Mediation in Malaysia: The Law and Practice

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MEDIATION IN MALAYSIA: THE LAW AND PRACTICE

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†Company No 76125-H
ISBN 978-967-5371-84-4

Printed in Malaysia by Percetakan Anda Sdn Bhd
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CHAPTER 21

FOUNDATIONS OF MEDIATION IN ISLAMIC LAW AND ITS CONTEMPORARY APPLICATION

by

SAID BOUHERAOUA

ABSTRACT

As humans are social beings, disputes among them are inevitable. Judicial settlement of disputes is unfortunately costly, time consuming and open to public scrutiny. Nevertheless Islamic law provides for settlement of disputes by many ways of Sulh including mediation. The purpose of this paper is to examine the principles on mediation laid down in the Qur'an and the Sunnah of Prophet Muhammad (peace be upon him), which are both the primary sources of Islamic law. The paper will seek to apply the deduced principles in contemporary mediation. Reference will be made to certain incidents wherein the final Prophet (peace be upon him), the earlier prophets and the Caliphs seemed to have resorted to mediation. The objective is many lessons that can be learned from the exemplary conduct of the Prophet (peace be upon him) who was a politically righteous person with highest moral and ethical values. His society wherein fighting would break out over petty matters and insignificant incidents and could linger on for generations had