

**A STUDY ON THE RIGHTS OF CHILDREN BORN OUT OF WEDLOCK TO  
INHERIT PROPERTY FROM THEIR 'PARENTS'.**

By

Aaina Liyana Abd Manaf (2006146149)

Nurulyazmine Razali (2006146259)

Nur Nadeera Mohd. Ridzuan (2006146243)

Amanda Leonie Benedick (2006146161)

Submitted in Partial Fulfillment of the Requirements  
for the Bachelor in Legal Studies (Hons)

**University Teknologi MARA  
Faculty of Law**

April 2009

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.

## **ABSTRACT**

This thesis deals with the law of inheritance in Malaysia. It concerns the rights of illegitimate children to inherit property from their 'parents'. The main objective of this research is to make a fair comparison between the two different laws, i.e. Islamic law and also civil law and to lay down the rights of inheritance of the illegitimate children.

Basically, the general rule in both laws is that only legitimate persons are entitled to inherit. Our first impression regarding the title of our research was that illegitimate children are generally prohibited to get inheritance. However, after studying the laws critically and carefully, we found out that illegitimate children do indeed have rights to inheritance.

Legitimacy is the key to inheritance. Therefore, we believe that we ought to discuss into detail of the law of legitimacy and how one's status can be illegitimate. For Muslims, the law that governs them is the divine words of Allah in the Holy Quran. Islam has set out strict rules regarding the rules of inheritance. With such rigidity, it is impossible to alter the position of illegitimate children under inheritance. However, an illegitimate child is considered as the child of his mother and thus, his rights to inheritance lie with the mother.

For non-Muslims, the laws available are the Distribution Act 1958, Inheritance Act 1971 and Wills Act 1959. There is no provision under the civil law specifically stating that an illegitimate child cannot inherit from his or her 'parents' but the law provides an alternative for these illegitimate children to inherit and that is, by way of legitimization. The process of legitimization makes the illegitimate child to be legitimate and therefore, makes the child as the lawful child of his 'parents' or adopted parents.

## ACKNOWLEDGEMENT

*Bismillahirrahmanirrahim. In the Name of Allah, Most Gracious, Most Merciful.*

Alhamdulillah, we managed to complete our Honours Project Paper within the specified time allocated to us.

In the process of completing this project paper, we had obtained much needed assistance and guidance from our beloved supervisor, Pn. Suzaini Mohd Saufi, who was as always, very helpful and patient. Besides that, we would like to express our gratitude towards our respective family for all their support, morally as well as financially.

It is also essential that we thank each other on the co-operation and effort we all of us put in towards the completion of this paper. Most of the research and materials were done and acquired together through our meetings and trips to the library.

Additionally, we would like to extend our appreciation towards the respondents we interviewed, Dr Azizah binti Mohd from International Islamic University and Arunan Selvaraj, a lawyer from Rusmah Arunan & Associates. We are extremely grateful that they were willing to allot time for attending to our questions and requests.

Last but not least, thank you to all our friends who were ready to give us suggestions and ideas pertaining to the project paper. Thank you also to everyone who was involved in the process of printing and documenting this research.

Thank you.

## TABLE OF CONTENTS

Acknowledgement	ii
Abstract	iii
Content	iv
List of Cases	viii
List of Statutes	x

### **CHAPTER ONE: INTRODUCTION**

1.0	Introduction	1
1.1	Research Question	4
1.2	Research Objectives	5
1.3	Literature Review	5
1.4	Methodology	10
	1.4.1 Library Research	10
	1.4.2 Interviews	10
1.5	Scope of Study	11
1.6	Limitations	11
1.7	Significance of Study	12
1.8	Provisional Plan of Research	12
	1.8.1 Defining The Problem	12
	1.8.2 Developing an Appropriate Approach	13
	1.8.3 Collecting and Gathering Data	13
	1.8.4 Preparing and Analyzing Data	13
	1.8.5 Documentation	14

### **CHAPTER TWO: LEGITIMACY IN MALAYSIA**

2.0	Legitimacy in Malaysia	15
-----	------------------------	----

2.1	Definition of Legitimacy	15
	2.1.1 Common Law	15
	2.1.2 Islam	16
2.2	Definition of Illegitimacy	18
	2.2.1 Common Law	18
	2.2.2 Islam	19
2.3	Laws Applicable in Malaysia	21
	2.3.1 Muslims	21
	2.3.1.1 Legitimacy Laws in the Quran	21
	2.3.1.2 Legitimacy Laws in Malaysia	23
	2.3.2 Non-Muslims	25
2.4	Basis of Illegitimacy	27
	2.4.1 Islam	27
	2.4.1.1 Introduction	27
	2.4.1.2 Cohabitation	27
	2.4.1.3 Zina	29
	2.4.1.4 Li'an	30
	2.4.1.5 Prohibited Marriage	32
	2.4.2 The Civil Law	38
2.5	Legitimation	48
	2.5.1 Muslims	48
	2.5.2 Non-Muslims	54
2.6	Conclusion	59

### **CHAPTER THREE: PROPERTY INHERITANCE IN MALAYSIA**

3.0	Property Inheritance in Malaysia	60
3.1	Property Inheritance in Islam	60
	3.1.1 History	60
	3.1.2 The Laws of Inheritance in the Holy Quran	61