



# 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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## THE PROCESS OF GATHERING EVIDENCE IN CIVIL CASES: ITS APPLICATION IN CIVIL AND SYARIAH COURTS\*

Duryana Mohamed  
Afridah Abas

### 1. Introduction

The procedural law in Malaysia is based on common law practice and procedure. Its history can be traced back to 1808 when the Britain established the Courts of Judicature in the Straits Settlements. In 1878<sup>2</sup>, the English Civil Procedure Ordinance was introduced to govern procedural matters, followed by the enactment of the Civil Procedure Code in 1907. The Code was however repealed by the Courts Ordinance 1934, which was itself replaced by the Supreme Court Rules 1935 (SCR). The Rules were used as reference until 1957. In the Federated and Unfederated Malay states, the civil procedure law of India was followed<sup>3</sup> which was introduced through an Enactment in each state. An attempt to unify the procedural law was made with the codification of the Civil Procedure Code 1918 to govern procedural matters in both the Federated and Unfederated Malay States. This situation continued until independence when the Civil Procedure Code (Repeal) Ordinance 1957 repealed all the separate enactments.<sup>4</sup>

At present, there are separate rules governing the procedural laws in various Malaysian courts. The Rules of High Court 1980 (RHC) governs civil proceedings at the High Court, and the Subordinate Courts Rules 1980 (SCR) govern the proceedings at the Magistrates Courts and Sessions Courts. The higher courts, namely, the Federal Court and the Court of Appeal, are governed by the Rules of the