

THE RIGHTS AND RESPONSIBILITIES OF A NON-CUSTODIAL  
PARENT IN MALAYSIA: AN ANALYSIS

By:

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## **ABSTRACT**

This project paper would be focusing on the right and responsibilities of the non-custodial parent in Malaysia post-divorce. This is because a parent, even does not has the custody of the child, would still has rights and responsibilities over the child. Most of the people might aware the right and responsibility of a parent towards his or her child. However, the question arises would be what are the differences between rights and responsibilities? What would be the effect of such terms if they are applied as a law?

This project paper would also study the applicability of such concept in local law. This is because this concept is practiced by Scotland and Australia and is said to be one of promising method in matter relating to custody of a child. Even if it is well applied in both of the foreign countries, could it be applied in Malaysia in the same way and have the same effect as what is currently practiced in Scotland and Australia to solve the custodial issues after the divorce?

In Malaysia, the current position of law with regard to the custody of the child is that in determining the order for custody of the child, the paramount consideration that should be taken into account by the court is welfare of the children. The wishes of the parent would be a secondary matter to be considered by the court. Again, a question would arise as to the extent that what is meant by welfare of the child or how welfare of the child is determined by the court? Does the law in Scotland and Australia could provide a better definition of welfare of the children?

This project paper would discuss the relevant law in comparison with the position of the law in Scotland and Australia. This is important because if the law could be improvised, then it would give a better protection for the children from their parents during and after the divorce proceeding as the paramount consideration is the welfare of the child. This research would be conducted based on article and journals from scholars, case law analysis and also interview with selected respondents.

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# **CHAPTER ONE: INTRODUCTION**

## **1.0 INTRODUCTION**

In family law apart from marriage, divorce matters, ancillary matters such as maintenance of the child and also custody, the disputed party would usually fight for the custody of the children if they have any.

Besides, custodial matters, there are certain rights and responsibilities that comes along with the custody order. In Malaysia, this usually refers to the right to daily custody over the children, the guardianship of the children, the visitations rights of the non-custodial parent and the duty to provide maintenance for the child.

This research analyses and compares the rights of custody in Malaysia with the responsibilities of the non-custodial parents in Scotland and Australia. A study is made with regards to the similarity of the position of laws in each of the respective countries and also the differences between each system and their application of the law.

Data will be analysed and suggestions on the certain aspects that could be adapted into the local law to improve the current position in Malaysia.

## **1.1 RESEARCH BACKGROUND**

Custody is one of the major issue arises after the granting of the divorce by the court. However, on the other hand, custody can also be granted without divorce such as adoption and custody of an illegitimate child. In Malaysia, Section 89(2) of the Law Reform (Marriage and Divorce) Act 1976, it provides:

“that an order for custody may; (d) give a parent deprived of custody or any member of the family of a parent who is dead or has been deprived of custody the right of access to the child at such times and with such frequency as the court may consider reasonable.”