

A COMPARATIVE STUDY ON THE RIGHT TO  
MAINTENANCE UNDER CIVIL AND MUSLIM LAW

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## CHAPTER I

## INTRODUCTION

The purpose of this paper is to make a comparative study on the right to maintenance under Civil and Muslim Law. This topic was chosen because of the writer's interest in the law of maintenance while she did her practical training in Sarawak Legal Aid Bureau in Kuching after her second year of study in December, 1984.

It is aimed that this paper would bring out similarities and contrasts of the various laws in force in Malaysia governing the right of married women (and men) and children to maintenance and also the extent of the protection of this right.

A marriage, being a civil contract regardless whether it is solemnised under Civil or Muslim Law, creates and imposes mutual rights and obligations. Maintaining a spouse and children of the marriage is one of the obligations imposed on spouses or parents.

Different laws apply to different sets of people because of the legal history and different religions practised by the multi-racial population of Malaysia.

In this paper, it is hoped that a comparative study will be made out successfully. To achieve this, the writer has divided this paper into four chapters. The introduction part is dealt with in this chapter, introducing the topic and the writer's aim and scope of the topic.

Chapter II will cover the right to maintenance under Civil Law. It is subdivided into maintenance of spouse and maintenance of children. The writer will rely greatly on statutory provisions since the law is contained in statutes.

Chapter III will deal with the right to maintenance under Muslim law. Similarly, it is also subdivided into maintenance of spouse and maintenance of children. As Muslim law is in the state list of the Federal Constitution there is a wide variety of Muslim Law Enactments from state to state. These enactments will be greatly made used of in this chapter too.

Chapter IV will summarise the topic. It is hoped that the writer will be successful in her attempt to compare the law as applicable in Malaysia.

The law is as on the 1st day of March 1985.

## CHAPTER II

## MAINTENANCE UNDER CIVIL LAW

A Maintenance of spouse

Legal rights and duties between spouses arise by virtue of marriage. Each is under a general duty to maintain each other. Maintenance may include lodging, feeding, clothing, teaching, training, attendance, medical and surgical relief, and in respect of any deceased person, the cost of his funeral.<sup>1</sup>

Cohabitees are under no duty to maintain each other because mere cohabitation without marriage does not give rise to any legal rights and obligations to the parties concerned.<sup>2</sup> In Low Kim Yon v Tay Guat Hian and Ors,<sup>3</sup> it was held that when the deceased [husband] married the first respondent [wife] he incurred a legal obligation to maintain her and any children of the marriage and she acquired a legal right to be maintained. It is immaterial where he obtained the money to discharge his legal duty. The duty to maintain a wife is a legal duty enforceable by law. However, maintenance is not enforceable during cohabitation in marriage.<sup>5</sup>

1. Ingill, Family Law 302
2. Parry, Martin L. Cohabitation
3. [1960] 26 M.L.J. 261
5. R.L. Deech, 'The Principle of Maintenance' [1977] 7 Family Law 229.