

Shariah Law: Impact on non-Muslim spouses and children

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Outline of Presentation

- ✦ A snapshot of Malaysia
- ✦ Plural legal systems
- ✦ Family law: Non-Muslims
- ✦ Family law: Muslims
- ✦ When two worlds intersect

A snapshot of Malaysia



- ✦ Federation of 13 states & 3 federal territories
- ✦ The Federal Constitution (FC) is the supreme law of the federation
- ✦ Islam is the religion of the Malaysia but other religions may be practised in peace and harmony
- ✦ 61% Muslims, 19% Buddhists, 9% Christians, 6% Hindus and 5% others
- ✦ 9th Schedule, FC - Federal, States and Concurrent Lists

Plural legal systems



- ✦ Civil Court system
- ✦ Syariah Court systems
- ✦ Natives Court systems

Family law: Non-Muslims



Law Reform (Marriage & Divorce) Act 1976 (LRA)

- non-Muslims
- monogamous marriages
- welfare of the child is paramount
- child of 7 years and below presumed to be better off with mother - wishes of parents and children considered.
- custody orders may have conditions: access, education, religion, travel out of Malaysia

Family law: Non-Muslims



Guardianship of Infants Act 1961 (GIA)

- ✦ Child: 21 years and below (LRA – child is 18 years and below)
- ✦ Both parents are guardians
- ✦ Guardians shall have custody
- ✦ Guardians responsible for support, health and education

Family law: Muslims



- ✦ Each State and the 3 Federal Territories have different laws
- ✦ Non-Muslims must convert to marry Muslims
- ✦ Generally: Family Law enactments and Administration of Islam enactments
- ✦ **Islamic Family Law (Federal Territories) Act 1984**
 - Welfare of the child

Family law: Muslims



- ✦ Custody:
 - mother shall be of all persons the best entitled to custody up to 7 years (male, maximum 9) and 9 years (female, maximum 11)
 - custody devolves upon father after that, but child may express wishes
- ✦ Only fathers and other male members may be guardians

Family law: Muslims



✦ Administration of Islamic Law (Federal Territories) Act 1993

- Conversion of children: either parent or guardian may convert the child to the religion of Islam

Note: position differs depending on the States

When two worlds intersect



✦ Jurisdiction:

- Dissolution of marriage and ancillary relief: civil courts have jurisdiction

Viran Nagapan v Deepa Subramaniam

[2016] 3 CLJ 505 (FC)

When two worlds intersect



- ✦ Unilateral conversion of children: Syariah courts have jurisdiction, subject matter approach adopted

Pathmanathan Krishnan v Indira Gandhi Mutho & other appeals

[2016] 1 CLJ 911 (CA)

Leave to appeal to the Federal Court granted. No date fixed yet.



Thank you

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