

**A STUDY IN THE ADMISSIBILITY OF DIGITAL EVIDENCE IN  
THE MALAYSIAN COURTS**

By

Md. Shazli Munip b. Abdul Malek (2003642478)

Noraisyah bt Bahrim (2004103133)

Muhd. Akmal b Abu Bakar (2004103092)

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Faculty of Law**

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The students/authors confirm that the work submitted is their own and that appropriate credit has been given where reference has been made to the work of others.

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## **ABSTRACT**

This research was done to fulfil one of the requirements of the Bachelor of Legal Studies program. The research examines the issue of admissibility of digital evidence in Malaysian courts. The issue of authenticity of evidence is not new; however the nature of digital evidence makes it easier for it to be manipulated, altered and tempered. Thus, it is important to determine whether the current laws in Malaysia are sufficient to safeguard evidence in digital forms from being tempered. Two critical issues were discussed in this research. The first issue was whether digital evidence can be considered as evidence in Malaysian courts. The second issue was whether digital forms of evidence are admissible as documentary evidence. To shed some light on the issues concerned, the research had focused on the definition of evidence under the Malaysian Evidence Act and the rules governing the admissibility of documentary evidence. To understand the issue of admissibility of documentary evidence reference were made to Malaysian authors. The research has also examines the position taken by other common law countries such as the United States, Australia, United Kingdom and India on the issue. After examining the problems surrounding admissibility of digital evidence, some recommendations were suggested at the end of this research.

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# A STUDY IN THE ADMISSIBILITY OF DIGITAL EVIDENCE IN THE MALAYSIAN COURTS

## CHAPTER ONE: INTRODUCTION

### 1.0 Introduction

There is no denying that the world has gone digital. Every aspect of our lives is increasingly becoming more connected to computer and digital technology: be it at home, at work or for official business or even for entertainment purposes. The emergence of digital technologies creates a new situation that raises doubts as to whether the current law can be applied to these new situations.<sup>1</sup> With such advances in technology in this era of globalisation, the law simply cannot ignore the use of digital devices which can in fact store crucial evidence.

‘Evidence’ according to the *Barron’s Law Dictionary*<sup>2</sup> is described as being all the means by which any alleged matter of fact, the truth of which is submitted to investigation at judicial trial, is established or disproved. It includes testimony of witnesses, introduction of records, documents, exhibits, objects or any other probative matter offered for the purpose of inducing belief in the party’s contention by the fact-finder.

The *Oxford Concise Dictionary of Law*<sup>3</sup> defines evidence as that which tends to prove the existence or non-existence of some fact. It may consist of testimony, documentary evidence, real evidence and when admissible even hearsay evidence. The law of evidence comprises all the rules governing the presentation of facts and proof in proceedings before a court, including in particular the rules governing the admissibility of evidence and the exclusionary rules.

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<sup>1</sup> Crystal A. Garcia. Ph.D., Sheila Suess Kennedy, J.D., Barbara Lawrence, *Picture Powerlessness: Digital Photography, Domestic Violence and the Fight Over Victim Autonomy*. (Hamline Journal of Public Law Policy, 2003) at Page 2.

<sup>2</sup> Steven H. Giffis, *Barron’s Law Dictionary, 3rd Edition*, (Barron’s Educational Series, Inc. 1991), at page 169.

<sup>3</sup> Oxford Reference, *A Concise Dictionary of Law, 2<sup>nd</sup> Edition*, (Oxford University Press, Penerbit Fajar Bakti, 1991) at Page 156.