

## 2. GUARDIANSHIP AND CUSTODY OF CHILDREN UNDER 18 YEARS

### Guardianship

This relates to the legal rights over your children. You and your spouse have equal guardianship rights. This means either party can apply for the identity cards, passports and schools of your children. Both of you are responsible for your children's support, health and education.

### Custody

This means having the physical care of and control over your children.

The Court will consider mainly the welfare of the children (below 18 years).

Children below 7 years of age are presumed to be better off with their mother.

If both of you are living separately you can apply for custody of your children even though you do not wish to file for divorce.

A wife may be granted custody even if she is not working and even if she had left the matrimonial home.

When looking into the welfare of the children, the Court will also consider:

- (a) the wishes of the parties to the marriage
- (b) your children's choice, with whom they want to stay (if they are above 7)
- (c) not disturbing current custody arrangements
- (d) the Welfare Report, if any, prepared by the Social Welfare Department Officer after conducting interview with you and your spouse and children

The Court may, in making the custody order, also decide on one or more of the following:

- a) Maintenance for the child
- b) Access to the other spouse and/or grandparents
- c) Educational arrangements
- d) Religious upbringing
- e) Preventing the child from being taken out of the country

### Matrimonial Assets

- These are the assets (e.g. house, car, shares, money, EPF) acquired by you and your spouse during your marriage even if they are held only in one party's name. It may include property owned by one party before marriage if the other party had made substantial improvements to it after marriage.

**When dividing the matrimonial assets, the Court will consider:**

- (a) how much money both parties contributed to obtain the assets
- (b) your indirect contribution (e.g. your role as a homemaker, assistance in building up the business)
- (c) loans taken for the benefit of
- (d) needs of minor children (the Court will try to give equal division of assets as far as possible)



# DIVORCE

## and MAINTENANCE

(for non-Muslims)

### ? DID YOU KNOW THAT

- A marriage in Malaysia will not be valid unless registered.
- If a person married after 1 March 1982 without registering the marriage, the marriage is invalid and the children will be considered illegitimate.
- A person once married cannot marry again until his/her marriage has been dissolved by court order or the spouse dies.
- All valid polygamous marriage entered before 1 March 1982, are recognized under the present law.
- All valid marriages conducted according to traditional or customary rites before 1 March 1982, are considered registered under the present law.

### REQUIREMENTS FOR DIVORCE

- Your marriage must have been registered in Malaysia or if registered elsewhere must be a monogamous marriage.
- You must be married for at least 2 years.
- Both spouses must be domiciled in Malaysia. A wife can still file even if the husband is not domiciled in Malaysia if:
  - a) her husband has deserted her and the husband was domiciled in Malaysia before he left her; or
  - b) if the wife has been continuously resident in Malaysia for 2 years just before filing the divorce.

**Women's Centre for Change (WCC)**  
241, Jalan Burma, 10350 Penang  
Tel: 04-228 0342  
011-3108 4001  
E-mail: [wcc@wccpenang.org](mailto:wcc@wccpenang.org)  
Website: [www.wccpenang.org](http://www.wccpenang.org)

**Pusat Perkhidmatan Wanita (PPW)**  
13 Lorong Sutera 6, Taman Sutera,  
13700 Seberang Jaya, Penang  
Tel: 04-398 8340 / 016-439 0698  
E-mail: [ppw@wccpenang.org](mailto:ppw@wccpenang.org)

## THERE ARE 2 WAYS YOU CAN GET A DIVORCE:

### 1. BY JOINT PETITION

- You and your spouse must agree on all the terms of the divorce i.e. custody of children, access to children, maintenance for spouse and children and division of matrimonial assets.
- The Court usually requires both parties to be present in Court on the day of the hearing of your Petition.
- It is simpler, cheaper and faster.

### 2. BY SINGLE

#### (CONTESTED) PETITION

*If your spouse does not agree to present a joint petition you will have to:*

- a) **Refer your marital problems to the Marriage Tribunal** at the office of the Registrar of Marriages where you last lived with your spouse. The Marriage Tribunal will try to reconcile both of you. If it fails, it will give you a certificate which you need to have to file for divorce in Court.

- b) **Prove that your marriage has irretrievably broken down** on one or more of the following grounds i.e.,

- i) your spouse has committed adultery and you find it intolerable to live with him/her
- ii) your spouse has behaved in such a way that you cannot reasonably be expected to live with him/her (has been cruel to you, been violent towards you, failed or neglected to maintain you and/or children, etc)
- iii) your spouse has deserted you for a continuous period of 2 years before you filed the divorce petition
- iv) both of you have lived apart for a continuous period of at least 2 years before you filed the divorce petition

- c) **Prove your claims for:**

- i) custody or access to children
- ii) maintenance for yourself and/or children
- iii) your share of matrimonial property

## THERE ARE 3 MAIN CLAIMS YOU CAN MAKE:

1. Maintenance for yourself and children
2. Guardianship, custody or access to children under 18 years
3. Share of Matrimonial Assets

### 1. MAINTENANCE FOR YOURSELF AND CHILDREN

- This is the monetary support you and your children may claim from your spouse. It is the duty of a husband to maintain his wife and children. In some cases a wife may be ordered to maintain her husband (if he is in poor health/mentally or physically unable to make a living) and children if she can afford to do so.
- A wife can claim maintenance for herself and the children even if she does not wish to file for divorce.
- Illegitimate children are also entitled to maintenance from their biological father.

#### The Court will consider:

- i) The means and needs of both parties;
- ii) Needs of the children;
- iii) To what extent the spouse making the claim contributed to the divorce

- A wife will be entitled to maintenance from her husband until she re-marries or lives together with another man.
- Maintenance for children has to be paid until the children are 18 years of age.
- Either party can apply later to increase or decrease the maintenance order if there are changes in circumstances (drastic increase in expenses, high cost of living, better income for either party, loss of employment, etc).