



# Divorce Laws in Malaysia

(Civil and Shariah)

Dr. Zaleha Kamaruddin



Malayan Law Journal

# **DIVORCE LAWS IN MALAYSIA**

**By**

**DR. ZALEHA KAMARUDDIN**

**LLB (Hons), MCL, DSLP, PHD**

**Ahmad Ibrahim Kuliyah of Laws**

**International Islamic University Malaysia**



**LexisNexis™**

**Malayan Law Journal  
(A member of LexisNexis)**

**Malaysia • Singapore • HongKong  
2005**

## **Members of the LexisNexis Group worldwide**

Malaysia	Malayan Law Journal Sdn Bhd (Co No 76125-H) Level 12A (Tower 2), Kelana Brem Tower, Jalan SS 7/15 (Jalan Stadium), 47301, Kelana Jaya, Selangor Darul Ehsan.
Argentina	LexisNexis Argentina, BUENOS AIRES
Australia	LexisNexis Butterworths, CHATSWOOD, New South Wales
Austria	LexisNexis Verlag ARD Orac GmbH & Co KG, VIENNA
Canada	LexisNexis Butterworths, MARKHAM, Ontario
Chile	LexisNexis Chile Ltda, SANTIAGO DE CHILE
Czech Republic	Nakladatelství Orac sro, PRAGUE
France	Editions du Juris-Classeur SA, PARIS
Hong Kong	LexisNexis Butterworth, HONG KONG
Hungary	HVG-Orac, BUDAPEST
India	LexisNexis Butterworths, NEW DELHI
Ireland	Butterworths (Ireland) Ltd, DUBLIN
Italy	Giuffrè Editore, MILAN
New Zealand	LexisNexis Butterworths, WELLINGTON
People's Republic of China	LexisNexis Beijing Representative Office, BEIJING
Poland	Wydawnictwo Prawnicze LexisNexis, WARSAW
Singapore	LexisNexis Butterworths, SINGAPORE
South Africa	Butterworths SA, DURBAN
Switzerland	Stämpfli Verlag AG, BERNE
United Kingdom	LexisNexis Butterworths Tolley, LONDON and EDINBURGH
USA	LexisNexis, DAYTON, Ohio

© Malayan Law Journal 2005

All rights reserved. No part of this publication may be reproduced or transmitted in any form or by any means, including photocopying and recording, without the written permission of the copyright holder, application for which should be addressed to the publisher. Such written permission must also be obtained before any part of this publication is stored in a retrieval system of any nature.

Company No 76125-H

ISBN 967-962-633-4

Printed by Gains Print Sdn. Bhd.

# Table of Contents

<i>Dedication</i> .....	<i>iv</i>
<i>Preface</i> .....	<i>v</i>
<i>Introduction</i> .....	<i>vii</i>
<i>Abbreviations</i> .....	<i>xi</i>
<i>Table of Cases</i> .....	<i>xiii</i>
<i>Table of Legislation</i> .....	<i>xxi</i>

## **Chapter 1**

### **Divorce in the context of Malaysian Society**

1.1 Introduction .....	2
1.2 Social Structure of the Society.....	4
1.3 THE MALAYS .....	7
1.4 The Malay Family .....	9
1.4.1 Adat .....	10
1.4.2 Malay Customary Laws.....	11
1.4.3 Malay Clans .....	12
1.4.4 Adat Perpatih .....	13
1.4.5 Adat Temenggung .....	16
1.5 Divorce Amongst the Malays .....	18
1.5.1 Procedure for Malay Divorce .....	19
1.5.2 Protection for Malay Women .....	20
1.5.3 Malay Divorce Rate .....	21
1.6 THE CHINESE .....	23
1.7 The Chinese Family .....	27
1.8 Divorce Amongst the Chinese .....	29
1.8.1 Civil and Customary Marriages .....	31
1.8.2 Principal and Secondary Wives.....	33
1.8.3 Chinese Customary Laws .....	34
1.8.4 Divorce by mutual consent.....	37
1.8.5 Protection for Chinese Women.....	38
1.8.6 Chinese Customary Divorce .....	40
1.8.7 Administration of Chinese Customary Laws .....	42
1.9 THE INDIANS .....	44
1.10 The Indian Family .....	46
1.10.1 Social Structure .....	47
1.10.2 Family Structure .....	48
1.11 Divorce amongst the Indians.....	49
1.11.1 Indissolubility of marriage .....	52
1.11.2 Indian Customary Laws.....	55

1.11.3 Divorce via Court of Law .....	56
1.12 Conclusion.....	58

## **Chapter 2**

### **Statutory Divorce amongst Non-Muslims**

2.1 Introduction .....	62
2.2 Historical Background of the LRA, 1976 .....	63
2.2.1 Registration under Civil Marriage Ordinance, 1952 ...	65
2.2.2 The Royal Commission .....	65
2.3 The law relating to Divorce and changes in the law .....	67
2.3.1 Jurisdiction of the Court .....	67
2.3.2 Time Restriction of Petition .....	80
2.4 Grounds of Divorce .....	81
2.4.1 Divorce on the ground of spouse's conversion to Islam .....	82
2.4.2 Dissolution by Mutual Consent.....	86
2.5 Divorce on the grounds of irretrievable breakdown of marriage .....	91
2.5.1 The respondent has committed adultery.....	92
2.5.2 Respondent's behaviour .....	96
2.5.3 Desertion .....	99
2.5.4 Living apart .....	103
2.6 General matters to be considered by the Court.....	105
2.7 Procedure .....	107
2.7.1 Forms .....	108
2.8 Reconciliation.....	110
2.8.1 Conciliatory Body .....	111
2.9. Ancillary Matters .....	115
2.9.1 Matrimonial Property.....	115
2.9.2 The Position Prior to The LRA .....	116
2.9.3 The Position Under The LRA .....	119
2.9.4 Custody .....	123
2.9.5 Maintenance.....	140
2.10 Conclusion.....	150

## **Chapter 3**

### **The Muslim divorce and its law in Malaysia**

3.1 Introduction .....	156
3.2 Divorce under Muslim Law .....	158
3.3 Divorce Laws in Malaysia.....	161
3.3.1 <i>Talaq</i> .....	162
3.3.2 <i>Talaq as-sunnab</i> .....	164

TABLE OF CONTENTS

---

3.3.3	<i>Talaq al- Bid'ab</i> .....	164
3.3.4	Procedure for <i>Talaq</i> .....	167
3.4	<i>Khul'</i> .....	174
3.4.1	Procedure for <i>Khul'</i> .....	178
3.5	<i>Fasakh</i> .....	180
3.5.1	<i>Fasakh</i> - grounds .....	183
3.5.2	Procedure for <i>Fasakh</i> .....	186
3.6	<i>Ta'liq</i> .....	188
3.6.1	<i>Ta'liq</i> - Cases .....	189
3.7	Dissolution of Marriage by Conversion .....	192
3.8	Arbitration by <i>Hakam</i> .....	193
3.8.1	Other jurisdictions.....	195
3.9	Ancillary Matters .....	197
3.9.1	<i>Maskahwin</i> .....	197
3.9.2	Maintenance .....	198
3.9.3	Residence.....	201
3.9.4	<i>Muta'ab</i> .....	202
3.9.5	<i>Harta Sepencarian</i> .....	205
3.9.6	<i>Harta Sepencarian</i> - Cases.....	208
3.9.7	<i>Adat Perpatih</i> .....	213
3.9.8	<i>Hadhanah</i> .....	214
3.9.9	<i>Nafaqah</i> .....	221
 <b>Chapter 4</b>		
<b>Conclusion</b>		
4.1	History of Divorce .....	225
4.2	Reforms in Legal rules and processes.....	226
4.3	Looking ahead .....	227
 <i>Index</i> .....		 229