HARMONISATION OF THE
SHARĪ‘AH AND CIVIL LAWS
(PERSPECTIVE AND PRACTICE)

EDITORS
ABDUL HASEEB ANSARI
SYED KHALID RASHID

IIUM Press
# TABLE OF CONTENT

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preface</td>
<td>i</td>
</tr>
<tr>
<td>Table of Content</td>
<td>v</td>
</tr>
<tr>
<td>List of Contributors</td>
<td>x</td>
</tr>
</tbody>
</table>

**PART I**

**CHAPTER 1**

**HARMONISATION OF CIVIL LAW AND SHARĪ'AH: THE SUDANESE EXPERIENCE**
Akolda M. Tier

**CHAPTER 2**

**THE INTERRELATIONSHIP AND THE ASSOCIATED TENSION BETWEEN SHARĪ'AH AND CIVIL FAMILY LAW IN MALAYSIA: HARMONISATION AS A SOLUTION**
Dato’ Zaleha Kamaruddin

**CHAPTER 3**

**FROM ‘MAJALLAH’ TO ‘IRAQI CIVIL CODE’: A CRITICAL STUDY OF HARMONIZATION OF CIVIL LAW AND SHARĪ'AH**
Najm-Aldeen K. Kareem al-Zanki

**CHAPTER 4**

**HARMONISING CIVIL JOINT TENANCY CONTRACTS WITH SHARĪ'AH**
Sadali Rasban

**CHAPTER 5**

**REDEFINING REPRODUCTIVE RIGHTS THROUGH A HARMONISED APPROACH OF INTERNATIONAL HUMAN RIGHTS LAW AND ISLAMIC LAW**
Majdah Zawawi

V
CHAPTER 6
PERSONAL PRIVACY: THE CONCEPTUAL HARMONY BETWEEN SHARI'AH CIVIL LAW
Mohd Altaf Hussain Ahangar 153

CHAPTER 7
HARMONIZATION BETWEEN LAW AND MORALITY: A COMPARATIVE PERSPECTIVE
Syed Khalid Rashid 171

CHAPTER 8
LAW AND MORALITY: PROSPECT OF HARMONIZING CIVIL LAW AND SHARI'AH PERSPECTIVE
Abdul Haseeb Ansari 191

CHAPTER 9
HARMONISING THE USE OF LIVING TRUST AS AN INSTRUMENT FOR ISLAMIC ESTATE PLANNING IN MALAYSIA
Akmal Hidayah Halim 227

CHAPTER 10
RIGHTS OF A CHILD TO MAINEANCE: HARMONISING THE LAWS IN MALAYSIA
Nora Abdul Hak, Roslina Che Soh & Norami Hashim 243

CHAPTER 11
HARMONISATION OF CIVIL LAW AND SHARI'AH IN A SMALL ISLAND NATION CASE STUDY: THE REPUBLIC OF MALDIVES
Ismail Wisham & Aishath Muneeca 257

PART II

CHAPTER 12
IMPLEMENTING HUDUD ON WOMEN IN SHARI'AH: A COMPARISON WITH CIVIL LAWS IN THE PUNISHMENT OF ADULTERY
Noor Mohammad Osman 289
CHAPTER 13

THE SHARI'AH PROTECTION OF THE RIGHT TO THE PERSON VIS-À-VIS THE WESTERN LAW OF TORTS
Syed Ahmad S A Alsagoff

CHAPTER 14

SHARI'AH AND LEGAL ISSUES IN HOUSING BUYING IN MALAYSIA: THE LEGALITY OF BAY'BITHAMAN-AL-AJIL ('BBA') IN THE LIGHT OF ABANDONED HOUSING PROJECT
Nuarrual Hilal Md. Dahlan & Sharifah Zubaidah Syed Abdul Kader

CHAPTER 15

THEORIES AND PRINCIPLES OF GOOD GOVERNANCE IN THE SHARI'AH AND THE CIVIL LAW: ITS CONSTITUTIONAL FRAMEWORK IN THE UNITED STATES OF EGYPT
Khairil Azmin Mokhtar & Nayel Musa Shaker Al-Omran

CHAPTER 16

CONTRACTUAL AGENCY: AN APPRAISAL OF SECTION 175-191 OF THE CONTRACT ACT 1950 (THE CIVIL LAW AND SHARI'AH PERSPECTIVE)
Zuhairah Ariff Abd Ghadas & Wan Rumaizi Wan Husin

CHAPTER 17

REGISTRATION OF MARRIAGES: A COMPARATIVE ANALYSIS BETWEEN ISLAMIC LAW AND UNITED NATIONS GENERAL ASSEMBLY RESOLUTION OF 1965 ON REGISTRATION OF MARRIAGE WITH REFERENCE TO MALAYSIAN FAMILY LAW
Mek Wok Mahmud & Olorogun Lukman Ayinde

CHAPTER 18

THE PROCESS OF GATHERING EVIDENCE IN CIVIL CASES: ITS APPLICATION IN CIVIL AND SHARI'AH COURTS
Duryana Mohamed & Afridah Abas
CHAPTER 19

BEST INTEREST OF CHILDREN IN DIVISION OF MATRIMONIAL PROPERTY: BRIDGING THE GAP BETWEEN CIVIL LAW AND SHARĪ‘AH
Norliah Ibrahim 517

CHAPTER 20

RIGHT OF WORKING WIFE TO MAINTENANCE UNDER ISLAMIC LAW: A COMPARATIVE OVERVIEW WITH CIVIL LAW IN MALAYSIA
Azizah Mohd, Badruddin Hj Ibrahim & Normi Abd Malek 537

CHAPTER 21

THE STATUTORY ENACTMENT OF PROMISSORY ESTOPPEL BY INCORPORATING THE ISLAMIC PRINCIPLES: PROVIDING A BETTER PLATFORM FOR JUSTICE AND FAIRNESS IN THE SOCIETY
Wan Izatul Asma Talaat 555

CHAPTER 22

OBLIGATORY BEQUEST IN MALAYSIA: THE CLASSICAL LAW AND ITS ENFORCEMENT THROUGH VARIOUS ENACTMENTS
Tajul Aris Ahmad Bustami 589
THE INTERRELATIONSHIP AND THE ASSOCIATED TENSION BETWEEN SHARI'AH AND CIVIL FAMILY LAW IN MALAYSIA: HARMONISATION AS A SOLUTION

Dato’ Zaleha Kamaruddin

1. Introduction

As different family laws apply to different communities within one legal system, by right, there should be minimal interrelationship. However, on the few occasions that they intersect, there is much confusion and tension created as much by adjective law and juridical issues as the conflicting substantive family laws. The just resolution of these inherently complicated matters is aggravated by a third element seeking to be another, and even overriding source of substantive law-international instruments on certain aspects of family life.¹

1.1 Muslim Civil Society and the Legal Setting

Islamic law including Muslim family law was revealed by Allah (s.w.t.). It is therefore superior to man-made law. Observing Islamic law and its teachings in all aspects of life is the overarching Islamic duty of all Muslims encompassed in the concept of tauhid. Practising Islamic law and having it applied to Muslims is a sacred duty of all Muslims.

British colonisation resulted in the marginalisation of Islamic law from being the basic law applicable to all matters to being restricted to some narrow though significant aspects of life namely, the family. The efforts of ensuring human rights to all, especially feminist groups in promoting secular international law documents as the standard by which all laws including Islamic law should be judged, is infuriating interference to Muslims though reaction was surprisingly subdued.