

**DISSOLUTION OF MARRIAGE UPON CONVERSION OF  
RELIGION: LOOKING AT THE MARRIAGE AND DIVORCE  
SETTLEMENT**

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**ABSTRACT**

This thesis concerns with the family law in Malaysia where it deals with the area of divorce settlement upon conversion into Islam. The main intention of this research is to make a fair comparison which court has jurisdiction to grant a divorce and which family law could be applied for granting the divorce settlement to both parties.

The position of our judiciary is split into two jurisdictions whereby each of the court is bound to the converted party whilst the other party is bound to High Court's jurisdiction only. The amendment of Article 121 (1A) has split both jurisdiction where neither of it can contravened each other's jurisdiction.

Furthermore, comparison is made between the Law Reform (Marriage and Divorce) Act 1976 and the Islamic Family Law (Federal Territories) Act 1984 in order to understand the rights of both converted party and the non-converted party. Besides that this research also put a vital concentration on relevant decided cases before and after the amendment of Article 121 (1A) in order to determine factors taken by the court in deciding the divorce settlement.

There are two forms used as research methodology which the vital methodology is cases review as it is the major part to understand the position of the court on the issues of granting a divorce together with settlements to the parties. Library research is the second methodology used in this research which consists of case laws, textbooks, articles, and statutes.

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## CHAPTER ONE: INTRODUCTION

### **1.0 Introduction**

As a country that is made of plural society with various religious and cultural beliefs, there are mixed marriages and adoption of new faith everyday. Malaysians fall in love; wish to get married or in the midst of divorce. In such scenario, the matter will go beyond family institutions as it will involve religious institutions and eventually, will result in legal, political as well as social impact.

No issue will arise when the parties of the marriage live in peace and harmony. However, when one spouse converts into another religion or changed his/her faith, the issues of status of the marriage, division of matrimonial assets, maintenance and custody of children are inevitable of avoidance. The issues become more complicated due to the Dual Family Law system in Malaysia and these problems have yet been able to be resolved in satisfactory manner.

Family law in Malaysia is guided by two pieces of legislation namely Law Reform (Marriage and Divorce) Act 1976 for non Muslims and Islamic Family Law (in this research Islamic Family Law applicable in Federal territories) for Muslims. It is not the aim of the legislature to separate Malaysians according to their creed. The present situation came about as a history and the development of Malaysian society.

Large scale of immigration of Chinese and Indians to assist the economic development of Malaya came together with Chinese and Hindus customs in addition to the locals.<sup>1</sup> Their personal matters such as marriages, divorce and successions are guided by their own customs and laws accordingly. These differences have brought vast difficulty in Malaysian society, and it was then the Law Reform (Marriage and Divorce) Act 1976 being introduced.

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<sup>1</sup> Dr Zaleha Kamaruddin *Introduction To Divorce Laws in Malaysia* (International Islamic University Malaysia Kuala Lumpur 1998) pg 1

Thompson L.P in the case of Re Ding Do deceased<sup>2</sup> said:

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

As regard to Muslims, they are governed by Islamic Family Law that is different for each state<sup>3</sup> but for the purpose of this research we will focus on Islamic Family Law Act (Federal Territories) 1984. However, the provisions in all enactments are quite similar as they are based on Hukum Shara<sup>4</sup> and the most different they may have is on administrative procedures.

The settlement for dissolution of marriage when either party converts to Islam or *vice versa* involves this two branches of law. However, before seeking for reliefs and settlements, the dissolution of the marriage must first be confirmed in both civil and Syariah law. However, the provisions for both family law systems regarding the effect of the marriage when either party convert to another religion is not in harmony with each other. The tangle between the two will definitely effect the settlements for the marriage and divorce and this is the area which the study will focus on.

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<sup>2</sup> 1966 2 ML J 220

<sup>3</sup> Federal Constitution provides the Muslim Personal and Family law and Malay customs are matters within legislative and executive competency of the States. List 11 Ninth Schedule of State List

<sup>4</sup> As according to Shafi'e school