



HARMONISATION OF THE SHARĪ'AH AND CIVIL LAWS

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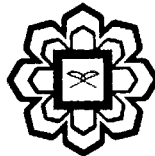


**HARMONISATION OF THE
SHARĪ'AH AND CIVIL LAWS
(PERSPECTIVE AND PRACTICE)**

EDITORS

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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	PERSONAL PRIVACY: THE CONCEPTUAL HARMONY BETWEEN <i>SHARĪ'AH</i> 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 <i>SHARĪ'AH</i> 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 MAINTENANCE: HARMONISING THE LAWS IN MALAYSIA	
	Nora Abdul Hak, Roslina Che Soh & Noraini Hashim	243
CHAPTER 11	HARMONISATION OF CIVIL LAW AND <i>SHARĪ'AH</i> IN A SMALL ISLAND NATION CASE STUDY: THE REPUBLIC OF MALDIVES	
	Ismail Wisham & Aishath Muneeza	257
PART II		
CHAPTER 12	IMPLEMENTING <i>HUDUD</i> ON WOMEN IN <i>SHARĪ'AH</i>: A COMPARISON WITH CIVIL LAWS IN THE PUNISHMENT OF ADULTERY	
	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' BITHAMAN-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

**OBLIGATORY BEQUEST IN MALAYSIA: THE
CLASSICAL LAW AND ITS ENFORCEMENT
THROUGH VARIOUS ENACTMENTS**

Tajul Aris Ahmad Bustami

1. Introduction

Before 1999, there was no specific legislation on Muslim bequest in Malaysia. While dealing with issues related to bequest, syariah courts in all states of Malaysia, therefore, relied heavily on non-codified *hukum Shari'ah* and general provisions in their respective Administration of Islamic Law Enactment.¹ Selangor, through Muslim Wills (Selangor) Enactment 1999,² was the first state in Malaysia introducing specific law relating to Muslim bequest.³ The statute provides, among other things, that any application relating to inheritance⁴ and bequest, including obligatory bequest, shall be dealt with by the Syariah Subordinate Court or Syariah High Court depending on the value of the subject matter.⁵ Later in 2004, Negeri Sembilan followed Selangor and enacted its Muslim Wills (State of Negeri Sembilan) 2004 and then in 2005, Malacca passed its Muslim Wills (State of Malacca) Enactment 2005.⁶ The statutes were prepared based on the legislations in Middle Eastern Countries. There is no such statute in other states in Malaysia.

This chapter attempts to discuss the position of the obligatory bequest as existed in those states' legislations and its application in the *Shari'ah* courts. A comparative analysis will be done with the position of the obligatory bequest as existed in other Muslim countries. This chapter shall highlight legal constraints relating to the provisions and shall propose suggestions for the improvement of the system.