

Ending a marriage in Singapore - divorce or annulment?*

I. Introduction

1 Ending a marital relationship is a major life decision, and it can be one that is stressful, emotional, and complicated. Should you be thinking of calling your marriage quits, you are not alone, and there are available avenues of the law you can turn to for your situation.

2 A marriage can be voluntarily ended either by annulment or divorce. This article explains these procedures and how to obtain them, and sets out some potential complications you might face in the process.

II. Discussion

3 In Singapore, marriage is a legal relationship formed between a man and a woman,¹ and is governed by the Women's Charter.² When a marriage breaks down, annulment and divorce offer parties a way to obtain relief from the marital relationship and its obligations.

A. Annulment

4 Annulment has its roots in the religious laws of England. Marriage was viewed as an indissoluble covenant by the church, and a divorce was therefore not recognised.³ Annulment was later developed by the ecclesiastical courts as a way to release parties from an unhappy union without going against the religious laws. Rather than acknowledging that a marriage has broken down, annulment allows the court to declare a marriage null and void.⁴ This simply treats the marriage as one which never existed.⁵

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¹ Women's Charter (Cap 353, 2009 Rev Ed) s 12(1).

² Cap 353, 2009 Rev Ed.

³ William T. Nelson, *Treatise on the Law of Divorce and Annulment of Marriage: Including the Adjustment of Property Rights upon Divorce, the Procedure in Suits for Divorce, and the Validity and Extraterritorial Effect of Decrees of Divorce* (1895), at section 565.

⁴ Leong Wai Kum, *Elements of Family Law in Singapore* (LexisNexis, 3rd Ed, 2018) at p 65, c.f. *supra* n 2, Women's Charter, s 104: "Any husband or wife may file a writ claiming for a judgement of nullity of his or her marriage."

⁵ *Id.*, at p 64: a void marriage refers to the relative absence of a marital relationship from the beginning.

5 Annulment remains an option in the Women’s Charter today.⁶ Parties who annul their marriage can avoid facing potential social stigma of being a ‘divorcee’,⁷ as they are simply restored to their ‘single’ status before the marriage.⁸

(1) How can I get an annulment?

6 The annulment process can be started by filing for a Writ of Nullity.⁹ An annulment applies to either a void or voidable marriage. A void marriage is one which never existed legally, while a voidable marriage is one which continues as if valid until either party chooses to prove that the marriage is otherwise.¹⁰ Notwithstanding this legal difference, both a void and voidable marriage give the same result of ending the marital relationship.

7 Under the Women’s Charter, a marriage is void if it fails to satisfy the formal requirements of a marriage. Examples of such failure include one or both parties being under the majority age of 18,¹¹ or the marriage not having been solemnized by an authorised person.¹²

8 On the other hand, a marriage is voidable if it is not consummated either because a party is unable to do so,¹³ or wilfully refuses to do so.¹⁴ This ground is not difficult to prove so long as both parties agree on that very fact, since the court’s investigative powers into the reality of the parties’ relationship are limited.¹⁵ A marriage could also be voidable if either party did not validly consent to the marriage, such as due to a mental disorder.¹⁶ An annulment for these reasons have to be brought to court within three

⁶ *Supra* n 2, Women’s Charter, Part X, Chapter 3 - Nullity of Marriage.

⁷ See Varda Konstam, Samantha Karwin, Teyana Curran, Meaghan Lyons & Selda Celen-Demirtas (2016) Stigma and Divorce: A Relevant Lens for Emerging and Young Adult Women?, *Journal of Divorce & Remarriage*, 57:3, 173: Divorce is a socially deviant label, and stigmatization may be a concern of more conservative individuals.

⁸ *Supra* n 4, *Elements of Family Law in Singapore* at p 71.

⁹ *Supra* n 2, Women’s Charter, s 104.

¹⁰ *Supra* n 4, *Elements of Family Law in Singapore* at p 63.

¹¹ *Supra* n 2, Women’s Charter, s 9.

¹² *Id.*, s 105(a), read with s 22(1)(2).

¹³ *Id.*, s 106(a).

¹⁴ *Id.*, s 106(b).

¹⁵ Debbie S. L. Ong, “Time restriction on divorce in Singapore” (2003) *Sing. J Legal Stud.* 418 at p 438.

¹⁶ *Id.*, s 106(c).

years from the date of the marriage.¹⁷ If three years have passed, the parties would have to seek a divorce instead.

- 9 An application for annulment can be challenged by a spouse on two grounds.¹⁸ They are: (i) that he or she was led to reasonably believe that the other spouse would not seek to avoid the marriage, or (ii) that an annulment would be unjust to him or her.
- 10 Since an annulment essentially declares that the marriage never existed, a potential concern might be the status of children born of such void or voidable unions. Fortunately, children born of a voidable marriage are recognised as legitimate.¹⁹ Children of a void marriage would also be legitimate if both or either of the parties reasonably believed that their marriage was valid.²⁰ The court also has powers to make ancillary orders relating to children of these marriages, including orders of maintenance, and orders relating to custody, access and care and control.²¹

B. Divorce

- 11 Unlike an annulment, a divorce dissolves an existing marriage.²² Generally, a divorce is an option only for parties who have been married for more than three years.²³ This time-bar exists to preserve marriage as an institution, and to prevent couples from abandoning their marriage at the first sign of trouble.²⁴
- 12 Nonetheless, parties facing exceptional hardship or who are able to prove exceptional depravity on the part of their spouse will be able to seek a divorce before three years of marriage have elapsed. In assessing this, the court considers the conduct of the spouse and the hardship that could arise from having to wait until the three-year period had

¹⁷ *Id.*, s 107(2).

¹⁸ *Id.*, s 107(1).

¹⁹ *Id.*, s 111(1).

²⁰ *Id.*, s 111(2).

²¹ *Supra* n 4, *Elements of Family Law in Singapore* at p 72-73.

²² *Id.*, at p 178.

²³ *Supra* n 2, Women's Charter, s 94(1).

²⁴ See Debbie S. L. Ong, "Time restriction on divorce in Singapore" (2003) *Sing. J Legal Stud.* 418 at p 423: The marriage and family institution is one which the Family Court of Singapore jealously protects as they believe that families are the threads from which the fabric of society is woven. The present law is based on the justification that the institution of marriage will be devalued if divorce was readily obtainable within days of the marriage.

elapsed.²⁵ For instance, exceptional hardship was proven by a husband whose wife, 21 years younger than he was, fled overseas and refused to return to him. The court concluded that she showed absolutely no regard for the marriage.²⁶

(1) Simple vs complicated divorce

13 A divorce is not always acrimonious, and it is possible for parties to agree on all issues to their divorce privately and amicably.²⁷ This is known as an uncontested, or “simple” divorce. An uncontested divorce allows the dissolution of the marriage to be less painful and emotionally fraught.

14 On the other hand, a contested, or “complicated” divorce occurs when parties are unable to agree on either or both the divorce and the ancillary matters, such as matrimonial assets and custody of children. In such cases, the divorce process will be protracted, and this often increases acrimony between the parties.

(2) How can I get a divorce?

15 Either spouse can file for a divorce by showing that the parties’ marriage has irretrievably broken down.²⁸ This can be proven by one or more of five facts. They are: adultery, unreasonable behaviour, desertion for 2 years or more, 3 years’ separation with consent, or 4 years’ separation.²⁹ A divorce will be granted if the court is satisfied that it is just and reasonable, having considered all circumstances, for the marriage to be dissolved.³⁰ Thereafter, the divorce will proceed to the ancillary matters stage.³¹

²⁵ *Id*, p 421, c.f. *W v W* [1966] 2 All E.R. 889.

²⁶ *Ng Kee Shee v Fu Gao Fei* [2005] 4 SLR(R) 762.

²⁷ Singapore Legal Advice, “Simplified Uncontested Divorce vs Contested Divorce in Singapore” (30 May 2019) <<https://singaporelegaladvice.com/law-articles/contested-vs-uncontested-divorce-singapore/>> (accessed 27 October 2019).

²⁸ *Supra* n 2, Women’s Charter, s 95(1).

²⁹ *Id*, s 95(3).

³⁰ *Id*, s 95(4).

³¹ As mentioned earlier, this includes division of matrimonial assets and determining who get custody of children.

C. *Potential complications*

16 An annulment or divorce might be complicated, as you may face potential issues such as having an uncontactable spouse, or having a prenuptial agreement that you had signed earlier.

(1) *Uncontactable spouse*

17 If your spouse is uncontactable, it does not mean that a divorce or annulment is not possible. Generally, the documents for divorce or annulment have to be personally given, or “served”, to your spouse.³² Should your spouse be uncontactable, other means, including email or newspaper advertisement, can be used to serve the documents on your spouse.³³ If all reasonable attempts to contact your spouse still fail, this requirement for service can be waived.³⁴ The divorce or annulment will then be treated as uncontested, and the matter will proceed to the ancillary matters stage.³⁵

(2) *Prenuptial agreements*

18 A prenuptial agreement is an agreement entered into prior to marriage, and documents the spouses’ respective positions in the event of a divorce.³⁶ Prenuptial agreements are generally valid, since the law does not forbid parties to regulate their own married lives.³⁷ However, it will be unenforceable if it involves the parties agreeing not to live together as husband and wife after the marriage. This is taken as an attempt to completely undermine the marital relationship and evade marital obligations altogether.³⁸

19 In general, prenuptial agreements can be enforceable, but they do not replace the court’s power to decide on how the parties’ ancillary matters should be settled.³⁹ Prenuptial

³² Women’s Charter (Matrimonial Proceedings) Rules (Cap 353, R 4, Rev Ed 2004) r 10(3).

³³ *Id.*, r 10(5).

³⁴ *Id.*, r 14.

³⁵ *Id.*, r 12.

³⁶ *TQ v TR* [2009] 2 SLR(R) 961 at [45].

³⁷ *Kwong Sin Hwa v Lau Lee Yen* [1993] 1 SLR 457 at 469.

³⁸ See English High Court decision of *Brodie v Brodie* [1916-17] All ER 237, as cited by the Court of Appeal in *Kwong Sin Hwa v Lau Lee Yen* [1993] 1 SLR(R) 90 at [22].

³⁹ *Supra* n 15, *Elements of Family Law in Singapore* at p 140, c.f. *TQ v TR*: core principle is that a marital agreement, even one that is valid, subsisting and, therefore, binding on the spouses, does not supplant the default laws of division of matrimonial assets or maintenance of the former wife or incapacitated husband, upon divorce. Marital agreements all the more so do not supplant the default laws on parental responsibility to continue to cooperate for the well-being of their child.

agreements remain subject to the overall scrutiny of the courts,⁴⁰ who will be extra vigilant where the prenuptial agreement relates to custody of the children of the marriage. Such an agreement is presumed to be unenforceable unless the parties can show that the agreement is in the best interests of the children.⁴¹

III. Conclusion

20 In conclusion, ending a marriage is possibly one of the most traumatic experiences a person can go through. If you are intending to seek an annulment or a divorce, it is hoped that this article has supplied you with some information that can allow you to make a more informed decision. Once you have made the decision to end the marriage, it is advisable to seek professional legal advice and obtain the appropriate help you need. The end of a marital relationship can always be a palatable one if both parties are willing to cooperate, and aim to allow each other to move on in life smoothly and amicably.

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⁴⁰ *Supra* n 35, *TQ v TR*, at [103] and [104].

⁴¹ *Id.*