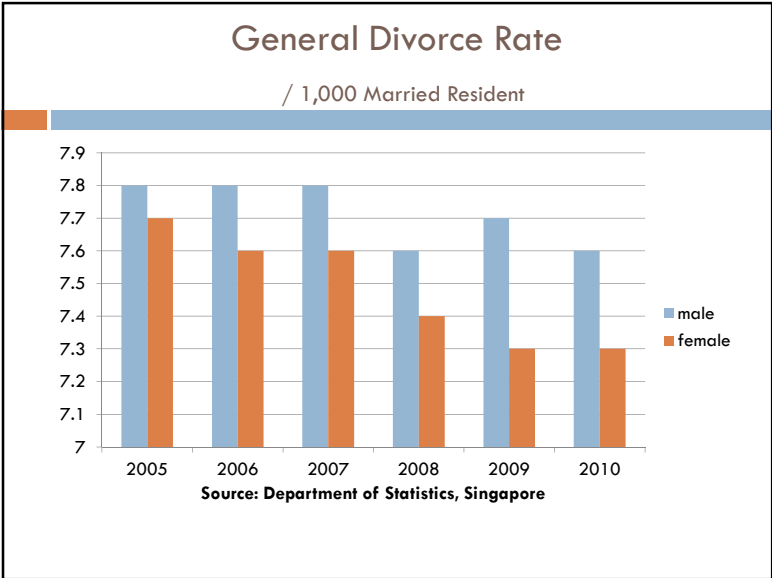
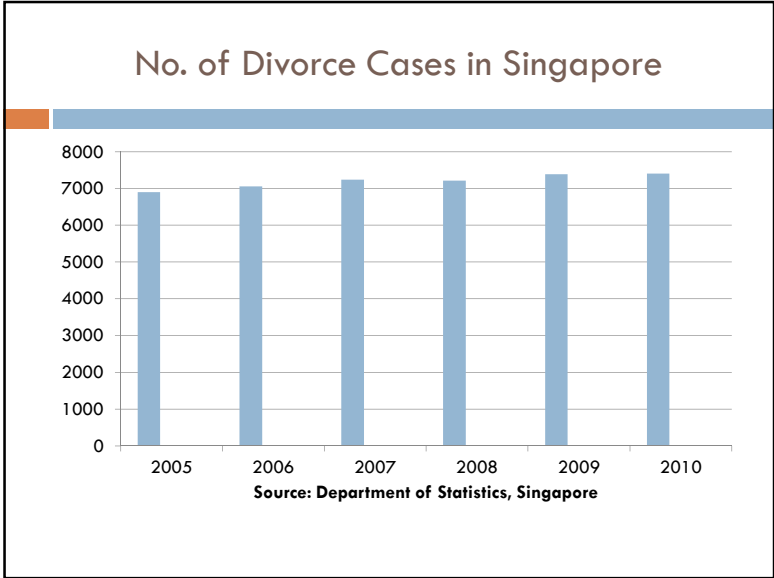


## JOINT PARENTAL RESPONSIBILITY - SINGAPORE EXPERIENCE

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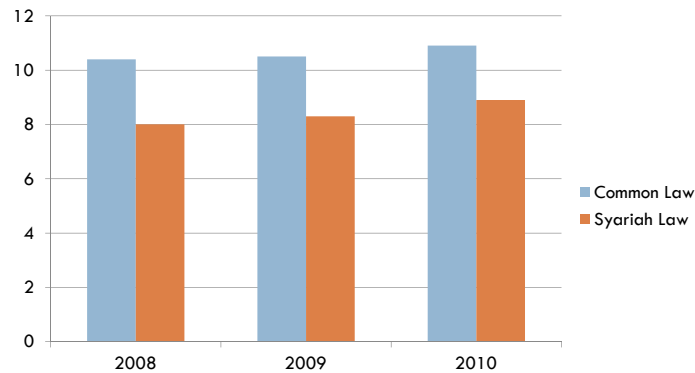


### Median Age at Divorce

	Common Law		Syariah Law	
	Male	Female	Male	Female
<b>2008</b>	40.40	36.50	38.40	34.90
<b>2009</b>	40.90	37.10	38.50	35.40
<b>2010</b>	41.50	37.70	38.80	35.70

Source: Department of Statistics, Singapore

## Median Duration of Marriages



Source: Department of Statistics, Singapore

## Child Custody in Singapore

- Child Custody refers to the bundle of rights, duties, obligations and responsibilities or parental authority that a person may exercise over a child.
- In any matrimonial proceedings relating to divorce, nullity of marriage or judicial separation, the Family Court may make such orders as it thinks fit with respect to the welfare of any child (Women's Charter, S.124).
- Among the matters considered for the welfare of the child is the issue of custody.

## Child Custody in Singapore Before 2005

- It was a common practice that the Court placed the child in the **sole custody** of the family or the father.
- Where the parents are able and willing to cooperate on the future upbringing of the child, the Court may also place the child in the **joint custody** of both parents.
- In exceptional circumstances where it is undesirable to entrust the child to either parents, the child may be placed in the custody of any other relative of the child, any child welfare organisation or association, or any other suitable person.

## Child Custody in Singapore Before 2005

- In deciding in whose custody a child should be placed, the Court will give paramount consideration to the welfare of the child.
- In a sole custody order, care and control is generally given to the custodial parent, while the non-custodial parent is given access.
- The custodial parent normally will reside with the child and will be entitled to decide all questions relating to the upbringing and education of the child, subject to any conditions that the Court may impose.

## Shortcomings

- Focus on parental rights rather than parental responsibilities
  - Custody does not adequately recognize that parenthood is a matter of responsibility rather than rights
  - Article 18(1) of UN Convention on the Rights of the Child 1989, “States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. ... The best interests of the child will be their basic concern.”

## Shortcomings

- Interferes with natural parent-child relationship
  - Non-custodial parent would have little involvement in future decisions affecting the child.
  - Relationship between the non-custodial parent and the child is severely curtailed and such a curtailment of the parent-child relationship is not in the best interest of the child.
  - Undermines the authority of the other parent.
  - It also affects other close relatives and caregivers, such as grandparents.
- Divisive issue in matrimonial proceedings
  - Custody disputes are often hotly contested because of the high emotional stakes – can fundamentally alter the parent-child relationship.

## Calls for Reform in 2005

- Reforms in other Commonwealth jurisdictions, e.g. the English Children Act 1989, the Australian Family Law Reform Act 1995
- To explore the replacement of custody by joint parental responsibility

## Scope of Parental Responsibility

- The duty to maintain or contribute to the maintenance of the child by providing or paying for the child’s accommodation, clothing, food and education (Women’s Charter, S.68);
- The power to make decisions relating to the upbringing of the child, such as choice of school, medical treatment, religion;
- The responsibility to ensure the proper upbringing and education of the child, such as ensuring that the child attends primary school; and
- The authority to give consent on matters that under the law require parental consent, such as marriage and adoption.

## Provisions under Women's Charter

Legal Provisions in	
UK & Australia	Women's Charter
•Residence Orders	•Orders relating to Care and Control
•Contact Orders	•Orders relating to Access
•Specific Issues Order	•Conditions that the Family Court may impose in respect of custody orders.

These orders under the Women's Charter remain relevant for the purpose of promoting joint parental responsibility. The wide discretion of the Court to make orders relating to "Care and Control" and "Access", and to impose conditions, does enable the Court to allocate parental responsibility where necessary.

## Welfare of the Child Remains Paramount

- Article 3 of the UN Convention on the Rights of the Child 1989 – "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."
- Consistent with this, our family laws emphasize that the welfare of the child is to be regarded by the Court when making any decision affecting the child (Women's Charter, S.70(1), 123,124,125, 129, 130).

## Welfare of the Child Remains Paramount

- When deciding on a child's welfare, the Court is to have regard to "the wishes of the child, where he or she is of an age to express an independent opinion". (Women's Charter 125(2)(b))
- In any decision on the allocation of parental responsibility, the welfare of the child should remain the paramount consideration.

## CX v CY

- In 2005, the Court of Appeal had given an authoritative opinion on what a custody order involves.
- Custody is a general concept that is divided into 2 smaller packages, namely:
  - "Care and Control" – parent shall be the daily caregiver of the child and with whom the child shall live
  - "Residual Custody" – residual rights that remains after the grant of a care and control order; concerns the long-term decision-making for the welfare of the child, including decisions pertaining to religion, education and major healthcare issues

## CX v CY

- Distinction between “care and control orders” and “custody orders”:
  - **Care and control** concerned the right to take care of a child and to make day-to-day, short-term decisions concerning the child’s upbringing and welfare.
  - **Custody** without care and control concerned the right to make the more important, longer-term decisions concerning the upbringing and welfare of a child

## CX v CY

- The practical effects of a “no custody order” and a “joint custody order” were similar where a “care and control order” had been made.
- A “**no custody order**” might be preferred over a “joint custody order” in the following circumstances:
  - a) Where there was no actual dispute between the parents over any serious matters relating to the child’s upbringing;
  - b) Where there was a need to prevent parties from drawing the child into the battle over the extent of their custodial powers; and
  - c) Where there was a need to avoid any negative psychological effect that came about when one parent “won” and the other “lost” in the custody suit.

## CX v CY

- The symbolism of a **joint custody order** may be used to remind the mother that the father has an equal say in more significant matters concerning the child’s upbringing to send a signal to the mother that should be more co-operative with the father.
- Generally, joint or no custody orders should be made, with sole custody orders being an exception to the rule.
- Exceptional circumstances might be where one parent had physically, sexually or emotionally abused the child, or where the relationship of the parties were such that co-operation was impossible even after the avenues of mediations and counselling had been explored, and the lack of co-operation was harmful to the child.

## CX v CY

- In any custody proceedings, it was crucial that the courts recognised and promoted joint parenting so that both parents could continue to have a direct involvement in the child’s life. The making of joint or no custody orders was very much in the welfare of the child, and it reminded the parents that the law expected both of them to co-operate to promote the child’s best interest.
- A parent of a child, by the fact of parenthood, has a right of custody over the child. That continues to be true even when the marriage of the parents has been dissolved because the parent-child relationship is not dissolved.

## CX v CY

- When the question of custody is raised and has to be determined by the courts, the child's welfare, which is the paramount consideration, is not best advanced by removing the fights and responsibility of custodianship from the parents, or by depriving one parent of his or her rights.
- If the relationship between the parents is acrimonious, granting the custody of the child to one parent to the exclusion of the other, or denying both of them custody, will add to the unhappiness between them.

## Whether Legislative Changes Required?

- Is it necessary to amend legislation in order to promote the concept of parental responsibility?
- Can parental responsibility be emphasized within the custody order?
- Professor Leong Wai Kum opined that parental responsibility could work within the current ambit of the law. Through the use of care and control orders, no custody orders, or joint custody orders, the courts could still preserve parental responsibility without the necessity to revamp the law.

## Significance of CX v CY

- CX v CY is a significant declaration of judicial policy on custody. The Court of Appeal has set the following principles for the lower courts to abide by:
  - a) Parental responsibility for a child continues until the child reaches adulthood. Both parents continue to have joint parental responsibility even after their marital relationship is severed in a divorce.
  - b) Joint parental responsibility (or joint custody) can be maintained when the court makes no custody order or a joint custody order, and this would be in the interests of the child.

## Significance of CX v CY

- c) There should be minimal intervention in the parent-child relationship. A "no custody" order is to be preferred if there is no actual dispute between the parents over any serious matters relating to the child's upbringing, or where there is a need to avoid the negative psychological effect that a custody battle may have on a child.
- d) A joint custody order could be useful for symbolic or signalling purposes, to remind both parties of their joint parental responsibility.
- e) Only in exceptional cases should a sole custody order be made.

## Final Decision on the Review of Child Custody Law

- Since the Court of Appeal had clarified the concept of “custody” in CX v CY, the courts could now be conveniently to preserve joint parental responsibility by making joint custody or no custody orders.
- The Review Committee in 2005 hence concluded that there was no pressing impetus for legislative change.

## Child Focused Resolution Centre

- The centre was set up in 2011 and forms part of the Family Court.
- It provides court-ordered counselling and mediation for child-related matters in divorce cases.
- If a parent files for a divorce on or after 26 Sep 2011 and there is at least one child of the family below the age of 8 years, the Family Court will inform both parents to attend mandatory counselling and mediation (under S.50(3A), Women’s Charter).

## Child Focused Resolution Centre

- This is to assist both parents to resolve any parenting issues and disputes related to their children in a non-adversarial setting, instead of having these issues decided in court by a judge.
- As the children’s well-being is of paramount concern to the Court, the children may be asked to attend the counselling sessions as well.
- Centre Staffing:
  - Judge-Mediators – appointed judges specializing in family mediation
  - Family Counsellors – specially appointed social workers/counsellors with expertise in child welfare and family-related matters.

## Child Focused Resolution Centre

- Objectives
  - Help parents create a suitable parenting agreement that focuses on the future and allows their children to have meaningful and vibrant relationship with both parents.
  - Empower parents to work together to identify and promote their children’s best interests.
  - Provide parents with useful information that supports them in actively considering the unique needs of their children.

## Child Focused Resolution Centre

- Types of Services
  - ▣ CFRC Conference (programme orientation)
  - ▣ Counselling
  - ▣ Mediation
  - ▣ Joint Conference
- Outcome
  - ▣ Should a resolution be reached between both parents during counselling, mediation or joint conference, the agreed terms can be recorded by a judge as an Order of Court. Once recorded, both parents are legally obliged to abide by it.

## References:

- Annual Reports, Department of Statistics, Singapore
- Women's Charter, Cap. 353
- Executive Summary of Review of Child Custody Law, Attorney-General Chamber, Singapore
- Annual Reports, Subordinate Courts, Singapore.

Thank You!