

A STUDY ON DISTRIBUTION OF ASSETS AND LIABILITIES UPON SEPARATION OF
NON-MUSLIM COHABITANTS IN MALAYSIA

BY

NURUL ASYIQIN BINTI SHUKRI (2010239546)

NUR FARHANA BINTI NANI (2010831034)

NUR FATIN AFIQAH RAMLI (2010220768)

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ABSTRACT

Despite fast changing ways of life, the modern living arrangement namely 'cohabitation' has been hesitantly recognised either by the society or law in Malaysia. Most researchers and scholars believe that though the society welcomes technological changes in their lives, in the case of family ties, most people stick to the traditionally accepted way of bringing up a family, which is a legally registered marriage. However, it must be noted that the number of people who practice cohabitation in Malaysia has been increasing over the years and like other relationships, some are meant to last forever and some end up halfway for various reasons. The lack of legal recognition of cohabitation has caused problems particularly in the division of assets and financial rights. As cohabitants are also part of the society, it would be necessary for the state to look into this matter and assist them in any possible way. Therefore, this research looks into the problems faced by cohabitants post their relationship and examine whether the law provides them with any form of protection.. This research also compares the situation in other countries such as Scotland, India, United States and others in relation to the division of assets and liabilities post cohabitation. It also proposes recommendations to assist the cohabitants in facing their problems.

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CHAPTER ONE

INTRODUCTION

1.0 Research Background

Marriage is the basis of family law. From a religious point of view, marriage is widely recognized as the gateway to enter into a legitimate relationship and starting a family. In Islam it is stated that marriage is the only legal way permitted for its devotees to have sexual relationships.¹ For Christians, they believe that marriage is a gift from God and it is the right atmosphere to engage in sexual relations and build a family life. However, Buddhism is silent on the subject of marriage. Perhaps, due to Buddhism's strong monastic tradition, marriage is considered as a secular affair where there is no turning to their monk or religious figure for a marriage ceremony. Nevertheless it is common for couples to turn to a monk for blessings after having performed the civil ceremony.²

From a moral and ethical point of view, society insists on marriage as it is the sole legitimate instrument to raise children and is assumed as the central feature of society. A formal marriage sets promises between spouses, stimulates feelings of responsibility and directs the spouses to behave in a certain way to sustain the relationship.³ Legal marriage becomes part and parcel of life as many other dimensions in law provides for married couples such as in taxation, pensions, inheritance, custody, property ownership and access rights. In short, marriage needs to be legally registered for the convenience of the couples and

¹ "Why Should I Marry?." (2011). Retrieved from Inter-Islam.com

² Kozak, A. (2011). *The Everything Buddhism Book: A Complete Introduction to the History, Traditions and Beliefs of Buddhism, Past and Present.* (2nd ed.). Massachusetts: Adams Media.

³ Carbone, J. "Morality, Public Policy and the Family: The Role of Marriage and the Public-Private Divide".