

Guardianship

Guardianship means the legal rights over your children. You and your husband have equal guardianship rights. This means either one of you can apply for the identity cards, passports and schools of your children.

3. MATRIMONIAL ASSETS

When dividing the matrimonial assets, the Court will consider:

- (a) how much you and your husband contributed in money terms to obtain the assets – your role as a housewife will also be taken into consideration as a financial contribution;
- (b) whether any money is owing by either of you which were borrowed for the benefit of your family.



Pusat Kesedaran Wanita
(Women's Centre for Change)
24-D Jalan Jones
10250 Pulau Pinang, Malaysia
Tel: 04-228 0342
Tel / Fax: 04-228 5784
E-mail: wccpen@po.jaring.my
Website: www.wccpenang.org

MAINTENANCE PRIOR TO DIVORCE

- You can make an application for maintenance to the Court once your Husband has failed to provide money for your children's education or for you to buy, for example, food and clothing for your family's needs, even if you have not yet decided to divorce your husband.
- The amount of maintenance ordered will be in the proportion of the means of your husband.
- It can be made payable from the date he has neglected to support you and your children financially.
- If your husband is an employee, you may also apply to have the amount of maintenance deducted from his salary. His employers will then send the said amount to you directly.
- Maintenance for you will cease if you are living with another man or if you refuse to live with your husband without any good reason.
- Even if your children are illegitimate (i.e. your marriage is not valid), they will be entitled to maintenance from their father. However, you will not be entitled to it.



The Women's Centre for Change ("WCC") is doing a series of pamphlets to equip you with more knowledge of your legal rights.



DIVORCE and MAINTENANCE

(for non-Muslims)

?

DID
YOU
KNOW
THAT

DIVORCE

There is only ONE ground for divorce, that is, the marriage has irretrievably broken down. You have to prove any one of the followings:

- Currently, all marriages in Malaysia have to be registered.
- If you were married according to traditional or customary rites prior to 1 March 1982, you have a valid marriage and it is considered to be registered.

However, after 1 March 1982, marriages MUST be registered, otherwise it is not valid. In such case, a divorce is unnecessary. Unfortunately, your children, if any, are illegitimate.

1. your husband has committed adultery and you find it intolerable to live with him
2. your husband has behaved in such a way that you cannot reasonably be expected to live with him
3. your husband has deserted you for a continuous period of two years before you filed the Divorce Petition
4. both you and your husband have lived apart for a continuous period of at least two years before you filed the Divorce Petition

THERE ARE 2 KINDS OF DIVORCE PROCEEDINGS:

1. THE JOINT PETITION

- You and your husband must agree on all the terms of the divorce.
- The Court usually requires both you and your husband to be present in Court on the day of the hearing of your Petition.
- It is the simpler, cheaper and faster proceedings.

2. THE CONTESTED DIVORCE PETITION

- If your Husband contests the divorce you ("the Petitioner") will have to prove all the claims against your husband ("the Respondent").
- Before you start the Court proceedings, you (or your lawyer) must make an appointment with the Marriage Tribunal at the district where you live. You and your husband are to attend their meetings, where they will try to reconcile the both of you. If they fail to do so, they will issue you with a certificate. With it, you may then commence your divorce proceedings in Court.

THERE ARE 3 MAIN ASPECTS TO CONSIDER IN A DIVORCE:

1. MAINTENANCE

This is the monetary support you and your children may get from your husband.

2. CHILDREN

- Custody: This means having the physical care of and control over your children.
- Guardianship: This relates to the legal rights over your children.

3. MATRIMONIAL ASSETS

These are the assets (e.g. houses, car, shares, money) acquired by you and your husband during your marriage. It may include property owned by you or your husband before marriage and if you and/or your husband have made substantial improvements to it during your marriage.

1. MAINTENANCE

The Wife

The Court will consider:

- (a) the means and needs of you and your husband;
- (b) the extent of your behaviour or that of your husband's which resulted in the divorce.

You will be entitled to maintenance from your husband until you re-marry or live together with another man.

Note: At the time of your divorce, if your husband is physical or mentally incapacitated and cannot earn a living, you may have to pay him maintenance.

The Children

If you are employed, you and your husband are responsible for your children's support, health and education until they are 21 years old. If you are unemployed, your husband must maintain the children. Any Court Order granted will continue until either you and your husband applies to have the amount of maintenance varied according to the growing needs of your children.

2. CUSTODY AND GUARDIANSHIP OF CHILDREN UNDER 18 YEARS

Custody

- The ONLY matter for the Court to consider is the wellbeing of your children.
- Children below seven years old are presumed to be better off with you.
- When looking into the wellbeing of your children, the Court may consider:
 - (a) your children's preference to stay with either parent (if they are above seven years old);
 - (b) not disturbing the daily routine of your children, if possible;
 - (c) the Welfare Report, if any, prepared by the Social Welfare Department Officer after conducting interview with you and your husband and your children.
 - (d) the closeness of your children to their extended family and grandparents, uncles, aunts and cousins living with you and your children now;
 - (e) their babysitting and/or schooling arrangements;
 - (f) religion.

If you gain custody of your children you will have to allow your husband reasonable access to them, and vice versa. Alternatively you and your husband may opt to make fixed arrangements.

Note: Children above 18 years old are considered adults.

DIVORCE
and MAINTENANCE