

Understanding Annulment vs. Divorce in Malaysia: Your Questions Answered!

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We understand that ending your marriage could be difficult, and so are the procedures. Fret not, we've put together a helpful guide that highlights some of the important considerations that you need to know when it comes to ending a marriage. In this article, we'll explain the key differences between the annulment of marriage and divorce as these terms can often be confusing. By the time you finish reading, we believe everything will make a lot more sense for you.

Q1: Annulment vs. Divorce: Core Differences

- **A:** Great question! Annulment and divorce are distinct legal processes for ending a marriage. Annulment treats a marriage as if it never existed, declaring it void or voidable. This means the marriage is considered legally invalid from its inception. In contrast, divorce acknowledges that a valid marriage existed but terminates it. In divorce proceedings, the court may address and make orders regarding custody, maintenance and division of matrimonial property, meanwhile annulment merely serves as a remedy for marriages that were never legally valid.

Q2: What makes a marriage void?

- **A:** A marriage is considered void if it was never legally valid. This can occur due to various factors, including:
 - One party was already married.
 - The individuals are underage without proper consent.

- The parties are closely related.
- The marriage involves same-sex couples, which is not recognized in Malaysia and is a crime under the Penal Code.

Q3: Grounds for Voidable Marriages

- **A:** A voidable marriage is valid until annulled. Several grounds can lead to a voidable marriage, including:
 - The marriage wasn't consummated due to incapacity.
 - One party refuses to consummate without justification.
 - The marriage was entered into under duress or misunderstanding.
 - One party was mentally unfit at the time of marriage.
 - One party had a communicable venereal disease.
 - One party was pregnant by someone else at the time of marriage.

Q4: Filing for Annulment in Malaysia

- **A:** To file for annulment, you must meet certain conditions:
 - The marriage must be registered under the Law Reform (Marriage and Divorce) Act 1976.
 - Both parties must reside in Malaysia at the time of filing.

Q5: Filing for Divorce in Malaysia

- **A:** To file for divorce, you must meet certain conditions:
 - The marriage must be registered under the Law Reform (Marriage and Divorce) Act 1976.
 - Both parties must reside in Malaysia at the time of filing.
 - Generally, you must wait two years after marriage to file for divorce, unless there are exceptional circumstances, like one spouse converting to Islam or facing hardship.

Q6: Grounds for Divorce in Malaysia

- **A:** Grounds for divorce include:

- Adultery.
- Unreasonable behaviour that makes it intolerable to live together.
- Desertion for at least two years.
- Living apart for two years, regardless of consent.

Q7: Conciliation Requirement for Divorce

- **A:** Did you know that before a divorce application can proceed, it must be referred to a conciliatory body? Yes! It is a requirement under Section 106 of the Law Reform (Marriage and Divorce) Act 1976 where you will be subjected to 3 sessions before a marriage tribunal at the National Registration Department (JPN), for reconciliation of the marriage difficulty, subject to exceptional circumstances. Upon completion of all sessions, the tribunal will decide whether the marriage can be reconciled.

Q8: One party refuses to attend the conciliation sessions

- **A:** If one party refused to attend the conciliation sessions as required under Section 106 of the Law Reform (Marriage and Divorce) Act 1976, the tribunal will either fix a new date, or the JPN may straight issue a certificate of non-conciliation for the other party to move the single petition.

Conclusion

Understanding the distinctions between annulment and divorce is crucial for anyone facing marital issues in Malaysia. Knowing whether to pursue annulment or divorce can significantly impact your legal rights and obligations. It encourages you to make informed decisions and choices that align with your circumstances.

If you have more questions or need further clarification, feel free to contact us at +03-6420 2928 or office@shankargovinth.com! We'll be happy to assist you.