capacity to marry under this Act.

Requirement of reference to conciliatory body before petition for divorce

106. (1) No person shall petition for divorce, except under sections 51 and 52, unless he or she has first referred the matrimonial difficulty to a conciliatory body and that body has certified that it has failed to reconcile the parties:

Provided that this requirement shall not apply in any case—

- (i) where the petitioner alleges that he or she has been deserted by and does not know the whereabouts of his or her spouse;
- (ii) where the respondent is residing abroad and it is unlikely that he or she will enter the jurisdiction within six months next ensuing after the date of the petition;
- (iii) where the respondent has been required to appear before a conciliatory body and has wilfully failed to attend;
- (iv) where the respondent is imprisoned for a term of five years or more;
- (v) where the petitioner alleges that the respondent is suffering from incurable mental illness; or
- (vi) where the court is satisfied that there are exceptional circumstances which make reference to a conciliatory body impracticable.

(2) A matrimonial difficulty may be referred to any conciliatory body acceptable to both parties but, where they are unable to agree on a conciliatory body, shall be referred to the marriage tribunal for the area in which they reside or, where they are living in different areas, to the marriage tribunal for the area in which they had last resided together.

(3) A “conciliatory body” means—

- (a) a council set up for the purposes of reconciliation by the appropriate authority of any religion, community, clan or association;
- (b) a marriage tribunal; or
- (c) any other body approved as such by the Minister by notice in the *Gazette*.

(4) A marriage tribunal shall be set up for such specified area or district as the Minister may decide, consisting of a Chairman and not less than two nor more than four other members who shall be nominated by the Minister, or by such officer to whom the Minister may have delegated his powers to in that behalf.

(5) (a) A conciliatory body to which a matrimonial difficulty has been referred shall resolve it within the period of six months from the date of reference; and shall require the attendance of the parties and shall give each of them an opportunity of being heard and may hear such other persons and make such inquiries as it may think fit and may, if it considers it necessary, adjourn its proceedings from time to time.

(b) If the conciliatory body is unable to resolve the matrimonial difficulty to the satisfaction of the parties and to persuade them to resume married life together, it shall issue a certificate to that effect and may append to its certificate such recommendations as it thinks fit regarding maintenance, division of matrimonial property and the custody of the minor children, if any, of the marriage.

(c) No advocate or solicitor shall appear or act as such for any party in any proceeding before a conciliatory body and no party shall be represented by any person, other than a member of his or her family, without the leave of the conciliatory body.

Maintenance of register of divorces and annulments

107. (1) The Registrar General shall maintain a register of divorces and annulments and shall forthwith enter therein the prescribed particulars of all decrees of divorce and annulment sent to

him under subsection (2) and of all decrees of divorce and annulment for the registration of which application is made under subsection (3).

(2) Every court which grants a decree of divorce or annulment shall forthwith send one certified true copy of the decree to the Registrar General for registration.

(3) Where a marriage which is solemnized in Malaysia is dissolved or annulled by a decree of a court of competent jurisdiction outside Malaysia, either of the parties may apply to the Registrar General for the registration of such decree and the Registrar General, on being satisfied that the decree is one which should be recognised as valid for the purposes of the law of Malaysia, shall register that decree.

(4) Where a decree of divorce or annulment, wherever granted, has dissolved a marriage which was solemnized in Malaysia and which has been registered under this Act or any written law in force immediately before the coming into force of this Act, the Registrar General shall, on registering such decree, cause the entry in the register of marriage relating to that marriage to be marked with the word “Dissolved” and a reference to the proceedings in which that decree was granted.

Power to make rules

108. (1) The Rules Committee may make rules regulating the practice and procedure in all matrimonial proceedings under this Act as they consider expedient and also rules to fix and regulate the fees and costs payable upon all such proceedings; and subject thereto all proceedings under this Act shall be regulated by the Divorce and Matrimonial Proceedings Rules 1980.

(2) The Minister may make rules for the purposes of this Act and, without prejudice to the generality of the foregoing, such rules may provide for—

- (a) prescribing the manner in which the Registrars shall exercise the powers conferred on them by this Act;
- (b) the form of marriage registers and certificates of marriage and the mode in which the same are to be kept;

- (c) the mode in which the Registrar General, the Superintendent Registrars, the Registrars and Assistant Registrars shall keep certificates of marriage, marriage registers and indices thereof;
- (d) the supply and the safe custody of marriage registers, Registrars' note-books and all declarations made for the purposes of this Act;
- (e) the preparation and submission of returns of marriages solemnized in Malaysia and abroad and of marriages registered under this Act;
- (f) the forms of any certificates, notices or other documents required for the purpose of carrying out this Act;
- (g) the making of searches and the giving of certified copies;
- (h) fixing the fees chargeable for the purposes of this Act.

Repeal

109. (1) Subject to subsection (2), the written laws or provisions of the written laws to the extent specified in the Schedule are repealed.

(2) All proceedings commenced under the Divorce Ordinance 1952 [*Ord. 74 of 1952*], Sabah Divorce Ordinance 1963 [*Sabah Ord. 7 of 1963*], and Matrimonial Causes Ordinance [*Sarawak Cap. 94*] repealed shall, so far as practicable, be continued under this Act and for this purpose, every petition for divorce other than one on which a decree *nisi* has been granted, shall be deemed to be a petition for divorce under this Act and the grounds set out in the petition shall be deemed to be the principal allegations which it will be sought to prove as evidence of the breakdown of the marriage, but every such petition shall, unless the court otherwise orders, be stayed pending reference to a conciliatory body; and where a decree *nisi* has been granted, the proceedings shall continue as if this Act has not been passed.

(3) The Registration of Marriages Ordinance 1952 [*Ord. 53 of 1952*] is extended to Sabah and Sarawak.

SCHEDULE
[Section 109]

PENINSULAR MALAYSIA

Ordinances and Acts	Short Title	Extent of Repeal
No. 44 of 1952	Civil Marriage Ordinance 1952	Whole
No. 53 of 1952	Registration of Marriages Ordinance 1952	In so far as it applies to persons whose marriages are registrable under this Act
No. 74 of 1952	Divorce Ordinance 1952	Whole
No. 33 of 1956	Christian Marriage Ordinance 1956	Whole
Act 60	Legitimacy Act 1961	Subsection 3(2)
No. 36 of 1950	Married Women and Children (Maintenance) Ordinance 1950	The words “not exceeding fifty dollars” in subsection 3(2)

SABAH AND SARAWAK

Sarawak Cap. 74 (1948 Edition Volume III)	Chinese Marriage Ordinance	Whole
Sarawak Cap. 92	Church and Civil Marriages Ordinances	Whole
Sarawak Cap. 94	Matrimonial Causes Ordinance	Whole
Sabah No. 7 of 1963	Divorce Ordinance 1963	Whole
Sabah Cap. 24	Christian Marriage Ordinance 1919	Whole
Sabah No. 14 of 1959	The Marriage Ordinance 1959	Whole

LAWS OF MALAYSIA**Act 164****LAW REFORM (MARRIAGE AND DIVORCE)
ACT 1976**

LISTS OF AMENDMENTS

Amending law	Short title	In force from
Act 160	Malaysian Currency (Ringgit) Act 1975	29-08-1975
Act A327	Penal Code (Amendment and Extension) Act 1976	31-03-1976
Act 92	Subordinate Courts Act 1948 (Section 111—P.U. (A) 357/1980)	01-06-1981
Act A498	Law Reform (Marriage and Divorce) (Amendment) Act 1980	01-03-1982
Act A650	Law Reform (Marriage and Divorce) (Amendment) Act 1986	16-05-1986

LAWS OF MALAYSIA

Act 164

LAW REFORM (MARRIAGE AND DIVORCE) ACT 1976

LISTS OF SECTIONS AMENDED

Section	Amending authority	In force from
2	Act A498	01-03-1982
3	Act A498	01-03-1982
4	Act A498	01-03-1982
5	Act A650	16-05-1986
7	Act A650	16-05-1986
8	Act A498	01-03-1982
12	Act A498	01-03-1982
14	Act A498	01-03-1982
15	Act A498	01-03-1982
21	Act A498	01-03-1982
26	Act A650	16-05-1986
28	Act A498	01-03-1982
30	Act A498	01-03-1982
31	Act A498	01-03-1982
32	Act A498	01-03-1982
33	Act A498	01-03-1982
44	Act A498	01-03-1982
45	Act A498	01-03-1982
46	Act A498	01-03-1982

Section	Amending authority	In force from
46A	Act A498	01-03-1982
46B	Act A498	01-03-1982
51	Act A498	01-03-1982
52	Act A498	01-03-1982
58	Act A498	01-03-1982
69	Act A498	01-03-1982
75	Act A498	01-03-1982
108	Act A498	01-03-1982
109	Act A498	01-03-1982
Schedule	Act A498	01-03-1982

