Contesting Jurisdiction in respect of Incest:  
With Particular Reference to Malaysia

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Introduction

The issue of contesting jurisdiction regarding aspects of law seems to be taking place in a country like Malaysia which operates a parallel judicial system. The national Malaysian legal system is based on a modern "secular" state. At the same time, Malaysia also implements some aspects of Islamic Law for those professing Islam (Muslim). The national court known as the civil court has jurisdiction on all matters of the law, except matters within the jurisdiction of Islamic law, also known as shariah.1 The position of Islam in Malaysia is, by virtue of the Federal Constitution, as the religion of the Federation. Article 3 of the Federal Constitution states: "Islam is the religion of the Federation, but other religions may be practised in peace and harmony in any part of the Federation". Although it is the religion of the Federation, Islamic Law only applies to Muslims. The position is clear in the decision by Salleh Abbas LP in the case of Che Omar bin Che Soh v Public Prosecutor,2 where his Lordship decided that due to the British colonisation, Islamic Law was only applicable to Muslims as their personal law.3 Following Article 4 of the Federal Constitution,4 Islamic Law is a matter falling within the State List, which means that it is a matter for the State Legislature.5 Today, Islamic law is governed by each state which establishes the religious council to administer and govern all matters pertaining to Muslim affairs. The Syariah Court, which tries Islamic Law matters once under the administration of state religious council, now stands on its own since 1996.

Even though the civil and Syariah courts seem independent of each other, there are several areas of tension which see the civil court absorbing into the