



Newsletter 05/2021

A summary of the facts the Court will have regard to in determining whether a marriage has irretrievably broken down. Applicable only to non-Muslims and single petition divorces.

Broadly speaking, a non-Muslim marriage can be ended by way of a joint petition (where both parties agree to the divorce) or a single petition (where e.g. only one party wants the divorce, or where both parties are unable to agree to the terms of the divorce).

In the event of a single petition, the petitioner (be it the wife or the husband) has to show that the marriage has irretrievably broken down.¹

In deciding whether a marriage has irretrievably broken down, the Court will consider the following facts:²

(a) that the respondent has committed adultery and the petitioner finds it intolerable to live with the respondent [**“Adultery + Intolerability”**];

(b) that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent [**“Unreasonable Behaviour”**];

(c) that the respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition [**“Desertion”**];

(d) 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 [**“Separation”**].

¹ Section 53(1) of the Law Reform (Marriage and Divorce) Act 1976

² Section 54(1) of the Law Reform (Marriage and Divorce) Act 1976



Newsletter 05/2021

A summary of the facts the Court will have regard to in determining whether a marriage has irretrievably broken down. Applicable only to non-Muslims and single petition divorces.

Adultery + Intolerability

If a petitioner relies on this ground to show that a marriage has broken down irretrievably, he/she has the burden of proving the allegation of adultery beyond reasonable doubt.³

In the event the respondent admits to the adultery, the allegation is proven⁴ and this would be sufficient to discharge the petitioner's burden.

In cases of adultery, the petitioner may include the alleged adulterer or adulteress a co-respondent. If the petitioner does so, he/she may claim for damages from the alleged adulterer or adulteress.⁵

³ *Shanmugam v Pitchamany & Anor* [1976] 2 MLJ 222, at p. 224; *Kang Ka Heng v Ng Mooi Tee & Anor* [2001] 3 MLJ 331, at p. 337

⁴ *Leow Kooi Wah v Ng Kok Seng Philip & Anor* [1995] 1 MLJ 852, at pp. 857 and 861

⁵ Sections 58 and 59 of the of the Law Reform (Marriage and Divorce) Act 1976

Unreasonable Behaviour

In deciding whether a marriage has irretrievably broken down on the basis of Unreasonable Behaviour, the judge will determine whether “any right thinking person [would] come to [such a] conclusion ... taking into account the whole of the circumstances and characters and personalities of the parties.”⁶

The categories of what amounts to Unreasonable Behaviour are open and very fact specific.

Examples of successful petitions premised on the ground of Unreasonable Behaviour include the following:

⁶ *Joseph Jeganathan v Rosaline Joseph* [1989] 3 MLJ 106, at p. 111; see also Sir George Baker P in *Katz v Katz* [1972] 1 WLR 955 at p 960, quoted in *Hariram Jayaram v Saraswathy Rajahram* [1990] 1 MLJ 114



Newsletter 05/2021

A summary of the facts the Court will have regard to in determining whether a marriage has irretrievably broken down. Applicable only to non-Muslims and single petition divorces.

- (a) abuse⁷ and humiliation of the petitioner;⁸ and
- (b) allegations of adultery incessantly causing quarrels and acrimony.⁹

Desertion

A petitioner must meet the following requirements to make out a case for Desertion:¹⁰

- (i) there must be physical separation that has existed two years immediately preceding the presentation of the petition;

- (ii) there must be intention on the deserting spouse to remain permanently separated;
- (iii) absence of consent on part of the deserted spouse; and
- (iv) absence of any reasonable cause for withdrawing from cohabitation on part of the deserting spouse.

Similar to Adultery, Desertion must be proven beyond reasonable doubt.¹¹

⁷ *Shameena a/p Nathesan v Balakrishnan a/l Kaliappan* [2017] MLJU 1849, at paragraph 18

⁸ *George Kennedy Best v Nyanamball a/p Sinappan* [2020] MLJU 1751, at paragraph 15; see also *Lee Hock Teong v Ching Suet Yeen* [2019] MLJU 1576, at paragraph 19

⁹ *George Kennedy Best v Nyanamball a/p Sinappan* [2020] MLJU 1751, at paragraph 15; see also *Khoo Boon Chin v Alice Tan Ling Mei* [2020] 7 MLJ 437, at paragraphs 2 and 5

¹⁰ *George Kennedy Best v Nyanamball a/p Sinappan* [2020] MLJU 1751, at paragraph 17, in reliance on *Thambyah v Thambyah* [1966] 1 MLJ 13

¹¹ *Thambyah v Thambyah* [1966] 1 MLJ 13, at p. 13



Newsletter 05/2021

A summary of the facts the Court will have regard to in determining whether a marriage has irretrievably broken down. Applicable only to non-Muslims and single petition divorces.

Separation

If a husband and wife have lived apart for a continuous period of at least two years, this would amount to “prima facie evidence of a breakdown”¹² of a marriage.

However, the petitioner still has to prove that the breakdown is irretrievable.¹³

What the petitioner needs to show is “both a physical separation and a mental attitude on the part of one or both of the spouses.”¹⁴

P. E. LIM ©

Website : pelim.my

Facebook: fb.com/pelim.my

LinkedIn : linkedin.com/company/pelim

Disclaimer: The contents of this newsletter are intended for information and academic discussion only and should not be construed as legal advice on a specific set of facts or circumstances

¹² *Bhanu Sekaramai v Nagamma* [1991] 2 CLJ Rep 350, at page 352

¹³ *Ibid.*

¹⁴ *Chong Lay Kwong v Lim Lay Kuan* [2001] 2 CLJ 492, at p. 496