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MySejahtera: Tracking Down Adultery



The Covid-19 outbreak has been with us for over a year. Aside from the obvious financial impact to Malaysians, Covid-19 has also kept many of us under house arrest. Working from home is now the “new normal”.

You know the saying “distance makes the heart grow fonder”? After over a year of being forced into this social experiment of “how many hours can my spouse and I be in the same room”, reports are now saying that Covid-19 may be putting married couples at an increased risk of experiencing infidelity¹.

In this article, we write to all aggrieved parties (wives and husbands alike), who are considering divorce proceedings, about using MySejahtera to prove adultery.

What is adultery?

Adultery is voluntary sexual intercourse between a married person and another who is not their spouse, commonly known as “cheating” or “extramarital sex”. Adultery is not a criminal offence in Malaysia but it can be grounds for a divorce.² Through divorce proceedings, the Court can also order the mistress to pay monetary compensation if adultery is proven.



It is not easy to prove adultery. It must be proven beyond reasonable doubt. Short of catching the cheaters in action (such as clear images or videos of the adultery, which is difficult to obtain), the innocent spouse is left to rely on circumstantial evidence. This means evidence of other facts that can reasonably infer that adultery has occurred.

The inference of adultery arises when there is proof of the disposition of parties to commit adultery, together with the opportunity to commit it³. The Courts require sufficient circumstantial evidence to show that adultery is the only reasonable conclusion.

Why MySejahtera?

“Beep! Normal body temperature.”. To anyone who has recently visited a mall or supermarket, this would be a common occurrence.

That is the beauty of MySejahtera. **Everyone must use it**. MySejahtera stores all our check-in information (location, time and date) for a period of 1 month.

If you manage to get your hands on such evidence, it may be used as circumstantial evidence to show where your better half has been in the last month, whether it be suspicious meeting places, hotels, apartments, etc (if any).

Is MySejahtera Conclusive Evidence?

No, MySejahtera is not sufficient or conclusive evidence to prove adultery. It can only show where your spouse has been but not that he/she had an affair. Whether or not the Court will find adultery will greatly depend on the facts of the case.

Take the case of **GGC v CCC & Anor**, where the petitioner wife presented, amongst others, the following circumstantial evidence to the Court:

- (a) the husband and his alleged mistress had gone to Bali for a pre-honeymoon photoshoot;
- (b) the husband bought a diamond ring for the alleged mistress;
- (c) there were trails of intimate messages between them; and
- (d) they had opened joint accounts together.

The High Court found that, *“the fact that the husband and his mistress had travelled to Bali together for pre-wedding photos to be taken and that they had planned to get wed each other does not necessarily mean that they must have sex with each other already in that trip.”*



In a rather exceptional case, the High Court found that the petitioner wife failed to prove adultery because the husband was HIV+ while his alleged mistress was not. The High Court also decided that it would not be reasonable for the mistress to still want to have sex with the husband knowing clearly that he had contracted HIV ⁴.

Other Types of Circumstantial Evidence

In contrast, in **Yew Yin Lai v Teo Meng Hai & Anor** ⁵, the High Court accepted that the following circumstantial evidence, amongst others, were sufficient for the petitioner wife to establish adultery beyond reasonable doubt.:

- (a) the husband and his mistress being in a closed room;
- (b) the husband had purchased several movable and immovable properties for his mistress without adequate justification;
- (c) repeated trips to the babysitter's house by the husband to visit his mistress's daughter; and
- (d) the husband refused to undergo a DNA test to prove that he was not the father of his mistress's daughter.

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In **Dr Gurmail Kaur a/p Sadhu Singh v Dr Teh Seong Peng & Anor** ⁶, the High Court accepted, amongst others, the following circumstantial evidence:

- (a) a birth certificate of a child born out of wedlock to the cheating spouse; and
- (b) a traditional wedding ceremony held between the cheating spouse and his/her other partner.

Conclusion

To sum it up, the MySejahtera check-in record may not, on its own, be sufficient evidence to prove adultery. But if direct evidence of adultery is not available, it could be the missing piece of the evidential puzzle in proving adultery.

¹ <https://pubmed.ncbi.nlm.nih.gov/32621371/>

² Section 58(1) of the Law Reform (Marriage and Divorce) Act 1976

³ **Yew Ying Lai v Teo Meng Hai & Anor** [2013] 8 MLJ 787

⁴ [2016] MLJU 377

⁵ [2013] 8 MLJ 787

⁶ [2014] 11 MLJ 843