



# HARMONISATION OF THE SHARĪ'AH AND CIVIL LAWS

**ABDUL HASEEB ANSARI  
SYED KHALID RASHID**

**Research Management Centre**  
INTERNATIONAL ISLAMIC UNIVERSITY MALAYSIAN



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

**EDITORS**

**ABDUL HASEEB ANSARI**

**SYED KHALID RASHID**



**IIUM Press**

published by:  
IIUM Press  
International Islamic University Malaysia

First Edition, 2011  
©IIUM Press, IIUM

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without any prior written permission of the publisher.

Perpustakaan Negara Malaysia

Cataloguing-in-Publication Data

Abdul Haseeb Ansari & Syed Khalid Rashid: Harmonisation of the Shariah and Civil Laws Perspective and Practice

Bibliography p.  
Includes Index  
ISBN

ISBN: 978-967-0225-89-0

Member of Majlis Penerbitan Ilmiah Malaysia – MAPIM  
(Malaysian Scholarly Publishing Council)

Printed by :

**IIUM PRINTING SDN. BHD.**

No. 1, Jalan Industri Batu Caves 1/3

Taman Perindustrian Batu Caves

Batu Caves Centre Point

68100 Batu Caves

Selangor Darul Ehsan

## TABLE OF CONTENT

Preface	i
Table of Content	v
List of Contributors	x

### PART I

#### CHAPTER 1

##### **HARMONISATION OF CIVIL LAW AND *SHARĪ'AH*: THE SUDANESE EXPERIENCE**

Akolda M. Tier 1

#### CHAPTER 2

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

Dato' Zaleha Kamaruddin 21

#### 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 31

#### CHAPTER 4

##### **HARMONISING CIVIL JOINT TENANCY CONTRACTS WITH *SHARĪ'AH***

Sadali Rasban 65

#### CHAPTER 5

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

Majdah Zawawi 105

CHAPTER 6		
	<b>PERSONAL PRIVACY: THE CONCEPTUAL HARMONY BETWEEN <i>SHARĪ'AH</i> CIVIL LAW</b>	
	Mohd Altaf Hussain Ahangar	153
CHAPTER 7		
	<b>HARMONIZATION BETWEEN LAW AND MORALITY: A COMPARATIVE PERSPECTIVE</b>	
	Syed Khalid Rashid	171
CHAPTER 8		
	<b>LAW AND MORALITY: PROSPECT OF HARMONIZING CIVIL LAW AND <i>SHARĪ'AH</i> PERSPECTIVE</b>	
	Abdul Haseeb Ansari	191
CHAPTER 9		
	<b>HARMONISING THE USE OF LIVING TRUST AS AN INSTRUMENT FOR ISLAMIC ESTATE PLANNING IN MALAYSIA</b>	
	Akmal Hidayah Halim	227
CHAPTER 10		
	<b>RIGHTS OF A CHILD TO MAINTENANCE: HARMONISING THE LAWS IN MALAYSIA</b>	
	Nora Abdul Hak, Roslina Che Soh & Noraini Hashim	243
CHAPTER 11		
	<b>HARMONISATION OF CIVIL LAW AND <i>SHARĪ'AH</i> IN A SMALL ISLAND NATION CASE STUDY: THE REPUBLIC OF MALDIVES</b>	
	Ismail Wisham & Aishath Muneeza	257
<b>PART II</b>		
CHAPTER 12		
	<b>IMPLEMENTING <i>HUDUD</i> ON WOMEN IN <i>SHARĪ'AH</i>: A COMPARISON WITH CIVIL LAWS IN THE PUNISHMENT OF ADULTERY</b>	
	Noor Mohammad Osmani	289

CHAPTER 13

**THE *SHARĪ'AH* PROTECTION OF THE RIGHT TO THE PERSON  
*VIS-À-VIS* THE WESTERN LAW OF TORTS**

Syed Ahmad S A Alsagoff

321

CHAPTER 14

***SHARĪ'AH* AND LEGAL ISSUES IN HOUSING BUYING IN  
MALAYSIA: THE LEGALITY OF *BAY'BIHAMAN-AL-AJIL*  
(*'BBA'*) IN THE LIGHT OF ABANDONED HOUSING PROJECT**

Nuarrual Hilal Md. Dahlan & Sharifah Zubaidah Syed Abdul Kader 337

CHAPTER 15

**THEORIES AND PRINCIPLES OF GOOD GOVERNANCE IN THE  
*SHARĪ'AH* AND THE CIVIL LAW: ITS CONSTITUTIONAL  
FRAMEWORK IN THE UNITED STATES OF EGYPT**

Khairil Azmin Mokhtar & Nayel Musa Shaker Al-Omran

385

CHAPTER 16

**CONTRACTUAL AGENCY: AN APPRAISAL OF SECTION 175-  
191 OF THE CONTRACT ACT 1950 (THE CIVIL LAW AND *SHARĪ'AH*  
PERSPECTIVE)**

Zuhairah Ariff Abd Ghadas & Wan Rumaizi Wan Husin

411

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

451

CHAPTER 18

**THE PROCESS OF GATHERING EVIDENCE IN CIVIL CASES: ITS  
APPLICATION IN CIVIL AND *SHARĪ'AH* COURTS**

Duryana Mohamed & Afridah Abas

475

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 MAINTENENCE UNDER  
ISLAMIC LAW: A COMPERATIVE 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

## 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

**Abstract:**

*Relationship between husband and wife creates certain rights and obligations that both spouses are to enjoy and fulfill. Maintenance is one of the rights of the wife and one of the obligations of the husband. There is no dispute among the fuqaha as to the wife's right to maintenance in Islam. This paper seeks to examine the position of the Islamic law on the working wife's right to maintenance and the provision of the law governing Muslims in Malaysia. The examination extends to the provision of Civil law in Malaysia, particularly Married Women and Children (Maintenance) Act (1950) and the Law Reform (Marriage and Divorce) Act 1976 to provide a comparative overview of the two laws. Finally, this paper will provide suggestions for improvement of the law in Malaysia wherever possible and necessary.*

**Key Words:**

Right, Maintenance (*nafaqah*), working wife, Islamic law, civil law