

# DIVORCE



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### DIVORCE: HUSBAND

- (1) If the husband wishes to initiate a divorce, he has to submit an application to the relevant court and he may only proceed if a Judge grants leave.
- (2) If the wife agrees to the divorce, then the husband may divorce his wife with the leave of court.
- (3) If the wife wishes to remain in the marriage, the Judge will refer them to the conciliation division.
- (4) The conciliation process must be completed no later than 3 months.
- (5) The conciliation division will inform the Judge on the status of the process, whether it was successful or not.
- (6) If the judge is satisfied that the parties will not be able to remain married, the Judge will grant leave to the husband to divorce his wife.
- (7) If the reconciliation is successful and the couple communicates this to the court, the application for divorce by the husband will be dismissed

### DIVORCE: WIFE

- (1) A wife may apply for divorce based on the following grounds:
  - (a) The husband has done something to damage the reputation and dignity of the wife
  - (b) The husband has been cruel and abusive to the wife
  - (c) The husband has forced the wife to commit an act that goes against Islam
  - (d) The husband has abstained from sexual relations with his wife for more than 4 months without justifiable reason
- (2) The judge will then refer the matter to the conciliation division
- (3) The conciliation process must be completed no later than 3 months

- (4) The conciliation will inform the Judge whether or not the conciliation was successful. If the judge is satisfied that the parties will not be able to remain married, the court will then dissolve the marriage by a *baayin* divorce
- (5) If the reconciliation is successful and the couple communicates this to the court, the application for divorce by the wife will be dismissed

## GROUNDS OF DIVORCE

Khul'u divorce	A divorce by agreement, where the parties to the marriage agree that the wife may seek a divorce from her husband by giving him something of value
Faskh	A woman can make an application for dissolution of marriage by <i>Faskh</i> provided that the conditions stated below are met. In such a case, the court shall dissolve the marriage without referring the matter to conciliation.
Thafriq	<i>Thafriq</i> is the special right of a woman under Islamic shariah to demand a divorce where the court finds that any of the grounds stated under the Islamic shariah for <i>thafriq</i> continue to exist. The wife can request for a divorce when the husband has committed an act of domestic violence against his wife

### Is the conciliation process compulsory?

It depends. The Family Law Act allows for dissolution by *Faskh*. If the following has occurred, the court can dissolve the marriage WITHOUT referring the matter to the conciliation division:

- (a) the husband cannot be located for over one year and the wife does not know where he is
- (b) the husband failed to provide maintenance for 3 months in a row and the matter has been filed in court twice and the husband has defaulted on orders to make payment.

- (c) the wife was not aware that the husband is impotent. In order for this to apply, the wife must be prepared to provide evidence that the husband is impotent.
- (d) the husband has been in a state of insanity for 2 years
- (e) the husband suffers from a dangerous and contagious disease which cannot be cured
- (f) any other event that allows for a marriage to be dissolved by faskh, according to the principles of Shariah

### **Can my husband divorce me by triple divorce in a single pronouncement?**

No – it does not matter what words or the number of times it is said. The act of a husband divorcing his wife will be deemed a single divorce.

### **How do I divorce by way of *Thafriq*?**

*Thafriq* is the special right of a woman under Islamic shariah to demand a divorce where the court finds that any of the grounds stated under the Islamic shariah for *thafriq* continue to exist.

The wife can request for a divorce when the husband has committed an act of domestic violence against his wife, based on the following grounds:

- (a) seriousness of the act of domestic violence results in the failure of a peaceful life between the husband and wife;
- (b) safety and wellbeing of the wife cannot be guaranteed in reference to the seriousness of the domestic violence;
- (c) in spite of the implementation of other measures prescribed under the Prevention of Domestic Violence Law, the marriage is irretrievably broken because of the act of domestic violence and it is impossible to remain married.

Once the court has ordered for a dissolution of marriage by way of *thafriq*, the marriage will come to an end immediately. The principles of Islamic shariah applicable upon the dissolution of a marriage shall also apply to both the husband and wife

## DIVISION OF PROPERTY IN A DIVORCE

In a divorce proceeding, the court has the power to distribute property acquired by the couple during the course of marriage provided that there is a nuptial agreement between the party that provides for division of property.

### What if there is an existing nuptial agreement?

If the parties do not dispute the nuptial agreement, property will be divided in accordance with the agreement. However, (and continue with the existing sentence provided here already)

### What is an equitable distribution?

By law, equitable distribution will consider:

- (a) the property or the amount of money the couple came into possession during their marriage.
- (b) the portion or amount due to the husband and wife from the property or money

### In divorce proceedings, how do I determine which assets remains mine and which assets will be eventually divided by the court?

The property that will be subjected to division during divorce proceedings is referred to as 'jointly acquired matrimonial property'. This includes all movable property, immovable property, cash and other property and money stipulated acquired jointly and individually by the parties to the marriage, during the time you remained married.

The following property and money are deemed individually acquired and will NOT be subject to division:

- property and money individually acquired,
- property and money in individual names and,
- property and money received by way of probate, gift or will before marriage shall be interpreted as

However, there is one exception: for property individually acquired before marriage but was made use of and its value increased during the marriage, it will be deemed as 'jointly acquired matrimonial property' and will be subject to division.

**The house we lived in is in my husband's name but I have been servicing the loan and maintaining the upkeep of it. I believe that for all intent and purposes I should be the home owner. Will the court take this into account - how do I ensure that my rights and interest is protected?**

Not to worry, just because the title of the property acquired during marriage is the name of one person, it does not mean that the ownership will be automatically go that person.

The court is bound to take into account the following when deciding the rightful portion to the husband and wife:

- (1) the amount of money or effort put in by the parties individually to acquire the property or money;
- (2) the duration of the marriage;
- (3) the extent of positive contribution made by the woman as the wife or as the mother of the children during the marriage regardless of she made any active physical or financial contribution towards acquisition of the property or money;
- (4) any debts owing by either party which may be tied to the property or money.

**For practical reasons, not all assets and property can be divided equally. My husband and I bought a motorcycle together. Now that we will be divorced, I wish to continue using it without having to buy a new motorcycle. How will my interest be protected?**

For practical reasons, not all assets and property can be divided equally. In instances where due to the nature of it, the property (in this case, the motorcycle) cannot be divided, the court will order a valuation of the property based on its current market value to determine its value. The court may then order one party

to retain the property and compensate the other party based on the monetary value. Both parties must agree as to who keeps the property in question. If both parties cannot come to an agreement, the court will decide who retains the property.