CONTEMPORARY ISSUES ON MATRIMONIAL PROPERTY

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MEDIATION IN MATRIMONIAL PROPERTY DISPUTE: THE PRACTICE IN MALAYSIA

_Nora Abdul Hak_

8.0 INTRODUCTION

In the system of justice, techniques for settling family disputes are either negotiation or litigation. It is however, seen to have minimized the importance of negotiation and exaggerated the importance of litigation. It is commented that lawyers have not fully explored other alternatives to litigation such as, mediation, arbitration, and med-arb. Many jurisdictions around the world have introduced ADR processes in their legal systems. In Malaysia, for example, Practice Direction No. 5 of 2010 has been introduced as an effort to encourage mediation in the Civil Court among lawyers and judges. The use of the litigation process to resolve family conflicts has been much criticized. Where human relationship are strained, the adversarial approach may actually exacerbate rather than reduce conflict. Thus, mediation, as one of the important mechanisms of alternative dispute resolution, has great potential to resolve family disputes, one of which is matrimonial property dispute. There may be disagreements between the parties over division of property during or after divorce. This type of dispute may be settled