

KEYNOTE ADDRESS AT PRACTICE AND PROCEDURE IN THE ADMINISTRATION OF MUSLIM FAMILY LAW BY THE HONOURABLE JUSTICE VALERIE THEAN

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Introduction

1 I am honoured that you have asked me to speak this morning. Your invitation reflects deep bonds within our community, as a community that welcomes diversity. This morning, let me talk about three aspects of our shared multi-cultural, multi-ethnic diversity that can be seen in the administration of Muslim law in Singapore. First, its philosophical rationale. Second, our legal architecture which brings this rationale to life. And third, how the practical outworking of these conceptual strands within our family law systems has made our lives so much stronger, better, and richer.

The Singapore brand of multi-culturalism

2 First, let me talk about our unique Singapore brand of pluralism. It is a pluralism rooted in a deep respect for our heritage. The law relating to the administration of Muslim law in Singapore has a long history, dating from the Mahomedan Marriage Ordinance V of 1880. When Singapore first came into its own in 1965, Article 153 of the Constitution required that the legislature shall by law make provision for regulating Muslim religious affairs. While our first Prime Minister promised that in Singapore all races will be equal, this was an equality premised upon appreciation of our heritage. The Administration of Muslim Law Act (“AMLA”) was enacted in 1968.

3 Thus, the smooth administration of Muslim law was embedded early in our philosophy of diversity. It is entirely unique to Singapore that we do not want everyone to be the same, but to move forward appreciating how we are all different. Prime Minister Lee Hsien Loong said in 2017, at the opening of the Singapore Chinese Cultural Centre:

“We are ... a multi-racial, multi-religious, and multi-cultural society, ...

This diversity is a fundamental aspect of our respective identities. Our aim is integration, not assimilation. No race or culture in Singapore is coerced into conforming with other cultures or identities, let alone that of the majority.

Ours is not a melting pot society. Instead, we encourage each race to preserve its unique culture and traditions, while fostering mutual appreciation and respect among all of them. Being a Singaporean has never been a matter of subtraction, but of addition; not of becoming less, but more; not of limitation and contraction, but of openness and expansion.”

4 Deputy Prime Minister Lawrence Wong, speaking at the S. Rajaratnam School of International Studies on 25 June 2021, explained this concept by contrasting the Singapore approach usefully with two others. First, French universalism, which emphasises assimilation into a dominant French culture, and second, the American “melting pot” approach, which seeks to create a uniform community based on parts of each culture, but with each component losing something of itself at the same time. Both methods seek to create what he termed a monolithic society. In Singapore, our aim is instead to embrace our respective inheritance, respect those of others, and go beyond them, to encompass a national identity and a shared purpose.

The legal architecture of our multi-culturalism

5 And this is the approach we see within our statutory architecture for the administration of Muslim law. This architecture is set out in the Supreme Court of Judicature Act 1969 and the AMLA. The AMLA mandates that the Syariah Court has jurisdiction to hear and determine all actions and proceedings where: a) the parties are Muslims or were married under Muslim law; and b) the dispute relates to specific areas of personal law, including marriage, divorce, disposition of property on divorce or nullification and maintenance. For the High Court’s jurisdiction, that is delineated by s 17A of the SCJA.

6 These spheres of jurisdiction overlap. For certain core areas, such as those relating to marriage, divorce, betrothal, nullity of marriage or judicial separation, the High Court has no jurisdiction and the Syariah Court’s jurisdiction is exclusive. Thus we see that in deeply personal matters, our model accepts the need for diversity. The Women’s Charter, first enacted in 1961, maintains this diversity.

7 In certain areas outside of this core, the High Court and the Syariah Court share concurrent jurisdiction. This concurrence in jurisdiction sets us apart from other jurisdictions in which Muslim law feature. In Malaysia, for example, Article 121 of the Constitution provides that the civil High Court has no jurisdiction over matters which are within the jurisdiction of the Syariah courts. This concurrent jurisdiction of the High Court and Syariah Court was the result of amendments to the SCJA in 1999. At the time, Minister for Community Development and Minister-in-charge of Muslim Affairs, Mr Abdullah Tarmugi, explained that the concern of the Select Committee was that Muslims, as citizens of this country, must be allowed the same right of access to civil courts as other citizens.

8 These areas of concurrence allow for good conversation, a seeking of shared purpose as we advance together in a common space. Let me take, for example, the division of financial assets on divorce. Section 52 of AMLA provides that the Syariah Court has the power to divide property between divorcing spouses in a manner that it thinks just and equitable. And it sets out the non-exhaustive list of considerations that the Syariah Court may take into account in making its determination. Section 112 of the Women's Charter is the same.

9 Case law has developed in tandem. In *ANJ v ANK* [2015] 4 SLR 1043, the Court of Appeal set out a structured approach to determine a just and equitable division of matrimonial assets. In the Syariah Court, the Appeal Board, in *CY v CZ* (2020) 8 SSAR 38 noted that this structured approach provided a principled methodology for a just and fair division of matrimonial property. In *DZ v EA* (2021) 8 SSAR 241, the Appeal Board went further, and suggested that the structured approach should be at the forefront of every practitioner's mind when dealing with the issue of division.

10 The High Court, on its part, also has its own sphere of jurisdiction. In this respect, it is important to note that the application of Muslim law in Singapore is not limited to proceedings in the Syariah Court. It is applied in civil courts as an integral part of our laws. This is important because disputes involving Muslim law fall within the civil courts' jurisdiction. We see this, for example, in probate disputes. Under s 112(1) of the AMLA, where a Muslim person dies in Singapore intestate, their estate shall be distributed according to the Muslim law, as modified

where applicable by Malay custom. In *Shafeeg bin Salim Talib v Fatimah bte Abud bin Talib* [2010] SGCA 11, the Court of Appeal clarified that the question of what assets constitute the estate and effects of a deceased Muslim must also be first determined according to Muslim law and not the common law. In such cases, Muslim law need not be proven like foreign law, as it is part of the law of the land.

11 This local approach has enabled us to resolve gaps in the legislative framework. In *TMO v TMP* [2017] 1 SLR 585, the Court of Appeal answered the question of whether there is any jurisdiction to make orders for financial relief where parties were married under Muslim law in Singapore but were divorced in a Syariah Court in another jurisdiction. A woman, divorced in Malaysia, required assistance in dividing financial assets in Singapore. The difficulty arose from section 3(2) of the Women's Charter, which includes the provision allowing the court to order financial relief pursuant to foreign divorce proceedings as a provision that does not apply to persons married under Muslim law. At the same time, s 52(3) of the AMLA stipulates that the Syariah Court's power to order financial relief only extends to divorce proceedings that were brought before it. As such, its power does not extend to divorces obtained in foreign Syariah Courts. The Court of Appeal concluded that s 3(2) of the Women's Charter is subject to an important qualification, that where the Syariah Court lacks jurisdiction over a dispute, the High Court retains residual jurisdiction over the matter. Thus we see our local model flexibly covers what would otherwise be a gap in legislation.

Practical outworking of the architecture

12 Coming to my third area, how does this architecture look like in real life? On a day-to-day level, we need to ensure the law translates well into practices on the ground.

13 Here again, deep respect for our heritage is crucial. I recall some years ago celebrating with our in-house counsellors at FJC who had successfully resolved a string of domestic violence cases. These particular disputes involved multiple families across an extended family umbrella of in-laws living in close proximity, involving different issues of gender and elderly violence, debt and differences between two different Muslim traditions. Finally, after a series

of co-mediations, our two counsellors – one a male Malay Muslim and the other a female Indian Muslim - used the occasion of Prophet Muhammad’s birthday to secure peace amongst the families.

14 Demonstrative of our aim to forge a national identity, we see similarities in the specific practices adopted by the Syariah and Family Justice Courts. For example, at FJC, parties may be directed to support services facilitated by DSSAs. This includes the Parenting PACT programme, a one-time consultation for divorced parents with children below the age of 21. It aims to help parents understand the impact of divorce on their children and teach them co-parenting strategies as they move forward. In the Syariah Court, attending the Parenting PACT programme is a condition for parties before obtaining Certificates of Divorce. For these Muslim parties, it is conducted by the PPIS As-Salaam FSC.

15 This year, amendments were made to AMLA to further the joint collaboration between the civil and Syariah Courts. Minister for Social and Family Development and Minister-in-charge of Muslim Affairs, Mr Masagos Zulkifli, explained that the amendments seek to allow the adoption of updated processes, and to keep pace with broader developments in family law. Thus, for example, a new s 43C of the AMLA allows the court to advise parties to secure their child’s completion of a programme for children. A new s 132A of the Women’s Charter was inserted to similar effect earlier in the year.

16 And yet, it is not just a matter of aligning systems. Mindset, the ethos we bring to each case, is crucial. In such a space, therapeutic justice helps us, because it is a flexible tool that looks to the needs of each specific family; a “lens of care”, as Presiding Judge Debbie Ong put it in her Workplan Speech 2020. In *VDZ v VEA* [2020] 2 SLR 858, the Court of Appeal recognised therapeutic justice as a necessity, not simply an ideal.

17 Therapeutic justice has also been recognised as an important principle in the Syariah Court. In her closing address at the Family Conference 2022 last month, Senior President of the Syariah Court, Mdm Guy Ghazali, called therapeutic justice an essential of family justice that cut across the civil courts and the Syariah Courts. She explained how therapeutic justice

is directly connected to the aim of preserving the welfare and best interests of the child, which is yet another universal principle of family justice that applies equally in the civil and Syariah Courts.

18 And this focus on child welfare must unite us all. Attending to what our children need attends to our future as a society. Mixed marriages are now commonplace. In 2021, 16.2% of all marriages in Singapore were between persons of different ethnicities. The figure was a higher 22.4% for marriages under the AMLA. While at the FJC, I was privileged to have assisted parties with many complex child arrangements. For example, the same child may need to be with one parent for Christmas, and yet be with another before sunset prayers on specific days. Grandparents too, often have views on particular religious classes or demands for particular cultural holidays. Some might ask why parties would humour grandparents. But on a very practical level, in our local Asian context, grandparents are very often key caregivers. Respect for each person's heritage and specific concerns is fundamental to anchoring the kind of conflict-free childhood that every child should have. Children need strong bonds of affection and a harmonious environment in which to grow and to flourish.

Conclusion

19 In conclusion, our common spaces are to be treasured, guarded as family treasure to be passed from generation to generation. Speaking of family treasure, Academy Publishing is launching today its first textbook on Muslim Family Law in Singapore. This textbook is the result of a collaboration between veteran practitioners in Muslim law, respected Muslim scholars and the Legal Aid Bureau. There has been no equivalent textbook touching on this area of practice in Singapore since Ahmad Ibrahim's textbook on Islamic Law in Malaya in 1965. Now, we have a useful and practical guide to the many questions we have on substantive Muslim family law and procedure. Reading the draft the authors sent me, I wish I had had the benefit of the last chapter when I dealt with an inheritance case just 2 months ago. I congratulate our authors and SAL on its publication.

20 This morning's event is also a first of its own. Panellists today comprise past and present members of the Syariah Court, as well as the MUIS Appeal Board, some of whom have held or also hold judicial appointments at the FJC. There has not been an event involving so many members of the Muslim family law bench, with topics specifically curated to allow practitioners to directly interact with members of the bench on practice-oriented issues. At the various sessions, we can hear each other out and explore ideas together, thus deepening the storehouse of our knowledge with treasures old and new.

21 I wish you all an enriching day ahead. Thank you