



# **LAWS OF SARAWAK**

**REPRINT**

## **Chapter 43**

### **ISLAMIC FAMILY LAW ORDINANCE, 2001**

*Incorporating all amendments up to 31st July, 2008*

PREPARED AND PUBLISHED BY  
THE COMMISSIONER OF LAW REVISION, SARAWAK  
UNDER THE AUTHORITY OF THE REVISION OF LAWS ORDINANCE, 1992  
**2008**

**ISLAMIC FAMILY LAW ORDINANCE, 2001**

Date Passed by Dewan Undangan Negeri ... ..	6th November, 2001
Date of Assent ... ..	10th December, 2001
Date of Publication in <i>Gazette</i>	27th December, 2001

Sarawak LawNet

**LAWS OF SARAWAK**

**Chapter 43**

**ISLAMIC FAMILY LAW ORDINANCE, 2001**

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Sarawak LawNet

**LAWS OF SARAWAK**

**Chapter 43**

**ISLAMIC FAMILY LAW  
ORDINANCE, 2001**

*An Ordinance to make provisions relating to Islamic Family Law in respect of marriage, divorce, maintenance, guardianship, and other matters connected with family life.*

*\*[1.12.2004]*

*\*(Swk. L.N. 154/2004)*

Enacted by the Legislature of Sarawak—

**PART I  
PRELIMINARY**

**Short title and commencement**

1.—(1) This Ordinance may be cited as the Islamic Family Law Ordinance, 2001.

(2) This Ordinance shall come into force on such date as the Chief Minister may, by notification in the *\*Gazette*, appoint.

**Interpretation**

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

— “appointed date” means the date appointed under section 1 (2) for the coming into force of this Ordinance;

“attachment of earnings order” means an order made under section 81;

“*baligh*” means the age of puberty according to Islamic Law;

“Chief Registrar” means the Chief Registrar of Muslim Marriages, Divorces and Ruju’ appointed under section 26 (2);

“Chief Syariah Judge” means the Chief Syariah Judge appointed under section 4 of the Syariah Courts Ordinance, 2001 [Cap. 42];

“Chief Syariah Prosecutor” means the officer appointed under section 26 of the Syariah Courts Ordinance, 2001 [Cap. 42];

“Court” or “Syariah Court” means the Syariah Subordinate Court, the Syariah High Court or the Syariah Appeal Court, as the case may be, constituted under section 3 of the Syariah Courts Ordinance, 2001 [Cap. 42];

“*darar syarie*” means harm, according to what is normally recognized by Islamic Law, affecting a wife in respect of religion, life, body, mind, dignity, or property;

“defendant”, in relation to a maintenance order or a related attachment of earnings order, means the person liable to make payments under the maintenance order;

“divorcee” means a woman who has been married and divorced after consummation of marriage;

“earnings”, in relation to a defendant, means any sums payable to him—

(a) by way of wages or salary, including any fees, bonus, commission, overtime pay or other emoluments payable in addition to wages or salary by the person paying the wages or salary or payable under a contract of service;

(b) by way of pension, including gratuity and an annuity in respect of past services, whether or not the services were rendered to the person paying the annuity, and including periodical payments by way of compensation for the loss, abolition or relinquishment, or any diminution in emoluments, of any office or employment;

“employer” means a person by whom, as a principal and not as a public servant or agent, earnings fall to be paid to an employee in his employment;

“*fasakh*” means the annulment of a marriage by reason of any circumstance permitted by Islamic Law in accordance with section 51;

“fosterage” means the suckling of a baby up to sufficiency by a woman who is not its natural mother for at least five times during the first two years of its life;

“*harta sepencarian*” means property jointly acquired by husband and wife during the subsistence of marriage in accordance with the conditions stipulated by Islamic Law;

“illegitimate”, in relation to a child, means born out of wedlock but not as a result of *syubhah* intercourse;

“*iqrar*” means an admission made by a person, in writing or orally or by gesture, stating that he is under an obligation or liability to another person in respect of some right;

“Islamic Law” means Islamic Law according to *Mazhab Syafie* or according to one of the *Mazhab Maliki*, *Hanbali* or *Hanafii* as may be determined by the Majlis;

“Judge” or “Syariah Judge” means the Chief Syariah Judge or the Judge of the Syariah Appeal Court, the Syariah High Court or the Syariah Subordinate Court, as the case may be, appointed under section 4, 5, 6 or 8 of the Syariah Courts Ordinance, 2001 [Cap. 42];

“*kariah masjid*”, in relation to a mosque, means the area the boundaries of which are determined under section 60 of the Majlis Islam Sarawak Ordinance, 2001 [Cap. 41];

“Majlis” means the Majlis Islam Sarawak established under section 3 of the Majlis Islam Sarawak Ordinance, 2001 [Cap. 41];

“*mas kahwin*” means the obligatory marriage payment due under Islamic Law by the husband to the wife at the time the marriage is solemnized, whether in the form of money actually paid or acknowledged as a debt with or without security, or in the form of something that, according to Islamic Law, is capable of being valued in terms of money;

“*mut’ah*” means a consolatory gift that is reasonable according to Islamic Law given to a divorced wife;

“*nasab*” means descent based on lawful blood relationship;

“*Peguam Syarie*” means a person who is admitted under section 28 of the Syariah Courts Ordinance, 2001 [Cap. 42] to be a *Peguam Syarie*;

“*pemberian*” means a gift whether in the form of money or things given by a husband to a wife at the time of the marriage;

“Registrar” means the Registrar of Muslim Marriages, Divorces and Ruju’ appointed under section 26(3), and includes the Deputy Registrar and Assistant Registrars;

“resident” means permanently living or ordinarily residing in a particular area;

“*ruju’*” means a return to the original marriage state;

“State” means the State of Sarawak;

“*syubhah* intercourse” means intercourse performed on erroneous impression that the marriage was valid when in fact the marriage was not valid (*fasid*) or intercourse by mistake and includes any intercourse not punishable by *Hadd* in Islam;

“*ta’liq*” means a promise expressed by the husband after the solemnization of marriage in accordance with Islamic Law and the provisions of this Ordinance;

“*thayyib*” means a woman who has had sexual intercourse;

“*wali Hakim*” means a *wali* appointed and authorized by the Yang di-Pertua Negeri under section 6(3) to give away in marriage a woman who has no *wali* from *nasab*;

“*wali mujbir*” means the father or paternal grandfather and above;

“widow” means a woman whose husband has died.

(2) All words and expressions used in this Ordinance and not herein defined but defined in the Interpretation Ordinance, 2005 [*Cap. 61*], the Majlis Islam Sarawak Ordinance, 2001 [*Cap. 41*], the Syariah Courts Ordinance, 2001 [*Cap. 41*] or any other written law shall have the meanings assigned to them respectively by those Ordinances or written law to the extent that such meanings do not conflict with Islamic Law.

(3) For the avoidance of doubt as to the identity or interpretation of the words and expressions used in this Ordinance that are listed in the Schedule, reference may be made to the Arabic script for those words and expressions shown against them therein.

(4) The Yang di-Pertua Negeri may from time to time amend, delete from, or add to, the Schedule.

### **Application**

3. Save as otherwise expressly provided, this Ordinance shall apply to all Muslims living in the State and to all Muslims resident in the State who are living outside the State.

### **Criterion for deciding whether a person is a Muslim**

4. If for the purposes of this Ordinance any question arises as to whether a person is a Muslim, that question shall be decided according to the criterion of general reputation, without making any attempt to question the faith, beliefs, conduct, behaviour, character, acts, or omissions of that person.

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

5.—(1) Nothing in this Ordinance shall affect the validity of any marriage solemnized under any law wheresoever prior to the appointed date.

(2) Such marriage, if valid under the law under which it was solemnized, shall be deemed to be registered under this Ordinance.

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

- (a) by the death of one of the parties;
- (b) by such *talaq* as may be pronounced under this Ordinance;
- (c) by order of a Court of competent jurisdiction; or
- (d) by a declaration of nullity made by a Court of competent jurisdiction.

PART II

MARRIAGE

**Persons by whom marriages may be solemnized and appointment of *Wali Hakim***

6.—(1) A marriage in the State shall be in accordance with the provisions of this Ordinance and shall be solemnized in accordance with Islamic Law by—

- (a) the *wali* in the presence of the Registrar;
- (b) the representative of the *wali* in the presence and with the permission of the Registrar; or
- (c) the Registrar as the representative of the *wali*.

(2) Where a marriage involves a woman who has no *wali* from *nasab* in accordance with Islamic Law, the marriage shall be solemnized only by the *wali Hakim*.



(3) The Yang di-Pertua Negeri may—

(a) appoint and authorize the Chief Syariah Judge to be a *wali Hakim* in respect of a woman who has no *wali* or in circumstances where the duty of a *wali* is transferred to *wali Hakim* according to Islamic Law; and

(b) give the power of *istikhlaf* to the Chief Syariah Judge to appoint any person whom he thinks fit to solemnize the marriage of a woman who has no *wali* or in circumstances where the duty of a *wali* is transferred to *wali Hakim* according to Islamic Law.

#### **Minimum age for marriage**

7. No marriage shall be solemnized under this Ordinance where either the man is under the age of eighteen or the woman is under the age of sixteen except where the Syariah Judge has granted his permission in writing in certain circumstances.

#### **Relationship prohibiting marriage**

8.—(1) No man or woman, as the case may be, shall, on the ground of consanguinity, marry—

(a) his mother or her father;

(b) his grandmother or her grandfather upwards, whether on the side of his or her father or mother;

(c) his daughter or her son and his granddaughter or her grandson and his or her descendants;

(d) his sister or her brother of the same parents, his sister or her brother of the same father, and his sister or her brother of the same mother;

(e) the daughter of his brother or sister, or the son of her brother or sister and the descendants of the brother or sister;

(f) his aunt or her uncle on his or her father's side and her or his ascendants;

(g) his aunt or her uncle on his or her mother's side and her or his ascendants.

(2) No man or woman, as the case may be, shall, on the ground of affinity, marry—

(a) his mother-in-law or her father-in-law and the ascendants of his wife;

(b) his stepmother or her stepfather, being his father's wife or her mother's husband;

(c) his stepgrandmother or her stepgrandfather, being the wife of his grandfather or the husband of her grandmother, whether on the side of the father or the mother;

(d) his daughter-in-law or her son-law;

(e) his stepdaughter or her stepson and the descendants of a wife or a husband with whom the marriage has been consummated.

(3) No man or woman, as the case may be, shall, on the ground of fosterage, marry any woman or any man connected with him or her through some act of suckling where, if it had been instead an act of procreation, the woman or man would have been within the prohibited degrees of consanguinity or affinity.

(4) No man shall have two wives at any one time who are so related to each other by consanguinity, affinity, or fosterage that if either of them had been a male a marriage between them would have been illegal in Islamic Law.

#### **Void marriages**

9.—(1) No person shall marry a non-Muslim.

(2) A marriage shall be void unless all conditions necessary, according to Islamic Law for the validity thereof are satisfied.

### **Non-registrable marriages**

**10.—**(1) A marriage in contravention of this Ordinance shall not be registrable under this Ordinance.

(2) Notwithstanding subsection (1) and without prejudice to section 38(2), a marriage which has been solemnized contrary to any provision of this Part but is otherwise valid according to Islamic Law may be registered under this Ordinance with an order from the Court.

### **Consent required**

**11.** A marriage shall not be recognized and shall not be registered under this Ordinance unless both parties to the marriage have consented thereto, and either—

(a) the *wali* of the woman has consented thereto in accordance with Islamic Law; or

(b) the Syariah Judge having jurisdiction in the place where the woman resides or any person generally or specially authorized in that behalf by the Syariah Judge has, after due inquiry in the presence of all parties concerned, granted his consent thereto as *wali Hakim* in accordance with Islamic Law; such consent may be given wherever there is no *wali* by *nasab* in accordance with Islamic Law available to act or if the *wali* cannot be found or where the *wali* refuses his consent without sufficient reason.

### **Marriage of a woman**

**12.—**(1) No woman shall, during the subsistence of her marriage to a man, be married to any other man.

(2) Where the woman is a divorcee—

(a) subject to paragraph (c), she shall not, at any time prior to the expiry of her period of *'iddah* which shall be calculated in accordance with Islamic Law, be married to any person other than to the man from whom she was last divorced;

(b) she shall not be married unless she has produced—

(i) a certificate of divorce lawfully issued under the law for the time being in force; or

(ii) a certified copy of the entry relating to her divorce in the appropriate register of divorce; or

(iii) a certificate which may, upon her application, be granted after due inquiry by the Syariah Judge having jurisdiction in the place where the application is made, to the effect that she is a divorcee;

(c) if the divorce was by *ba-in kubra*, that is to say, three *talaq*, she shall not be remarried to her previous husband, unless she has been lawfully married to some other person and the marriage has been consummated and later lawfully dissolved, and the period of *'iddah* has expired.

(3) If the woman alleges she was divorced before the marriage had been consummated, she shall not during the ordinary period of *'iddah* for a divorce, be married to any person other than her previous husband, except with the permission of the Syariah Judge having jurisdiction in the place where she resides.

(4) Where the woman is a widow—

(a) she shall not be married to any person at any time prior to the expiry of her period of *'iddah*, which shall be calculated in accordance with Islamic Law; and

(b) she shall not be married unless she has produced a certificate of the death of the late husband or otherwise proved his death.

(5) Where a woman has been pronounced divorced or *fasakh* by a Court and the matter is brought before the Syariah Appeal Court, she shall not marry any other person pending the decision of the Syariah Appeal Court.

### **Betrothal**

**13.** If any person has, either orally or in writing, and either personally or through an intermediary, entered into a betrothal in accordance with Islamic Law, and subsequently refuses without lawful reason to marry the other party, the other party being willing to marry, the party in default shall be liable to return the betrothal gifts, if any, or the value thereof and to pay whatever moneys that have been expended in good faith by or for the other party in preparation for the marriage, and the same be recovered by action in the Court.

#### *Preliminaries to a Marriage*

### **Application for permission to marry**

**14.—(1)** Whenever it is desired to solemnize a marriage in the State, each of the parties to the intended marriage shall apply in the prescribed form for permission to marry to the Registrar for the *kariah masjid* in which the woman is resident.

(2) If the man is resident in a *kariah masjid* different from that of the woman or is resident in any State, his application shall bear or be accompanied by a statement of the Registrar of his *kariah masjid* or by the proper authority of the State, as the case may be, to the effect that as far as he has been able to ascertain the matters stated in the application are true.

(3) The application of each party must be delivered to the Registrar at least seven days before the proposed date of marriage, but the Registrar may allow a shorter period in any particular case.

(4) The application of the parties shall be treated as a joint application.

(5) The Registrar shall not solemnize the marriage of any person who comes from outside the State except with the written permission of the Syariah Judge of the place where the person to be married normally resides:

Provided that if such place has no Syariah Judge, permission shall be obtained from any authority of that place.

**Issue of permission to marry**

15. Subject to section 16, the Registrar, on being satisfied of the truth of the matters stated in the application, of the legality of the intended marriage, and, where the man is already married, that the permission required by section 21 has been granted, shall, at any time after the making of the application and upon payment of the prescribed fee, issue to the applicant his permission to marry in the prescribed form.

**Reference to action by Syariah Judge**

16.—(1) In any of the following cases, that is to say—

(a) where either of the parties to the intended marriage is below the age specified in section 7; or

(b) where the woman is a divorcee to whom section 12(3) applies; or

(c) where the woman has no *wali* from *nasab* according to Islamic Law,

the Registrar shall, instead of acting under section 15, refer the application to the Syariah Judge having jurisdiction in the place where the woman resides.

(2) The Syariah Judge, on being satisfied of the truth of the matters stated in the application and the legality of the intended marriage and that the case is one that merits the giving of permission for the purposes of section 7, or permission for the purposes of section 12(3), or his consent to the marriage being solemnized by *wali Hakim* for the purposes of section 11(b), as the case may be, shall, at any time after reference of the application to him and upon payment of the prescribed fee, issue to the applicants his permission to marry in the prescribed form.

**Permission necessary before solemnization**

17. No marriage shall be solemnized unless permission to marry has been given—

(a) by the Registrar under section 15 or by the Syariah Judge under section 16, where the marriage involves a woman resident in the State; or

(b) by the proper authority of a State, where the marriage involves a woman resident in that State.

**Place of marriage**

18.—(1) No marriage shall be solemnized except in the *kariah masjid* in which the woman resides, but the Registrar or Syariah Judge giving permission to marry under section 15 or 16 may give permission for the marriage to be solemnized elsewhere, whether in the State or in any other State.

(2) A permission under subsection (1) may be expressed in the permission to marry given under section 15 or 16.

(3) Notwithstanding subsection (1), a marriage may be solemnized in a *kariah masjid* other than that where the woman resides if—

(a) in a case where the woman resides in the State, a permission for the marriage to be solemnized in that *kariah masjid* has been given under section 15 or 16 and the permission for the solemnization of the marriage in another *kariah masjid* has been given under subsection (1); or

(b) in a case where the woman resides in a State, a permission to marry and a permission for the marriage to be solemnized in another *kariah masjid* have been given by the proper authority of that State.

**Mas kahwin and pemberian**

19.—(1) The *mas kahwin* shall ordinarily be paid by the man or his representative to the woman or her representative in the presence of the person solemnizing the marriage and at least two other witnesses.

(2) The Registrar shall, in respect of every marriage to be registered by him, ascertain and record—

(a) the value and other particulars of the *mas kahwin*;

(b) the value and other particulars of any *pemberian*;

(c) the value and other particulars of any part of the *mas kahwin* or *pemberian* or both that was promised but not paid at the time of the solemnization of the marriage, and the promised date of payment; and

(d) particulars of any security given for the payment of any *mas kahwin* or *pemberian*.

**Entry in the Register of Marriages**

20.—(1) Immediately after the solemnization of a marriage, the Registrar shall enter the prescribed particulars and the prescribed or other *ta'liq* of the marriage in the Register of Marriages.

(2) The entry shall be attested to by the parties to the marriage, by the *wali* and by two witnesses other than the Registrar present at the time the marriage is solemnized.

(3) The entry shall then be signed by the Registrar.

**Polygamy**

21.—(1) No man during the subsistence of a marriage shall, except with the prior permission in writing of the Court, contract another marriage with another woman.



(2) No marriage contracted without the permission under subsection (1) shall be registered under this Ordinance unless the Court is satisfied that the marriage is valid according to Islamic Law and the Court has ordered the marriage to be registered subject to section 127.

(3) Subsection (1) applies to the marriage in the State of a man who is resident within or outside the State to the marriage outside the State of a man resident in the State.

(4) An application for permission shall be submitted to the Court in the prescribed manner and shall be accompanied by an *iqrar* stating the grounds on which the proposed marriage is alleged to be just or necessary, the present income of the applicant, particulars of his commitments and his ascertainable financial obligations and liabilities, the number of his dependants, including persons who would be his dependants as a result of the proposed marriage, and whether the consent or views of the existing wife or wives on the proposed marriage have been obtained.

(5) On receipt of the application, the Court shall summon the applicant, his existing wife or wives, the woman to be wedded, the *wali* of the woman to be wedded, if any, and other persons who in the opinion of the Court may provide information relating to the proposed marriage, to be present at the hearing of the application, which shall be *in camera*, and the Court may grant the permission applied for if satisfied—

(a) that the proposed marriage is just or necessary, having regard to, among others, the following circumstances, that is to say, sterility, physical infirmity, physical unfitness for conjugal relations, wilful avoidance of an order for restitution of conjugal rights, or insanity on the part of the existing wife or wives;

(b) that the applicant has such means as to enable him to support, as required by Islamic Law, all his wives and dependants, including persons who would be his dependants as a result of the proposed marriage;

(c) that the applicant would be able to accord fair treatment to all his wives as required by Islamic Law; and

(d) that the proposed marriage would not cause *darar syarie* to the existing wife or wives.

(6) A copy of the application under subsection (4) and of the *'iqrar* required by that subsection shall be served together with the summons on each existing wife and the woman to be wedded.

(7) Any party aggrieved by or dissatisfied with any decision of the Court may appeal against the decision in the manner provided in the Syariah Civil Procedure Ordinance, 2001 [Cap. 44];

(8) Any person who contracts a marriage in contravention of subsections (1) and (2) shall pay immediately the entire amount of the *mas kahwin* and *pemberian* due to the existing wife or wives, which amount, if not so paid, shall be recoverable as a debt.

(9) The procedure for solemnization and registration of a marriage under this section shall in all respects be similar to that applicable to other marriages solemnized and registered in the State under this Ordinance.

(10) Every Court that grants permission or orders the marriage to be registered under this section may, of its own motion or on the application by any party to the marriage, require the man to pay maintenance to his existing wife or wives and dependants.

#### **Solemnization of marriages in Malaysian Embassies, etc., abroad**

22.—(1) Subject to subsection (2) and section 14(5), a marriage may be solemnized in accordance with Islamic Law by the Registrar appointed under subsection 26(3) at the Malaysian Embassy, High Commission or Consulate in any country that has not notified the Government of Malaysia of its objection to solemnization of marriages at such Embassy, High Commission or Consulate.

(2) Before solemnizing a marriage under this section, the Registrar shall be satisfied—

(a) that one or both of the parties to the marriage are residents of the State;

(b) that each party has the capacity to marry according to Islamic Law and this Ordinance; and

(c) that, where either party is not a resident of the State, the proposed marriage, if solemnized, will be regarded as valid in the place where that party is resident.

(3) The procedure for the solemnization and registration of a marriage under this section shall be similar in all respects to that applicable to other marriages solemnized and registered in the State under this Ordinance as if the Registrar appointed for a foreign country were a Registrar for the State.

### PART III

#### REGISTRATION OF MARRIAGES

##### **Registration**

**23.** The marriage after the appointed date of every person resident in the State and the marriage of every person living abroad who is resident in the State shall be registered in accordance with this Ordinance.

##### **Marriage certificate and *ta'liq* certificate**

**24.—(1)** Upon registering any marriage and upon payment to him of the prescribed fees, the Registrar shall issue marriage certificates in the prescribed form to both parties to the marriage.

(2) The Registrar shall also, upon payment of the prescribed fees, issue a *ta'liq* certificate in the prescribed form to both parties to the marriage.

**Reporting void or illegal marriage**

25. It shall be the duty of every person to report to the Registrar of the circumstances of any case in which it appears to him that any alleged marriage was void or that any registrable marriage was solemnized in contravention of this Ordinance.

**Appointment of Chief Registrar, Registrars, Deputy Registrars and Assistant Registrars of Muslim Marriages, Divorces and Ruju'**

26.—(1) The Yang di-Pertua Negeri may, by notification in the *Gazette*, appoint any member of the diplomatic staff of Malaysia in any country to be the Registrar of Muslim Marriages, Divorces and Ruju' for the purposes of this Ordinance in that country.

(2) The Majlis may appoint any qualified public officer to be the Chief Registrar of Muslim Marriages, Divorces and Ruju' for the purposes of this Ordinance, who shall have general supervision and control over Registrars and the registration of marriages, divorces and *ruju'* under this Ordinance.

(3) The Chief Registrar, with the approval of the Majlis, may appoint as many qualified persons as may be necessary, to be the Registrars, Deputy Registrars or Assistant Registrars of Muslim Marriages, Divorces and Ruju' for such *kariah masjid* in the State as may be specified in the appointments.

(4) Every person appointed under subsection (3) who is not a public officer shall be deemed to be a public officer for the purposes of the Penal Code [*Act 574*].

**Books and Registers to be kept of all marriages**

27. Every Registrar shall keep a Register of Marriages and such books as are prescribed by this Ordinance or rules made hereunder, and every marriage solemnized in the State shall be duly registered by the Registrar in his Register of Marriages.

**Copies of entries to be sent to Chief Registrar**

28.—(1) Every Registrar shall, as soon as practicable after the end of each month, deliver to the Chief Registrar a true copy certified under his hand of every entry made in the Register of Marriages.

(2) All such copies shall be kept by the Chief Registrar in such manner as may be prescribed and shall constitute the Register of Marriages of the Chief Registrar.

**Registration of foreign marriage of a person resident in the State**

29.—(1) Where any person who is a resident of the State has solemnized a valid marriage according to Islamic Law abroad, not being a marriage registered under section 22, the person shall, within six months after the date of the marriage, appear before the nearest or most conveniently available Registrar of Muslim Marriages, Divorces and Ruju' abroad in order to register the marriage, and the marriage, upon being registered, shall be deemed to be registered under this Ordinance.

(2) Where before the expiry of the period of six months, the return of either or both parties to the State is contemplated and the marriage has not been registered abroad, registration of the marriage shall be effected within six months of the first arrival of either or both of the parties in the State by the party or both parties appearing before any Registrar in the State and—

(a) producing to the Registrar the certificate of marriage or such evidence, either oral or documentary, as may satisfy the Registrar that the marriage did take place;

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

(c) applying in the prescribed form the registration of the marriage and subscribing the declaration therein.

(3) The Registrar may dispense with the appearance of one of the parties if he is satisfied that there exists good and sufficient reason for the absence of the party and in that case the entry in the Register of Marriages shall include a statement of the reason for the absence.

(4) Upon the registration of a marriage under this section, a certified copy of the entry in the Register of Marriages signed by the Registrar shall be delivered or sent to the husband and another copy to the wife, and another certified copy shall be sent, within such period as may be prescribed, to the Chief Registrar who shall cause all such certified copies to be bound together to constitute the Register of Marriages of Foreign Muslims.

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

#### **Unlawful registers**

**30.** No person, other than a Registrar appointed under section 26, shall—

(a) keep any book that is or purports to be a register kept in accordance with this Ordinance; or

(b) issue to any person any document that is or purports to be a copy of a certificate of a marriage or a certificate of marriage registered by the Registrar.

#### **Voluntary registration of Muslim marriages previously solemnized under any law**

**31.—(1)** Notwithstanding sections 5 and 29, the parties to any marriage according to Islamic Law solemnized under any law prior to or after 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, 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 Register of Marriages prescribed for this purpose.

(4) The entry of the marriage in the Register of Marriages shall be signed by the Registrar making the entry and by both parties to the marriage, if available, or, otherwise, by whichever party who appears before the Registrar.

(5) Upon the registration of the marriage, a certified copy of the entry in the Register of Marriages signed by the Registrar and sealed with his seal of office shall be delivered or sent to the husband and another copy to the wife and a third shall be sent to the Chief Registrar.

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

#### **Legal effect of registration**

32. Nothing in this Ordinance or rules made under this Ordinance shall be construed to render valid or invalid any marriage that otherwise is invalid or valid, merely by reason of its having been or not having been registered.

### **PART IV**

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

#### **Omission to appear before the Registrar within prescribed time**

33. Any person who, being required by section 29 to appear before a Registrar, fails to do so within the prescribed time commits an offence and shall be punished with a fine not exceeding one thousand ringgit or with imprisonment not exceeding six months or with both such fine and imprisonment.

**Contravention of section 30**

34. Any person who contravenes section 30 commits an offence and shall be punished with a fine not exceeding five hundred ringgit or with imprisonment not exceeding three months or with both such fine and imprisonment; and for a second or subsequent offence shall be punished with a fine not exceeding one thousand ringgit or with imprisonment not exceeding six months or with both such fine and imprisonment.

**Interference with marriage**

35. Unless permitted under Islamic Law, any person who uses any force or threat—

(a) to compel a person to marry against his or her will; or

(b) to prevent a man who has attained the age of eighteen years or a woman who has attained the age of sixteen years from solemnizing a valid marriage,

commits an offence and shall be punished with a fine not exceeding one thousand ringgit or with imprisonment not exceeding six months or with both such fine and imprisonment.

**False declaration, *'iqrar* or statement for procuring marriage**

36. Any person who for the purpose of procuring any marriage under this Ordinance intentionally makes any false declaration, *'iqrar* or statement commits an offence and shall be punished with a fine not exceeding one thousand ringgit or with imprisonment not exceeding six months or with both such fine and imprisonment.



**Unauthorized solemnization of marriage**

37. Any person who, not being authorized thereto under this Ordinance, solemnizes or purports to solemnize any marriage, commits an offence and shall be punished with a fine not exceeding one thousand ringgit or with imprisonment not exceeding six months or with both such fine and imprisonment.

**Offences relating to solemnization of marriage**

38.—(1) Any person who knowingly solemnizes or purports to solemnize, or officiates at, a marriage—

(a) without there being a permission to marry as required by section 17; or

(b) otherwise than in the presence of at least two credible witnesses other than the person solemnizing the marriage,

commits an offence and shall be punished with a fine not exceeding one thousand ringgit or with imprisonment not exceeding six months or with both such fine and imprisonment.

(2) 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 II commits an offence and shall be punished with a fine not exceeding one thousand ringgit or with imprisonment not exceeding six months or with both such fine and imprisonment.

**Sanction to prosecute**

39. No prosecution for an offence under sections 33 to 38 shall be instituted except with the sanction in writing of the Chief Syariah Prosecutor.

### **Correction of errors**

**40.**—(1) If the Registrar is satisfied by statutory declaration or otherwise that any entry relating to a marriage is erroneous in form or substance, he may, in the presence of the persons married, or, if they are absent, in the presence of two credible witnesses, correct the error by ruling through the entry and making the correct entry and he shall thereupon cause the entry in the local Register of Marriages to be corrected in the same manner.

(2) The Registrar shall sign and date the correction made in the certificate of marriage and the local Register of Marriages.

(3) Every entry made under subsection (1) shall be attested to by the witnesses in whose presence it was made.

(4) A certified copy of the correction shall be sent forthwith to the Chief Registrar for a similar correction to be made in his Register of Marriages.

### **Inspection of Register of Marriages and index**

**41.**—(1) Every Register of Marriages and index kept by the Chief Registrar or Registrar under this Ordinance shall be open to inspection by any person upon payment of the prescribed fee.

(2) The Chief Registrar or Registrar, as the case may be, shall, upon payment of the prescribed fee, furnish to any person requiring a copy of the entry in the Register of Marriages and index, certified under the hand and seal of his office.

### **Proof**

**42.** Every Register of Marriages kept by the Chief Registrar or Registrar under this Ordinance and any copy of any entry therein, certified under his hand and seal of office to be a true copy or extract, shall be *prima facie* evidence in all courts and tribunals of the dates and acts contained or set out in the Register of Marriages, copy or extract.

PART V  
DISSOLUTION OF MARRIAGE

**Extent of power to make any order**

43. Save as is otherwise expressly provided, nothing in this Ordinance shall authorize the Court to make an order of divorce or an order pertaining to a divorce or to permit a husband to pronounce a *talaq* except—

- (a) where the marriage has been registered or is deemed to be registered under this Ordinance; or
- (b) where the marriage was solemnized in accordance with Islamic Law; and
- (c) where the residence of either of the parties to the marriage at the time when the application is presented is in the State.

**Change of religion**

44.—(1) The renunciation of Islam by either party to a marriage or his or her conversion to a faith other than Islam shall not by itself operate to dissolve the marriage unless and until so confirmed by the Court.

(2) The conversion to Islam by either party to a non-Muslim marriage shall not by itself operate to dissolve the marriage unless and until so confirmed by the Court.

**Divorce by *talaq* or by order**

45.—(1) A husband or a wife who desires divorce shall present an application for divorce to the Court in the prescribed form, accompanied by a declaration containing—

- (a) particulars of the marriage and the names, ages and sex of the children, if any, of the marriage;

(b) particulars of the facts giving the Courts jurisdiction under section 43;

(c) particulars of any previous matrimonial proceedings between the parties, including the place of the proceedings;

(d) a statement as to the reasons for desiring divorce;

(e) a statement as to whether any, and, if so, what steps had been taken to effect reconciliation;

(f) the terms of any agreement regarding maintenance and habitation of the wife and the children of the marriage, if any, the care and custody of the children of the marriage, if any, and the division of any assets acquired through the joint effort of the parties, if any, or, where no such agreement has been reached, the applicant's proposals regarding those matters; and

(g) particulars of the order sought.

(2) Upon receiving an application for divorce, the Court shall cause a summons to be served on the other party together with a copy of the application and the statutory declaration made by the applicant, and the summons shall direct the other party to appear before the Court so as to enable it to inquire whether or not the other party consents to the divorce.

(3) If the other party consents to the divorce and the Court is satisfied after due inquiry and investigation that the marriage has irretrievably broken down, the Court shall advise the husband to pronounce one *talaq* before the Court.

(4) The Court shall record the fact of the pronouncement of one *talaq*, and shall send a certified copy of the record to the appropriate Registrar and to the Chief Registrar for registration.

(5) Where the other party does not consent to the divorce or it appears to the Court that there is reasonable possibility of a reconciliation between the parties, the Court shall as soon as possible appoint a conciliatory committee consisting of a Religious Officer as Chairman and two other persons, one to act for the husband and the other for the wife, and refer the case to the conciliatory committee.

(6) In appointing the two persons under subsection (5), the Court shall, where possible, give preference to close relatives of the parties having knowledge of the circumstances of the case.

(7) The Court may give directions to the conciliatory committee as to the conduct of the conciliation and it shall conduct it in accordance with such directions.

(8) If the conciliatory committee is unable to agree, or if the Court is not satisfied with its conduct of the conciliation, the Court may remove the conciliatory committee and appoint another conciliatory committee in its place.

(9) The conciliatory committee shall endeavour to effect reconciliation within a period of six months from the date of it being constituted or such further period as may be allowed by the Court.

(10) The conciliatory committee 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 thinks fit and may, if it considers it necessary, adjourn its proceedings from time to time.

(11) If the conciliatory committee is unable to effect reconciliation and is unable to persuade the parties to resume their conjugal relationship, it shall issue a certificate to that effect and may append to the certificate such recommendations as it thinks fit regarding maintenance and custody of the minor children of the marriage, if any, regarding division of property, and regarding other matters related to the marriage.

(12) No *Peguan Syarie* shall appear or act for any party in any proceeding before a conciliatory committee and no party shall be represented by any person, other than a close member of his or her family, without the leave of the conciliatory committee.

(13) Where the conciliatory committee reports to the Court that reconciliation has been effected and the parties have resumed their conjugal relationship, the Court shall dismiss the application for divorce.

(14) Where the conciliatory committee submits to the Court a certificate that it is unable to effect reconciliation and to persuade the parties to resume the conjugal relationship, the Court shall advise the husband to pronounce one *talaq* before the Court, and where the Court is unable to procure the presence of the husband before the Court to pronounce one *talaq*, or when the husband refuses to pronounce one *talaq*, the Court shall refer the case to the *Hakam* for action according to section 46.

(15) The requirement of subsection (5) as to reference to a conciliatory committee shall not apply in any case—

(a) where the applicant alleges that he or she has been deserted by and does not know the whereabouts of the other party;

(b) where the other party is residing outside the State and it is unlikely that he or she will be within the jurisdiction of the Court within six months after the date of the application;

(c) where the other party is imprisoned for a term of three years or more;

(d) where the applicant alleges that the other party is suffering from incurable mental illness; or

(e) where the Court is satisfied that there are exceptional circumstances which make reference to a conciliatory committee impracticable.

(16) A *talaq* pronounced by a husband unless revoked earlier, either expressly or constructively, or an order made by the Court, shall not operate to dissolve the marriage until the expiry of the *'iddah* period.

(17) If the wife is pregnant at the time the *talaq* is pronounced or the order is made, the *talaq* or the order shall not be effective to dissolve the marriage until the pregnancy ends.

### **Arbitration by *Hakam***

46.—(1) If satisfied that there are constant quarrels (*shiqaq*) between the parties to a marriage, the Court may appoint in accordance with Islamic Law two arbitrators or *Hakam* to act for the husband and wife respectively.

(2) In appointing the *Hakam* under subsection (1), the Court shall, where possible, give preference to close relatives of the parties having knowledge of the circumstances of the case.

(3) The Court may give directions to the *Hakam* as to the conduct of the arbitration and they shall conduct it in accordance with such directions and Islamic Law.

(4) If the *Hakam* are unable to agree, or if the Court is not satisfied with their conduct of the arbitration, the Court may remove them and appoint other *Hakam* in their place.

(5) The *Hakam* shall endeavour to obtain from their respective principals full authority, and may, if their authority extends so far, pronounce one *talaq* before the Court, if permitted by the Court, and in that event the Court shall record that pronouncement of one *talaq*, and send a certified copy of the record to the appropriate Registrar and to the Chief Registrar for registration.

(6) If the *Hakam* are of the opinion that the parties should be divorced but are unable for any reason to order a divorce, the Court shall appoint other *Hakam* and shall confer on them authority to order a divorce and shall, if they do so, record the order and send a certified copy of the record to the appropriate Registrar and to the Chief Registrar for registration.

(7) Unless he is a close member of the family of the parties, no person or *Peguam Syarie* shall be allowed to be present or represent any of the parties in the presence of the *Hakam*.

**Divorce by *khul'* or *cerai tebus talaq***

47.—(1) Where the husband does not agree to voluntarily pronounce a *talaq* but the parties agree to a divorce by redemption or *cerai tebus talaq*, the Court shall, after the amount of the payment of *tebus talaq* is agreed upon by the parties, cause the husband to pronounce a divorce by redemption, and such divorce is *ba-in sughra* or irrevocable.

(2) The Court shall record the *cerai tebus talaq* accordingly and send a certified copy of the record to the appropriate Registrar and the Chief Registrar for registration.

(3) Where the amount of the payment of *tebus talaq* is not agreed upon by the parties, the Court may assess, in accordance with Islamic Law, the amount having regard to the status and the means of the parties.

(4) Where the husband does not agree to a divorce by redemption or does not appear before the Court as directed or where it appears to the Court that there is a reasonable possibility of a reconciliation, the Court shall appoint a conciliatory committee as provided under section 45 and that section shall apply accordingly.

**Divorce under *ta'liq* or stipulation**

48.—(1) A married woman may, if entitled to a divorce in pursuance of the terms of a *ta'liq* certificate made upon a marriage, apply to the Court to declare that such divorce has taken place.

(2) The Court shall examine the application and make an inquiry into the validity of the divorce and shall, if satisfied that the divorce is valid according to Islamic Law, confirm and record the divorce and send one certified copy of the record to the appropriate Registrar and to the Chief Registrar for registration.



### **Divorce by *li'an***

49.—(1) Where the parties to a marriage have taken oath by way of *li'an* according to Islamic Law before a Syariah Judge, the Syariah Judge shall, upon judgment, order them to be *faraq* and be separated and to live apart forever.

(2) The Court shall record the divorce by *li'an* accordingly and send a certified copy of the record to the appropriate Registrar and to the Chief Registrar for registration.

### **Resumption of conjugal relationship or *ruju'***

50.—(1) In this section, “revocable divorce” means a divorce by one or two *talaq* not followed by completion of *'iddah*, and “recohabit” means resume conjugal relations within the period before the divorce has become irrevocable.

(2) If, after a revocable divorce, recohobitation takes place by mutual consent, the parties shall within seven days report the fact of recohobitation and other relevant particulars to the Registrar for the *kariah masjid* in which they reside.

(3) The Registrar shall make such inquiry as may be necessary and, if satisfied that recohobitation has taken place in accordance with Islamic Law, shall register the recohobitation by endorsement upon the entry relating to that divorce in the Register of Divorces and Annulments, if the divorce was registered by him, and shall require the parties to deliver to him the relevant certificates of divorce and shall issue to them certificates of recohobitation in the prescribed form.

(4) The Registrar shall also deliver a copy of the certificate of recohobitation to the Chief Registrar who shall register the recohobitation by endorsement upon the entry relating to that divorce in the Register of Divorces and Annulments kept by him.

(5) Any party to a marriage who fails to report the fact of recohabitation as required by subsection (2) commits an offence and shall be punished with a fine not exceeding five hundred ringgit or with imprisonment not exceeding six months or with both such fine and imprisonment.

(6) If the divorce was not registered by the Registrar to whom the report under subsection (2) is made, he shall record on the certificates of divorce the serial number and particulars of the certificates of recohabitation and shall forward the certificates of divorce to the Registrar by whom they were issued together with a copy of the certificates of recohabitation, and the other Registrar shall thereupon register the recohabitation by endorsement upon the entry relating to that divorce in the Register of Divorces and Annulments and shall deliver the copy of the certificate of recohabitation to the Chief Registrar who shall register the recohabitation by endorsement upon the entry relating to that divorce in the Register of Divorces and Annulments kept by him.

(7) If a revocable divorce has taken place without the knowledge of the wife, the husband shall not require or request the wife to recohabit with him without disclosing to her the fact of the divorce.

(8) If after a revocable divorce the husband pronounces a *ruju*' and the wife has consented to the *ruju*', she may, on the application of the husband, be ordered by the Court to resume conjugal relations, unless she shows good cause to the contrary, according to Islamic Law, in which case the Court shall appoint a conciliatory committee as provided under section 45 and that section shall apply accordingly.

(9) If after a revocable divorce the husband pronounces a *ruju*' but the wife has not consented to the *ruju*' for reasons allowed by Islamic Law, she shall not be ordered by the Court to resume conjugal relationship, but the Court shall appoint a conciliatory committee as provided under section 45 and that section shall apply accordingly.

**Order for dissolution of marriage or *fasakh***

**51.—(1)** A woman or man, as the case may be, married in accordance with Islamic Law shall be entitled to obtain an order for the dissolution of marriage or *fasakh* on any one or more of the following grounds, namely—

(a) that the whereabouts of the husband or wife have not been known for a period of more than one year;

(b) that the husband has neglected or failed to provide for her maintenance for a period of three months;

(c) that the husband or wife has been sentenced to imprisonment for a period of three years or more;

(d) that the husband or wife has failed to perform, without reasonable cause, his marital obligations (*nafkah batin*) for a period of one year;

(e) that the husband was impotent at the time of marriage and remains so and she was not aware at the time of the marriage that he was impotent;

(f) that the husband or wife has been insane for a period of two years or is suffering from leprosy or vitilago or AIDS or is suffering from a venereal disease in a communicable form;

(g) that she, having been given in marriage by her *wali mujbir* before she attained the age of *baligh*, repudiated the marriage before attaining the age of eighteen years, the marriage not having been consummated;

(h) that the husband or wife treats her or him with cruelty, that is to say, *inter alia*—

(i) habitually assaults her or him or makes her or his life miserable by cruelty of conduct; or

- (ii) associates with women or men of evil repute or leads what, according to Islamic Law, is an infamous life; or
  - (iii) forces the wife to lead an immoral life; or
  - (iv) disposes of her or his property or prevents her or him from exercising her or his legal rights over it; or
  - (v) obstructs her or him in the observance of her religious obligations or practice; or
  - (vi) if he has more wives than one, does not treat her equitably in accordance with the requirements of Islamic Law;
- (i) that even after the lapse of four months the marriage has still not been consummated owing to the wilful refusal of the husband or wife to consummate it;
- (j) that she did not consent to the marriage or her consent was not valid, whether in consequence of duress, mistake, unsoundness of mind, or any other circumstance recognized by Islamic Law;
- (k) that at the time of the marriage she, though capable of giving a valid consent, was whether continuously or intermittently, a mentally disordered person within the meaning of the Mental Health Ordinance, 1961 [*Ord. No. 16/61*], and her mental disorder was of such a kind or to such an extent as to render her unfit for marriage;
- (l) any other ground that is recognized as valid for the dissolution of marriage or *fasakh* under Islamic Law.
- (2) Any person married in accordance with Islamic Law shall be entitled to obtain an order for the dissolution of marriage or *fasakh* on the ground that the wife is incapacitated which prevents sexual intercourse.

(3) No order shall be made on the ground in subsection (1)(c) until the sentence has become final and the husband or wife has already served one year of the sentence.

(4) Before making an order on the ground in subsection (1)(e), the Court shall, on application by the husband, make an order requiring the husband to satisfy the Court within a period of one year from the date of the order that he has ceased to be impotent, and if the husband so satisfies the Court within that period, no order shall be made on that ground.

(5) No order shall be made on any of the grounds in subsection (1) if the husband satisfies the Court that the wife, with knowledge that it was open to her to have the marriage repudiated, so conducted herself in relation to the husband as to lead the husband reasonably to believe that she would not seek to do so, and that it would be unjust to the husband to make the order.

#### **Presumption of death**

**52.—**(1) If the husband of any woman has died, or is believed to have died, or has not been heard of for a period of four years or more, and the circumstances are such that he ought, for the purpose of enabling the woman to remarry, to be presumed in accordance with Islamic Law to be dead, the Court may, on the application of the woman and after such inquiry as may be proper, issue in the prescribed form a certificate of presumption of death of the husband and the Court may, on the application of the woman, make an order for the dissolution of marriage or *fasakh* as provided for under section 51.

(2) A certificate issued under subsection (1) shall be deemed to be a certificate of the death of the husband within the meaning of section 12(4)(b).

(3) A certificate issued under subsection (1) shall be registered as if it effected a divorce.

### **Maintenance of Register of Divorces and Annulments**

**53.—**(1) Every Registrar as well as the Chief Registrar shall each maintain a Register of Divorces and Annulments and shall forthwith enter therein the prescribed particulars of all orders of divorce or annulment sent to him under subsection (2) and of all orders of divorce and annulment for the registration of which application is made under subsection (3).

(2) Every Court that grants and records an order of divorce or annulment or that permits and records any *talaq* or any other form of divorce shall forthwith send one certified copy of the record to the appropriate Registrar and to the Chief Registrar for registration.

(3) Where a marriage that is solemnized in the State is dissolved or annulled by an order of a Court of competent jurisdiction outside the State, either of the parties may apply to the appropriate Registrar and to the Chief Registrar for registration of the order, and the appropriate Registrar and the Chief Registrar, on being satisfied that the order is one that should be recognized as valid for the purposes of the law in the State, shall register the order.

(4) Where a pronouncement of *talaq* before the Court or an order of divorce or annulment, wherever granted, has dissolved a marriage that was solemnized in the State, and has been registered under this Ordinance or any written law in force before the appointed date, the appropriate Registrar and the Chief Registrar shall, on registering the *talaq* or order, cause the entry relating to that marriage in the Register of Marriages to be marked with the word "Dissolved" and a reference to the proceedings in which the *talaq* was pronounced or the order was made.

(5) Upon registering the *talaq* or order of divorce or annulment and upon payment to him of the prescribed fees, the Chief Registrar shall issue the divorce or annulment certificates in the prescribed form to both parties.

### **Registration of divorces**

**54.** No pronouncement of *talaq* or order of divorce or annulment shall be registered unless the Chief Registrar is satisfied that the Court has made a final order relating to it.

### **Registration of divorces outside the Court**

**55.—(1)** Notwithstanding section 53, a man who has divorced his wife by the pronouncement of *talaq* outside the Court and without the permission of the Court shall, within seven days of the pronouncement of the *talaq*, report to the Court.

(2) The Court shall hold an inquiry to ascertain whether the *talaq* that was pronounced is valid according to Islamic Law.

(3) If the Court is satisfied that the *talaq* that was pronounced is valid according to Islamic Law, the Court shall, subject to section 128—

- (a) make an order approving the divorce by *talaq*;
- (b) record the divorce; and
- (c) send a copy of the record to the appropriate Registrar and to the Chief Registrar for registration.

### ***Mut'ah* or consolatory gift to woman divorced without just cause**

**56.** In addition to her right to apply for maintenance, a woman who has been divorced without just cause by her husband may apply to the Court for *mut'ah* or a consolatory gift, and the Court may, after hearing the parties and upon being satisfied that the woman has been divorced without just cause, order the husband to pay such sum as may be fair and just according to Islamic Law.

**Right to *mas kahwin*, etc., not affected**

57. Nothing in this Ordinance shall affect any right that a married woman may have under Islamic Law of her *mas kahwin* and *pemberian* or any part thereof on the dissolution of her marriage.

**Power of Court to order division of *harta sepencarian***

58.—(1) The Court shall have power, when permitting the pronouncement of *talaq* or when making an order of divorce, to order the division between the parties of any assets acquired by them during their 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 labour towards acquiring of the assets;

(b) any debts owing by either party that were contracted for their joint benefit;

(c) the need of the minor children of the marriage, if any,

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

(3) The Court shall have power, when permitting the pronouncement of *talaq* or when making an order of divorce, to order the division between the parties of any assets acquired during the marriage by the sole efforts 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 party who did not acquire the assets to the welfare of the family by looking after the home or caring for the family;

(b) the need of the minor children of the marriage, if any,

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

## PART VI

### MAINTENANCE OF WIFE, CHILDREN AND OTHERS

#### **Power of the Court to order maintenance of wife, and the effect of *nusyuz***

**59.—**(1) The Court may, subject to Islamic Law, order a man to pay maintenance to his wife or former wife.

(2) Subject to Islamic Law and confirmation by the Court, a wife shall not be entitled to maintenance when she is *nusyuz*, or unreasonably refuses the lawful wishes or commands of her husband, that is to say, *inter alia*—

(a) when she withholds her association with her husband;

(b) when she leaves her husband's home against his will;

or

(c) when she refuses to move with him to another home or place,

without any valid reason according to Islamic Law.

(3) As soon as the wife repents and obeys the lawful wishes and commands of her husband, she ceases to be *nusyuz*.

### **Power of the Court to order maintenance of certain persons**

**60.** The Court may order any person liable thereto according to Islamic Law to pay maintenance to another person 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 the means of the first-mentioned person it is reasonable so to order.

### **Assessment of maintenance**

**61.** In determining the amount of any maintenance to be paid, the Court shall base its assessment primarily on the means and needs of the parties, regardless of the proportion the maintenance bears to the income of the person against whom the order is made.

### **Power of the Court to order security for maintenance**

**62.** The Court may, when awarding maintenance, order the person liable to pay the maintenance to secure the whole or any part of it by vesting any property in trustees upon trust to pay the maintenance or a part thereof out of the income from the property.

### **Compounding of maintenance**

**63.** 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, with or without conditions, by the Court, but, when so approved, shall be good defence to any claim for maintenance.

### **Duration of orders for maintenance**

**64.** Except where an order for maintenance is expressed to be for any shorter period or is rescinded, and subject to section 65, an order for maintenance shall expire on the death of the person against whom or in whose favour the order was made, whichever is the earlier.

**Right to maintenance or *pemberian* after divorce**

65.—(1) The right of a divorced wife to receive maintenance from her former husband under any order of Court shall cease on the expiry of the period of *'iddah* or on the wife being *nusyuz*.

(2) The right of a divorced wife to receive a *pemberian* from her former husband under an agreement shall cease on her remarriage.

**Power of the Court to vary orders for maintenance**

66. The Court may at any time and from time to time vary, or may at any time rescind, any subsisting order for maintenance, whether secured or unsecured, on the application of the person in whose favour or against whom the order was made, 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 of the Court to vary agreements for maintenance**

67. Subject to section 63, the Court may at any time and from time to time vary the terms of any agreements 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, notwithstanding any provision to the contrary in the agreement.

**Maintenance to any person under order of the Court to be inalienable**

68. 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.

### **Recovery of arrears of maintenance**

69.—(1) Arrears of unsecured maintenance 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 bankruptcy and, where they accrued due before his death, shall be a debt due from his estate.

(2) Arrears of unsecured maintenance that accrued due before the death of the person entitled thereto shall be recoverable as a debt by the legal personal representatives of the person.

### **Interim maintenance**

70.—(1) Where the Court is satisfied that there are grounds for payment of maintenance, the Court may make an order against the husband for payment of interim maintenance to take effect at once and to be in force until an order of Court is made on the application for maintenance.

(2) The husband may adjust the interim maintenance paid against the amount ordered to be paid for maintenance under the order of the Court, provided that the amount received by the wife, after any deduction, is sufficient for her basic needs.

### **Right to accommodation**

71.—(1) A divorced woman is entitled to stay in the home where she used to live when she was married, for so long as the husband is not able to get other suitable accommodation for her.

(2) The right to accommodation provided in subsection (1) shall cease—

(a) if the period of *'iddah* has expired; or

(b) if the period of guardianship of the children has expired; or

(c) if the woman has remarried; or

(d) if the woman has been guilty of open lewdness (*fahisyah*),

and thereupon the husband may apply to the Court for the return of the home to him.

### **Duty to maintain children**

72.—(1) Except where an agreement or order of the Court otherwise provides, it shall be the duty of a man to maintain his children, whether they are in his custody or the custody of any other person, either by providing them with such accommodation, clothing, food, medical attention and education as are reasonable having regard to his means and station in life or by paying the cost thereof.

(2) Except as aforesaid, it shall be the duty of a person liable under Islamic Law to maintain or contribute to the maintenance of children if their father is dead or his whereabouts are unknown or if and so far as he is unable to maintain them.

### **Power of the Court to order maintenance for children**

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

(a) if he has refused or neglected to provide reasonably for his child;

(b) if he has deserted his wife and the child is in her charge;

(c) during the pendency of any matrimonial proceedings;

(d) when making or subsequent to the making of an order placing the child in the custody of any other person; or

(e) when permitting him to contract another marriage with another woman under section 21.

(2) The Court shall have the corresponding power to order a person liable under Islamic Law to pay or contribute towards the maintenance of a child where it is satisfied that having regard to his 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 to the trustee for the child.

**Power of the Court to order security for maintenance of a child**

74.—(1) The Court may, when ordering the payment of maintenance for the benefit of any child, order the person liable to pay the maintenance to secure the whole or any part of it by vesting any property in trustees upon trust to pay the maintenance or a part thereof out of the income from the property.

(2) Failure to comply with the order requiring the person liable to vest any property in trustees for the purpose of subsection (1) shall be punishable as a contempt of the Court.

**Power of the Court to vary order for custody or maintenance of a child**

75. The Court may, on the application of any interested person, at any time and from time to time vary, or may at any time rescind, any order for the custody or maintenance of a child, 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 of the Court to vary agreement for custody or maintenance of a child**

76. 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 such agreement was made before or after the appointed date, notwithstanding any provision to the contrary in the agreement, where it is satisfied that it is reasonable and for the welfare of the child so to do.

**Recovery of arrears of maintenance of a child**

77. Section 69 shall apply, *mutatis mutandis* and according to Islamic Law, to orders for the payment of maintenance for the benefit of a child.

**Duty to maintain child accepted as member of family**

78.—(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 the child while he or she remains a child, so far as the parents 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.

(2) The duty imposed by subsection (1) shall cease if the child is taken back by either of his or her parents.

(3) Any sum expended by a man in maintaining a child as required by subsection (1) shall be recoverable from the father or mother of the child.

**Duration of order for maintenance of a child**

79. Except—

(a) where an order for the maintenance of a child is expressed to be for any shorter period; or

(b) where any such order has been rescinded; or

- (c) where any such order is made in favour of—
- (i) a daughter who has not been married or who is, by reason of some mental or physical disability, incapable of maintaining herself;
  - (ii) a son who is, by reason of some mental or physical disability, incapable of maintaining himself,

the order for maintenance shall expire on the attainment by the child of the age of eighteen years, but the Court may, on application by the child or any other person, extend the order for maintenance to cover such further period as it thinks reasonable to enable the child to pursue further or higher education or training.

#### **Duty to maintain illegitimate children**

**80.—**(1) If a woman neglects or refuses to maintain her illegitimate child who is unable to maintain himself or herself, other than a child born as a result of rape, the Court, upon due proof thereof, may order the woman to make such monthly allowance as the Court thinks reasonable.

(2) A monthly allowance under this section shall be payable from the date of commencement of the neglect or refusal to maintain or from such later date as may be specified in the order.

#### **Power of the Court to make an attachment of earnings order**

**81.—**(1) Notwithstanding the provisions of any written law to the contrary, the Court may, upon application by the person for whose maintenance the order is made or the guardian of such person, make an attachment of earnings order, if the Court considers it just so to make.

(2) An application for an attachment of earnings order may be made in the proceedings in which a maintenance order is applied for or in any subsequent proceedings.



### **Nature of attachment of earnings order**

**82.—**(1) An attachment of earnings order shall require the person to whom the order in question is directed, being a person appearing to the Court to be the defendant's employer, to make out of the earnings falling to be paid to the defendant payments in satisfaction of the order.

(2) The amount to be prescribed in an attachment of earnings order shall be such sum as to the Court shall seem reasonable after taking into account the resources and needs of the defendant and the needs of persons for whom he must or reasonably should provide.

(3) An attachment of earnings order shall contain, so far as they are known to the Court making the order, such particulars as may be prescribed for the purpose of enabling the defendant to be identified by the person to whom the order is directed.

(4) An attachment of earnings order or any variation thereof shall not come into force until the expiration of seven days from the date when a copy of the order is served on the person to whom the order is directed.

(5) An attachment of earnings order shall designate the officer to whom payments under the order are to be made.

### **Effect of attachment of earnings order**

**83.—**(1) When an attachment of earnings order is made, all other proceedings for the enforcement of the related maintenance order begun before the making of the attachment of earnings order shall be suspended.

(2) The Court by which an attachment of earnings order has been made may, if it thinks fit, upon the application of the defendant or a person entitled to receive payments under the related maintenance order, make an order discharging or varying the attachment of earnings order.

(3) An attachment of earnings order shall cease to have effect

(a) upon the issue of a warrant directing that the amount due under the related maintenance order shall be levied in the manner provided by law for levying fines;

(b) upon the making of an order sentencing the defendant to imprisonment for failure to comply with the related maintenance order; and

(c) upon the rescission of the related maintenance order,

and where an attachment of earnings order ceases to have effect as aforesaid, the Court making such order shall give notice of the cessation to the person to whom the order was directed.

**Duty of defendant and employer to comply with attachment of earnings order**

84.—(1) A person to whom an attachment of earnings order is directed shall, notwithstanding anything contained to the contrary in any other written law but subject to the provisions of this Ordinance, comply with the order or, if the order is subsequently varied under section 82, with the order as so varied.

(2) Where on any occasion on which earnings fall to be paid to a defendant there are in force two or more attachment of earnings orders relating to those earnings, then, for the purpose of complying with this Ordinance, the employer shall—

(a) deal with those orders according to the respective dates on which they came into force disregarding any later order until all earlier orders have been dealt with; and

(b) deal with any later order as if the earnings to which it relates were the residue of the defendant's earnings after the making of any payments under this Ordinance in pursuance of any earlier order.

(3) An employer who, in pursuance of an attachment of earnings order, makes a payment under this Ordinance shall give to the defendant a statement in writing specifying the amount of that payment.

(4) Where the person to whom an attachment of earnings order is directed has, during the period of one month immediately preceding the day on which the order is served on him, on no occasion been the defendant's employer, he shall forthwith give notice in writing to that effect in the prescribed form to the Court.

## PART VII GUARDIANSHIP

### *Hadanah or Custody of Children*

#### **Persons entitled to custody of a child**

**85.**—(1) Subject to section 86, the mother shall be of all persons the best entitled to the custody of her infant children during the connubial relationship as well as after its dissolution.

(2) Where the Court is of the opinion that the mother is disqualified under Islamic Law from having the right to *hadanah* or custody of her children, the right shall, subject to subsection (3), pass to one of the following persons in the following order of preference, that is to say:

- (a) the maternal grandmother, how-high-soever;
- (b) the father;
- (c) the paternal grandmother, how-high-soever;
- (d) the full sister;
- (e) the uterine sister;
- (f) the sanguine sister;

- (g) the full sister's daughter;
- (h) the uterine sister's daughter;
- (i) the sanguine sister's daughter;
- (j) the maternal aunt;
- (k) the paternal aunt;
- (l) the male relatives who could be their heirs as '*asabah* or residuaries:

Provided that the custody of such person does not affect the welfare of the child.

(3) No man shall have a right to the custody of a female child unless he is a *muhrim*, that is to say, he stands to her within the prohibited degrees of relationship.

(4) Subject to sections 86 and 88, where there are several persons of the same line or degree, all equally qualified and willing to take charge of the child, the custody shall be entrusted to the one most virtuous who shows the greatest tenderness to the child, and where all are equally virtuous, then the senior among them in age shall have the priority.

#### **Qualifications necessary for custody**

**86.** A woman to whom belongs the upbringing of a child shall be entitled to exercise the right of *hadanah* if—

- (a) she is a Muslim;
- (b) she is of sound mind;
- (c) she is of an age that qualifies her to bestow on the child the care, love, and affection that the child may need;
- (d) she is of good conduct from the standpoint of Islamic morality; and
- (e) she lives in a place where the child may not undergo any risk morally or physically.

### How right of custody is lost

87. The right of *hadanah* of a woman is lost—

(a) by her marriage with a person not related to the child within the prohibited degrees if her custody in such case will affect the welfare of the child but her right to custody will revert if the marriage is dissolved;

(b) by her gross and open immorality;

(c) by her changing her residence so as to prevent the father from exercising the necessary supervision over the child, except that a divorced wife may take her own child to her birth-place;

(d) by her abjuration of Islam;

(e) by her neglect of or cruelty to the child.

### Duration of custody

88.—(1) The right of the *hadinah* to the custody of a child terminates upon the child attaining the age of seven years, in the case of a male, and the age of nine years, in the case of a female, but the Court may, upon application of the *hadinah*, allow her to retain the custody of the child until attainment of the age of nine years, in the case of a male, and the age of eleven years, in the case of a female.

(2) After termination of the right of the *hadinah*, the custody devolves upon the father, and if the child has reached the age of discernment (*mumayyiz*), he or she shall have the choice of living with either of the parents, unless the Court otherwise orders.

### Custody of illegitimate children

89. The custody of illegitimate children appertains exclusively to the mother and her relations.

**Power of the Court to make order for custody**

**90.**—(1) Notwithstanding section 85, the Court may at any time by order choose to place a child in the custody of any one of the persons mentioned therein or, where there are exceptional circumstances making it undesirable that the child be entrusted to any one of those persons, the Court may by order place the child in the custody of any other person or of any institution or association the objects of which include child welfare.

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

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

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

(3) It shall be a rebuttable presumption that it is for the good of a child during his or her infancy 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.

(5) The Court may, if necessary, make an interim order to place the child in the custody of any person or institution or association and the order shall forthwith be enforced and continue to be enforced until the Court makes an order for the custody.

### **Order subject to conditions**

**91.—**(1) An order for custody may be made subject to such to conditions as the Court thinks 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 live and as to the manner of his or her education;

(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 considers 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 considers reasonable; or

(e) prohibit the person given custody from taking the child out of Malaysia.

### *Guardianship of Person and Property*

#### **Persons entitled to guardianship**

**92.—**(1) Although the right to *hadanah* or the custody of the child may be vested in some other person, the father shall be the first and primary natural guardian of the person and property of his minor child, and where he is dead, the legal guardianship devolves upon one of the following persons in the following order of preference, that is to say—

(a) the father's father;

- (b) the executor appointed by the father's will;
- (c) the father's executor's executor;
- (d) the father's father's executor;
- (e) the father's father's executor's executor,

provided that he is a Muslim, an adult, sane and worthy of trust.

(2) The father shall have, at all times, the amplest power to make by will such dispositions as he thinks best relative to the guardianship of his minor children and the protection of their interests, provided that he is in full possession of his senses.

(3) Subsection (1) shall not apply where the terms and conditions of the instrument vesting the property in the minor expressly exclude the persons mentioned therein from exercising guardianship over the property, and in that case the Court shall appoint a guardian of the property of the minor.

(4) A person shall, for the purposes of guardianship of person and property, be deemed to be a minor unless he or she has completed the age of eighteen years.

#### **Power over immovable and movable property**

**93.—**(1) As regards immovable property, a legal guardian shall have no power to sell, except in the following cases, that is to say—

- (a) where at least double the price of the property may be obtained by him from a stranger by the sale of the property;
- (b) where the minor has no other means of livelihood, and the sale is absolutely necessary for his maintenance, and the minor has no other property;
- (c) where the property is required to be sold for the purpose of paying off the debts of the testator, which cannot otherwise be liquidated;



(d) where there are some general provisions in the will of the testator that cannot be carried into effect without the sale of the property;

(e) where the income accruing from the estate is insufficient to defray the expenditure incurred in its management and the payment of the land revenue;

(f) where the property is in imminent danger of being destroyed or lost by decay;

(g) where the property is in the hands of a usurper, and the guardian has reason to fear that there is no chance of fair restitution; or

(h) in any other case, where it is absolutely necessary to sell the property on other grounds permitted by Islamic Law and the sale is to the manifest or evident advantage of the minor.

(2) As regards moveable property, a legal guardian shall have power to sell or pledge the goods and chattels of the minor, if he is in need of imperative necessities, such as food, clothing, and nursing; and where the moveable property of a minor is sold *bona fide* for an adequate consideration, with the object of investing the proceeds safely and for an increased income, its sale shall be held valid.

### **Appointment of guardians by the Court**

**94.—(1)** In the absence of the legal guardians, the duty of appointing a guardian for the protection and preservation of the minor's property shall be upon the Court, and in making an appointment the Court shall be guided chiefly by considerations of the minor's welfare.

(2) In considering what will be for the welfare of the minor, the Court shall have regard to the age and sex of the minor, the character and the capacity of the proposed guardian and his nearness of relationship to the minor, the wishes, if any, of the deceased parents; and any existing or previous relations of the proposed guardian with the minor or his property, and where the minor is old

enough to form an intelligent preference, the Court may consider that preference.

#### **Appointment of mother as testamentary guardian**

95. A mother who is a Muslim may be validly appointed executrix of the father, and in that case she may exercise the powers as a testamentary guardian or, in the absence of a legal guardian, she may be appointed legal guardian by the Court, but in the absence of such appointment she shall not deal with the minor's property.

#### **Joint guardian with mother**

96. Where the Court appoints the mother to be guardian, the Court may also appoint some other person to be guardian of the minor's person and property, or either of them, to act jointly with the mother.

#### **Variation of power of guardian of property**

97. The Court may, in appointing any guardian of a minor's property, by order define, restrict, or extend the power and authority of the guardian in relation thereto to such extent as is necessary for the welfare of the minor.

#### **Removal of guardian**

98. The Court may at any time and from time to time remove any guardian, whether a parent or otherwise and whether of the person or the property of the minor and may appoint another person to be guardian in his place.

#### **Security to be given**

99.—(1) Where a person is appointed by the Court to be the guardian of a minor's property he shall, unless the Court otherwise orders, give security in such sum as may be appointed for the due performance of his duties as guardian.

(2) Such security shall be given in the manner prescribed for the time being in the case of receivers appointed by the Court; and the guardian appointed shall render his accounts at such periods as may be ordered, and shall pay in any balance certified to be due from him into Court in the manner prescribed in the case of receivers.

### **Limitation of powers of guardian appointed by Court**

**100.**—(1) A guardian of the property of a minor appointed by the Court shall not—

(a) sell, charge, mortgage, exchange, or otherwise part with the possession of any moveable or immovable of the minor; or

(b) lease or let out any land belonging to the minor for a term exceeding one year,

without the prior leave of the Court.

(2) Any disposal of a minor's property in contravention of this section may be declared void, and on such declaration the Court may make such order as appears requisite for restoring to the minor' estate the property disposed of.

(3) The Court shall not make any order under subsection (2) unless it is necessary or advisable in the interests of the minor.

### **Guardian may not give discharge for capital property**

**101.** A guardian of the property of a minor appointed by the Court shall not, unless in any case the Court otherwise orders, be empowered to give a good discharge for any legacy or other capital moneys payable to or receivable by the minor.

### **Guardian may support minor out of income**

**102.**—(1) A guardian of the property of a minor appointed by the Court may make reasonable provision out of the income of the property for his maintenance and education, having regard to his station in life; but no sum exceeding three hundred ringgit per month may be so applied without the leave of the Court.

(2) Where the income of the minor's property in the hands of the guardian is insufficient for such purpose, or money is required for the minor's advancement, the Court may order the provision for such purpose be made out of the capital of the minor's property and, for such purpose, may authorize the sale, charge or mortgage of any part of the minor's property and give such directions in regard thereto as may be necessary in the interests of the minor.

### **Special order in case of small estate**

**103.**—(1) If it appears that, having regard to the station in life of a minor and to the value of his property and to all the circumstances of the case, it would be expedient that the capital property of the minor be made available for his maintenance, education, or advancement in such manner as to avoid the expense of making application to the Court, the Court may, instead of appointing a guardian of the property of the minor, order that all the property of the minor, of whatsoever description, be placed in the hands of a person to be appointed by the Court, with full power to deal with and apply the property for the purpose aforesaid in his sole and uncontrolled discretion; and in that case the receipt of the person appointed shall be a good discharge to any person making any payment or transfer of any property to him on behalf of the minor.

(2) Any person appointed under subsection (1) may be ordered by the Court to render an account of his dealings with the minors' estate.

(3) The Court may for any sufficient reason discharge any order, or revoke any appointment, made under subsection (1), and may appoint another person with the same power or such greater or lesser power as may appear advisable, or may appoint a guardian of the minor's property.

**Application for opinion, etc.**

**104.** Any guardian may apply to the Court for its opinion, advice or discretion on any question respecting the management or administration of the minor's property.

**Prohibition order by the Court**

**105.—(1)** Notwithstanding section 93, the Court may, where it considers it necessary so to do, make an order prohibiting the father of a minor or the father's father or their respective executors or their respective executors' executors from—

(a) selling, charging, mortgaging, exchanging, or otherwise parting with the possession of any movable or immovable property of the minor; or

(b) leasing or letting out any land belonging to the minor for a term exceeding one year,

without the prior leave of the Court.

(2) Any disposal of a minor's property in contravention of the order may be declared void, and on such declaration the Court may make such order as appears requisite for restoring to the minor's estate the property disposed of.

(3) The Court shall not make any order under subsection (2) unless it is necessary or advisable in the interests of the minor.

### **Guardian of orphans**

**106.** Where the father and the grandfather of a minor have died without appointing a testamentary guardian, any penghulu, any police officer not below the rank of Sergeant, any person having the custody of the minor, or any person with the powers of a Protector under the Guardianship of Infants Ordinance [*Cap. 93 (1958 Ed.)*] may cause the minor to be taken before the Court and the Court may appoint a guardian of the minor's person and property or either of them.

### **The Court to have regard to advice of welfare officers, etc.**

**107.** 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 the advice.

### **Power of Court to restrain taking of child out of Malaysia**

**108.—**(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 the child to be taken out of Malaysia either unconditionally or subject to such conditions or such undertaking as the Court thinks 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 the child, from taking a 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 of the Court to set aside and prevent dispositions intended to defeat claims to maintenance**

**109.**—(1) Where—

- (a) any matrimonial proceeding is pending;
- (b) an order has been made under section 56, 59 or 73 and has not been revoked; or
- (c) maintenance is payable under any agreement for or for the benefit of a wife or former wife or child,

the Court shall have power on application—

(i) if it is satisfied that any disposition of property has been made by the husband or former husband 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 his means to pay *mut'ah* or of depriving his wife of any rights in relation to the property, subject to subsection (2), to require the person making the disposition to revoke 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 the disposition.

(2) For the purpose 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.

(3) Failure to comply with an order made under subsection (1) shall be punishable as a contempt of Court.

#### **Injunction against molestation**

**110.**—(1) The Court shall have power during the pendency of any matrimonial proceedings or on or after the grant of an order of divorce, *fasakh*, 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 on him or her or on the family of either party.

(2) Failure to comply with an order made under subsection (1) shall be punishable as a contempt of Court.

#### **Prohibiting disposal of *harta sepencarian***

**111.**—(1) The Court may, on the application of any party to a marriage—

(a) where any matrimonial proceeding is pending in the Court; and

(b) in such proceeding where the Court may make an order under section 58,

make an order prohibiting the wife or husband, as the case may be, from disposing of any property jointly acquired during the subsistence of their marriage if the Court is satisfied that it is necessary to do so.

(2) Failure to comply with an order made under subsection (1) shall be punishable as a contempt of Court.

### **PART VIII**

#### **MISCELLANEOUS**

#### **Recognition of Muslim marriages solemnized outside the State**

**112.** A Muslim marriage solemnized outside the State, other than a marriage solemnized in a Malaysian Embassy, High



Commission, or Consulate under section 22, shall be recognized as valid for all purposes of this Ordinance if—

- (a) it was solemnized in a form required or permitted by the law of the place where it was solemnized;
- (b) each of the parties had, at the time of the marriage, capacity to marry under the law of the place of his or her residence; and
- (c) where either of the parties is a resident of the State, both parties had capacity to marry according to this Ordinance.

**Recognition of marriages contracted in Embassies, etc., in the State**

**113.** A Muslim marriage of persons who are not Malaysian citizens solemnized in any foreign Embassy, High Commission, or Consulate in the State shall be recognized as valid for all purposes of this Ordinance if—

- (a) it was solemnized 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 Ordinance;
- (b) each of the parties had, at the time of the marriage, capacity to marry under the law of the place of his or her residence; and
- (c) where either of the parties is a resident of the State, both parties had capacity to marry according to this Ordinance.

*Legitimacy*

**Ascription of paternity**

**114.** Where a child is born to a woman who is married to a man more than six *qamariah* months from the date of the marriage or within four *qamariah* years after dissolution of the marriage either by the death of the man or by divorce, the woman not having remarried, the *nasab* or paternity of the child is established in the man, but the

man may, by way of *li'an* or imprecation, disavow or disclaim the child before the Court.

**Birth more than four years after dissolution of marriage**

**115.** Where the child is born more than four *qamariah* years after the dissolution of the marriage either by the death of the man or by divorce, the paternity of the child shall not be established in the man unless he or any of his heirs asserts that the child is his issue.

**Birth after declaration of completion of 'iddah**

**116.** Where a woman, not having remarried, makes a declaration that the period of *'iddah* has been completed, whether the period is for death or divorce, and she is subsequently delivered of a child, the paternity of the child shall not be ascribed to her husband unless the child was born less than four *qamariah* years from the date of the dissolution of the marriage either by the death of the husband or by divorce.

**Syubhah intercourse**

**117.** Where a man has *syubhah* intercourse with a woman, and she is subsequently delivered of a child between the period of six *qamariah* months to four *qamariah* years after the intercourse, the paternity of the child shall be ascribed to the man.

**Conditions for valid acknowledgment**

**118.** Where a man acknowledges another, either expressly or impliedly, as his lawful child, the paternity of the child shall be established in the man, if the following conditions are fulfilled, that is to say—

- (a) the paternity of the child is not established in any one else;
- (b) the ages of the man and the child are such that filial relationship is possible between them;
- (c) where the child is of discreet age, the child has acquiesced in the acknowledgment;

(d) the man and mother of the child could have been lawfully joined in marriage at the time of conception;

(e) the acknowledgment is not merely that the child is his child, but that the child is his legitimate child;

(f) the man is competent to make a contract;

(g) the acknowledgment is with the distinct intention of conferring the status of legitimacy;

(h) the acknowledgment is definite and the child is acknowledged to be the child of his body.

#### **Presumption from acknowledgment rebuttable**

**119.** The presumption of paternity arising from acknowledgment may only be rebutted by—

(a) disclaimer on the part of the person acknowledged;

(b) proof of such proximity of age, or seniority of the acknowledgee, as would render the alleged relationship physically impossible;

(c) proof that the acknowledgee is in fact the child of some other person; or

(d) proof that the mother of the acknowledgee could not possibly have been the lawful wife of the acknowledgor at the time when the acknowledgee could have been conceived.

#### **Acknowledgment by a woman in *'iddah***

**120.** Where the acknowledgor is a woman who is married or who is observing the *'iddah*, the paternity of the person acknowledged shall not be ascribed to her husband unless her acknowledgment is confirmed by him or by evidence.

#### **Acknowledging another as mother or father**

**121.** Where a person acknowledges another as his father or mother, the acknowledgment, if assented to or confirmed by the acknowledgee, whether during the lifetime or after the decease of the acknowledgor, shall constitute a valid relationship, in so far as the

parties themselves are concerned, provided that the ages of the acknowledged and the acknowledgee are such that filial relationship is possible between them.

**Acknowledgment other than as a child, mother or father**

122. Where a person acknowledges another as a relation other than as a son, mother, or father, the acknowledgment shall not affect any other person unless that other person confirms the acknowledgment.

**Acknowledgment irrevocable**

123. Once an acknowledgment or confirmation has been made in respect of paternity or relationship, the acknowledgment or confirmation shall become irrevocable.

*Order to Resume Cohabitation*

**Application by deserted wife**

124. Where a person has ceased to cohabit with his wife in a manner required by Islamic Law, the wife may apply to the Court for an order that the person resume cohabitation with her.

*Will*

**Will on property of adopted child**

125.—(1) Every person who adopts a child recognized by the local society as his adopted child since childhood may make an agreement or a declaration in a form prescribed and prepared by the Islamic Religious Department.

(2) In case the adopter has no heir, the adopted child shall, by virtue of this section, get not more than one third of the property of the adopter in his will.

(3) In case the adopter has heirs, the adopted child shall get not more than what is provided for under subsection (2) out of the property of his adopted parents.

(4) The adopted child shall only get not more than the share mentioned in subsection (2) or (3) out of the property of his adopted parents regardless of the number of adopted children that parents may have.

(5) In case the child that the adopted parents adopt is from his own heirs and entitled to the property, the child shall not be subject to subsection (1) or (3).

## PART IX

### APPEALS

#### **Appeals**

**126.** Any person aggrieved by any judgment, order or decision of any Court, any Syariah Judge or the Registrar under this Ordinance may appeal to the Syariah High Court or the Syariah Appeal Court, as the case may be, according to the procedures laid down by the Syariah Courts Ordinance, 2001 [*Cap. 42*] or in any other written law relating to the civil or criminal procedure of the Syariah Courts.

## PART X

### PENALTIES

#### **Polygamy without the permission of the Court**

**127.** Any man who, during the subsistence of a marriage, contracts another marriage in any place without the prior permission in writing of the Court commits an offence and shall be punished with a fine not exceeding three thousand ringgit or with imprisonment not exceeding two years or with both such fine and imprisonment.

#### **Divorce outside the Court and without the permission of the Court**

**128.** Any man who divorces his wife by the pronouncement of *talaq* in any form outside the Court and without the permission of the Court commits an offence and shall be punished with a fine not exceeding one thousand ringgit or with imprisonment not exceeding six months or with both such fine and imprisonment.

### **Failure to report**

**129.**—(1) Whoever, being under a duty to report under this Ordinance, wilfully neglects or fails to do so commits an offence and shall be punished with a fine not exceeding one thousand ringgit or with imprisonment not exceeding six months or with both such fine and imprisonment.

(2) Whoever, being under a duty to report or being required to submit an application under this Ordinance or being required to furnish any information or to execute or sign any document lawfully necessary for the purpose of effecting registration thereof, wilfully neglects or fails to report or to comply with the requirement commits an offence and shall be punished with a fine not exceeding one thousand ringgit or with imprisonment not exceeding six months or with both such fine and imprisonment.

### **Desertion of wife**

**130.** Any person who, having been ordered by the Court to resume cohabitation with his wife, wilfully fails or neglects to comply with the order commits an offence and shall be punished with a fine not exceeding one thousand ringgit or with imprisonment not exceeding six months or with both such fine and imprisonment.

### **Ill-treatment of spouse**

**131.** Any husband or wife who ill-treats his wife or her husband or cheats his wife or her husband of her or his property, as the case may be, commits an offence and shall be punished with a fine not exceeding one thousand ringgit or with imprisonment not exceeding six months or with both such fine and imprisonment.

### **Failure to give proper justice to wife**

**132.** Any person who fails to give proper justice to his wife or wives according to Islamic Law commits an offence and shall be punished with a fine not exceeding one thousand ringgit or with imprisonment not exceeding six months or with both such fine and imprisonment.

### **Disobedience by wife**

**133.** Any woman who wilfully disobeys any order lawfully given by her husband according to Islamic Law commits an offence and shall be punished with a fine not exceeding one hundred ringgit or, in the case of a second or subsequent offence, with a fine not exceeding five hundred ringgit.

### **Illicit intercourse between divorced persons**

**134.—(1)** Any man who, having lawfully divorced his wife, resumes cohabitation with her without having pronounced a lawful *ruju*' commits an offence and shall be punished with a fine not exceeding five hundred ringgit or with imprisonment not exceeding three months or with both such fine and imprisonment.

(2) If his wife was not at the time of resumption of cohabitation aware of the occurrence of the divorce, the man commits an offence and shall be punished with a fine not exceeding one thousand ringgit or with imprisonment not exceeding six months or with both such fine and imprisonment.

(3) Any woman who abets an offence under subsection (1) commits an offence and shall be punished with a fine not exceeding five hundred ringgit or with imprisonment not exceeding three months or with both such fine and imprisonment.

### **Wilful neglect to comply with order**

**135.—(1)** Without prejudice to the right of any person interested under any order made under this Ordinance to enforce the order under this or under this Ordinance or under any other law, the Court that made the order, in case of failure to comply therewith, may, where such order requires the payment of any amount, direct the amount due to be levied in the manner by law provided for levying fines imposed by the Court or may sentence the person wilful failing to comply therewith to imprisonment if the order for each month's payment remains unpaid, or, in any other case, to one year's payment remaining unpaid.

(2) The Court may—

(a) if any order made under subsection (1) provides for payment to be made monthly, sentence the person wilfully failing to comply with the order to imprisonment not exceeding one month for each month's payment remaining unpaid; and

(b) in any other case, sentence the person wilfully failing to comply with the order made under subsection (1) to imprisonment not exceeding one year for any payment remaining unpaid.

#### **Attempts and abetments**

**136.** Whoever attempts to commit, or abets the commission of, any offence under this Ordinance commits an offence punishable with the same punishment provided for the offence.

### PART XI GENERAL

#### **Power to make rules**

**137.—**(1) The Yang di-Pertua Negeri, on the advice of the Majlis, may by notification in the *Gazette* make rules regulating the practice and procedure in all matrimonial proceedings under this Ordinance as he considers expedient and rules to fix and regulate the fees and costs payable on all such proceedings; subject thereto, all proceedings under this Ordinance shall be regulated by the practice and procedure of the Court laid down by the Syariah Courts Ordinance, 2001 [*Cap. 42*], or in any other written law relating to the civil or criminal procedure of the Syariah Courts, to the extent that such practice and procedure are not inconsistent with this Ordinance.

(2) In matters of practice and procedure in matrimonial proceedings not expressly provided for in this Ordinance, or in any rules made under this Ordinance or in the Syariah Courts Ordinance, 2001 [*Cap. 42*], the Court may adopt such practice and procedure as may seem proper for the avoidance of injustice and the disposal of the matters in issue between the parties.



(3) The Yang di-Pertua Negeri, on the advice of the Majlis, may by notification in the *Gazette* make rules for the purposes of this Ordinance and, without prejudice to the generality of the foregoing, such rules may provide for—

(a) the manner in which the Registrars of Muslim Marriages, Divorces, and *Ruju'* shall exercise the powers conferred on them by this Ordinance;

(b) the forms of the Marriage, Divorce, and *Ruju'* Registers and of the certificates of marriages, divorce, and *ruju'* and the mode in which they are to be kept;

(c) the supply and safe custody of the Marriage, Divorce and *Ruju'* Registers, the Registrar's notebooks, and all declarations made for the purpose of this Ordinance;

(d) the preparation and submission of returns of marriages, divorces and *ruju'* registered under this Ordinance;

(e) the forms of any certificate, notice, or other document required for the purpose of implementing this Ordinance;

(f) the making of searches and the giving of certified copies;

(g) the fees chargeable for the purpose of this Ordinance;

(h) the punishment for any breach or failure to comply with any rules made under this Ordinance; and

(i) other matters for the purpose of carrying out this Ordinance.

#### **Punishment in respect of offences not provided for**

**138.**—(1) A person who commits an offence against any provisions of this Ordinance or any rules made hereunder for which no punishment is expressly provided therefor shall be punished with a fine not exceeding five thousand ringgit or with imprisonment not exceeding three years or with both such fine and imprisonment.

(2) Imprisonment may be imposed in default of fine under this Ordinance but such imprisonment shall not exceed half the sentence for such offence or seven days if such offence is punishable with fine only.

### **Reference to Islamic Law**

**139.**—(1) Any provision or the interpretation of any provision in this Ordinance which is inconsistent with Islamic Law shall, to the extent of such inconsistency, be void.

(2) If the event of a lacuna or where there is any matter which is not expressly provided for in this Ordinance or in any rules made under this Ordinance, the Syariah Court shall refer to Islamic Law.

### **Penalty for non-compliance with attachment of earnings order and for giving false notice or statement**

**140.**—(1) Any person who—

(a) fails to comply with section 84 (1) or (4); or

(b) wilfully gives a false notice or statement on a material matter,

commits an offence and shall, subject to subsection (2), be punished with a fine not exceeding one thousand ringgit or with imprisonment not exceeding six months or with both such fine and imprisonment.

(2) It shall be a defence for an accused person failing to comply with the attachment of earnings order under section 84 (1) to prove that he has taken all necessary and proper steps in complying with the attachment of earnings order to which such non-compliance relates.

## **PART XII**

### **REPEAL AND SAVING PROVISIONS**

#### **Repeal and saving provisions**

**141.**—(1) The Ordinan Undang-Undang Keluarga Islam, 1991 [*Ord. No. 5/91*] is repealed.

(2) All rules, proclamations, orders, notices, forms, authorization letters and appointments issued or made under the repealed Ordinance shall remain in force, in so far as they are not inconsistent with this Ordinance, until revoked or replaced by regulations, rules, proclamations, orders, notices, forms, authorization letters or appointments issued or made under this Ordinance.

Sarawak Law

## SCHEDULE

(Section 2(3))

## ARABIC SCRIPT FOR CERTAIN WORDS AND EXPRESSIONS

<i>Ba-in kubra</i>	—	بنائن كبوى
<i>Ba-in sughra</i>	—	بنائن صغرى
<i>Darar syarie</i>	—	ضرر شرعى
<i>Fasakh</i>	—	فسخ
<i>Hadanah</i>	—	حنانة
<i>Hakam</i>	—	حكم
<i>Hakim Syarie</i>	—	حاكم شرعى
<i>'iddah</i>	—	عدة
<i>Kariah</i>	—	قرية
<i>Khul'</i>	—	خلع
<i>Li'an</i>	—	لعان
<i>Mastautin</i>	—	مستوطن
<i>Mumatyiz</i>	—	مميز
<i>Mut'ah</i>	—	مصلحة
<i>Nafkah</i>	—	نفقة
<i>Nasab</i>	—	نسب
<i>Nusyuz</i>	—	نشوز
<i>Persetubuhan syubhah</i>	—	فرستوبهون (وطر) شبهه
<i>Qamariah</i>	—	قمرية
<i>Ruju'</i>	—	رجوع
<i>Shiqaq</i>	—	شقاق
<i>Ta'liq</i>	—	تحليلق
<i>Talaq raji'</i>	—	طلاق رجعى
<i>Thayyib</i>	—	طيب
<i>Wali</i>	—	وكلى

**[List of Amendments]**

ISLAMIC FAMILY LAW

83

LAWS OF SARAWAK

**Chapter 43**

**ISLAMIC FAMILY LAW ORDINANCE, 2001**

LIST OF AMENDMENTS

Amending Law	Short Title	In force from
Swk. L.N. 154/2004	Date of Commencement of the Ordinance	1.12.2004

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DICETAK OLEH PERCETAKAN NASIONAL MALAYSIA BERHAD, KUCHING, SARAWAK  
BAGI PIHAK DAN DENGAN KUASA PERINTAH KERAJAAN SARAWAK