

STATE OF SABAH

I assent,

TUN DATUK HAJI MOHD. SAID BIN KERUAK,
Yang di-Pertua Negeri.

30TH DECEMBER, 1992.

No. 15 of 1992

An Enactment to provide for Islamic Family Law in respect of marriage, divorce, maintenance, guardianship, and other matters connected with family life.

ENACTED by the Legislature of the State of Sabah as follows:

PART I PRELIMINARY

Short title, and commencement.

1. This Enactment may be cited as the Islamic Family Law Enactment 1992.
 - (2) This Enactment shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint. [01.01.96]

Interpretation.

2. (1) In this Enactment, unless the context otherwise requires –

“anak dara” means a woman who has not had sexual intercourse, whether she has been married or not;

“appointed date” means the date appointed under section 1(2) for the coming into operation of this Enactment;

“Chairman” shall have the same meaning as assigned thereto in the Administration of Muslim Law Enactment 1992;

“Chief Registrar” means a Chief Registrar of Muslim Marriages, Divorces and *Ruju’* appointed under section 28;

“Chief Prosecutor” shall have the same meaning as assigned thereto in the Syariah Courts Enactment 1992;

“Court” means the Syariah Lower Court, Syariah High Court, or Syariah Appeal Court;

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

“*fasakh*” means the annulment of a marriage by reason of any circumstance permitted by *Hukum Syarak* in accordance with section 53;

“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;

“*Hukum Syarak*” means the laws of Islam in any recognized sects;

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

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

“*janda*” means a woman who has been married and divorced after consummation;

“*kariah*”, in relation to a mosque, means the area, the boundaries of which are determined by the Majlis, in which the mosque is situated;

“*Kitabiyah*” means –

- (a) a woman whose ancestors were from the *Bani Ya'qub*; or
- (b) a Christian woman whose ancestors were Christians before the prophethood of the Prophet Muhammad s.a.w.; or
- (c) a Jewess whose ancestors were Jews before the prophethood of the Prophet 'Isa;

“Muslim” has the same meaning as assigned thereto in the Administration of Muslim Law Enactment 1992;

“Majlis” has the same meaning as assigned thereto by the Administration of Muslim Law Enactment 1992;

“*mas kahwin*” means the obligatory marriage payment due under *Hukum Syarak* 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 *Hukum Syarak*, is capable of being valued in terms of money;

“*mut'ah*” means a consolatory gift that is reasonable according to *Hukum Syarak*, given to a divorced wife;

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

“Registrar” means a Registrar of Muslims Marriages Divorces, *Ruju'* appointed under section 28, and includes a Deputy Registrar and an Assistant Registrar;

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

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

“Syarie Judge” means a Judge appointed under section 6 of the Syariah Courts Enactment 1992, and includes Chief Syarie Judge;

“Syarie Lawyer” shall have the same meaning as assigned thereto in the Syariah Courts Enactment 1992;

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

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

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

“*wali Hakim*” means a *wali* appointed and commissioned under subsection (3) of section 7;

“widow” means a woman whose husband has died;

“widower” means a man whose wife has died;

(2) All words and expressions used in this Enactment and not herein defined but defined in the Interpretation and General Clauses 1963 Enactment [*En. No. 34/63.*] shall have the meanings thereby assigned to them respectively by that Enactment to the extent which do not conflict with *Hukum Syarak*.

(3) For the avoidance of doubt as to the identity or interpretation of the words and expression used in the Enactment that are listed in the Schedule, reference may be made to the Arabic script form 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.

Saving of prerogative.

3. Nothing in this Enactment contained shall derogate from or affect the prerogative rights and powers of the Yang di-Pertuan Agong as the Head of the religion of Islam in the State of Sabah, as declared and set forth in the State Constitution.

Application.

4. Save as is otherwise expressly provided, this Enactment shall apply to all Muslims living in Sabah and to all Muslims resident in Sabah who are living outside the State of Sabah.

Criterion for deciding whether a person is a Muslim.

5. If for the purposes of this Enactment 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 Enactment and dissoluble only under this Enactment.

6. (1) Nothing in this Enactment shall affect the validity of any Muslim 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 Enactment.

(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 Enactment;
- (c) by order of 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*.

7. (1) A marriage in the State of Sabah shall be in accordance with the provisions of this Enactment and shall be solemnized in accordance with *Hukum Syarak* 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 without a *wali* from *nasab* according to *Hukum Syarak*, the marriage shall be solemnized only by the *Wali Hakim*.

(3) The Yang di-Pertua Negeri may –

- (a) appoint and commission the Chief Syarie Judge to become the *Wali Hakim* on behalf of a woman who has no *wali* or under any circumstances where *wali* changes to *Wali Hakim* according to *Hukum Syarak*; and
- (b) confer *istikhlaf* authority (substitute on his behalf) on Syarie Judge to appoint any person he deems qualified to solemnize the marriage of a woman who does not have *wali* or under any circumstances where *wali* changes to *Wali Hakim* according to *Hukum Syarak*.

Minimum age for marriage.

8. No marriage may be solemnized or registered under this Enactment where either the man is under the age of eighteen or the woman is under the age of sixteen except where the Syarie Judge has granted his permission in writing in certain circumstances.

Relations prohibiting marriage.

9. (1) No man or woman, as the case may be, shall on the ground of consanguinity, marry –
- (a) his mother or father;
 - (b) his grandmother or upwards, whether on the side of his father or his mother, and his or her ascendants, how-high-soever;
 - (c) his daughter or her son and his granddaughter or her grandson and his or her descendants, how-low-soever;
 - (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, how-low-soever, of the brother or sister;
 - (f) his aunt or her uncle on his father's side and her or his ascendants;
 - (g) his aunt or her uncle on his 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 father-in-law and the ascendants of his wife, how-high-soever;
 - (b) his stepmother or her stepfather, being his father's wife or her mother's husband;
 - (c) his step grandmother, 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-in-law;
 - (e) his stepdaughter or her stepson and her or his descendants, how-low-soever.

(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 *Hukum Syarak*.

Persons of other religions.

10. (1) No man shall marry a non-Muslim except a *Kitabiyah*.

(2) No woman shall marry a non-Muslim.

Void marriages.

11. A marriage shall be void unless all conditions necessary, according to *Hukum Syarak*, for the validity thereof are satisfied.

Non-registerable marriage.

12. A marriage in contravention of this Enactment shall not be registerable under this Enactment:

Provided that a marriage solemnized in contravention of this Enactment but is valid according to *Hukum Syarak* may with the order of the court and subject to section 40(2), be registered under this Enactment.

Consent required.

13. A marriage shall not be recognized and shall not be registered under this Enactment unless both parties to the marriage have consented thereto, and either –

- (a) the *wali* of the woman has consented thereto in accordance with *Hukum Syarak*;
- or

- (b) the Syarie Judge having jurisdiction in the place where the woman resides or any person generally or specially authorized in that behalf by the Syarie Judge has, after due inquiry in the presence of all parties concerned, granted his consent thereto as *wali Hakim* in accordance with *Hukum Syarak*; such consent may be given wherever there is no *wali* by *nasab* in accordance with *Hukum Syarak* or if the *Wali* could not be traced or if the *Wali* unreasonably refused to give his consent.

Marriage of a woman.

14. (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 *janda* –

(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 *Hukum Syarak*, 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 Syarie Judge having jurisdiction in the place where the application is made, to the effect that she is a *janda*;

(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 that she was divorced before the marriage had been consummated, she shall not, during her ordinary period of *'iddah* for a divorce, be married to any person other than her previous husband, except with the permission of the Syarie 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 expiration of the period of *'iddah*, which shall be calculated in accordance with *Hukum Syarak*;

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

(5) If a women was divorced or *fasakh* by order of Court and the matter is brought to the Syariah Appeal Court, she shall no be married with any other man pending the decision of the Syariah Appeal Court.

Betrothal.

15. If any person has either orally or in writing, and either personally or through an intermediary, entered into a contract of betrothal in accordance with *Hukum Syarak*, and subsequently refuses without lawful reason to marry the other party to the contract, 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 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.

16. (1) Whenever it is desired to solemnize a marriage in the State of Sabah, 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 Registrar concerned is not allowed to solemnize a marriage of any person who arrives from outside the State of Sabah, except with the written permission of the *Kadi* in the place where the person normally resides:

Provided that if there is no *Kadi* in such place, the permission of any authority in that place.

(4) 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.

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

Issue of permission to marry.

17. Subject to section 18, 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 23 has been granted, shall, at any time after the application and upon payment of the prescribed fee, issue to the applicant his permission to marry in the prescribed form.

Reference to an action by Syarie Judge.

18. (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 8; or
- (b) where the woman is a *janda* to whom subsection 14(3) applies; or
- (c) where the woman has no *wali* from *nasab*, according to *Hukum Syarak*,

the Registrar shall, instead of acting under section 17, refer the application to the Syarie Judge having jurisdiction in the place where the woman resides.

(2) The Syarie 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 8, or permission for the purposes of subsection 14(3), or his consent to the marriage being solemnized by *wali Hakim* for the purposes of section 13(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.

19. No marriage shall be solemnized unless permission to marry has been given –
- (a) by the Registrar under section 17 or by the Syarie Judge under section 18, where the marriage involves a woman resident in Sabah; or
 - (b) by the proper authority of a State, where the marriage involves a woman resident in that State.

Place of marriage.

20. (1) No marriage shall be solemnized except in the *kariah masjid* in which the woman resides, but the Registrar or Syarie Judge giving permission to marry under section 17 or 18 may give permission for the marriage to be solemnized elsewhere, whether in Sabah or any State.

(2) A permission under subsection (1) may be expressed in the permission to marry given under section 17 or 18.

(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 Sabah, a permission for the marriage to be solemnized in that *kariah masjid* has been given under

section 17 or 18 and the permission for the solemnization of the marriage in other *kariah masjid* has been given under subsection (1); or

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

Mas kahwin and pemberian.

21. (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 any *mas kahwin* or *pemberian*.

Entry in Marriage Register.

22. (1) Immediately after the solemnization of a marriage, the Registrar shall enter the prescribed particulars and the prescribed *ta'aliq* or other *ta'aliq* of the marriage in the Marriage Register.

(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.

23. (1) No man, during the subsistence of a marriage, shall except with the prior permission in writing of the Syarie Judge, contract another marriage, nor shall another marriage contracted without such permission be registered under this Enactment.

(2) An application for permission shall be submitted to the Court in the prescribed manner and shall be accompanied by a statutory declaration 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 view of the existing wife or wives on the proposed marriage have been obtained.

(3) On receipt of the application, the Court shall summon the applicant and his existing wife or wives 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 and necessary, having regard to such circumstances as, among others, the following, that is to say, sterility, physical infirmity, physical unfitness for conjugal relations, wilful avoidance of an order for restitution of conjugal right, or insanity on the part of existing wife or wives;
- (b) that the applicant has such means as to enable him to support, as required by *Hukum Syarak* 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 equal treatment to all his wives as required by *Hukum Syarak*;
- (d) that the proposed marriage would not cause *darar syarie* to the existing wife or wives; and
- (e) that the proposed marriage would not directly or indirectly lower the standard of living that the existing wife or wives and dependants had been

enjoying and would reasonably expect to continue to enjoy were the marriage not to take place.

(4) A copy of the application under subsection (2) and of the statutory declaration required by that subsection shall be served together with the summons on each existing wife.

(5) Any party aggrieved by or dissatisfied with any decision of the Court may appeal against the decision in the manner provided in the Syariah Courts Enactment 1992 for appeals in civil matters. Implementation of the decision of the Court is subject to the decision of the Syariah Appeal Court.

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

(7) The procedure for 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 Sabah under this Enactment.

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

24. (1) Subject to subsections (2) and (3) of section 16, a marriage may be solemnized in accordance with *Hukum Syarak* by the Registrar appointed under subsection 28(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 in Sabah;
- (b) that each party has the capacity to marry according to *Hukum Syarak* and this Enactment;

- (c) that where either party is not a resident of Sabah the proposed marriage, if solemnized, will be regarded as valid in the place where that party is resident; and
- (d) that permission to marry was obtained from the Syarie Judge for *kariah masjid* in which the party is a resident in Sabah.

(3) The procedure for 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 Sabah under this Enactment as if the Registrar appointed for a foreign country were a Registrar for Sabah.

PART III REGISTRATION OF MARRIAGES

Registration.

25. The marriage after the appointed date of every person resident in Sabah and of every person living abroad who is resident in Sabah shall be registered in accordance with this Enactment.

Marriage certificate and *ta'liq* certificate.

26. (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 each of the parties to the marriage.

Reporting of void or illegal marriages.

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

Appointment of Chief Registrar, Registrars, and Deputy Registrars.

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

(2) The Majlis may appoint so many qualified persons as may be necessary, to be Registrars, Deputy Registrars, or Assistant Registrars of Muslim Marriages, Divorces, and *Ruju'* for such *kariah masjid* in Sabah as may be specified in the appointment.

(3) 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 Enactment in that country.

(4) Every person appointed under subsections (1) and (2) who is not a public officer shall be deemed to be a public officer for the purposes of the Penal Code [*F.M.S. Cap. 45.*].

Books and Registers to be kept of marriages.

29. Every Registrar shall keep a Marriage Register and such books as are prescribed by this Enactment or rules made under this Enactment, and every marriage solemnized in Sabah shall be duly registered by the Registrar in his Marriage Register.

Copies of entries to be sent to Chief Registrar.

30. (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 Marriage Register.

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

Registration of foreign marriage of a person resident in Sabah.

31. (1) Where any person who is a resident of Sabah has contracted a valid marriage according to *Hukum Syarak* abroad, not being a marriage registered under section 24, 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 Enactment.

(2) Where, before the expiry of the period of six months, the return of either or both parties to Sabah 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 Sabah by the party or both parties appearing before any Registrar in Sabah 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 for 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 Marriage Register 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 Marriage Register 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 Foreign Muslim Marriages Register.

(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.

- 32.** No person other than a Registrar appointed under this Enactment shall –
- (a) keep any book that is or purports to be a register kept in accordance with this Enactment; 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.

33. (1) Notwithstanding sections 6 and 31, the parties to any marriage according to *Hukum Syarak* 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 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 Marriage Register prescribed for this purpose.

(4) The entry of the marriage in the Marriage Register shall be signed by the Registrar making the entry and by both 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 Marriage Register 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 Enactment.

Legal effect of registration.

34. Nothing in this Enactment or rules made under this Enactment 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 Registrar within prescribed time.

35. Any person who, being required by section 31 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 32.

36. Any person who contravenes section 32 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.

37. Unless permitted under *Hukum Syarak*, any person who uses any force or threat –

- (a) to compel a person to marry against his 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 contracting 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 or statement for procuring marriage.

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

Unauthorized solemnization of marriage.

39. Any person who, not being authorized thereto under this Enactment, 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.

40. (1) Any person who knowingly solemnizes or purports to solemnize, or officiates at, marriage –

- (a) without there being a permission to marry as required by section 19; or
- (b) otherwise than in the presence of at least two credible witnesses besides 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 for prosecution.

41. No prosecution for an offence under sections 35 to 40 shall be instituted except with the sanction in writing of the Chief Prosecutor.

Correction of errors.

42. (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 Marriage Register 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 Marriage Register.

(3) Every entry made under subsection (1) shall be attested by the witness 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 Marriage Register.

Inspection of Marriage Register and index.

43. (1) Every Marriage Register and index kept by the Chief Registrar or Registrar under this Enactment 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 it a copy of the entry in the Marriage Register and index, certified under the hand and seal of office of the Chief Registrar or Registrar, as the case may be.

44. (Deleted)

PART V
DISSOLUTION OF MARRIAGE

Extent of power to make any order.

45. Save as is otherwise expressly provided, nothing in this Enactment 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 deemed to be registered under this Enactment;
- (b) where the marriage was contracted in accordance with *Hukum Syarak*; and
- (c) where the residence of either of the parties to the marriage at the time when the application is presented is in Sabah.

Change of religion.

46. (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.

47. (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 statutory declaration containing –

- (a) particulars of the marriage and the names, age and sex of the children, if any, of the marriage;
- (b) particulars of the facts giving the Court jurisdiction under section 45;
- (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 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 committee is unable to agree or if the Court is not satisfied with its conduct of the conciliation, the Court may remove the committee and appoint another committee in its place.

(9) The 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 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 think 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 Syarie Lawyer 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 member of his or her family, without the leave of the conciliatory committee.

(13) Where the 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 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 where the husband refuses to pronounce one *talaq*, the Court shall refer the case to the *Hakam* for action according to section 48.

(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 Sabah 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) Save as provided in subsection (17), a *talaq* pronounced by a husband or an order made by the Court shall determine the marriage to be effective not until the expiry of the *'iddah*.

(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 determine the marriage until the pregnancy ends.

Arbitration by *Hakam*.

48. (1) If satisfied that there are constant quarrels (*shiqaq*) between the parties to a marriage, the Court may appoint in accordance with *Hukum Syarak* 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 *Hukum Syarak*.

(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 so 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) No person or Syarie Lawyer is allowed to be present or to act for any party before the *Hakam* except a close member of his family.

Khul', Divorce or Cerai Tebus talaq.

49. (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 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 to 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 *Hukum Syarak*, 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 48 and that section shall apply accordingly.

Divorce under *ta'liq* or stipulation.

50. (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 *Hukum Syarak*, 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 way of *li'an*.

51. (1) Where a husband to a marriage has taken oath by way of *li'an* according to *Hukum Syarak* before the Syarie Judge, and it is so found by him, the Syarie Judge shall impose the punishment of *fasak* and of permanent separation on them.

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

Resumption of conjugal relationship or *ruju*.

52. (1) In this section "*talag raj'i*" 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 *talag raj'i* 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 *Hukum Syarak*, shall register the

recohabitation by endorsement upon the entry relating to that divorce in the Register of Divorce, if the divorce was registered by him, and shall require the parties to deliver to him the relevant certificate of divorce and shall issue to them certificate of recohabitation in the prescribed form.

(4) The Registrar shall also deliver a 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 Divorce 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 certificate of divorce the serial number and particulars of the certificate of recohabitation and shall forward the certificate of divorce to the Registrar by whom it was issued together with a copy of the certificate of recohabitation, and the other Registrar shall thereupon register the recohabitation by endorsement upon the entry relating to that divorce in the Register of Divorce 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 Divorce kept by him.

(7) If a *talag raj'i* 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 *talag raj'i* the husband pronounces *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 *Hukum Syarak*, in which case the Court shall appoint a conciliatory committee as provided under section 47 and that section shall apply accordingly.

(9) If after a *talag raj'i* the husband pronounces a *ruju'* but the wife has not consented to the *ruju'* for reasons allowed by *Hukum Syarak*, she shall not be ordered by the

Court to resume conjugal relations, but the Court shall appoint a conciliatory committee as provided under section 47 and that section shall apply accordingly.

Order or dissolution of marriage or *fasakh*.

53. (1) A woman married in accordance with *Hukum Syarak*, 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 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 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 has been insane for a period of two years or is suffering from leprosy or *vitalago* or acute immunity deficiency syndrome (AIDS) or is suffering from a venereal disease in a communicable form;
- (g) that she, having been given in marriage by *wali mujabir* 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 treats her with cruelty, that is to say, *inter alia* –
 - (i) habitually assaults her or makes her life miserable by cruelty of conduct; or

- (ii) associates with women of evil repute or leads what, according to *Hukum Syarak*, is an infamous life; or
 - (iii) attempts to force her to lead an immoral life; or
 - (iv) disposes of her property or prevents her from exercising her legal rights over it; or
 - (v) obstructs her 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 *Hukum Syarak*;
- (i) that even after the lapse of four months the marriage has still not been consummated owing to the wilful refusal of the husband 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 *Hukum Syarak*;
 - (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 Disorders Ordinance 1952 [Ord. No. 31/52.] and her mental disorder was of such a kind or to such extent as to render the unfit for marriage;
 - (l) that she is physically disabled which prevents the consummation of the marriage;
 - (m) any other ground that is recognized as valid for dissolution of marriages or *fasakh* under *Hukum Syarak*.

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

(3) Before making an order on the ground in paragraph (e) of subsection (1) the Court shall, on application by the husband, make an order requiring the husband to satisfy

the Court within a period of six months 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.

(4) 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.

54. (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 *Hukum Syarak* to be dead, but a death certificate under the Registration of Birth and Deaths Ordinance [Cap. 123] cannot be obtained, 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 dissolve or *fasakh* the marriage in accordance with section 53.

(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 14(4)(b).

(3) In the circumstances mentioned in subsection (1), a woman shall not be entitled to remarry in the absence of a certificate issued under subsection (1), notwithstanding that the Court may have given leave to presume the death of the husband.

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

Maintenance of Register of Divorces and Annulments.

55. (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 and 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 Sabah is dissolved or annulled by an order of a Court of competent jurisdiction outside Sabah, 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 Sabah 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 Sabah and has been registered under this Enactment or any written law in force before this Enactment, the appropriate Registrar and the Chief Registrar shall, on registering the *talaq* or order, cause the entry relating to that marriage in the Marriage Register 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 certificate in the prescribed form to both parties.

Registration of divorce out of court.

56. (1) Notwithstanding the provisions contained in section 47, a husband who divorced his wife by pronouncing *talaq* in whatever manner, outside the Court without the consent of the Court, shall within seven days of the pronouncement of *talaq*, report the said pronouncement of *talaq* to the Court.

(2) The Court shall conduct a hearing to ensure that the said *talaq* was pronounced validly in accordance with *Hukum Syarak*.

(3) If the Court is satisfied that the *talaq* was pronounced validly in accordance with *Hukum Syarak*, the Court shall subject to section 57, make an order to confirm the said

divorce by *talaq*. The Court shall record the said divorce and deliver a certified copy of such record to the appropriate Registrar and to the Chief Registrar for registration.

Order of divorce shall not be registered unless final order has been made.

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

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

58. 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 *Hukum Syarak*.

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

59. Nothing contained in this Enactment shall affect any right that a married woman may have under *Hukum Syarak* to her *mas kahwin* and *pemberian* or any part thereof on the dissolution of her marriage.

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

60. (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 the marriage by their joint efforts or the sale of any such assets and the division between the parties of the proceeds of sale.

(2) In exercising the power conferred by subsection (1), the Court shall have regard to –

- (a) the extent of the contributions made by each party in money, property, or labour towards acquiring of the assets;
- (b) any debts owing by either party that were contracted for their joint benefit;

- (c) the needs 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 effort of one party to the marriage or the sale of 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 needs 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 thinks reasonable, but in any case the party by whose efforts the assets were acquired shall receive a greater proportion.

(5) For the purpose of this section reference to assets acquired during a marriage includes assets owned before the marriage by one party that have been substantially improved during the marriage by the other party or by their joint efforts.

PART VI

MAINTENANCE OF WIFE, CHILDREN AND OTHERS

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

61. (1) The Court may, subject to *Hukum Syarak*, order a man to pay maintenance to his wife or former wife.

(2) Subject to *Hukum Syarak* 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 or refuses sex 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 *Hukum Syarak*.

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

Power of Court to order maintenance of certain persons.

62. The Court may order any person liable thereto according to *Hukum Syarak*, 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.

63. 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 Court to order security for maintenance.

64. 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.

65. An agreement for the payment, of 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 a good defence to any claim for maintenance.

Duration of order for maintenance.

66. Except where an order for maintenance is expressed to be for any shorter period or is rescinded, and subject to section 68, 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.

67. (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 marriage to or becoming *nusyuz*, unless the agreement otherwise provides.

Power of Court to vary orders for maintenance.

68. 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 Court to vary agreements for maintenance.

69. Subject to section 65, the Court may at any time and from time to time vary the terms of any agreement as to maintenance made between husband and wife, whether made before or after the appointed date, where it is satisfied that there has been any material change in the circumstances, notwithstanding any provision to the contrary in the agreement.

Maintenance payable under order of Court to be inalienable.

70. 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.

71. (1) Arrears of unsecured maintenance, whether payable by agreement or under an order of Court, shall be recoverable as a debt from the defaulter and, where they accrued due before the making of a receiving order against the defaulter, shall be provable in his 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 representative.

Interim maintenance.

72. (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.

73. (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 openly committed immoral act,

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

Duty to maintenance of children.

74. (1) Except where an agreement or order of 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 *Hukum Syarak*, 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 Court to order maintenance for children.

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

(2) The Court shall have the corresponding power to order a person liable under *Hukum Syarak*, to pay or contribute towards the maintenance of a child where it is satisfied that having regard to his means 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 Court to order security for maintenance of a child.

76. (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 Court.

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

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

78. 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.

79. Section 71 shall apply, *mutatis mutandis* and according to *Hukum Syarak* to order for the payment of maintenance for the benefit of a child.

Duty to maintain child accepted as member of family.

80. (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 away 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 as a debt from the father or mother of the child.

Duration of order of maintenance of a child.

81. 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 of 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.

82. (1) If a woman neglects or refuses 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 Court to order for attachment of earned income.

83. (1) Notwithstanding the provisions of any written law to the contrary, the Court, on the application of the person to whom a maintenance order was made or the guardian of the said person, may make an order for the attachment of earned income, if the Court deems fit so to do.

(2) An application for an order for attachment of earned income may be made at the hearing in which maintenance order is being sought for or in any subsequent proceeding.

Types of order relating to earned income.

84. (1) An order for attachment of earned income shall require the person against whom the order is directed, the person whom, in the opinion of the Court is an employer of the person being claimed against, to make payment from the earned income of such last mentioned person in compliance with the order.

(2) The amount of money required to be fixed in an order for attachment of earned income is the sum which, in the opinion of the Court is fair after considering the abilities and needs of the person being claimed against and the needs of those for whom the latter is required to maintain.

(3) An order for attachment of earned income shall contain, to the extent that is known to the Court making the order, particulars that may be specified for the purpose of enabling the person being claimed against to be identified by the person to whom the order is directed.

(4) An order for attachment of earned income or any variation thereof shall not take effect until seven days after a copy of the order is served on the person against whom the order is directed.

(5) An order of attachment of earned income shall specify the officer to whom payments under the order shall be made.

Effect of order of attachment of earned income.

85. (1) When an order of attachment of earned income is made, all other proceedings to enforce the relevant maintenance order which commenced prior to the order of attachment of earned income is made shall be stayed.

(2) The Court in which an order of attachment of earned income is made may, if it considers necessary, on application by the person whose earned income is attached or by the person entitled to receive payments under a relevant maintenance order, make an order to discharge or vary the order of attachment of earned income.

- (3) An order of attachment of earned income shall cease to have effect when –
- (a) a warrant is issued to direct that the money payable under the relevant maintenance order shall be recovered in accordance with the manner provided in the law for recovery of fines;
 - (b) an order is made to punish the party liable to pay maintenance by committing him to prison on the ground of his failure to comply with the relevant maintenance order; or
 - (c) the relevant maintenance order is revoked,

and when an order of attachment of earned income ceases to be effective as aforesaid the Court which made the order shall give notice of the said cessation to the person to whom the order was directed.

Obligation of person being claimed and employer to comply with order of attachment of earned income.

86. (1) A person to whom an order of attachment of earned income is directed shall, notwithstanding the provisions contained in any other written law but subject to the provisions of this Enactment, comply with the order or, if the order is later varied under section 85, comply with the order as varied.

(2) If at any time, there exist two or more orders of attachment of earned income relating to the earned income of a person liable to pay, for the purpose of complying with this Enactment, the employer shall –

- (a) implement the orders according to their respective dates when the orders become effective without regard to any later order until all the orders made earlier are implemented; and
- (b) implement any subsequent orders as if the earned income in relation thereto is a balance of the earned income of the person liable to pay after making any payments under this Enactment in accordance with any order made earlier.

(3) An employer, who, in complying with an order of attachment of earned income, makes a payment under this Enactment, shall give to the person liable to pay a written statement stating the amount of money paid.

(4) If a person to whom an order of attachment of earned income is directed had never at any time, within one month prior to the order being conveyed to him, been an employer of the person liable to pay, he shall immediately give a written notice stating the fact in the specified form to the Court.

PART VII

GUARDIANSHIP

HADANAH OR CUSTODY OF CHILDREN

Persons entitled to custody of children.

87. (1) Subject to section 88, the mother shall be of all persons the best person entitled to the custody of her infant children during the connubial relationship as well after its dissolution.

(2) Where the Court is of the opinion that the mother is disqualified under *Hukum Syarak* 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 shall 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 88 and 92, 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.

88. The *hadanah*, that is to say, the woman to whom belongs the upbringing of a child, shall be entitled to exercise the right of *hadanah* –

- (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.

89. 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, but shall revive upon dissolution of the marriage;
- (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.

90. (1) The right of the *hadanah* 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 *hadanah*, the custody devolves upon the father, and if the child has reached the age of discernment (*mumaiyis*), he or she shall have the choice of living with either of the parents, unless the Court otherwise orders.

Custody of illegitimate children.

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

Power of the Court to make order for custody.

92. (1) Notwithstanding section 87, 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 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 to 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) If it is found necessary, the Court may make an interim order placing a child in the custody of any person or institution or association and the order shall take immediate effect and continue to be enforced until a Court order is made on an application for custody.

Orders subject to conditions.

93. (1) An order for custody may be made subject to such 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.

94. (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.

(5) Notwithstanding the provision above, the welfare of the child shall be the paramount consideration in deciding custody of the child and his property.

Power over immovable and movable property.

95. (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 *Hukum Syarak* and the sale is to the manifest or evident advantage of the minor.

(2) As regards movable 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 movable 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.

96. (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.

97. A mother, whether a Muslim or a *Kitabiyah*, may be validly appointed executrix of the father, and in that case she may exercise her 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.

98. 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.

99. 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.

100. 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.

101. (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.

102. (1) A guardian of the property of a minor appointed by the Court shall not, without the leave of the Court –

- (a) sell, charge, mortgage, exchange, or otherwise part with the possession of any movable or immovable property of the minor; or
- (b) lease any land belonging to the minor for a term exceeding one year.

(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'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 may not give discharge for capital property.

103. 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.

104. (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 off 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.

105. (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 persons 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.

106. 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 Court.

107. (1) Notwithstanding the provisions of section 95, 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 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 orphan.

108. Where the father and the grandfather of a minor have died without appointing a testamentary guardian, any penghulu, 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 any written law relating to the protection and custody of children 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.

Guardianship of Infants Ordinance (Cap.54) not to apply if contrary to the religion of Islam.

108A. (1) Nothing in the Guardianship of Infants Ordinance (Cap. 54) that is contrary to the religion of Islam shall apply to any person under the age of eighteen years who professes the religion of Islam and whose father professes or professed at the date of his death that religion or, in the case of an illegitimate child, whose mother so professes or professed that religion.

(2) In the case of any other person, that Ordinance, so far as it is contrary to the religion of Islam, shall cease to apply to him upon his professing the religion of Islam if at that date he has completed the age of eighteen years or, if he has not completed that age, he professes the religion of Islam with the consent of the person who under that Ordinance is the guardian of the person of the infant.

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

109. 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.

110. (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 Court to set aside and prevent dispositions intended to defeat claims to maintenance.

111. (1) Where –

- (a) any matrimonial proceeding is pending; or
- (b) an order has been made under section 58, 62 or 75 and has not been revoked; or
- (c) maintenance is payable under any agreement to 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 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 same; 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 purposes of this section –

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

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

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

Injunction against molestation.

112. (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 annoying or interfering with his or her former spouse or the families of both parties.

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

PART VIII
MISCELLANEOUS

Recognition of Muslim marriages contracted outside Sabah.

113. (1) A Muslim marriage contracted outside Sabah other than a marriage solemnized in a Malaysian Embassy, High Commission, or Consulate under section 24 shall be recognized as valid for all purposes of this Enactment if –

- (a) it was contracted in a form required or permitted by the law of the place where it was contracted;

- (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 Sabah, both parties had capacity to marry according to this Enactment.

(2) Notwithstanding subsection (1), a Muslim marriage contracted under the subsection shall not be registrable under this Enactment if the marriage would have been in contravention of section 23 had the marriage been contracted within Sabah.

Recognition of marriages contracted in Embassies, in Malaysia.

114. (1) A Muslim marriage of persons who are not Malaysian citizens contracted in any Foreign Embassy, High Commission, or Consulate in Malaysia shall be recognized as valid for all purposes of this Enactment if –

- (a) it was contracted in a form required or permitted by the law of the country whose Embassy, High Commission, or Consulate it is or in a form permitted under this Enactment;
- (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 Sabah, both parties had capacity to marry according to this Enactment.

(2) A Muslim marriage contracted under subsection (1) shall not be registrable under this Enactment if the marriage would have been in contravention of section 23 had the marriage been contracted within Sabah outside the Foreign Embassy, High Commission, or Consulate.

LEGITIMACY

Ascription of paternity.

115. Where a child is born to a woman who is married to a man six *qamariah* months or more 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.

116. 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.

117. 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.

Shubhah intercourse.

118. Where a man has *shubhah* sexual 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.

119. 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 he is his son, 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; and
- (h) the acknowledgment is definite and the child is acknowledged to be the child of his body.

Presumption from acknowledgment rebuttable.

120. 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.

121. 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.

122. 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 acknowledgor and the acknowledgee are such that filial relationship is possible between them.

Acknowledgment other than as a child, mother or father.

123. 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.

124. 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.

125. Where a person has ceased to cohabit with his wife in manner required by *Hukum Syarak*, the wife may apply to the Court for an order that the person resumes cohabitation with her.

Property in favour of adopted child.

126. (1) Every person who adopts a child who is acknowledged by the community in the locality that the child was adopted since his childhood may make an agreement or declaration in such form as may be furnished by Majlis.

(2) Where the person who adopts the child does not have any heir, the adopted child may, under the provision of this section, obtain not more than one third (1/3) of the person's property as his inheritance.

(3) Where the person who adopts the child is succeeded by his heir, the adopted child will not receive any part in excess of the smallest part that may be receivable by *ashabul-furud* except *Zaujah* as his inheritance.

(4) An adopted child will receive only portion which does not exceed the proportions mentioned in subsections (2) and (3) from the property of the adopted parents notwithstanding that there are several adopted children.

(5) Where the adopted child is from his own heir and eligible to inherit, he shall not be subjected to subsections (1) and (3).

APPEALS

Appeals.

127. Any person aggrieved by any decision of any Court, any Syarie Judge or any Registrar under this Enactment may appeal to the Syariah Appeal Court in accordance with the procedure laid down in the Syariah Courts Enactment, 1992 or in any other law relating to civil and criminal procedure in the Syariah Courts.

PART IX PENALTIES

Polygamy without Court's permission.

128. Any man who, during the subsistence of a marriage, contracts another marriage in any place without the prior permission in writing of the Syarie Judge 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 Court and without Court's permission.

129. 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 of husband to give maintenance to wife or children.

130. (1) A husband who fails to give maintenance to the wife without reasonable cause shall commits an offence.

(2) A father who fails to give maintenance to the children under his care shall commits an offence.

(3) The Court may order that the husband or father who is found guilty of an offence under subsection (1) or (2) to pay or give effect to any Court order relating to the maintenance of his wife or children under his care.

(4) Whoever refuses or does not comply with the order of the Court under subsection (3) commits an offence and shall be liable to a fine not exceeding two thousand ringgit or with imprisonment not exceeding one year or with both such fine and imprisonment.

(5) The punishment imposed under this section, unless accepted by the wife or children under his care, does not derogate his responsibility on maintenance or accrued maintenance which must be settled to the wife or children under his care.

Failure of husband to render his marital obligation.

131. (1) Failure on the part of the husband to fulfil his conjugal obligation to any wife for such a period as may induce the wife to commit immorality shall be deemed as failure to render his conjugal obligation and shall constitute an offence if complained is made by the wife to the Court.

(2) A wife who lodges a complaint about an offence committed by the husband under subsection (1), may apply to the Court for any order as allowed by *Hukum Syarak*.

(3) Whoever commits an offence under subsection (1) 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.

132. (1) Whoever, being under a duty to report under this Enactment, 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 Enactment 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.

(3) Whoever give either orally or written false statement or admission to the Registrar in respect of any matter required to be recorded or registered by the Registrar according to the provision of this Enactment, commit an offence and shall be liable to a fine not exceeding one thousand ringgit or to imprisonment not exceeding six months or to both.

Desertion of wife.

133. 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 wife or husband.

134. Any person who ill-treats his wife or her husband or cheats his wife or her husband of property 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.

135. (1) Any person who fails to give proper justice to his wife according to *Hukum Syarak* 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 having more than one wife conducts himself unfairly to all his wives in regard to maintenance, clothings, place of abode and rotation according to *Hukum Syarak* 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 fines and imprisonment.

Apostacy to annul marriage.

136. Any person who dislikes his or her spouse and by deception makes himself or herself an apostate in order to annul his or her marriage commits an offence and shall be punished with imprisonment not exceeding six months.

Unfaithful wife.

137. A wife who wilfully ignores to follow a lawful order given by the husband in accordance with *Hukum Syarak* commits an offence and shall be punished with a fine not exceeding one hundred ringgit, or for the second or subsequent offences, a fine of not exceeding fifty ringgit for every commission of the offence.

Illicit intercourse between divorced persons.

138. (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 one thousand ringgit or with imprisonment not exceeding six months or with both such fine and imprisonment.

Wilful neglect to comply with maintenance order.

139. Without prejudice to the right of any person interested under any order of maintenance made under this Enactment to enforce the order under this Enactment or under any other law, the Court that made the order, in case of wilful failure to comply therewith, may 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 wilfully failing to comply therewith to imprisonment not exceeding one month for each month's maintenance remaining unpaid.

Instigating a couple to divorce.

140. Any person who instigates or compels or persuades any married couple or any married man into divorce or to neglect one's obligation and responsibility to the other, commits an offence and shall be punished with a fine not exceeding one thousand ringgit or with imprisonment of not less than six months or with both such fine and imprisonment.

To divorce wife during prohibition period.

141. A man who divorces his wife during her apparent pregnancy or during the period of chastity or during *haid* or *nifas*, commits an offence and shall be punished with a fine of not exceeding five hundred ringgit or with imprisonment not exceeding three months or with both such fine or imprisonment.

Cruelty to wife, husband or children.

142. (1) A man who commits cruelty to his wife or to his children in whatever manner commits an offence and shall be punished with a fine not exceeding three thousand ringgit or with imprisonment not exceeding one year or with both such fine and imprisonment.

(2) A wife who commits cruelty to the husband or to her children in whatever manner commits an offence and shall be punished with a fine not exceeding three thousand ringgit or with imprisonment not exceeding one year or with both such fine and imprisonment.

Buying or selling child.

143. (1) A mother or father or guardian who sells, buys, or gives away his or her child or children under his or her custody to a non-Muslim person commits an offence and shall be punished with a fine not exceeding one thousand ringgit or with imprisonment not exceeding two years or with both such fine and imprisonment.

(2) Such sale, purchase or giving away shall be void and the child shall be delivered to any qualified person or qualified welfare home.

Husband alleges wife *nusyuz* without Court's finding.

144. A husband who declares or alleges that his wife is *nusyuz* and deprives his wife her rights without first obtaining the Court's decision commits an offence and shall be punished with a fine not exceeding three thousand ringgit or with imprisonment not exceeding one year or with both such fine and imprisonment.

Assuming ownership of undistributed estate.

145. Any person who sells, takes or assumes ownership of any estate which has not been distributed by the Court commits an offence and shall be punished with a fine of not exceeding three thousand ringgit or with imprisonment not exceeding one year or with both such fine and imprisonment.

To conceal member of the heir.

146. (1) Any person who wilfully conceals any heir lawfully entitled to any estate commits an offence and shall be punished with a fine not exceeding two thousand ringgit or with imprisonment not exceeding two years or with both such fine and imprisonment.

(2) The Court may order that any religious authority or any person authorised by the Court to search for, investigate into or compile a list of all persons who are entitled to be heirs.

(3) Any person who wilfully disobeys any order of the Court under subsection (2) commits an offence and shall be punished with a fine not exceeding two thousand ringgit or with imprisonment not exceeding one year or with both such fine and imprisonment.

Invalid will.

147. (1) Any person who wilfully executes any will which is not valid commits an offence and shall be punished with a fine of not exceeding two thousand ringgit or with imprisonment not exceeding one year or with both such fine and imprisonment.

(2) The Court shall declare void such will so far as it is inconsistent with *Hukum Syarak* and may make any order as it considers proper.

Concealing a will.

148. (1) Any person who wilfully conceals any instrument of will commits an offence and shall be liable to a fine of not exceeding two thousand ringgit or with imprisonment not exceeding one year or with both such fine and imprisonment.

(2) The Court may order the seizure of any instrument of will so concealed from the custody of any party.

(3) Any person who conspires to do or causes to be done any matter which constitutes an offence under subsection (1) commits an offence and shall be punished with a fine not exceeding two thousand ringgit or with imprisonment not exceeding one year or with both such fine and imprisonment.

Attempts and conspiracy.

149. Any person who attempts to or conspires to do an act constituting an offence under this Enactment commits an offence and shall be punished in accordance with the provision relating to that offence.

Punishment when not specified.

150. (1) Any person who commits an offence against any of the provisions of this Enactment or rules made under this Enactment of which punishment is not specified therein expressly 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) The punishment of imprisonment may be imposed if the fine imposed under this Enactment is not paid but such imprisonment shall not exceed half of the punishment for the offence or seven days if such offence is punishable with fine only.

***Hukum Syarak* shall be used when no alternative.**

151. (1) Any provision or interpretation of any provision of this Enactment not consistent with *Hukum Syarak* shall be void to the extent of its inconsistency.

(2) The Court shall adopt *Hukum Syarak* in relation to any matter not expressly provided for in this Enactment or under any rules made under this Enactment.

Penalty for failure to comply with attachment of earned income order and for giving false notice and statement.

152. (1) Whoever –

- (a) fails to comply with subsection (1) or (3) of section 86; or
- (b) fails to give a notice as is mentioned in subsection (4) of section 86; or
- (c) carelessly gives a notice or statement which is false relating to certain important 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 defence for any person accused of failing to comply with subsection (1) of section 86, to prove that he has taken every action necessary to comply with the order for attachment of income which relates to such breach.

PART X
GENERAL

Power to make rules.

153. (1) 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 Enactment as he considers expedient and rules to fix and regulate the fees and costs payable on all such proceedings, subject thereto, all proceeding under this Enactment shall be regulated by the Syariah Courts Enactment 1992, to the extent that such practice and procedure are not inconsistent with this Enactment.

(2) In matters of practice and procedure in matrimonial proceedings not expressly provided for in this Enactment or in any rules made under this Enactment or under the Syariah Courts Enactment 1992, 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) Yang di-Pertua Negeri, on the advice of the Majlis, may by notification in the *Gazette* make rules for the purpose of this Enactment 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 Enactment;
- (b) the forms of the Marriage, Divorce, and *Ruju'* Registers and of the certificates of marriage, 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 Registrars' notebooks, and all declarations made for the purposes of this Enactment;
- (d) the preparation and submission of returns of marriages, divorces, and *ruju'* registered under this Enactment;

- (e) the forms of any certificate, notice, or other document required for the purpose of implementing this Enactment;
- (f) the making of searches and the giving of certified copies;
- (g) the fees chargeable of the purpose of this Enactment;
- (h) the punishment of any breach or failure to comply with any rules made under this Enactment; and
- (i) other matters for the purpose of carrying out the provisions of this Enactment.

Savings.

154. All rules, declarations, orders, notices, forms, consent letters and appointments issued or made under or with the authority of any written law repealed by this Enactment shall remain in force so far as they are not inconsistent with or replaced by the provisions of this Enactment, until they were repealed or substituted by rules, declarations, orders, notices, forms, consent letters or appointments issued or made under the provisions of this Enactment.

Repeal.

155. Upon the coming into force of this Enactment, Parts VI and VII of the Administration of Muslim Law Enactment 1977 [*En. No.15/1977.*] are hereby repealed and ceased to be enforceable in the State of Sabah.

SCHEDULE
(Section 2 (3))

**ARABIC SCRIPT FOR CERTAIN
WORDS AND EXPRESSIONS**

darar syarie	ضرر شرعي
fasakh	فسخ
mastautin	مستوطنين
hakim syarie	حاكم شرعي
hukum syarak	حكم شرع
mut'ah	متعة
nasab	نسب
ruju'	رجوع
ta'liq	تعليق
persetubuhan syubhah	فرستوبوهن شبيهة
khul'	خلع
Shiqaq	شقاق
Hakam	حكم
thayyib	طيب
ba-in kubra	بائن الكبرى
wali	ولي
ba-in sughra	بائن الصغرى
talaq raj'i	طلق رجعي
hadinah	حضينة
hadanah	حفاة
mumaiyiz	منهيز
li'an	لعان
nafkah	نفقة
nusyuz	نشوز
kathi	قاضى
Bani Ya'qub	بنو يعقوب
qamariah	قمرية
kairah	قريه

FOR REFERENCE ONLY (August 2010)

CERTIFIED by me to be a true copy of the Bill passed by the Legislative Assembly on Tuesday, the 24th day of November, 1992.

JOHN DATUK ANGIAN ANDULAG,
Deputy Speaker,

Sabah LawNet