



HARMONISATION OF THE SHARĪ'AH AND CIVIL LAWS

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

EDITORS

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BEST INTEREST OF CHILDREN IN DIVISION OF MATRIMONIAL PROPERTY: BRIDGING THE GAP BETWEEN CIVIL LAW AND *SHARĪ'AH**

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1. Introduction

Matrimonial property disputes is one area of law, which is daily litigated before the registrars and judges with numerous cases reported in Malaysian journals. Although the ownership of matrimonial property may arise also during marriage such as when one of the parties has been declared as bankrupt;¹ more often than not, the couple may not anxious to distinguish the ownership of property since at that time they are sharing the benefit together. However, upon divorce, both parties start to distinguish the ownership of property and desire it to be returned to the original owner or to be sold and the proceeds to be divided among them. Some divorces are concluded smoothly, but in some cases, it turns to be the other way round. The parties generally fight over practically everything of what has been accumulated throughout their marriage to be divided between them.

The relevant provision in the Law Reform (Marriage and Divorce) Act 1976² (LRA) which conferred power to the court to divide the property upon divorce or judicial separation clearly provides guidelines as to how the division is to be made depending on whether the property involved, is the joint effort or the sole effort property. There are several factors that the court has to take cognizance of, including