Malaysia

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The Authors
Table of Contents

The Authors 3
Preface 11
List of Abbreviations 13
General Introduction 15

§1. **General Background of the Country** 15
§2. **Historical Background of Family and Succession Law** 18
   I. Marriage and Divorce 18
   II. Succession Law 22
§3. **Sources of Family and Succession Law** 23
   I. Constitution 23
   II. Legislation 24
      A. Federal Legislation 24
      B. State Legislation 25
   III. Treaties 25
   IV. Judicial Decisions 27
§4. **The Courts Administering Family Law and Succession Law** 28
   I. Different Courts 28
   II. Courts Dealing with Family Matters in Malaysia 29
   III. The Unique Characteristics of the Courts Dealing with Family Matters in Malaysia 30
   IV. Criticisms of the Enforcement of Family Law 32

Selected Bibliography 33

Part I. Persons 37

Chapter 1. The Status of a Person 37

§1. **Definition of a Person** 37
§2. **Capacity** 37
   I. Minors in Malaysian Law 38
   II. Child as a Term of Relationship 38
Table of Contents

§3. REGISTRATION OF CIVIL STATUS
§4. MINORS' CONTRACTS
§5. MINORS' RESPONSIBILITY FOR TORTS
§6. MINORS' RESPONSIBILITY FOR CRIMES
§7. CRIMES AGAINST CHILDREN
§8. NAMES
  I. Composition of Name
  II. Surname
§9. NATIONALITY
§10. DOMICILE AND RESIDENCE
  I. Domicile
  II. Domicile Rules
  III. Domicile of Origin
§11. MENTALLY HANDICAPPED PERSONS

Part II. Family Law

Chapter I. Marriage

§1. THE NATURE OF MARRIAGE
§2. THE CAPACITY TO MARRY
  I. Betrothal
  II. Different Sex
  III. Consanguinity
  IV. Marriageable Age
  V. Prior Marriage
  VI. Failure to Consent
  VII. Failure to Comply with Necessary Formalities
  VIII. Consequences
§3. FORMALITIES OF MARRIAGE
  I. Marriages Solemnized after the Issue of a Certificate for Marriage
  II. Marriages Solemnized after the Issue of a Licence
  III. Marriage in Accordance with Religion, Custom or Usage
  IV. Marriages Solemnized Abroad
§4. EFFECTS OF MARRIAGE
  I. Duty of Consortium
  II. Sexual Intercourse
  III. Confidences in Marriage
  IV. Contract
  V. Tort
  VI. Criminal Law
  VII. Duty to Maintain
§5. VOID AND VOIDABLE MARRIAGES

6 – Malaysia
Chapter 2. Divorce

§ 1. GROUNDS FOR DIVORCE
   I. Divorce on the Ground of Spouse’s Conversion to Islam 83
   II. Dissolution by Mutual Consent 84
   III. Divorce on the Grounds of Irretrievable Breakdown of Marriage 87

§ 2. PROCEDURE 97

§ 3. EFFECTS OF DIVORCE 98
   I. Legal Effects 98
   II. Conclusion 103

§ 4. DIVORCE UNDER MUSLIM LAW IN MALAYSIA 107

§ 5. GROUNDS OF DIVORCE UNDER MUSLIM LAW 107
   I. Talaq 107
      A. Procedure for Talaq 111
   II. Khulū’ 116
      A. Procedure for Khulū’ 119
   III. Fasakh 120
      A. Procedure for Fasakh 123
   IV. Ta’liq 124

Chapter 3. Cohabitation Outside Marriage 130

§ 1. INTRODUCTION 130
§ 2. DEFINITION 130

Chapter 4. Filiation 131

§ 1. CHILDREN BORN IN WEDLOCK 131
   I. The Status of Legitimacy 131
   II. Acquisition of Legal Status of a Legitimate Child 131
      A. Through Birth or Conception 131
      B. Legitimacy of a Child of a Void Marriage 135
      C. Legitimacy of a Child of a Voidable Marriage 136
   III. Disputes as to Legitimacy 136

§ 2. EX-NUPTIAL CHILDREN 138
   I. Legal Disabilities of Ex-nuptial Children 138
      A. Name 138
      B. Maintenance 138
      C. Guardianship, Custody and Access 139
      D. Nationality and Citizenship 141
      E. Surname 141
      F. Inheritance 142

Chapter 5. Adoption and Foster Care 144

§ 1. ADOPTION 144
   I. Introduction 144
   II. Who May Adopt? 145
Table of Contents

III. Ages and Religion 146
IV. Consent to Adoption 148
   A. The Father 148
   B. The Mother 149
   C. The Child 149
V. Discharge 150
VI. Access to Information and Contact 151
VII. Adoptees 152
   A. Adoptee under 18 Years Old 152
   B. Adoptee over 18 Years Old 152
   C. Natural Parents 153
   D. Other Persons 153
VIII. Access to Adopted Children 154
IX. Foreign Adoption 154
§ 2. FOSTER CARE 155

Chapter 6. Guardianship and Custody 157

§ 1. INTRODUCTION 157
§ 2. ADOPTED CHILDREN 159
   I. Interim Orders 160
   II. Restriction on Removal of Children from Malaysia 162
   III. Principles on which Guardianship Custody and Access Awards are Made, and Procedure in Those Cases 163
   IV. The Status Quo 163
   V. Wishes of the Child 164
   VI. Religion 165

Part III. Matrimonial Property Law 167

Chapter 1. Matrimonial Property 167

§ 1. INTRODUCTION 167
§ 2. PROPERTY DURING MARRIAGE AND COHABITATION 167
§ 3. MAINTENANCE 168
§ 4. RE-ADJUSTMENT OF PROPERTY ON SEPARATION OR DIVORCE 172
§ 5. VARIATION OF ORDERS 172
§ 6. SETTING ASIDE TRANSACTIONS 173
§ 7. ADJUDICATION OF PROPERTY DISPUTES 173

Part IV. Succession Law 177

Chapter 1. Introduction 177

Chapter 2. The Opening of Succession 178
§ 1. DEATH OF THE DECEASED
§ 2. MISSING PERSONS AND ABSENTEES
§ 3. COMMORIENTES
§ 4. THE BONA VACANTIA

Chapter 3. Testamentary Succession

§ 1. INTRODUCTION
§ 2. CAPACITY TO MAKE A WILL
   I. Persons Possessed of Property
   II. Exceptions to Testamentary Capacity
      A. Minors
      B. Persons of Unsound Mind
   III. Foreigners
   IV. Soldiers, Airmen and Sailors
   V. Malaysian Citizens
   VI. Married Women
   VII. Prisoners
§ 3. DIFFERENT TYPES OF WILLS
   I. A Valid Will
   II. Nuncupative and Holographic Wills
   III. Codicil
   IV. Other Documents
   V. Living Wills and Euthanasia
   VI. Privileged Wills
   VII. Joint Wills
§ 4. REVOCATION OF A WILL
   I. Another Will
   II. An Intention to Revoke
   III. Destruction
   IV. Revocation by Law
§ 5. PROVISIONS IN A WILL
§ 6. RESTRICTIONS: TESTATORS' FAMILY MAINTENANCE
   I. Spouses
   II. Children
   III. Further Dependents
   IV. Others
§ 7. INTERPRETATION OF A WILL
§ 8. FAILURE OF GIFTS
§ 9. WILLS OF MUSLIMS

Chapter 4. Intestate Succession of Non-Muslims

§ 1. INTRODUCTION
§ 2. THE RIGHT OF THE SURVIVING SPOUSE
§ 3. THE RIGHTS OF A PARENT OR PARENTS
§ 4. THE RIGHTS OF DESCENDANTS/ISSUE
Table of Contents

§5. The Rights of Other Heirs 201
§6. Adoption 201

Chapter 5. Intestate Succession of Muslims 203

§1. Introduction 203
§2. The Rule of Fixed Portion (Faraid) 205
  I. Exclusion of Heirs in Male, Female and Mixed Lineages 205
  II. Shares Allotted to a Husband or Widower 206
  III. Shares Allotted to Wives or Widows 206
  IV. Shares Allotted to Children 206
  V. Shares Allotted to Father and Mother 207
  VI. The Umariyyatani Case 207
  VII. Shares Allotted to Full Sisters 207
  VIII. Shares Allotted to Sisters of the Same Father 208
  IX. Shares Allotted to Brothers and Sisters of the Same Mother 208
  X. Doctrine of Return or ‘Radd’ 208

Chapter 6. Administration of Estate 210

§1. Introduction 210
§2. Administration by the High Court 210
§3. Administration of Small Estates 213
§4. Administration by Public Trust Corporation 213
Family law is one aspect of the law that treats Malaysians differently according to their race, religion and custom. It is not the intention of the legislature to segregate them according to their creed. The present situation came about as a result of history and the development of Malaysian society.

Malaysia has always been under the influence of various religions and races. Prior to the English occupation, there was no uniform system of law, domestic or otherwise in Malaysia, although a Malay Legal Code had existed since the fifteenth century. Malay customary law, mixed with Hindu law and Muslim law, was also in existence but was mainly confined to the Malays. The Chinese and Indian customary laws were introduced with the large-scale immigration of Chinese and Indian labourers to assist in economic development of the then Malaya. Therefore, in many cases, judges had to take local customs into consideration.

Although Islam is, constitutionally, the official religion of Malaysia, other religions are permitted. Previously, each individual ethnic group was governed by a mixture of customary and civil law. Islamic law applied to Muslims, the Malay Adat to certain sections of the Malay people, Hindu law to those who profess the Hindu religion and Chinese law to the ethnic Chinese. However, the scope of these personal laws was confined to family law only.

Highlighting the need for legislative intervention in personal law, in the case of Re Ding Do Ca deceased, L.P. Thomson commented that:

The whole question of personal law in the country particularly as regards questions of marriage, divorce and succession, calls for the attention of the legislature. As regards persons professing Islam, the position is tolerably clear. But as regards persons of Chinese race, the law the courts are administering is probably different from any law, which exists or even existed in China. The same sort of position may well arise in relation to persons professing the Hindu religion by reason of the enactment in India of the Hindu Marriage Act 1955.

In all matters relating to the family, Muslims are governed by Muslim law. Although the then Lord President stated that the position as regards persons professing Islam is tolerably clear, there were also defects in the administration of the Islamic family law in Malaysia. As Islamic law falls within the purview of the State authorities, each State in Malaysia had its own law for the administration of the Islamic family law, as well as its own system of courts, and for this reason most parts of the law were administered at the State level in the State Qadhi's courts.
Preface

The provisions in the various enactments were somewhat similar as they were all based on Islamic law. However, although the enactments followed the same pattern and had much in common, there were sometimes significant differences between them, and these gave rise to the diversity and complexity that became the hallmark of Muslim family law in Malaysia. Furthermore they contained numerous loopholes and weaknesses, which were taken advantage of in certain quarters.

The high divorce rate among Muslims in the country was particularly alarming and this led to the demand by various organizations for a revision of the law, to consolidate and improve its provisions, thereby making them more or less uniform among the States. Against this background, the Federal Government made an attempt to draw up a model law for a uniform administration of Islamic family law. A draft was prepared which was approved in principle by the Conference of Rulers. It was sent to the various States for their comments and approval. In Kuala Lumpur, this resulted in the enactments of the Islamic Family Law (Federal Territory) Act 1984 (Act 303) based on the advise of a committee set up to consider the legislation. Although the original intention was to have uniformity of the law among the various states, this has unfortunately not been possible until mid-2001 when the Council of Rulers approved six drafts of Islamic laws which include Islamic Family Law. This positive development towards uniformity bore fruit, with all states (except Kedah) adopting the model law (after some amendments) from 2002 onwards.

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