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**A STUDY ON THE MALAYSIAN CIVIL LAW  
RELATING TO MATRIMONIAL PROPERTY  
AFTER DISSOLUTION OF MARRIAGE**

**BY**

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MALAYSIA**

**APRIL 2004**

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**BY**

**NORLIAH BINTI IBRAHIM**

A THESIS SUBMITTED AS A REQUIREMENT  
FOR THE DEGREE OF  
PH.D IN LAW

AHMAD IBRAHIM KULLIYYAH OF LAWS  
INTERNATIONAL ISLAMIC UNIVERSITY  
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## ABSTRACT

The thesis examines the Malaysian Civil law governing the division of the matrimonial property after dissolution of marriage. The present provision failed to provide details on how the matrimonial property is to be divided. The direction derived from the provision which mainly divide the property on the basis of joint effort and sole effort without defining the scope of the two types of property has led to uncertainty which encourages litigation.

The study adopts an analysis on the statutory provisions governing matrimonial property aimed at identifying the strengths and weaknesses of the present law. This in depth study of the law has resulted in showing the shortcomings in applying the law into practice. Decided cases prove to be significant in illustrating the substantial role of the judiciary in streamlining the law into practice in order to reach a fair and just division of matrimonial property. A comparative study with other jurisdictions has significantly contributed to this research. However, careful considerations are taken to ensure that it suits with the local circumstances. In the case of Islamic law, only a specific discussion on *harta sepencarian* has been made.

The study disclosed that a loose draft of the provisions has caused various discrepancies in applying the law into practice. Limited jurisdiction of the court has significantly deprived the rights of the parties whose divorce has been granted by a foreign decree to claim the division of the property. Other problems include the ambiguity in defining the scope of the matrimonial property and the role of the homemaker also has not been properly addressed. Therefore, the study suggests an amendment to the existing provision.

## خلاصة البحث

تدور الرسالة حول القوانين المتعلقة بتقسيم مال الزوجية بعد انحلال عقد الزواج. لقد فشل القانون المطبق في البلاد حالياً في بيان كيفية التقسيم بصورة مفصلة. وذلك لأن المبادئ العامة تقتصر فقط على تقسيم هذه الحقوق على أساس الجهد المشترك من الزوجين أو انفراد أحدهما دون الآخر في جلب الأموال. وليس هناك معيار واضح في تحديد هذين النوعين من الجهد، وأفضى ذلك الى عدم وضوح أسهم في تطويل مدى التقاضى بين الطرفين.

هذه الدراسة تتبنى طريقة في تحليل النصوص الحاكمة - في شأن تقسيم الأموال وممتلكات الحياة الزوجية - لبيان مواضع القوة والضعف فيها. ومن خلال التحليل العميق لهذا القانون تبين لنا الثغرات الناتجة عن تطبيقه. والحالات القضائية التي فصل فيها أسهمت في بيان الدور البالغ الأهمية بالنسبة للجهاز القضائي في تطبيق القانون بكيفية تؤدي الى تحقيق العدل في تقسيم أموال وممتلكات الحياة الزوجية. وكذلك المقارنات مع حالات قضائية أخرى قد أسهمت بنصيب وافر في اثراء هذه الدراسة مع الأخذ في الاعتبار خصوصيات تلك الحالات القضائية. أما بخصوص القانون الإسلامي فقد تم الإشارة بصورة خاصة الى حالة هرتا سبنجرين.

وتكشف الدراسة أن عدم إحكام صياغة النصوص القانونية قد أدى إلى تناقض وتباين عند تطبيقها كما أن اختصاصات المحكمة المحدودة لها أثر في حرمان الأطراف الذين تم طلاقهم خارج البلاد من المطالبة بحقوقهم المالية وكذلك الأمر إذا كان الزواج غير صحيح. وإلى جانب ذلك فإن الغموض في تعريف وتحديد مال الزوجية ودور الزوجة التي لم تعمل لهو من المشاكل التي تصادفها هذه الدراسة ولذا فقد اقترحت تعديل النصوص القانونية المعمول بها حالياً وإعداد نصوص أخرى أوضح وأشمل.

## APPROVAL PAGE

The thesis of NORLIAH BINTI IBRAHIM has been examined and is approved by the following:



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# DECLARATION

I hereby declare that this thesis is the result of my own investigations, except where otherwise stated. Other sources are acknowledged by footnotes giving explicit references and a bibliography is appended.

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**MATRIMONIAL PROPERTY AFTER DISSOLUTION OF**  
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*This thesis is dedicated to my beloved husband, Ahmad Khairuddin and my five children: Amir, Awin, A'in, Anis and Amirah.*

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## LIST OF ABBREVIATIONS

A.C	Law Reports Appeal Cases
A.L.J.	Australian Law Journal
A.L.R.	Australian Law Reports
Adel. Law Rev.	Adelaide Law Review
ALL E.R	All England Law Reports
AMR	All Malaysian Reports
Beav.	Beavan's Rolls Court Reports
C.L.J	Current Law Journal
C.P.F.	Central Provident Fund
Cal. Rprtr.	California Reporter (West).
Cal.L.Rev.	California Law Review
Camb. L.J	Cambridge Law Journal
Ch.	Law Reports Chancery Division
Ch. Ca	Cases in Chancery
Ch. D	Law Reports, Chancery Division
Civ. Appeal	Civil Appeal
Conv. & Prop. Law.	Conveyancer and Property Lawyer
E.P.F	Employees Provident Fund
E.R	English Reports
ed.	Edition / editions, edited by
etc.	( <i>et cetra</i> ) : and so forth
F.L.R.	Family Law Reports
Fam.	Law Reports Family Division
Fam. Law	Family Law. 1971-
Fam.L.Q	Family Law Quarterly
FT. Act	Islamic Family Law (Federal Territories) Act 1984
G.L.R	Gazette Law Reports (N.Z)
Hofstra L.Rev.	Hofstra Law Review
Ibid.	( <i>Ibidem</i> ) : in the same place
Id.	( <i>Idem</i> ): the same
Ins.	Inside
J.H	Jurnal Hukum
J.L & Soc.	Journal of Law & Society
J.R	Juridical Review
JMBRAS	Journal of the Malayan Branch of the Royal Asiatic
K.B.	Law Reports: King's Bench Division.
Ky.	Kyshe's Reports
Leic	Leicester Report
L.R Eq	Law Reports, Equity Cases. 1865-75
L.R.	Law Reports
L.R. P & D	Law Reports, Probate & Divorce Cases
LQR	Law Quarterly Review
LRA	Law Reform (Marriage & Divorce) Act 1976
MLR	Modern Law Review
Mich.L.Rev	Michigan Law Review
MLJ	Malayan Law Journal

MLN	Malayan Law News
MLR	Malayan Law Review
N. Y. S. 2d.	New York supplement Reporter, Second Series
n.d.	no date
N.E. 2d	Northeastern Reporter, Second Series
n.p	no place: no publisher
N.Y. 2d	New York Court of Appeals Reports, Second Series
N.Z.L.R.	New Zealand Law Reports
no./ nos	number / numbers
p.	page
pp.	pages
P.	Law Reports, Probate, Divorce and Admiralty Division.
P. 2d.	Pacific Reporter, Second Series.
P.B.U.H	Peace Be Upon Him
passim	here and there
pp.	pages
Q.B	Law Reports, Queen's Bench
S.A.S.R.	South Australian State Reports
S.L.T	Scots Law Times 1893-date
S.W.T	Subhanahu Wa Ta'ala (Praise be to Allah and the Most High)
SLJS	Singapore Journal of Legal Studies
SLR	Singapore Law Reports
Sol. Jo.	Solicitors' Journal
Trans.	Translator, translated by
Tul. L. Rev.	Tulane Law Review
U.C.L.A Law Review	University of California at Los Angeles Law Review
U.New South Wales L.J	University of New South Wales Law Journal
v.	(versus): against
v. / vv.	Verse / verses
vol. / vols	volume / volumes
W.L.R	Weekly Law Reports
Win.L.R.	Wisconsin Law Review
Women's Right L.Reptr.	Women's Right Law Reporter
Yale. L.J	Yale Law Journal

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