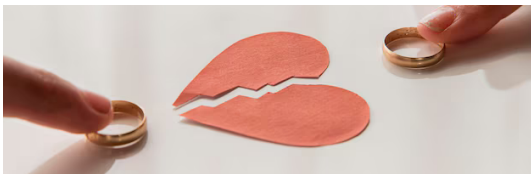


JUDICIAL SEPARATION UNDER THE LAW REFORM (MARRIAGE AND DIVORCE) ACT 1976

1. What is judicial separation?

Judicial separation is an alternative to divorce in which the court may make a decree of judicial separation to absolve parties to a marriage of their marital obligations. Judicial separation is governed by Sections 48(1) and 64 of the Law Reform (Marriage and Divorce) Act 1976 ("the Act").

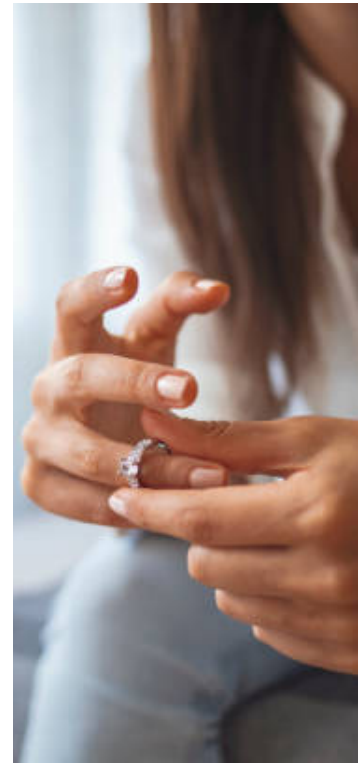
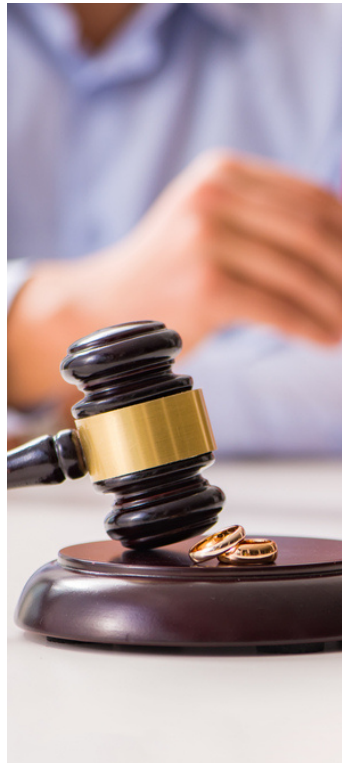


2. Who may apply for a decree of judicial separation?

Any spouse may apply for a decree of judicial separation having considered that:

- the marriage must be registered or deemed to be registered under the Act or was contracted by any law providing for monogamous marriage; and
- both parties to the marriage must ordinarily reside in Malaysia at the time of the commencement of proceedings.^[1]

Not to mention, unlike a petition for divorce, parties are not required to wait 2 years from the date of their marriage to apply for a decree of judicial separation.



3. Grounds for presentation of petition for judicial separation

A petition for judicial separation may be presented on the same circumstances as those that apply for a unilateral divorce on the grounds that the marriage has irretrievably broken down due to one or more of the following factors:

- that the respondent has committed adultery, and the petitioner finds it intolerable to live with the respondent; and/or
- that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent; and/or
- that the respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition; and/or
- that the parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition.^[2]

Notwithstanding the above, the presentation of a petition for judicial separation does not require a marriage to be referred to a conciliatory body under **Section 106(1) of the Act**.

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4. Effect of a decree for judicial separation

Once the court has granted a decree of judicial separation, the petitioner is longer obligated to cohabit with the respondent.^[3]

5. Interim applications

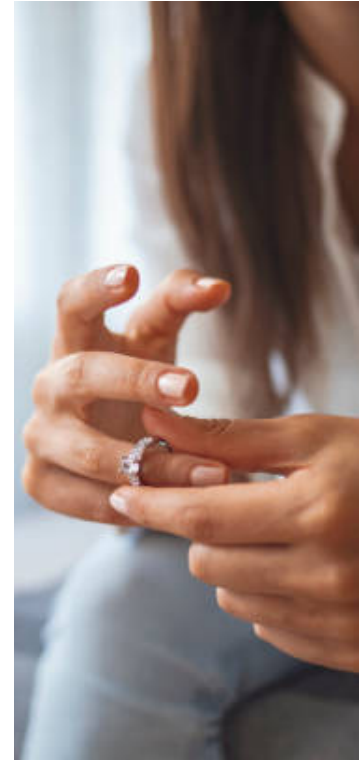
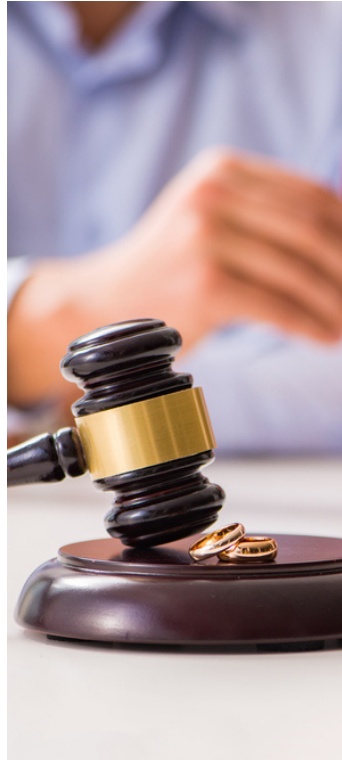
The court may also invoke its ancillary power pending the disposal of the petition to make an order for the following:

- to order a husband to pay maintenance to his wife;^[4]
- to set aside or prevent any dispositions of property intended to defeat claims to maintenance; and^[5]
- to order an injunction to refrain any person from forcing their society on their former spouse and from acts of molestation.^[6]

6. Other rights under judicial separation proceedings

The grant of a decree of judicial separation does not prevent any parties from presenting a petition for divorce unless the respondent can prove that the facts are substantially different. In such a case, the court may regard the decree of judicial separation as sufficient proof of the adultery, desertion, or other ground on which it was granted.^[7] In this situation, the court finds it unreasonable to insist on the subsistence of a marriage if it has clearly broken down.^[8]

A party to a judicial separation proceeding may seek for an order for division of matrimonial assets.^[9] Pending the disposal of an ancillary order for the division of matrimonial assets, the court may consider each party's contribution to the property, any debts owing by either party which were contracted for their joint benefit, the needs of their minor children (if any) and the duration of the marriage.^[10] However, an order for division of matrimonial asset is limited to the period when granting a decree of judicial separation and not after a decree nisi has been made absolute.^[11]



A husband who had been judicially separated from his deceased wife is entitled to her property, in a case where she dies intestate.^[12] The treatment given to the estate of a deceased wife who died intestate is the same as if the husband survives her.^[13] The same principle applies if the husband dies intestate; his estate will be governed by the laws of succession, keeping in mind that the marriage was subsisting at the time of death. However, when a valid will is in place, the property of the deceased spouse will be distributed in accordance with the will.^[14] Keep in mind that a valid Last Will and Testament takes precedence over any other claims regarding the estate for the purpose of succession.

Where alimony has been ordered to be paid to the wife and the husband fails to fulfil his obligations, he shall be held responsible for the costs of necessities supplied for her support.^[15]

A recent development in the law allows for a judicial separation petition to be treated in the same manner as a divorce petition in respect of a claim for damages based on adultery. As such, where judicial separation is concerned, a petitioner may seek for damages against a co-adulterer/adulteress and/or name them in the petition as a co-respondent.^[17]

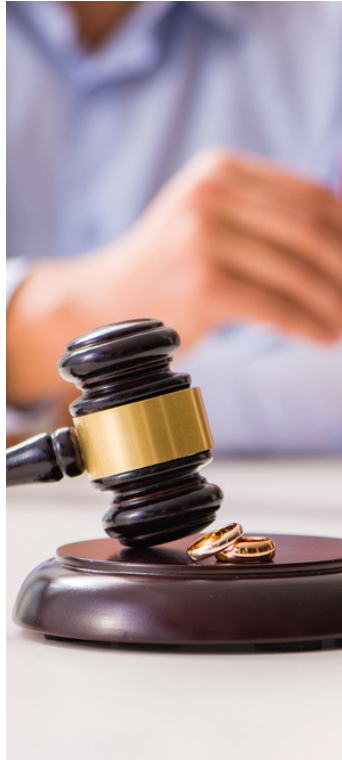
JUDICIAL SEPARATION UNDER THE LAW REFORM (MARRIAGE AND DIVORCE) ACT 1976

7. Conclusion

In conclusion, judicial separation under the Act provides a viable alternative to divorce, allowing couples to live apart while retaining certain marital rights and obligations. It facilitates the resolution of issues such as maintenance and asset division without a lengthy waiting period. Importantly, judicial separation does not prevent either party from later seeking a divorce. This legal option provides couples with a path to reconciliation without the need to remarry. It also serves as a suitable alternative for couples whose religious beliefs strongly oppose divorce.

References

1. Section 48(1) of the Law Reform (Marriage and Divorce) Act 1976
2. Section 54 of the Law Reform (Marriage and Divorce) Act 1976
3. Section 64(2) of the Law Reform (Marriage and Divorce) Act 1976
4. Section 77(1) of the Law Reform (Marriage and Divorce) Act 1976
5. Section 102(1) of the Law Reform (Marriage and Divorce) Act 1976
6. Section 103(1) of the Law Reform (Marriage and Divorce) Act 1976
7. Section 65(1) and (2) of the Law Reform (Marriage and Divorce) Act 1976
8. Satheesan a/l TA Menon v Ayginus Shirley a/p John [2013] 7 MLJ 257
9. Section 67(1) of the Law Reform (Marriage and Divorce) Act 1976
10. Section 67(2) of the Law Reform (Marriage and Divorce) Act 1976
11. Manokaram Subramaniam V. Ranjid Kaur Nata Singh [2008] 6 CLJ 209
12. Section 66(1) of the Law Reform (Marriage and Divorce) Act 1976
13. G Nagarajan a/l Ganesan v Suthakari a/p Renu [2020] MLJU 2255
14. Section 3 of the Wills Act 1959
15. Section 66(2) of the Law Reform (Marriage and Divorce) Act 1976
16. Federal Court decision in AJS v JMH And Another Appeal [2021] MLJU 2445
17. Section 58 of the Law Reform (Marriage and Divorce) Act 1976



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