

FATWAS OF SINGAPORE

VOLUME 2



INHERITANCE AND ESTATE PLANNING



Majlis Ugama Islam Singapura
(Islamic Religious Council of Singapore)

FATWAS OF SINGAPORE

VOLUME 2

Inheritance and Estate Planning

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FATWAS OF SINGAPORE

VOLUME 2

Inheritance and Estate Planning



Majlis Ugama Islam Singapura

(Islamic Religious Council of Singapore)

CONTENT PAGE

NOTE ON TRANSLITERATION STYLES	vi
LIST OF FATWAS	vii
PREFACE	x
INTRODUCTION	2

Chapter 1: INHERITANCE MATTERS AND ESTATE PLANNING

The History of Inheritance Laws in Singapore	6
Inheritance in Singapore: A Pre-1968 History	6
Legal Institutions Before 1942	6
Islamic Administration of Inheritance in the 1950s	8
The Repeal of Customary (Adat) Administration of Inheritance	9
Administration of Muslim Law Act (AMLA)	11
The <i>Maqāṣid al-Sharī'ah</i> of Planned Giving	12
Quranic Objectives of Asset Distribution	12
The Importance of Financial Management for Senior Citizens	17
New <i>Ijtihād</i> Based on <i>Maqāṣid al-Sharī'ah</i> for Financial Issues (<i>Mu'āmalāt</i>)	21
Instruments in Financial Planning	22
Fatwa Decisions Regarding Various Issues Related to Wills	24

Chapter 2: INHERITANCE (*FARĀ'ĪD*)

Inheritance and Changing Family Structures in Singapore	35
Marriage and Maintenance	35
Elderly and the Right to Maintenance (<i>Naḥkab</i>)	38
Inheritance Law (<i>Farā'id</i>)	40
Distribution of Inheritance Among Family Members	45
Issue of Equal Distribution	49
Distribution of Inheritance According to Agreement Between Heirs	50
Inheritance Distribution for Adopted Children	53
Financial Support for Children Born Out of Wedlock	58
Estate Distribution Following Schools of Thought (<i>Madhhab</i>)	60

Estate Distribution Based on Different Schools of Thought (<i>Madhhab</i>)	61
Inheritance and Schools of Thought (<i>Madhhab</i>)	62
Inheritance Between Heirs of Different Religions	68
Conclusion	71
<hr/>	
Chapter 3: WILL	77
<hr/>	
Wills in Singapore – Before and After AMLA	77
Before AMLA: Administration of Muslim Law in the 19th Century	77
After AMLA: Administration of Muslim Law After Independence	80
Wills	84
The Pillars and Conditions of Wills	86
Conditions for a Valid Will in Singapore	87
Estate Inheritance in the Administration of Muslim Law Act (AMLA)	89
Bequeathing One-Third of the Estate	90
Trustee	94
Wills Made for Unborn Heirs	97
Wills for Non-Muslims	99
Mandatory Will (<i>Waṣiyyah Wājibah</i>)	102
Illustration of Mandatory Will	103
Conditional Will	107
Revocation of Wills According to Fiqh and Its Legal Implications	109
Conclusion	111
<hr/>	
Chapter 4: WAKAF	113
<hr/>	
Historical and Development of Wakaf in Singapore	113
Post-AMLA	115
Fatwa – Selling Wakaf Property / Land	116
Wakaf in Islam	117
Pillars and Conditions of Wakaf	120
Wakaf and Limited Period Wakaf	122
Fatwa – Wakaf of Leased Land and the Terms of Wakaf	123

Principles of Wakaf Management	124
Wakaf property is perpetual (<i>ta'bid</i>), and its benefits continuous (<i>darwām</i>)	124
The administration of wakaf properties must align with the intentions of the endower	126
The <i>Maqāṣid al-Shari'ah</i> as the Foundation for the Formation and Preservation of Wakaf Assets	129
Fatwa – Merging Several Wakaf Properties Into Wakaf Ilmu	130
The Existence of Wakaf is Contingent Upon the Presence of Endowed Assets	131
Funding Wakaf Asset for its Preservation	133
Redevelopment of Wakaf Assets	135
First Issue: Reconstruction to Enhance Wakaf Income	137
Second Issue: Redevelopment of wakaf as an investment asset	139
Third Issue: Reconstruction of Wakaf Assets	140
Fourth Issue: Using <i>Baitulmal</i> Funds to Redevelop Wakaf Properties	141
Fifth Issue: Temporary Cessation of Wakaf Income	143
Sixth Issue: The Types of Goods Sold through Wakaf Properties	143
Fatwa on the Sale of Non-Halal Items on Wakaf Property	148
Wakaf Masyarakat Singapura (Singapore Community Wakaf): Ensuring Welfare and Development	149
Conclusion	151

Chapter 5: CENTRAL PROVIDENT FUND (CPF) AND INSURANCE NOMINATION **160**

Background of CPF in Singapore	160
CPF Nomination	163
The Development of inheritance Rights for CPF Nomination Funds and MUIS-AMLA's Position	164
Fatwa on CPF Nomination	168
Nomination as a Contemporary Form of <i>Hibah</i>	173
Insurance Nomination	175
Fatwa Decisions on Insurance Nomination	177
Dependants' Protection Scheme (DPS)	182
Special Needs Trust Company (SNTC)	190
Conclusion	195

Chapter 6: JOINT TENANCY AND JOINT ACCOUNT	197
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Developments of Inheritance Rights	197
Background of Joint Tenancy	198
Joint Tenancy According to the Shariah	200
<i>Nuzriah</i>	203
Latest Development: <i>Presumption of Resulting Trust</i>	220
Joint Account	222
Conclusion	226

ENDNOTES	227
GLOSSARY	252
ACKNOWLEDGEMENT	254
INDEX	256

NOTE ON TRANSLITERATION STYLE

CONSONANT			
ا : a	ذ : dh	ظ : ḏ	ن : n
ب : b	ر : r	ع : ʿ	و : w
ت : t	ز : z	غ : gh	ه : h
ث : th	س : s	ف : f	ء : ʾ
ج : j	ش : sh	ق : q	ي : y
ح : ḥ	ص : ṣ	ك : k	
خ : kh	ض : ḍ	ل : l	
د : d	ط : ṭ	م : m	
VOWEL			
Long	Short	Doubled	Diphthong
آ : ā	أ : a	آي : iyy	أو : au/aw
و : ū	إ : i	وو : uww	آي : ai/ay
آ : ā	أ : u		

LIST OF FATWAS

Year	Fatwa Title	Page
1968	Inheritance for Adopted Children	57
1969	Wills Before 1966	88
1970	Wakaf on Temporary Occupation Licence (TOL) Land	131
1971	Wakaf of Leased Land and the Terms of Wakaf	132
1971	CPF Nomination	178
1975	Inheritance Distribution for a Non-Muslim Widow	73
1977	Adopted Children and Children Born Out of Wedlock	60
1985	Issue on Wakaf Assets	147
1985	Liquidating a Portion of Wakaf Assets for Redevelopment	149
1988	Inheritance and Wills	97
1988	Distribution According to the Method of <i>Radd</i>	69
1988	Inheritance of People of Different Religions	74
1988	Redevelopment of Wakaf Assets	151
1988	Utilisation of Baitulmal Funds for Wakaf Redevelopment	152
1992	Wills for Non-Muslims	107
1994	Inheritance Certificate of a Person with No Affiliation with Any <i>Madhhab</i>	65
1995	Inheritance According to the Hanafi School of Thought	67
1994	Bequeathal of One-Fifth of Inheritance to Adopted Child	57
1995	Bequeathing One-Third for Endowment (<i>Wakaf</i>)	98
1995	Equal Distribution of Inheritance	52
1995	Distribution of Inheritance Based on Agreement Among Heirs	55

Year	Fatwa Title	Page
1995	Written Statement of Nazar	215
1996	Gifting (<i>Hibah</i>) Inheritance Estate	100
1996	Estate Distribution According to <i>Farā'id</i>	48
1997	Conditions Contravening the Principle of Wakaf	114
1997	Conditional Will Provisions for Non-Heir Grandchild	134
1997	Selling Wakaf Property / Land	125
1997	Temporary Cessation of Wakaf Income	153
1997	The Types of Commodities Transacted Within Wakaf Properties	155
1997	Conditional Will (<i>Ta'liq</i>)	115
1997	Selling Wakaf Property to Preserve It	137
1997	Joint Tenancy (Ownership Status of HDB Flat of the deceased late YBA)	224
1998	A Gift by Nazar	216
2002	Wills for Unborn Heirs	104
2002	Wills for Heirs	101
2002	Joint Account	238
2002	Excluding the Name of a Disobedient Child from Inheritance	49
2003	Inheritance Distribution Amongst Non-Muslim Heirs	75
2005	Various Issues Related to Wills	25
2006	Wills for Non-Heirs and Non-Muslims	107
2007	Guide for Forming Nuzriah	81
2008	Responsibility of the Biological Father in Providing Financial Support	62

Year	Fatwa Title	Page
2008	Joint Tenancy	225
2008	Inheritance for Children Born Out of Wedlock	62
2010	CPF Nomination	180
2012	Insurance Nomination	190
2014	Group Insurance	196
2015	Wakaf with No Remaining Assets	140
2015	Merging Several Wakaf Properties Into Wakaf Ilmu	139
2015	Funding Wakaf Asset for its Preservation	143
2016	<i>Hibah</i> ZB's Estate	202
2018	Hibah Special Needs Trust Company (SNTC)	222
2019	Joint Tenancy	228
2019	Lasting Power Attorney (LPA)	19
2022	The Sale of Non-Halal Items on Wakaf Property	158
2023	Dependents Protection Scheme Nomination (DPS)	198



PREFACE

SOHIBUS SAMAAH MUFTI

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

الحمد لله رب العالمين، والصلاة والسلام على أشرف الأنبياء والمرسلين، سيدنا وحبينا محمد وعلى آله وصحبه ومن والاه.

With the grace of Allah ﷻ, the Office of the Mufti is pleased to present this volume of fatwa compilation on inheritance and estate planning. It is a sequel to the first volume in the series published in 2017, whose theme was on *Science, Medicine & Health*.

Today, financial matters and estate distribution have grown increasingly complex. With the higher cost of living and rapid economic growth, individuals are able to explore and avail themselves to various forms of estate planning. This also means that there are many questions on the religious position and guidance regarding these instruments. This therefore necessitates robust and comprehensive study as part of formulating fatwa positions and guidance for the Muslim community in Singapore.

In this regard, there are two fundamental guiding principles: (i) the principles and values of the Shariah, such as compassion (*rahmah*), generosity (*ihsan*) and facilitativeness (ii) consideration of the impact of contemporary developments.

First Consideration: The Principles and Values of the Shariah in Fatwas

The Shariah brought by the Prophet ﷺ is established on the principles of *rahmah*, *ihsan*, and ease. This is encapsulated in Ibn ‘Āshūr’s magnum opus, *al-Taḥrīr wa al-Tanwīr*:

فَامْتَاَزَتْ شَرِيْعَةُ الْإِسْلَامِ بِأَنَّ الرَّحْمَةَ مُلَاَزِمَةٌ لِلنَّاسِ بِهَا فِي سَائِرِ أَحْوَالِهِمْ وَأَنَّهَا حَاصِلَةٌ بِهَا لِجَمِيعِ النَّاسِ
لَا لِأُمَّةٍ خَاصَّةٍ... فَأَقِيَمَتْ شَرِيْعَةُ الْإِسْلَامِ عَلَى دَعَائِمِ الرَّحْمَةِ وَالرِّفْقِ وَالْيُسْرِ.

Meaning: “*The distinctiveness of the Shariah lies in its inherent mercy in all situations, encompassing everyone, and transcending all communities... the Shariah is established on the foundations of mercy, gentleness, and ease.*”¹

One of the objectives of fatwa is to facilitate the community’s socio-religious life. This is particularly evident in wealth, inheritance, and estate planning, as these have a direct impact on an individual’s daily life and well-being. The Fatwa Committee therefore continuously seeks solutions for the community facing various inheritance-related challenges. Drawing from the various inheritance-related cases addressed by Muis and the Office of the Mufti (OOM), it is clear that many individuals face difficulties due to a lack of understanding of Islamic law and a lack of appreciation of Islamic principles and values on matters relating to wealth and estate. This has unfortunately given rise to conflicts amongst family members or heirs. Yet, such situations conflict with the essence of the Shariah, which brings mercy (*rahmah*) and kindness (*ihsan*). Ibn Qayyim explains in *I’lām al-Muwaqqi’in ‘an Rabb al-‘Ālamīn*:

فَإِنَّ الشَّرِيْعَةَ مَبْنَاهَا وَأَسَاسُهَا عَلَى الْحِكْمِ وَمَصَالِحِ الْعِبَادِ، فِي الْمَعَاشِ وَالْمَعَادِ، وَهِيَ عَدْلٌ كُلُّهَا،
وَرَحْمَةٌ كُلُّهَا، وَمَصَالِحُ كُلُّهَا، وَحِكْمَةٌ كُلُّهَا، فَكُلُّ مَسْأَلَةٍ خَرَجَتْ عَنِ الْعَدْلِ إِلَى الْجُورِ، وَعَنِ الرَّحْمَةِ
إِلَى ضِدِّهَا، وَعَنِ الْمَصْلَحَةِ إِلَى الْمَفْسَدَةِ، وَعَنِ الْحِكْمَةِ إِلَى الْعَبَثِ فَلَيْسَتْ مِنَ الشَّرِيْعَةِ...

Meaning: “*The Shariah is based on wisdom and achieving people’s welfare in this life and the afterlife. The Shariah is centered on justice, mercy, wisdom, and goodness. Thus, any ruling that replaces justice with injustice, mercy with its opposite, common good with mischief, or wisdom with foolishness does not belong to The Shariah...*”²

Similarly, Imam al-Ghazālī writes in *al-Mustasfā*:

فَكُلُّ مَا يَتَّصَمَّنُ حِفْظَ هَذِهِ الْأُصُولِ الْخَمْسَةِ فَهُوَ مَصْلَحَةٌ، وَكُلُّ مَا يُفَوِّتُ هَذِهِ الْأُصُولَ فَهُوَ
مَفْسَدَةٌ وَدَفْعُهَا مَصْلَحَةٌ

Meaning: “Everything that advances the protection of these five fundamentals (i.e., religion, life, intellect, family relations, and property) is considered *maṣlahah*, and everything that fails to protect these five fundamentals is considered as harm (*mafsadah*), and repelling it is regarded as *maṣlahah*.”³

These principles and values guide our approach in considering social conditions and lived realities when issuing fatwas. The Islamic tradition and intellectual heritage are meant to help societies progress, rather than impede its growth. The writings of past scholars are profoundly rich because they had actively and diligently sought solutions to the challenges faced by their communities. It is now the responsibility of the current generation of scholars and fatwa institutions to advance religious thought in addressing the complex issues faced by their respective communities.

Adopting the approach of *rahmah* and *ihsān* when issuing legal rulings or fatwas can lead to decisions that prioritise the benefits accruing to individuals as well as society. This approach favours ease and leniency, in accordance with the guidance from the Quran. Allah ﷻ says:

﴿يُرِيدُ اللَّهُ بِكُمُ الْيُسْرَ وَلَا يُرِيدُ بِكُمُ الْعُسْرَ﴾

Meaning: “Allah intends ease for you, not hardship.” (Surah *al-Baqarah*: 185)

Second Consideration: The Impact of Contemporary Developments

The Fatwa Committee, with the support of the Office of the Mufti, continuously assess and study new developments that affect the community. Readers will notice some of these developments in the fatwa decisions presented in this book. Changes to fatwa happen due to various reasons, such as contemporary needs, and new policies, which impact on the community’s religious life. Contemporary developments must be given due consideration

in the review of fatwa decisions, guided by the principle of *maṣlaḥah*. This aligns with the well-established Islamic principle that rulings may differ with changes in time and place (*taghayyur al-aḥkām bi-taghayyur al-zamān wa al-makān*).

Contemporary developments today necessitate proper solutions and appropriate religious guidance. Some of these developments include artificial intelligence (AI), food technology, finance, and medical technology. The fatwa institution must carefully and judiciously interpret religious texts in the context of these contemporary developments, and consider all relevant perspectives, not just the legal or *fiqhī* perspective. A critically important *fiqh* principle in today's context is:

الْحُكْمُ عَلَى الشَّيْءِ فَرَعٌ عَنْ تَصَوُّرِهِ

Meaning: “*The ruling on a matter is contingent and dependent on its prior conception.*”

Issues concerning inheritance and estate planning are among those that necessitate in-depth research and nuanced understanding of new estate planning instruments, to ensure a more thorough appreciation of the question at hand (*taṣawwur al-mas'alah*). Ibn al-Qayyim writes in *I'lām al-Murwaqqi' in 'an Rabb al-'Ālamīn*:

وَلَا يَتَمَكَّنُ الْمُفْتِيَّ وَلَا الْحَاكِمُ مِنَ الْفُتْوَى وَالْحُكْمِ بِالْحَقِّ إِلَّا بِنَوْعَيْنِ مِنَ الْفَهْمِ: أَحَدُهُمَا: فَهْمُ الْوَاقِعِ وَالْفَهْمُ فِيهِ وَاسْتِنْبَاطُ عِلْمٍ حَقِيقَةٍ مَا وَقَعَ بِالْقَرَائِنِ وَالْأَمَارَاتِ وَالْعَلَامَاتِ حَتَّى يُحِيطَ بِهِ عِلْمًا...

Meaning: “*And neither the mufti nor judge can truly issue a fatwa or verdict without two types of understanding: One of them is understanding the reality and essence of the issue through different forms of evidence and signs until he truly understands it...*”

In ensuring a comprehensive understanding of any given issue, the Fatwa Committee takes into account all relevant aspects, which may include the latest scientific and technological advancements on a certain matter, or

national policies. The Fatwa Committee also consults experts on their opinions and clarifications to an issue at hand. Where necessary, the Fatwa Committee will also directly observe manufacturing processes to determine the relevant aspects that have impact on particular rulings. Such an approach mitigates the risk of inaccurate conception of an issue or matter that needs guidance.

A notable example is the landmark fatwa *on Joint Tenancy*. The Fatwa Committee conducted multiple reviews leading up to the issuance of the latest fatwa in 2019. The reassessment was motivated by a range of considerations, and drew upon the Islamic principles, particularly public welfare, or interest (*maṣlahah*). It had also carefully considered the various legal aspects and unique circumstances of the contract of joint tenancy as practised in Singapore.

Our hope is for the compilation of fatwa to provide clear and comprehensive explanations of the approaches and principles that guide fatwa formulation and decisions on matters relating to inheritance and estate distribution. The primary goal is to educate the community and empower them with the right understanding of how the Shariah intends for our wealth and assets to be managed and distributed. At the same time, the series document the development and evolution of the Shariah and fatwa institution in Singapore, in line with the passage of time and social changes. In the same vein, it demonstrates that the Muslim community in Singapore has progressed and thrives in its socio-religious life without compromising its principles and values. By fostering a constructive collaboration between religious leadership and the Muslim community, we portray a religious identity and thought that embrace challenges with the confidence to make necessary changes, yet still rooted to the fundamentals and principles of our faith. May these efforts to achieve goodness and progress find Allah's ﷻ pleasure, *tawfīq*, and *hidāyah*.

DR NAZIRUDIN MOHD NASIR
Sohibus Samahah Mufti
Chairman of the Fatwa Committee





INTRODUCTION

The second volume maintains the discussion format of the first, analyzing each fatwa within its socio-historical context. This approach provides background information on the thought process and factors influencing the fatwa's decision.

FATWAS ON INHERITANCE AND ESTATE PLANNING

From the inception of Muis in 1968 until 2023, **Muis has issued 56 fatwas** on inheritance, endowment, estate planning and distribution. To this end, the topics in this publication are categorised into six chapters. However, it is important to note that not all fatwa decisions related to inheritance are included here due to various reasons, including the existence of similar rulings applied to different cases.

The first chapter explores the issue of estate planning. It highlights the establishment of legal institutions and the pivotal inception of the Administration of Muslim Law Act (AMLA). This legislation, dating back to the 1950s, marked the centralisation of Muslim authority in Singapore. This authority was further codified into law and institutionalised through the creation of the Majlis Ugama Islam Singapura (Muis) in the 1968. Emphasizing the adherence to the higher objectives of Shariah (*maqāṣid al-sharī'ah*), this chapter underscores the significance of planned giving in Islam and explores various financial planning instruments.

The second chapter discusses fatwas on inheritance (*farā'id*) law. This chapter looks at the socio-historical aspect of *farā'id* law in Singapore, followed by the nuances and complexities of family structure in Singapore and how the Fatwa Committee addressed these concerns and provided relevant guidance to the community.

The third chapter is closely linked to the previous chapter, focusing on the issue of wills (*waṣiyyah*). It begins with a socio-historical context of wills in civil law following the establishment of AMLA. It explores the concept of wills in Islamic jurisprudence and the Singapore context. Subsequently, it analyses eight fatwas issued by the Fatwa Committee in addressing issues or questions on inheritance.

The fourth chapter highlights the wakaf (*waqf*) institution in Singapore. It traces the chronological evolution of this institution, delineating its higher objectives (*maqāṣid*), core principles, and foundational pillars, while also addressing the challenges it faces. It discusses the fatwa thinking on the wakaf institution, which is essentially for the benefit and interest of the Muslim community, thereupon highlighting revolutionary fatwas such as the redevelopment of wakaf properties, i.e., selling wakaf properties or items and reusing the revenue for the rebuilding the wakaf property. This forward-thinking of the fatwa institution primarily aims to maintain the continuity of the wakaf institution, thereby further developing the socio-religious life of the Muslim community in Singapore and contributing to the development of the nation.

The fifth chapter focuses on a modern-day financial planning instrument the Muslim community can benefit from i.e., through nomination, in Central Provident Fund (CPF) and insurance. Notably, the chapter discusses the fatwa position on CPF nomination and revocable nomination, delineating this nomination concept as a contemporary *hibah*. In analysing the fatwa positions, it shows how the Fatwa Committee took a comprehensive approach, considering human realities and needs, national policies, and matters grounded in Islamic jurisprudence and principles.

The final chapter ends with the issue of joint tenancy and joint account. It covers joint tenancy in civil and Muslim laws, developments of inheritance rights in property and court decisions on these issues and their implications for the fatwa deliberations. The landmark fatwa, '*Fatwa on Joint-Tenancy*' in 2019, incorporates the dimensions of state and religion, taking into account public policy and juristic positions.

Each chapter of this publication addresses specific aspects of inheritance, endowment, estate planning, and distribution in Singapore, offering insights from the legal and Islamic juristic perspectives. It is the hope of the editorial team to publish subsequent volumes on other themes, such as theology, acts of worship, and family.

We sincerely hope this publication will help readers understand the multi-disciplinary approach towards the formulation of fatwa and its intricate complexities yet filled with compassion and empathy towards the questioner (*mustafti*) and the broader community. May this effort contribute to the well-being of the community in Singapore and serve as a means of attaining His pleasure and mercy in this world and the hereafter.



1

INHERITANCE MATTERS AND ESTATE PLANNING

﴿وَلْيَحْشَ الَّذِينَ لَوْ تَرَكَوْا مِنْ خَلْفِهِمْ ذُرِّيَّةً ضِعْفًا خَافُوا عَلَيْهِمْ فَلْيَتَّقُوا اللَّهَ وَلْيَقُولُوا قَوْلًا سَدِيدًا ﴿٩﴾﴾

Meaning: “Let the guardians be as concerned (for the orphans) as they would if they were to (die and) leave (their own) helpless children behind. So let them be mindful of Allah and speak equitably.” (Surah *al-Nisā*: 9)

This first chapter focuses on the historical aspect of the establishment of legal institutions in Singapore and the Administration of Muslim Law Act (AMLA), followed by the inception of Majlis Ugama Islam Singapura (Muis) in 1968 and the Fatwa Committee. Subsequently, this chapter discusses the higher objectives of Shariah (*maqāṣid al-shari‘ah*) of asset distribution and the various instruments in financial planning.

Inheritance in Singapore: A Pre-1968 History

The issue of inheritance among the Muslim community in Singapore is often fraught and contested as Singapore developed from a polity under the rule of Malay aristocracy to a British colony and, later, to a modern independent state. As the state population and diversity grew, the proportion of Malay Muslims in Singapore shrank to a minority during the colonial period. Muslims as a community were also not homogenous; a large number of immigrants from Sumatra, as well as Indian and Arab settlers, brought differing practices of the religion to Singapore. This political and demographic change meant that, before independence, Malay Muslims faced an uncertain legal landscape with three poles of power – colonial (secular) law, religious (Muslim) law and customary (*adat*) law. Each of these held considerable influence and lent authority to a Muslim’s decision on how to dispose of his property after death.

Legal Institutions Before 1942

As early as 1823, Sir Stamford Raffles established that customary and religious law would continue to have a place in Singapore by stipulating in his treaty with Malay rulers who ceded the land to him that “in all cases

regarding the ceremonies of religion, marriage and the rules of inheritance, the laws and customs of the Malay will be respected where they shall not be contrary to reason, justice or humanity.”⁴ This statement recognised – and circumscribed – the role of customary and religious laws in the British legal administration since the former was used only in family matters and subjected to scrutiny by the latter. In this matter, the British drew on a rich corpus of legal administration in British India, which had divided the lives of Muslim subjects into personal and public spheres, with religious law holding sway only over the former.⁵

Such double-edged protection was codified in 1880 when the British colonial government passed the Mohammedan Marriage Ordinance. The ordinance officially legislated the status of Muslim law while bypassing customary law, making a distinction between the two for the first time. This signalled British’s intention to streamline the legal system while being mindful of their colonies’ religious and racial diversities. While Muslims were free to marry, divorce and dispose of their property after death under the Shariah, colonial law was the *de facto* authority in all other matters. By streamlining complex religious and customary practices to a single ordinance, the British reduced the role of religious leaders trained in religious schools since their function in adjudicating disputes was limited to only family matters.⁶ Complex jurisprudential debates in religious literature became guiding precedents for legal disputes.⁷

The establishment of the Mohammedan Advisory Board in 1915 provided a channel for Muslims in Singapore to have representatives making state legislation about them. This was the primary channel to petition the government on matters pertaining to the Muslim community. Muslim organisations also pushed for representation in the Municipal Council. Opening this channel paved the way for the systematic regulation of marriages and the construction of wills, trust instruments and Muslim endowments.⁸ The Board, however, was not independent or democratically elected. Representatives were selected from a pool of prominent members of the community nominated annually by the colonial government. The Board’s advisory role also meant that it did not administer any cases directly. Rather, a judge (*qāḍī*) recognised but not appointed by the government oversaw matters such as marriage. Therefore, the circumscription of this group was assuaged by an official recognition of the *qāḍī*’s role by the colonial government, which had pledged not to interfere with religious matters.

Inheritance, trusts (*wakaf*) and wills were among the issues on which the Advisory Board could share their input. They successfully petitioned for a law stipulating that when a Muslim dies intestate (without leaving a will), his property was automatically subject to Muslim laws of inheritance (*farā'id*).⁹ However, this was not compulsory for Muslims. Therefore, individuals could choose to make a will to circumvent Islamic rules on inheritance. Muslims who made a will could also file suit in cases of disputes, and these lawsuits will be judged in civil courts under English law, where religious and customary practices had limited influence. Nonetheless, Muslim family law had a comparatively wider scope of application than Chinese or Hindu customary law. For instance, Chinese customary law was recognised for marriage and adoption but rarely applied to inheritance.¹⁰

Islamic Administration of Inheritance in the 1950s

The 1950s saw many changes to the legal administration of Muslim law in the prescribed areas of marriage, divorce, and inheritance. The Syariah Court was formed in 1958, following the passing of the Muslim Ordinance Act in the previous year. This Ordinance was formed partly to restrict the power of *qādīs*, who were previously independent of the government. Such a system, some government officials felt, failed to arrest the divorce rate – which reached as high as 60% in 1957 – and even gave an incentive for *qādīs* to profit since they were allowed to collect marriage and divorce fees. The Syariah Court was formed with a government-appointed *qāḍī* at its head and was designated as the sole legal channel for divorces.

These developments surrounding the process of Muslim marriages and divorce, *prima facie*, may seem unrelated to inheritance matters. However, it is worth noting that the administration of marriage, divorce and inheritance for Muslims has been interlinked for over a century. With the reform of the administration for Muslim marriages and the centralisation of religious authority in the form of the Syariah Court, there came parallel debates about reforming to the administration of inheritance. These discussions were prompted by a bill presented to a special committee of the Legislative Assembly in 1957, which aimed to mandate the division of property according to Islamic (*farā'id*) rules for all Muslims upon their passing. While the move was well-received by the larger community, it was unpopular among the business people who unwilling to have their inheritance divided after their death.¹¹ Fifty Muslim businessmen signed a petition in protest, alleging that Muslim assemblymen were pushing the bill to secure the Malay votes, and that other assemblymen, including non-Muslims, had refrained from opposing the bill out of fear of being perceived as anti-Islam.¹²

This Bill differed from the previous colonial practice of allowing Muslims to choose between Islamic law and civil law in inheritance matters.¹³ In essence, the bill sought to centralise and consolidate the administration of Muslim inheritance into one system. When the bill passed in 1957, the Syariah Court became the main administrative body in inheritance as Inheritance Certificates were issued through this body, a practice that remains to this day.

Adat Perpatih

Adat Perpatih is a family-based tribal system where power rests in the hands of the *Mamak* or mother's elder brother and tribal chiefs loyal to the ruler of state-enforced social and familial customs, including inheritance. In this system, a person's property after death came under three categories.¹⁴ The first was *harta pusaka* (ancestral property), which daughters customarily inherited in the family. The second was *carian bujang* (assets acquired by husband and wife each before marriage), and this was customarily divided among the surviving heirs. The third category was *harta sepencarian* (assets jointly acquired by husband and wife during their marriage), half of which was customarily inherited by the surviving spouse after death.¹⁵ *Adat perpatih* was commonly followed by Minangkabau migrants who settled in various parts of Malaya. This custom was recognised by British law, which sometimes took these customs into account when adjudicating cases that came up in their courts.¹⁶ Most inheritance cases in the 19th and early 20th centuries never reached the courts as these matters were often amicably settled at the community level.

The Repeal of Customary (Adat) Administration of Inheritance

Using *adat* to manage inheritance was legally phased out in the early 1950s. The British had long found the process cumbersome but respected the adherents of *adat perpatih*. Sir Richard Olaf Winstedt,¹⁷ disapprovingly described how land revenue collectors had to deal with “the female democrats, in whose names ancestral lands are registered, (who) flock with their tribal chief before the Collector and expound and demand their tribal rights with dominant persistence.”¹⁸ However, the initial step towards doing away with *adat perpatih* was not taken by the British but by modernist Malays in the Rembau branch of the United Malays National Organisation (UMNO).¹⁹ The move was followed by a similar push in Naning, Malacca.²⁰

The move to abolish *adat perpatih* met with a great deal of debate. The main problem was land and capital, which some families preferred not to fragment. Cecil Street pointed out in a letter to *the Straits Times* that while Shariah is fair in general, it could lead to an awkward distribution of land into fractions, and this could not be solved by selling out the portion because the land would then be out of family line or by buying out other inheritors' portion because no party had the means to do so. He pointed out that "the effect of the custom by which land is entailed in the female line is that the land, even after several inheritances, is not morcellated uneconomically into absurd fractions. The second effect is that it cannot be sold or mortgaged to aliens." Without a practicable solution to the land question, people in Negeri Sembilan clung to *adat perpatih*.

The debate also reached Singapore shores. Groups of Malays in Singapore who were of Minangkabau origin or came from Negeri Sembilan also held meetings in the city to discuss the issue. After a four-hour debate, a meeting sponsored by Rembau Malays in Singapore at Kota Raja Club passed by 68-15 to abolish the use of *adat perpatih*.²¹ However, there were dissenting voices, with some groups – mainly women – siding with *adat* preservation while others, such as the Malay police officers in Singapore, supported the end of *adat*.²² *Adat* was effectively abolished when the bill on making *fara'id* compulsory for Muslims was passed in 1957.²³

Adat Temenggung

The overlap between religion and the second system of customary social practices is even more marked. This system is called *adat temenggung*. It was more common among the Malays in Malaya and was governed by the contemporary political structure, overseen by the Sultan of the state and enforced by the *Bendahara* (Prime Minister and Chief of War) as well as the *Temenggung* (Chief of Police) and a network of affiliated chiefs. *Adat Temenggung* was codified and written down in some states, such as the 99 Laws of Perak.²⁴

Contrary to *adat perpatih*, *adat temenggung's* foundation was no longer matriarchal; it was patriarchal. In matters of inheritance, this meant that assets were inherited along the patrilineal line. The codification was neither extensive nor standard. Malay chiefs had considerable discretion and latitude in mediating disputes; as British colonial officer Wilkinson noted, "the true *adat temenggung* of Malaya was an unwritten law."²⁵ As a patrilineal system,

it was closer to the Islamic inheritance system, which had, in turn, greatly influenced Malay customs. With such overlaps, it will be futile to attempt to demarcate where *adat* ended and religion began. The fusion of tradition and religion in *adat temenggung* manifested itself in several legal arguments that surfaced in British colonial courts.

The case of *Ramah binti Taat v Laton binti Malim* in Selangor illustrates this. Here, both the plaintiff and respondent are the deceased's widows. The deceased has never written a will during his life. In this case, the plaintiff filed a suit to claim all the deceased's assets, including the entire plot of land from her deceased father's estate as part of "harta perkongsian" (*sharikah*, i.e., matrimonial asset) in Islam. The plaintiff argues half of the deceased's estate as "harta perkongsian" and a quarter as a wife according to Muslim inheritance law. The basis of her case was that her claim followed *adat temenggung* of not fragmenting land to preserve capital. The court ruled in favour of the respondent granting her half of the land.²⁶

There are court decisions that are influenced by *adat temenggung*. For instance, in the case of *Shafi v Lijah*,²⁷ the judge ruled for the plaintiff based on *adat temenggung*. He compared *adat temenggung* to British common law, commenting that "in this case, the late Abdul Majid did not desire the land to be subject to *adat perpatih*, although I do not believe inheritance or succession under the Shafi'i school of law was ever contemplated..."²⁸

Administration of Muslim Law Act (AMLA)

The special bill on Muslim wills and the formation of the Syariah Court paved the way for the Administration of Muslim Law Act (AMLA), which codified the centralisation of Muslim authority in Singapore. With the passing of AMLA, the centralisation of Muslim authority in Singapore, which had begun in the 1950s, became coded in law and embodied in a central institution named the Majlis Ugama Islam Singapura (Muis). AMLA signalled the end of multiple Muslim communities co-existing with different culturally inflected practices and heralded a putative united community in one state, under one Islam. This development standardised rules for family law, especially inheritance, for Muslims in Singapore.

While this prevented conflicts between secular and religious laws in inheritance matters, this legalistic structure also provided less scope for religious rulings to respond to societal changes. As seen from the debates

on the Muslim Wills Bills, competing interests exist between a need to keep property together for the welfare of the next generation and a need to ensure that all heirs receive their rightful share. This dilemma could not be fully resolved by a legalistic approach. In later years, with the advent of flat ownership and Central Provident Fund (CPF) savings – Singaporean assets that cannot be easily divided – this issue of fragmentation versus *farā'id* is to recur repeatedly.

The *Maqāṣid al-Sharī'ah* of Planned Giving

In discussing the topic of wealth planning in Islam, one must take into consideration its fundamental principles and spirit (*maqāṣid*). This is important so that in engaging this topic of planned giving, we remain cognisant of the fundamental principles which serve as the ethical framework within which financial planning in Islam operates and is guided. Often, when it comes to estate planning, Muslims would be quick to look to the detailed apportionment of *farā'id* without much appreciation and understanding of the *maqāṣid* which it seeks to achieve.

Neglect of the objectives and spirit leads to several negative implications. One such implication is the unethical estate distribution, causing distress and hardship for the dependents of the deceased. Another implication is that it limits consideration of other planned giving instruments within the corpus of Shariah beyond *farā'id*. A further implication is that it creates the perception of Shariah as unjust, rigid, and irreconcilable with the realities of contemporary life and the changing socio-economic roles of both genders in family life.

Quranic Verses on the Higher Objectives (*Maqāṣid*) of *Farā'id*

The Islamic law of inheritance, known as *farā'id*, is one of the most detailed laws revealed to Prophet Muhammad ﷺ. This is unique because Quranic methodology typically provides general legislation, with specific details explained by the second source of Islamic law, the Prophetic tradition (*ḥadīth*). While the specific allocation of inheritance is detailed starting from verse 11 of the fourth chapter of the Qur'an (surah *al-Nisā'*), the ethical principles of Islamic wealth distribution are introduced at the beginning of verse seven of the same chapter:

﴿لِّلرِّجَالِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ وَلِلنِّسَاءِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ مِمَّا قَلَّ مِنْهُ أَوْ كَثُرًا ٧﴾
 نَصِيبًا مَّفْرُوضًا ﴿٧﴾ وَإِذَا حَضَرَ الْقِسْمَةَ أُولُو الْقُرْبَىٰ وَالْيَتَامَىٰ وَالْمَسْكِينُ فَأَرْضُوهُمْ مِنْهُ وَقُولُوا لَهُمْ قَوْلًا
 مَّعْرُوفًا ﴿٨﴾

Meaning: “For men, there is a share in what their parents and close relatives leave, and for women, there is a share in what their parents and close relatives leave — whether it is little or much. (These are) obligatory shares. If (non-inheriting) relatives, orphans, or the needy are present at the time of distribution, offer them a (small) provision from it and speak to them kindly.” (Surah *al-Nisā*: 7-8)

Quranic Objectives of Asset Distribution

There are several implicit objectives in the Quranic verses concerning inheritance and asset distribution. They are as follows:

First Objective: Protecting the Welfare of Immediate Dependents and Ensuring the Disposition of Wealth Does Not Cause Hardship

One of the *maqāsid* of wealth disposition is to protect the welfare of the immediate dependents of the deceased. By extension, any wealth disposition instrument within Islamic law or beyond, must align to this objective.

Historically, scholars have identified various instruments such as conditional *nazar*.²⁹ Contemporary Muslim scholars have also accepted underutilised instruments, such as *hibah al-ruqbā*.³⁰ Muslim scholars endorsed the customs of a society previously unrecognised through established inheritance instruments. Notably, contemporary scholars such as the renowned Professor Dr Haji Abdul Malik Karim Amrullah (Hamka), rooted in the Minangkabau tradition in Indonesia, argued that the matriarchal division of wealth based on customary rules of *adat perpatih* is valid in Islam. He proposed that this division be considered a form of specific *wakaf* (*wakaf khās*).³¹ This accentuates the notion that Islamic inheritance aims to reform the injustices prevalent in Arabian society at that time.

Imam Al-Qurṭubī, a renowned authority in Islamic law and Quranic exegesis, stated that one of the reasons for the revelation on inheritance distribution was to emphasise Islam's focus on the welfare of the fundamental building blocks of society: family.³² Ultimately, Islamic wealth distribution aims to protect the rights of immediate family members, regardless of gender, as documented in verse seven of surah *al-Nisā'*. This is particularly significant in a society where women were not only denied inheritance rights but were treated as commodities to be inherited.

Upon closer examination of the stipulated shares in the Quran, it reflects an individual's responsibility within a family unit. Islamic inheritance law should not be viewed in isolation from the whole body of Shariah such as obligatory maintenance (*nafkah*). For instance, a working woman with a higher income than her siblings probably is in a better position to support her parents, including covering medical expenses. Similarly, an adopted child does not inherit through inheritance laws but still requires financial support for education while their adoptive siblings are already working. In both instances, the absence of sustenance due to various social, economic, cultural, or even ethical reasons necessitates a rethinking of wealth disposition using various instruments or, if necessary, the creation of new instruments. This can be seen in the Fatwa Committee's position when considering CPF and revocable insurance nominations as a form of contemporary *inter-vivos* gift (*hibah*) different from the traditional *hibah* discussed in traditional *fiqh*.

In line with this reason and context behind the revelation of Quranic verses on inheritance, Islamic scholars such as Ibn Abī Laylā, Abū Thawr, Mālik, Aḥmad Ibn Ḥanbal and al-Qurṭubī opine that the distribution of wealth can be delayed if it has the potential to cause suffering, hardship or harm to any of the beneficiaries.³³ This principle is guided by the Prophetic tradition of the Messenger ﷺ which states: “*A will made to an heir is not allowable unless the other heirs are agreeable.*” (Narrated by Al-Dāraquṭnī, 4150)

Hence, the protection of the welfare of dependents under inheritance law goes beyond the mere allocation of rights. The protection extends to the execution of the distribution, taking into account the avoidance of hardship and harm to other beneficiaries. Disputes will take place when a beneficiary obtains his or her right whilst another suffers. Hence, every beneficiary bears the moral duty and responsibility to ensure that no harm arises while making claims on the estate of the deceased. Avoidance of harm is a fundamental principle emphasised in the Shariah based on the *hadīth* of the Prophet ﷺ:

لَا ضَرَرَ وَلَا ضِرَارَ

Meaning: “*There should be neither harm nor reciprocating harm.*” (Hadith narrated by Ibn Mājah, 2341)

Each heir must also inform the Syariah Court of the list of eligible heirs. Regardless of any disputes in the family, nobody has the right to conceal the names of the heirs from the list of recipients.

Second Objective: Graciousness in the Disposition of Wealth and Maintenance of Relationships

As part of the Islamic ethics of estate planning, Muslims are encouraged to give some token from the estate to family members who may not qualify as *farā'id* beneficiaries, whenever feasible. It is recommended that this gesture be accompanied by kind and gracious words, irrespective of whether such a token has been presented to non-beneficiaries or otherwise. This ethic finds its basis in the Quran:

﴿وَإِذَا حَضَرَ الْقِسْمَةَ أُولُو الْقُرْبَىٰ وَالْيَتَامَىٰ وَالْمَسْكِينُ فَأَرْزُقُوهُمْ مِنْهُ وَقُولُوا لَهُمْ قَوْلًا مَعْرُوفًا﴾

“*If (non-inheriting) relatives, orphans, or the needy are present at the time of distribution, offer them a (small) provision from it and speak to them kindly.*” (Surah *al-Nisā'*: 8)

This Quranic verse reminds Muslims that wealth distribution extends beyond self-interest. It encompasses the Islamic values of graciousness, honour, compassion, and sensitivity towards the feelings of those in their midst. Imam Ibn 'Atīyyah and al-Qushairī view that it is obligatory for beneficiaries to allocate a portion of their share towards the welfare of these groups.³⁴ It further shows the importance of graciousness in wealth distribution.

In addition, the absence of explicit mention of some beneficiaries do not imply that they are entirely denied any share of the estate. Hence, Muslims should not forget to allocate a portion for their extended families, the needy,³⁵ or for charitable causes in their plans while striving to ensure that their dependents receive a substantial portion of the wealth. This ethical approach to wealth distribution in Islam should be observed diligently by Muslims. Negligence renders the distribution process unjust.

Third Objective: The Need to Plan for the Welfare of Dependents

The third objective is closely linked to the first objective. While the first objective pertains to the well-being of heirs during the distribution of the estate, the third objective encourages individuals to engage in advance planning and take measures to safeguard the welfare of their dependents after their deaths. Allah ﷻ says:

﴿وَلْيَحْشَ الَّذِينَ لَوْ تَرَكَوْا مِنْ خَلْفِهِمْ ذُرِّيَّةً ضِعْفًا خَافُوا عَلَيْهِمْ فَلْيَتَّقُوا اللَّهَ وَلْيَقُولُوا قَوْلًا سَدِيدًا ﴿٨﴾﴾

“Let the guardians be as concerned (for the orphans) as they would if they were to (die and) leave (their own) helpless children behind. So let them be mindful of Allah and speak equitably.” (Surah *al-Nisā*: 8)

This verse primarily reminds those planning their estate to give due consideration to the welfare of their dependents and ensure they are not left destitute.³⁶ This is exemplified in a Prophetic tradition where a companion, who had only one daughter, sought Prophet Muhammad’s ﷺ counsel regarding the permissibility of bequeathing two-thirds of his wealth for charitable causes. The Prophet ﷺ advised against it, and the companion reduced it to half. Subsequently, he allocated one-third following the Prophet’s ﷺ guidance. In the same narration, the Prophet ﷺ emphasised an important consideration in estate planning:

إِنَّكَ أَنْ تَذَرَ وَرَثَتَكَ أَغْنِيَاءَ، خَيْرٌ مِنْ أَنْ تَذَرَهُمْ عَالَةً يَتَكَفَّفُونَ النَّاسَ

Meaning: *“It is better to leave your children with wealth than to leave them poor, having to beg from people.”* (Hadith narrated by Al-Bukhārī, 2742; Muslim, 1628)

This tradition is significant as it proves that the welfare of a Muslim’s dependents take precedence over other causes, even when allocating wealth for charitable purposes. It completes the Quranic guidance, for instance, verse nine of surah *al-Nisā*’ elucidated earlier, that a person should not deny the rights of their dependents or beneficiaries.³⁷ This verse also addresses beneficiaries and reminds them of their responsibility to ensure the well-being of the deceased’s dependents. Just as they would not want their dependents’ welfare to be neglected, they should also consider the immediate dependents of the deceased from whom they have inherited. In addition to

the right to their shares, they inherit the responsibility to ensure the well-being of the deceased's dependents.³⁸ This practice is evident in the Muslim community, particularly during the revelation of *farā'id*. The connection between inheriting shares and the corresponding responsibilities towards the dependents of the deceased is a fundamental aspect that the community should thoroughly comprehend and uphold.

The Importance of Financial Management for Senior Citizens

The considerations and priorities that govern management of assets for elderly citizens differ from younger ones. In recent years, the government has introduced a suite of laws and policies to assist the public in addressing the multi-faceted challenges associated with old age. These initiatives encompass aspects of long-term healthcare and estate planning. These measures are crucial in light of projections that indicate a rise in elderly individuals living independently. According to data released by the Ministry of Health (MOH), this demographic is expected to surge from 35,000 in 2012 to 83,000 in 2030.³⁹

One of the laws introduced is the Mental Capacity Act, which empowers the elderly to appoint a trusted representative (*wakil*) to act on their behalf in instances when they lose mental capacity in future. Crucially, this appointment can be made anytime as long as the elderly can make decisions independently.⁴⁰ Mental capacity deficiency refers to the inability to make independent decisions due to a decline in cognitive ability. This deficiency may result from various factors, which include stroke, brain injury, or conditions such as dementia. The appointment of a representative (referred to as “donee”) for the elderly individual (the “donor”) is stated in a legal document known as the Lasting Power of Attorney (LPA). The LPA grants authority to the donee to undertake actions and make decisions related to personal welfare, property matters etc, in alignment with the donor's wishes and preferences.⁴¹

Likewise, it is imperative to note that the donee is not authorised to make decisions regarding marriage, religion, Advance Medical Directive (AMD) and organ donation. The donee must exercise restraint from decision-making if they believe, at any juncture, that the donor has the capacity to decide independently. If the appointed deputy acts contrary to the donor's best interests, the Office of the Public Guardian (OPG) will assume the

responsibility of taking appropriate action. Consequently, the LPA document can be revoked at any time as long as the donor is mentally capable.⁴² When an elderly citizen does not have the opportunity to create an LPA before the loss of his or her mental capacity, the court holds the authority to appoint a deputy to make decisions on their behalf.⁴³

Notably, the Fatwa Committee has deliberated on the validity of creating an LPA for Muslims. This endeavour is a part of our collective effort to fulfil the healthcare needs of Muslims as they face challenges associated with ageing in the years to come.

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Fatwa on the Lasting Power of Attorney⁴⁴

BACKGROUND

1. The Fatwa Committee received an enquiry from the Faculty of Law, National University of Singapore through a letter dated 30 August 2018 regarding the Lasting Power of Attorney (LPA) from Shariah perspective.
2. Based on the question submitted, the LPA is a legal document that gives the opportunity to an individual, known as the donor, to appoint a donee to legally manage official matters on behalf of the donor. In relation to that, the Centre for Pro Bono and Clinical Legal Education, posed a question to the Fatwa Committee on whether the LPA is in line with Islamic law.

BACKGROUND OF THE LASTING POWER OF ATTORNEY (LPA)

3. The LPA is a legal document that allows a person aged 21 and above (known as the 'Donor'), who has the mental capacity to voluntarily appoint one or more persons (known as 'Donee(s)') to make decisions and act on his behalf in the event when the donor lacks the mental capacity to do so. The donee has the right to make decisions pertaining to the donor's personal welfare, or matters concerning the donor's property and daily affairs, or both.⁴⁵

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4. The donee can only act on the authority given by the donor in the LPA signed. However, there are some decisions that the donee cannot make on behalf of the donor, such as: consenting to marriage, divorce, child adoption, adopting or renouncing a religion, receiving treatment for change of gender, consenting or revoking consent to treatment for sexual sterilisation or abortion, registering or withdrawing an objection regarding the removal of an organ, making or revoking an Advance Medical Directive (AMD), etc.⁴⁶
5. In the event that a person becomes mentally incapable and has not made the LPA to appoint a donee, a deputy may be appointed by the court to make such decisions. The court may appoint an individual or a licensed trust company as a deputy under the Trust Companies Act (Cap. 336), as prescribed by the Mental Capacity Act.⁴⁷
6. In ensuring that the welfare of the donor is not neglected or abused by the donee or the deputy, the court has the power to prosecute any donee or deputy, and revoke their powers, if necessary, should there be any allegations of abuse or ill-treatment.

CONSIDERATIONS BY THE FATWA COMMITTEE

7. The Fatwa Committee has considered this issue and looked at it from two perspectives, namely:
 - a) Earlier fatwa decisions relating to Advance Medical Directive (AMD) and principles of Shariah relating to Advance Care Planning (ACP); and
 - b) The concept of self and property management in Islam.

Earlier Fatwa Decisions Relating to Advance Medical Directive (AMD), and the Principles of Islamic Law Relating to Advance Care Planning (ACP)

8. In 1994, the Fatwa Committee made a decision permitting Muslims to create an Advanced Medical Directive (AMD). This is a legal document that a person signs in advance to inform the doctor that he does not wish to receive any extraordinary life-sustaining treatment to be used to prolong his life, in the event of terminal illness. The fatwa decided that those who decline such treatment can be considered as choosing patience and forgoing extraordinary interventions as he believes that there is a predetermined time for every person to die.

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9. Advance Care Planning (ACP), on the other hand, is an instrument that provides an opportunity for individuals to make early planning in determining his desired form of care and medical treatment when he is in critical condition and unable to make any decisions. In this case, the Office of the Mufti is of the view that Islam allows a person to draw up the ACP in determining the care preferences and treatment options.

The Concept of Self and Property Management in Islam

10. The Fatwa Committee finds that there are several elements in the Islamic fiqh tradition, which are similar to the concept of LPA, such as *Wiṣāyā*.⁴⁸
11. There are also other concepts related to *Wiṣāyā* such as the concept of *Wakālah* and *Wilāyah*.⁴⁹ These three concepts are based on the Quranic verse:

﴿فَإِنْ كَانَ الَّذِي عَلَيْهِ الْحَقُّ سَفِيهًا أَوْ ضَعِيفًا أَوْ لَا يَسْتَطِيعُ أَنْ يُجِزَّ هُوَ فَلْيُجِزَّ بِأَعْدَلٍ﴾

Meaning: "...If the debtor is feeble-minded or weak or cannot dictate himself, then his guardian should dictate with fairness..." (Surah al-Baqarah, verse 282)

13. The Islamic principles behind these concepts are in harmony with the provisions of law which authorise the appointment of a donee to manage the affairs and property of an individual in the situation where they lack mental capacity.

Decision of the Fatwa Committee

14. Based on the above considerations, the Fatwa Committee decided that the LPA is a form of planning which is permissible under the Shariah and is in line with the objectives of the Shariah (*maqāṣid al-sharī'ah*). It is also consistent with the Islamic principles which encourage Muslims to plan and prepare for their future.

f

15. The Fatwa Committee is also of the view that the legislative provisions in place to safeguard the interest of the donor are already in accordance with the Islamic legal maxim of blocking the means (*sadd al-dharāʾi*),⁵⁰ which would thus prevent any possibility of the donee or the deputy abusing the authority given.
16. The Fatwa Committee wishes to emphasise that a Muslim should ensure that the plans made will serve to protect his welfare and well-being throughout his life. The donor also needs to exercise due diligence appointing trustworthy individuals whom he believes can best execute the entrusted responsibilities according to legal and religious requirements.

Fatwa Decision 12/3/2019

New *Ijtihād* Based on for Financial Issues (*Muʿāmalāt*)

While certain aspects of Shariah remain immutable and cannot be altered, such as those related to acts of worship, foundational pillars, and religious obligations,⁵¹ legal facets predicated on *ijtihād* remain. This domain is adaptable and responsive to the evolving exigencies of society and individuals. It is fundamental, however, that such legal determinations are guided by the spirit and higher objectives set forth by Islamic law that act as overarching principles that encompass all *ijtihād* efforts.

Ijtihād

Linguistically, *ijtihād* refers to the exertion of effort in carrying out a matter. In religious terminology, *ijtihād* refers to the diligent endeavour undertaken by a *mujtahid* to deduce Islamic legal rulings.

As emphasised by Ibn Qayyim al-Jawziyyah, who affirmed: “*The Shariah is based on justice, compassion, human welfare, and wisdom. Thus, any ruling in which justice succumbs to oppression, compassion yields to cruelty, goodness to evil, and wisdom to foolishness, is one that does not belong to the Shariah, even if it is claimed according to some interpretations.*”⁵²

The values of justice, compassion, human welfare and wisdom constitute the foundational principles that the Shariah strives to preserve. Therefore, it becomes the duty of scholars tasked with identifying the Islamic legal rulings in each era and generation to ensure that all legal conclusions align with the overarching principles of the Shariah.

The corpus of Islamic legal rulings for transactions (*mu'āmalāt*), such as buying and selling, constitutes a facet of law receptive to change. *Mu'āmalāt* deals with financial and economic transactions involving Islamic financial planning and wealth distribution. This is in line with the *fiqh* principle:

الأَصْلُ فِي الْعُقُودِ وَالشُّرُوطِ الصِّحَّةُ إِلَّا مَا أَبْطَلَهُ الشَّارِعُ أَوْ نَهَى عَنْهُ

Meaning: “*The fundamental principle regarding (formulating) contracts and (establishing) terms is that it is permissible, except for what the Shariah declares as prohibited or void.*”⁵³

Within this framework, scholars have exercised *ijtihad* in the creation of instruments pertinent to transactions and inheritance in Islam. Such a proactive approach ensures that Islamic laws can be applied and remain relevant in guiding Muslim community throughout time.

Instruments in Financial Planning

Islam places special emphasis on the distribution of inherited wealth. This emphasis is rooted in the understanding that balanced wealth distribution is fundamental to ensure prosperity is not confined to an affluent few. Therefore, proper estate planning will accommodate the needs of the less fortunate and foster a sense of familial spirit in society. This, in turn, contributes to a harmonious and contented community.⁵⁴

Fundamentally, Islam is founded upon the principles of compassion and excellence, which shape the character, demeanour and attitude of Muslims across all facets of life, including wealth management. Consequently, Islamic teachings prescribe the sharing of wealth to safeguard the interests of other family members, primarily through institutions like inheritance laws (*fara'id*), *baitulmal* and similar mechanisms. During wealth distribution, a Muslim should exemplify compassion and reasonable benevolence towards

fellow family members. This attitude entails the consideration of potential implications when asserting one's rights according to inheritance laws. For instance, will such claims cause hardship or result in the loss of necessities like shelter? These are questions that should be considered.

Wealth could draw one closer to Allah ﷻ through acts of charity and aid for the needy. One's responsibility towards wealth must also be fulfilled, including payment of zakat, financial support, and charitable contributions to deserving individuals, as Allah ﷻ states in surah *al-Dhāriyāt* verse 19: “*And in their wealth there was a rightful share (fulfilled) for the beggar and the poor.*” Moreover, wealth can be a means to showcase one's generosity and strengthen kinship. Imam Ibn Abī Jamrah said: “*Maintaining family ties can be done with wealth — by providing for their needs, warding off harm from them, having a radiant face, and offering supplications.*”⁵⁵

AMLA focuses on three central instruments of inheritance distribution that can be utilised by the Muslim community. The **first instrument** is detailed in section 58 of AMLA, which delineates *nazar* as an individual's declaration to perform any action or dedicate wealth for purposes permitted in Islam. The owner of the wealth can form this intention to be carried out either during their lifetime or after their deaths. *Nazar* is divided into two: *Nazar Am* and *Nazar Khas*. According to section 2 of AMLA, “*Nazar am means a nazar intended wholly or in part for the benefit of the Muslim community generally...*”⁵⁶ As for *Nazar Khas*, it is a pledge intended for specific individuals.

The second instrument is the establishment of endowments (*wakaf*). These endowments are categorised into two primary types: general endowments (*wakaf 'ām*) and specific endowments (*wakaf khas*). *Wakaf 'ām* is defined as the endowment of property, including capital and perpetual income, for the purpose of righteous deeds, religious activities, or practices recognized by Islamic law. The proceeds are channelled towards the general benefit of the Muslim community. For *wakaf khas*, its accumulated proceeds will be distributed to specific parties as the endower (*wāqif*) identified in the endowment document. In accordance with AMLA, all *wakaf* assets in Singapore established for charitable, religious or similar purposes are vested in the rights of Muis to manage.⁵⁷ A *wakaf* property can be registered with Muis by providing details about the property, which includes (i) the annual gross income generated, (ii) estimated expenses to ensure the property can continue income generation and profit, and (iii) allocation to cover overhead costs, including *mutawalli* (trustee) salary, allowances and related expenditures.

Question:

- a) Can a testator (*pewasiat*) stipulate provisions or give instructions to the executor/trustee appointed regarding how the estate assets should be managed or distributed, without altering the rights of the heirs according to Islamic inheritance (*farā'id*)?
- b) Is there any impediment or prohibition for a testator to grant the power of sale or suspension to the appointed executor/trustee in the will? If there is any prohibition, is the will considered void and to what extent?

Answer:

The Fatwa Committee has deliberated that a person who bequeaths his wealth has the right to specify the implementation of their will, as long as the bequest does not involve sinful matters and does not exceed the limits set by Shariah.

In this matter, an individual wishing to make a will must fulfill the following conditions:

1. The bequeathed matter must not involve sinful actions.
2. The bequeathed wealth does not exceed one-third of the total estate.
3. Wills cannot be granted to legal heirs.

Meanwhile, the conditions for a valid executor are that the executor must be a *mukallaf*, free, and of the Islamic faith. The tasks entrusted to the executor should involve charitable and benevolent activities. As long as the executor meets the following conditions, the created will is considered valid.

Fatwa Decision 16/9/2005

The third inheritance instrument is detailed in Section 111 of AMLA. It pertains to the formation of a will by a Muslim to dictate the distribution of his or her assets upon death. The will must adhere to specific conditions and subject to certain religious constraints. In the same breadth, there are minor differences between the schools of thought (*madhhab*) regarding the details of will formulation. On this ground, the individual's adherence to

a particular school of thought needs to be taken into consideration when formulating a will. Section 60 of AMLA also recognises the establishment of *wakaf* through a will (*al-waqf bi al-waṣiyyah*). This occurs when an individual includes provisions in their will to create an endowment using a portion of their assets upon death. It is permissible in Islam to establish a *wakaf* through a will, provided that the assets intended for endowment do not exceed one-third of the owner's total assets. Chapter 3 contains an in-depth discussion on wills.

In addition to the three instruments, there are two fatwa decisions related to nominations: CPF Nomination and Insurance Nomination. These tools are considered modern financial planning instruments. Despite their limitations to specific transactions or accounts, their significance cannot be denied. The Fatwa Committee in 2010 ruled that distributing assets through CPF nomination (and insurance nomination in the 2012 fatwa) is permissible under Islamic law. These tools constitute a form of contemporary gift (*hibah*) for which there is no historical equivalent in Islamic history and literature.

Furthermore, a comprehensive explanation of Joint Tenancy ownership is needed, as most Singaporeans possess homes as assets. Joint Tenancy pertains to issues of co-ownership of a house, whereas joint accounts refer to jointly held bank accounts.

These financial planning instruments will be discussed in chapters 5 and 6. Simultaneously, this publication will explain several inheritance distribution tools, which, although expounded on by earlier scholars, still need to be applied in the current era. These include *waṣiyyah wājibah*, *hibah*, *hibah al-ruqbā*, and *nuzriah*. The application of *waṣiyyah wājibah* will be discussed in Chapter 3, while *hibah*, *hibah al-ruqbā*, and *nuzriah* in Chapter 6.



Inheritance and Estate Planning



Waris faraid perlu *ihsan dan rahmah* dalam pembahagian harta

**WASLAT
DAN FARAIH**
SUHAIMI SALLEH
Penulis tamu



“Kalau ikut faraid, kita perlu bahagikan harta pusaka ayah mengikut sijil warisan. Ini mesti dilakukan,” suara Sulaiman menanggapi.

Adik-beradiknya yang lain, kesemuanya perempuan, hanya berdiam diri. Semua takut dimarahi abang sulung mereka itu.

Sulaiman dan lima orang adik perempuannya adalah anak kepada Ahmad dan Zubaidah. Ahmad bekerja sebagai pegawai keselamatan Cisco sementara Zubaidah adalah suri rumah tangga.

BERNIAGA KECIL-KECILAN

Walaupun keluarga mereka besar, dengan kebijaksanaan Zubaidah mengurus kewangan keluarga serta pandai pula beliau berniaga kecil-kecilan, hidup mereka sekeluarga agak selesa.

Dengan anak-anak yang sudah membesar dan bekerja, tanggungjawab kewangan beransur berkurangan.

Sulaiman dan dua lagi adik perempuannya sudah pun berumah tangga. Setelah berumah tangga, Sulaiman dan isterinya tinggal di rumah mereka sendiri.

Hubungan Sulaiman dengan ibu bapanya tidak begitu rapat selepas perkahwinannya. Jarang sekali beliau dan isteri berkunjung ke rumah ibu bapanya, mungkin tiga atau empat kali setahun sahaja.

Bapanya, Ahmad, masih bekerja dan berusaha terus bekerja. “Biarlah abang terus bekerja dan terus aktif. Jadi abang tidak cepat nyanyuk,” kata Ahmad pada isterinya.

Menang Ahmad cukup menjaga kesihatannya. Dua kali seminggu, beliau akan berlari-lari anak di kawasan perumahan yang sekebualnya daripada bekerja.

Namun malang tidak berlaku. Semasa bertari-lari anak pada suatu petang, Ahmad rebah akibat serangan jantung dan meninggal dunia tidak lama kemudian.

Harta pusaka Ahmad agak sederhana – rumah HDB 4-bilik yang telah habis dibayar atas dasar *joint tenancy* dengan isterinya, wang di bank sebanyak \$32,000 hasil daripada wang CPF yang baru saja beliau keluarkan pada usia 55 tahun serta baki wang di CPF sebanyak \$25,000.

Ahmad pernah berpesan kepada isterinya:

“Jika abang dah tak ada, rumah ini Bedah punya. Duit-duit abang kat bank serta duit CPF juga abang serahkan kepada Bedah. Anak-anak semua dah bekerja. Jadi sekurang-kurangnya Bedah ada wang untuk menyara hidup jika abang tak ada,” pesan Ahmad.

“Eh! Kenapa abang cakap begini. Sedih rasa Bedah. Kalau ya pun, takkanlah anak-anak kita nak sia-siakan Bedah kalau abang tak ada,” jawab Zubaidah.

SUJIL WARISAN

Beberapa minggu setelah kematian Ahmad, Sulaiman mendapatkan sijil warisan di Mahkamah Syariah.

“Mengikut sijil warisan, harta



pusaka ayah perlu dibahagikan mengikut pembahagian faraid,” Sulaiman memulakan perbincangan selepas satu majlis tahill arwah bapanya.

“Emak dapat 1/8 dan bakiunya dibahagikan kepada kita adik-beradik. Sebagai anak lelaki, saya mendapat dua bahagian daripada bahagian anak perempuan,” tambah Sulaiman.

Adik-beradik Sulaiman memandang ke arah satu sama lain.

“Harta pusaka ayah yang perlu dibahagikan ikut faraid adalah wang arwah ayah di bank sebanyak \$32,000. Kalau ikut Syariah, 50 peratus daripada nilai rumah ni juga patut dikira sama,” sambung Sulaiman.

Zubaidah, yang sepanjang penerangan Sulaiman itu, hanya berdiam diri, tiba-tiba bersuara.

“Ma, arwah ayah engkau pesan pada emak. Jika dia dah tak ada, kesemua harta ayah diserahkan pada emak. Selepas emak meninggal, barulah boleh dibahagikan kepada kau orang semua,” kata Zubaidah.

BAHAGI HARTA

“Yalah bang. Hani pun dengar arwah ayah pesan begitu pada emak. Jadi tak payahlah kita nak bahagi harta arwah ayah. Kita kasai semua pada emak sudahlah,” sampuk Hani, anak kedua Zubaidah.

Adik-beradik Sulaiman yang lain mengangguk-angguk kepada.

“Tapi kalau gitu, kita dah tak ikut hukum faraid. Abang dah baca kat buku, kita perlu laksanakan hukum faraid, kerana faraid hukum Tuhan,” bangkang Sulaiman.

Air mata Zubaidah mula bergemang melihat tingkah laku anak sulungnya itu.

“Mana sifat kasihani anak aku ini? Kalau rumah ini juga hendak dijaja, mana aku nak tinggal pulak?” bisik hati Zubaidah, sedih.

“Tapi kita sebagai waris boleh menghalalkan hak faraid kita kan, bang?” sangah Hani, yang memang gemar melihat kedegilan abangnya itu.

Kenyataan Hani menyentak Sulaiman daripada pengetahuan cetek beliau mengenai faraid.

“Betul juga kata si Hani ni. Kalau aku dah dapat hak faraid, aku pun boleh menghalalkan dan berikan kepada emak,” bisik hati Sulaiman.

Sulaiman terdiam seketika. Tiba-tiba dia bersuara:

“Begini sajalah mak. Nanti saya tanyakan dengan terperinci kepada orang yang pakar dalam hal ini, sama ada boleh atau tidak buat seperti apa yang Hani cakapkan tadi. Bila dah dapat keterangan yang cukup, nanti kita bincangkan lagi,” saran Sulaiman.

Zubaidah dan anak-anaknya yang lain mengangguk-angguk, akur dengan kata-kata Sulaiman.

ULASAN

Ada beberapa isu yang timbul dalam kes ini.

Pertama, pesanan Ahmad kepada isterinya, Zubaidah, agar kesemua hartanya diserahkan kepada Zubaidah jika beliau meninggal dunia. Pesanan ini berupa satu wasiat dan wasiat kepada waris tidak sah mengikut Syariah.

Jika Ahmad mahu isterinya memiliki hartanya, misalnya baki wang di dalam bank, beliau boleh memberi hibah kepada Zubaidah sensasa hidupnya.

Dengan hibah ini, jika Ahmad meninggal dunia, wang tersebut bukan lagi harta pusaka Ahmad, kerana ia sudah pun dimiliki oleh Zubaidah.

Selain itu, jika Ahmad inginkan isterinya mewarisi rumah mereka itu, beliau boleh membuat nuziah untuk menghadiahkan bahagian hak miliknya kepada *joint tenancy* rumah tersebut kepada isterinya.

Walaupun faraid merupakan hukum yang perlu diikuti bagi pembahagian harta pusaka seorang Muslim, waris yang berhak boleh menghalalkan sebahagian atau kesemua hak mereka untuk diberikan kepada waris yang lebih memerlukan.

Misalnya dalam kes ini, Sulaiman dan adik-beradiknya boleh menghalalkan hak mereka dan menghadiahkan kesemuanya kepada ibu mereka.

SIKAP TEGAR PIHAK WARIS

Dalam pembahagian harta pusaka, saya dapat lihat banyak kes yang melibatkan sikap tegar atau *rigid* pihak waris yang tidak mahu berganjak daripada hak yang ditetapkan hukum faraid, tanpa menghiraukan kebijakan tanggungan si mati yang bukan waris seperti anak angkat, ibu angkat dan sebagainya.

Namun, hak ini boleh diubahsuai mengikut keadaan, lebih-lebih lagi jika si mati tidak meninggalkan wasiat.

Yang penting, waris faraid perlu bersikap ihsan dan rahmah dalam hal pembahagian harta pusaka.

Seberapa boleh, waris faraid harus cuba melaksanakan niat si mati, lebih-lebih lagi jika pesanan sudah dibuat, tetapi tidak sah atas sebab-sebab teknikal.

Nota: Penulis ialah Ketua Pegawai Eksekutif Barakah Capital Planners, sebuah syarikat yang memberi khidmat penyediaan wasiat dan nuziah serta nasihat perancangan dan pembahagian harta pusaka.

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Article published in the Malay newspaper Berita Harian dated 14th February 2010 regarding the principles of *ihsan* and *rahmah* in estate distribution emphasising the importance of safeguarding the well-being of the deceased's immediate dependents

Pakar: Pembahagian harta tidak terhad pada faraid saja

oleh
Khartini Khalid

UNDANG-UNDANG pembahagian harta dalam Islam luas dan tidak melibatkan hukum faraid saja.

Itu juga meliputi beberapa hukum yang boleh diamalkan di bawah kedua-dua undang-undang Syariah dan sivil, menurut dua pakar undang-undang Syariah Malaysia.

Antara hukum yang boleh diamalkan dalam kedua-dua kesediaan itu ialah hukum *hibah al-ruqba* — hukum yang mempunyai ciri-ciri seperti undang-undang hak milik bersama, atau *joint-tenancy*.

Undang-undang itu banyak diamalkan dalam pemilikan harta di sini, seperti dalam pemilikan flat HDB.

Pandangan itu diketegakkan Timbalan Pengarah Pusat Undang-Undang Kulliyah Ahmad Ibrahim, Universiti Islam Antarabangsa Malaysia (UIA), Dr Ismail Mohamed Abu Hassan, dan pensyarah Jabatan Syariah, Universiti Kebangsaan Malaysia (UKM), Profesor Madya Mohd Ridzuan Awang.

Itu diketegakkan dalam forum *Harta Waris Dalam Islam* di Masjid Sultan semalam. Forum itu dihadiri sekitar 30 orang.

Menjelaskan *hibah al-ruqba* itu, Profesor Ridzuan berkata ia adalah perjanjian antara dua pihak, misalnya, antara suami isteri.

Dalam perjanjian itu, apabila salah seorang daripada mereka meninggal dunia, hartanah yang dimiliki bersama itu diambil alih suami atau isteri yang masih hidup secara sepenuhnya dan automatik.

Ini bermakna hartanah itu tidak boleh dijual agar sebahagian daripada hasilnya dibagikan kepada waris si mati mengikut hukum faraid.

Dr Ismail pula berkata terdapat banyak kaedah pembahagian harta, selain faraid, yang dibahaskan dalam kitab-kitab tetapi dilupakan bertahun-tahun lamanya.

Selain *hibah al-ruqba*, kaedah itu termasuk *hibah al-umra*, harta sepercaraan dan



PROFESOR RIDZUAN: Cara *hibah al-ruqba* — hukum yang serupa undang-undang hak milik bersama, antara pilihan.



DR ISMAIL: Perancangan teliti perlu semasa pemilih harta masih hidup.

wasiat amanah.

Namun, beliau menegaskan penggunaan kaedah-kaedah ini adalah perjanjian antara dua pihak, misalnya, antara suami isteri.

"Kaedah-kaedah Islam ini boleh diamalkan di bawah kedua-dua undang-undang sivil dan Syariah. Tetapi yang penting, pembahagian harta selepas mati tertakluk kepada hukum wasiat dan hukum faraid," katanya, saksikan pakar pihak plaintif dalam kes nuzriah di Mahkamah Tinggi bulan lalu.

Dua buku — *Estate Planning for Muslims* dan *Isu-isu Harta Pusaka* — dilancarkan sempena seminar itu oleh Anggota Parlimen GRC Pasir Ris-Punggol, Dr Ahmad Mohd Magad.

Ini tulisan pengasas syarikat perancangan kewangan HTHH, Encik Sadali Rasban, dan Dr Ismail.

Muis lancar program pendidikan faraid

Usaha dua minggu bagi tingkat kesedaran soal kaitan dengan zakat

OLEH
AREF A. GHOUSE

MAJLIS Ugama Islam Singapura (Muis) telah melancarkan satu program pendidikan awam dengan tujuan mendidik dan meningkatkan pengetahuan masyarakat Islam mengenai pembahagian harta pusaka mengikut hukum faraid dan kaitannya dengan pembayaran zakat.

Program Pendidikan Faraid dan Zakat itu, yang berlangsung selama dua minggu sejak Jumaat lalu hingga akhir bulan ini, bertujuan mengingkatkan umat Islam tentang tanggungjawab mereka berkaitan harta pusaka sebelum ia bertukar menjadi milik para waris.

Menurut Pengurus Jabatan Pentadbiran Muis, Haji Jaffar Kassim, antara mesej penting kempen tersebut ialah mengingatkan para waris bahawa mereka perlu melunaskan hutang si mati terhadap Allah dari harta peninggalannya.

Dalam hal tersebut, antara perkara yang perlu diberi perhatian ialah zakat, puasa dan haji jika itu semua masih tertanggung oleh si mati dan belum sempat dilaksanakan semasa hidupnya.

Kempen itu juga menyenaraikan mesej bahawa melunaskan hutang si mati kepada orang lain merupakan perkara amat mustahak yang perlu diselesaikan

"Dengan adanya kempen ini, kami berharap lebih ramai Islam akan menunaikan hukum faraid dan zakat mereka. Pengetahuan mengenai faraid akan juga mengelakkan sebarang sengketa harta warisan."

— Penolong Eksekutif Jabatan Bahagian Pembangunan Perniagaan Muis, Encik Asmawi Mashuri.

Harta itu menjadi pusaka dan waris berhak menentukannya.

Encik Asmawi berkata kempen itu juga ingin mendidik sebilangan keluarga Islam yang tidak mengamalkan hukum faraid, contohnya dalam pembahagian dana CPF.

Keluarga Islam boleh menunggal mengikut faraid dengan mendapatkan Sijil Warisan dari Mahkamah Syariah.

Sijil Warisan itu akan memaparkan bahagian harta para waris.

Mereka boleh memohon Sijil Warisan secara dalam talian di laman Internet Mahkamah Syariah di <http://www.faraid.gov.sg>.

"Dengan adanya kempen ini, kami berharap lebih ramai umat Islam akan menunaikan hukum faraid dan zakat mereka. Pengetahuan mengenai faraid akan juga mengelakkan sebarang sengketa harta warisan," ujar Encik Asmawi.

Harta pusaka termasuklah rumah, wang simpanan, kenderaan, barang kemas, dan Tabung Simpanan Pe-

kerja (CPF), saham-saham dan insurans.

Encik Asmawi berkata kempen itu juga ingin mendidik sebilangan keluarga Islam yang tidak mengamalkan hukum faraid, contohnya dalam pembahagian dana CPF.

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"Dengan adanya kempen ini, kami berharap lebih ramai umat Islam akan menunaikan hukum faraid dan zakat mereka. Pengetahuan mengenai faraid akan juga mengelakkan sebarang sengketa harta warisan," ujar Encik Asmawi.

Harta pusaka termasuklah rumah, wang simpanan, kenderaan, barang kemas, dan Tabung Simpanan Pe-

► Siri ceramah perihal kaitan faraid, zakat, 6

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An article published in the Malay newspaper Berita Harian on June 19, 2001, discusses the inauguration of a public education initiative by Muis, focusing on estate distribution in accordance with *farā'id*.

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Article published in the Malay newspaper Berita Harian dated 18 October 2004 regarding various estate planning instruments in Islam.

The trustee shall hold the said trust estate in trust as to both capital and income for such of the said purposes set out in the before written paragraphs (A) and (B) as the trustee may deem fit and in such manner as at any time any of the said purposes set out in the said paragraphs (A) and (B) shall be discovered not to be lawful objects or shall cease to be lawful objects then the trustee directs that the said net income shall be applied for such of the said purposes as may be lawfully and in such proportions and in such manner as the trustee may deem fit and the settlor directs that the said Syed Omar bin Mohamed Alsagoff shall desire to retire or shall die before the trusts hereof are fully administered the settlor appoints Syed Ibrahim bin Alsagoff and Syed Ibrahim bin Alsagoff bin Mohamed Alsagoff or such of them as may then be living to be trustees or trustee hereof in succession to the said Syed Omar bin Mohamed Alsagoff and if the said Syed Omar bin Mohamed Alsagoff then the settlor appoints the personal representatives or personal representatives of the survivor of them the said Syed Ibrahim bin Alsagoff bin Mohamed Alsagoff and Syed Ibrahim bin Mohamed Alsagoff to be the trustees or trustee hereof and the settlor directs that in the event of any of the said lands houses and premises being acquired wholly or partly by government or the Singapore Municipal Council or any other public body the capital sum or sums available on such acquisition shall be invested by the trustee in the purchase of such house property within the Municipality of Singapore such house property being less than one hundred years to run.

In witness whereof the said parties at these presents have hereunto set their hands and seals the day and year first above written.

Signed sealed and delivered by the said Syed Omar bin Mohamed Alsagoff in the presence of
 Syed Omar bin Mohamed Alsagoff
 in Malay

of Syed A. Dalmeida
 as sole trustee
 Straits Settlements

Volume DCXL Page 381 13/1/24

Settlement of Singapore Lands & Goods
 See Gen Indenture of said Settlement
 to be registered on behalf of Syed Omar bin Mohamed Alsagoff of 15 Battery Road Singapore, Merchant.

Date 25th of Jan 1924

Parties Syed Omar bin Mohamed Alsagoff of the first part and Syed Omar bin Mohamed Alsagoff of the second part

District Rochore. ✓ 10-25 ✓ 10-25

I. S. XVII Lots 153 & 154

Site 204 Plot of 4 acres 102 (25 20 204) abt 202 for use as 24 111 and 112 (25 20 204) Singapore.

Signed: For the said Syed Omar bin Mohamed Alsagoff
 Syed Omar bin Mohamed Alsagoff
 Copy of the said Indenture
 23/1/24
 6/24

© A copy of handwritten will from the past, obtained from Community Funds Administration, Muis. A comprehensive discussion on the topic of wills is in Chapter 3.



© Photo from Community Funds Administration, Muis, showcasing an old hand written will in Arabic. The will contains a declaration to establish a wakaf (endowment).

Fatwa progresif demi atasi kemelut CPF

KEMATIAn sering menyedihkan. Lebih menyedihkan jika selepas itu berlaku pertikaian keluarga dan anak saudara gara-gara agihan harta pusaka si mati.

Ada kala hal ini menyebabkan anggota keluarga dan anak saudara tidak bertegur sapa, malah ada pula sampai terputus silaturahim dek merebut harta pusaka.

Wang dalam Tabung Simpanan Pekerja (CPF) tidak terkecuali.

Menurut Akta CPF, penama (*nominee*) akan menerima kesemua wang dalam CPF si mati. Namun, jika tiada penama, menurut laman web CPF, dana itu diagihkan berdasarkan Akta Penerimaan Tanpa Berwasiat bagi orang bukau Muslim.

Bagi Muslim pula, ia akan diagihkan berdasarkan Sijil Pusaka (faraid). Sijil itu boleh diperoleh daripada Mahkamah Syariah.

Fatwa 1971 menyatakan bahawa dari kaca mata agama, penama CPF setakat pengumuman dan menjadi tanggungjawabnya menagih wang CPF si mati berdasarkan faraid. Pengumuman tidak boleh mendapat apa-apa bahagian dana CPF ini melainkan beliau sendiri merupakan waris.

Namun, sejak tahun itu beberapa perkembangan dan keperluan baru timbul sehingga difikirkan perlu oleh Jawatankuasa Fatwa untuk memakmurkan Fatwa 1971.

Antaranya, terdapat keperluan sebenar untuk membantu tanggungan dan keluarga terdekat si mati yang menghadapi keperluan mendesak termasuk selongkang kewangan yang besar, sejuas kematian si mati.

Selain itu, harpun penamaan telah di-

buat, ia mungkin dicabar waris lain di bawah faraid sehingga merajis kemampuan tanggungan dan keluarga terdekat si mati (walaupun di bawah Akta CPF, tuntutan itu tidak akan dilayan dari segi undang-undang will).

Terdapat juga maklum balas adanya kes-kes membabitkan keluarga Muslim yang menghadapi kesulitan kerana fatwa 1971 itu tidak mengiktiraf penamaan (*nomination*) yang dibuat untuk tanggungan dan anggota keluarga yang lebih memerlukan.

Justeru, Jawatankuasa Fatwa, yang dipengerusikan Mufti Singapura, Syed Ima Mohd Semati, memutuskan bahawa Fatwa 1971 perlu disemak dan butiran semakan itu di-debatkan kepada umum Khumus lalu.

Perbincangan aktif mengenai semakan itu dikatakan bermula tahun ini.

Hasilnya, jawatankuasa itu mengeluarkan fatwa baru (2010) yang mengiktiraf penamaan CPF oleh penacram Muslim sebagai pemberian labah (hadiah) yang sah yang dibuat semasa hayat si penacram. Dengan demikian, penacram CPF Muslim boleh membuat penamaan atas nama tanggungan mereka.

Kesan semakan fatwa itu juga penting – penacram CPF Muslim kini ada dua pilihan untuk membuat penamaan.

► Pertama, melalui cara lisan dengan membuat penamaan.

► Kedua, memilih agar wang CPF diagihkan secara faraid tanpa membuat sebarang penamaan bagi wang CPF mereka.

Dari segi undang-undang, pengagihan wang CPF di bawah Akta CPF tidak akan terjejas oleh fatwa terbaru ini. Dari segi agama



Apakah mungkin Jawatankuasa Fatwa juga dapat bertindak secara proaktif dalam mencari huraian baru atau menyemak fatwa berkaitan harta lain seperti insurans, pelaburan/hartanah/aset setempat dan asing serta beberapa jenis pelaburan lain demi mengelak kekeliruan atau yang boleh menyebabkan pertikaian di kalangan anggota keluarga berkaitan tuntutan harta pusaka?

Namun, ada suara-suara kritikal yang menyatakan kaedah lisan ini boleh terlewat kepada penyalahgunaan cara pengagihan wang CPF. Malangnya, penacram Muslim mengabaikan kepada mereka yang tidak pertalian darah atau mendakikan keperluan tanggungan dan keluarga terdekat.

Delam hal ini Jawatankuasa Fatwa mensyorkan Muslim setempat bahawa penamaan CPF ini adalah satu wadah bagi penangan kewangan yang boleh membantu memastikan kebajikan dan kepentingan tanggungan dan keluarga terdekat si mati.

Justeru, penamaan perlu dilakukan secara bertanggungjawab dan tidak harus dibuat dengan niat untuk mendakikan keperluan waris/keluarga terdekat. Fatwa ini juga membekalkan Muslim secara bertanggungjawab mengurniakan harta mereka dan mengagihkannya secara adil dan saklama, "jelas Setiausaha Jawatankuasa Fatwa, Ustaz Nazrudin Mohd Nasir.

Ustaz Tengku Mohamad Fauzy Tengku Mahit Jumali, seorang lagi anggota Jawatankuasa Fatwa, berkata:

"Phak kami ingin menasihatkan setiap individu Muslim bahawa proses penamaan CPF ini mestilah dilakukan secara bertanggungjawab. Kami sedikdar memberi peringatan di bawah sleep agama. Cuma kami berharap tiada Muslim yang melakukan penamaan CPF ini dengan niat tidak baik sehingga melakukan satu kesalahan atau mencemarkan keadilan kepada orang lain."

Walaupun perubahan fatwa kali ini bukanlah semakan besar-besaran, ia tetap satu perubahan penting, malah dianggap progresif. Difahaman, Singapura yang pertama membuat peraturan syariahi ini. Namun ia pernah dibatalkan di negara lain.

Fatwa perlu sensus dan seiring keperluan hari ini. Ertinya, ia tidak wajar menyempitkan pilihan sesia ada, malah memberi ruang kepada Muslim untuk bijak menentukan kemalihatan diri dan tanggungjawabnya.

Perubahan fatwa kali ini juga membantu Muslim setempat agar tidak lagi keliru berkaitan pengagihan wang CPF dan prosedur penamaan CPF. Ini kerana semakan fatwa itu kian selaras dengan keputeraan Akta CPF, sekali gus tidak timbul atau mengurangkan masalah berkaitan tuntutan wang CPF daripada pihak-pihak berkepentingan yang akan melaras masa dan belanja yang besar.

Dengan pengalaman ini, bererti fatwa-fatwa setempat mesti terus disemak dan diperbaharui agar sejajar suasana umum. Kita tidak mahu fatwa yang lalu atau tidak lagi relevan pada keadaan sekarang.

Apakah mungkin Jawatankuasa Fatwa juga dapat bertindak secara proaktif dalam mencari huraian baru atau menyemak fatwa berkaitan harta lain seperti insurans, pelaburan/hartanah/aset setempat dan asing serta beberapa jenis pelaburan lain demi mengelak kekeliruan atau yang boleh menyebabkan pertikaian di kalangan anggota keluarga berkaitan tuntutan harta pusaka?

Umat Islam juga perlu dididik mengenai soal fatwa agar tidak timbul kekeliruan sehingga membawa pecah-belah bok yang terjadi di negara majoriti Muslim, dan ini termasuk pameran bergerak dan penjelasan melalui ceramah di masjid-masjid setempat.

Perkembangan fatwa dianggap satu proses yang dipanggil 'fithrah' progresif atau mendorong ummah untuk mengedar kemajuman berlandaskan lunas Islam atau syariahi.

Dituntut bui wasiat, termasuk wang CPF sehingga pusaka flat HDB, kian kurang menimbulkan tanggkar dan pecah-belah di kalangan keluarga Muslim.

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An article published in the Malay newspaper Berita Harian dated 25 September 2010 pertaining to the fatwa on CPF Nomination.

Sesungguhnya perantaraan Muis Ujama Islam Singapura (Muis) menguruskan aset-aset wakaf di negara ini, pelbagai keputusan telah dibuat para pemimpin agama atas masyarakat dalam usaha melestarikan warisan masyarakat ini. Langkah-langkah tersebut telah membuka haluan bagi pelbagai instrumen hartawan dan kewangan dilaksanakan bagi memelihara wakaf. Hasilnya, nilai aset-aset wakaf di negara ini meningkat sedemikian rupa sehingga mencapai RM1.2 bilion pada tahun 2010. Keseluruhan RM1.2 bilion itu terdiri daripada RM1.1 bilion yang merupakan aset-aset wakaf, antara lainnya termasuk wakaf di negara ini.

Usaha rancangan sektor wakaf oleh perintis kini buahkan hasil



HARTAHAN WAKAF Mohd Nur Hafid, ahli perniagaan dan perancang hartawan wakaf, berkata dalam perancangan wakaf, ia dapat membantu masyarakat yang memerlukan wang untuk membiayai pendidikan anak-anak mereka.

INSTITUSI wakaf Singapura telah banyak berkembang sepanjang 20 tahun lalu, dengan adanya kerjasama pelbagai badan untuk membantu dan menguruskan wakaf. Hasilnya, nilai keseluruhan aset wakaf negara telah meningkat daripada RM150 juta pada tahun 2000 kepada RM1.2 bilion pada tahun 2010, yang merupakan Muis Ujama Islam Singapura (Muis).

Dalam tempoh yang sama, Muis berkolaborasi dengan sektor swasta untuk membangunkan aset wakaf, seperti pembangunan pusat perniagaan dan perumahan di kawasan-kawasan tertentu. Ini adalah langkah pertama untuk membangunkan aset wakaf yang produktif dan berdaya guna.

Kemudahan ini telah membuka peluang kepada masyarakat untuk berinvestasi dalam aset wakaf yang produktif dan berdaya guna. Ini adalah langkah pertama untuk membangunkan aset wakaf yang produktif dan berdaya guna.

Selain menjadi dan memajukan, badan-badan lain seperti dengan golongan individu dan keluarga yang memerlukan instrumen atau perantara untuk menguruskan aset wakaf mereka, maka Muis akan membantu.

WAKAF DIBINA DARI UJAMA
Nasib berlainan dengan instrumen seperti saham dan obligasi yang tidak terdapat dalam Muis Ujama dan Muis, wakaf merupakan aset yang dihasilkan oleh individu yang mempunyai harta dan diwariskan kepada generasi berikutnya.

Dengan memulakan usaha ini, Muis telah membuka peluang kepada masyarakat untuk berinvestasi dalam aset wakaf yang produktif dan berdaya guna. Ini adalah langkah pertama untuk membangunkan aset wakaf yang produktif dan berdaya guna.

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Lebih 90 orang di 11 buah masjid menerima manfaat melalui perantaraan Muis Ujama Islam Singapura. Pada tahun 2001.

Kepimpinan kreatif dituntut dengan berkolaborasi dengan sektor swasta untuk membangunkan aset wakaf yang produktif dan berdaya guna.

Pengarah Dawat Awe dan Endowmen, Muis, Cik Devi Hartaty Suratty, berkata dalam perancangan wakaf, ia dapat membantu masyarakat yang memerlukan wang untuk membiayai pendidikan anak-anak mereka.

"Dengan adanya seperti ini, Muis dapat membantu masyarakat yang memerlukan wang untuk membiayai pendidikan anak-anak mereka.

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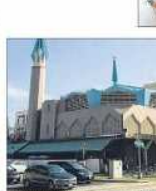
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WAKAF MAJLIS KASIM: Pembangunan rumah di kawasan perumahan di Singapura.

"Pada ketika itu, ramai ulama dan pemimpin kita yang prihatin tentang keadaan wakaf kita dan mereka juga mahu melihat institusi tersebut dapat terus dikanal." — Pengarah Dawat Awe dan Endowmen, Muis, Cik Devi Hartaty Suratty.

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MELISTAIKAN DIBANGUNKAN: Pembangunan rumah di kawasan perumahan di Singapura.

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Article published in the Malay newspaper Berita Harian dated 8 August 2021. The article offers an overview of Muis' efforts to preserve Singapore's wakaf assets.

The value of these assets has witnessed a remarkable sixfold surge, escalating from \$150 million in 2000 to well over \$900 million today.



PADA 2012, Muis Ujama Islam Singapura (Muis) memperkukuhkan sektor wakaf sebagai salah satu instrumen untuk memelihara aset wakaf berdaya guna.

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Wakaf Masyarakat bolehkan pelbagai aset berkembang, perluas manfaat

► NUR HUMAIRA SALT
nhsalt@sph.com.sg

LANGKAH Majlis Ugama Islam Singapura (Muis) mengumumkan pembentukan wakaf pelbagai aset yang dikenali sebagai Wakaf Masyarakat Singapura (WMS) adalah bertujuan untuk membolehkan aset milik masyarakat Islam di sini berkembang dan manfaatnya diperluas.

Ini termasuk menyokong keperluan masa depan seperti pembinaan Kolej Islam Singapura yang baru, menokok pajakan tanah masjid yang luput, dan memperkaya masyarakat Muslim di sini, khususnya golongan kurang upaya dan memerlukan, semasa berlaku krisis yang tidak dijangka.

Menerangkan hal ini semasa berucap di seminar 'Rancangan Akhirat, Manfaat Masyarakat' yang diadakan di Institut Pendidikan Sepanjang Hayat di Paya Lebar semalam, Pengarah Dasar Aset & Endowment Muis, Cik Dewi Hartaty Suratty, berkata



TIMBA PENGETAHUAN
Orang ramai mendengar panel perincian mengenai WMS oleh penceramah undangan – (dari kiri) Enck Ezra Bunyamin, Enck Sani Hamid, dan Ustaz Shamsam Sultanah. Perincian itu diendahkan selebriti dan ahli hartanah. Pengarah Divisyen ERA Realty Network, Cik Nona Kratos – Foto BM oleh NUR DIYANA TAHAR

keasikan pasaran tidak menanti, peningkatan kos dan turun naik ekonomi sejak beberapa tahun lalu telah merosakkan masyarakat, malah pandemik telah menyak

mengganggu usaha mengumpul dana bagi masjid dan madrasah, hingga merosakkan operasi mereka. "Kejadian ini, serta ramalan ke atas keper-

luan masa depan bagi masyarakat dan institusi kita, telah meniadakan kita untuk mula merancang awal. Ini supaya dapat memastikan institusi dan masyarakat keagamaan kita boleh terus wujud berenergi akan datang," ujarnya.

WMS akan dilancarkan tidak lama lagi. Semalam, hampir 200 orang menghadiri seminar dua setengah jam anjuran WMS itu yang memincikan mengenai kekayaan dan kejayaan dalam Islam serta usaha mesdori legasi hidup.

Program itu diselenggarakan M Kuasa Tiga (M3), Berita Harian dan Muslim.sg.

Tiga penceramah undangan – penceramah bebas yang bergengsi Iim Hub, Ustaz Shamsam Sultanah, Pengarah di Financial Alliance, Enck Sani Hamid, dan peguam daripada Rangkaian Peguam M3 dan Pengarah Urusan Deansgate Barakah Law Corporation, Enck Ezra Bunyamin – menekankan pentingnya bagi masyarakat Islam merancang legasi mereka – harta atau wang pening-

galan – agar dapat memberi manfaat kepada keluarga serta orang tersayang.

Masyarakat Islam juga digalakkan mengelektikan sebahagian harta untuk wakaf agar ia dapat dimanfaatkan masyarakat.

Sewaktu perbincangan panel dan sesi soal jawab di seminar itu, masyarakat bertanyakan pelbagai soalan berkenaan wakaf, wasiat, faraid dan perancangan kewangan.

Malah keprihatinan mengenai perancangan legasi seperti mengelektikan sebahagian harta sebagai wasiat, cara peribadikan harta tanpa mengikut hukum faraid, dan pengurusan wasiat, antara perkara ditimbulkan.

Di samping itu, ada juga menanyakan tentang isu hak pemilikan rumah, usur riba dan pembelian insurans.

Antara peserta yang hadir semalam ialah suri rumah, Cik Sulima Mohamed Nour, 73 tahun.

Ini lima anak itu berkata: "Selama ini saya masih belum faham tentang faraid, wakaf ataupun wasiat. Dengan ada penjelasan daripada ketiga-tiga penceramah ini, saya dapat lebih memahaminya."

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An article featured in the Malay newspaper Berita Harian on February 5, 2023, highlights a statement issued by Muis concerning the introduction of the new collective wakaf instrument, known as Wakaf Masyarakat Singapura (Singapore Community Wakaf).

Muis dapatkan maklum balas tentang penamaan wang insurans

Difahamkan timbang bolehkan Muslim ubah waris yang dinamakan, jadikan waris penerima mutlak wang pampasan

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MAJLIS Ugama Islam Singapura (Muis) sedang mendapatkan maklum balas daripada industri insurans berhubung isu penamaan insurans bagi masyarakat Islam, menurut sumber-sumber *Berita Harian*.

Difahamkan Muis sedang menimbang kemungkinan mengeluarkan panduan baru bagi membenarkan orang Islam mengubah nama bagi waris yang telah dicalonkan bagi insurans.

Di bawah peraturan sekarang pemilik insurans Islam yang telah menamakan waris insurans hayat mereka tidak boleh mengubahnya.

Sumber *Berita Harian* turut menyatakan bahawa Muis sedang juga menimbang kemungkinan men-

jadikan waris penerima mutlak wang pampasan insurans itu.

Di bawah peraturan sekarang, waris yang dinamakan pemilik insurans itu merupakan pengamanah bagi keseluruhan wang pampasan insurans itu.

Ini bermakna waris perlu mengagihkan wang pampasan itu mengikut hukum faraid.

Berita Harian difahamkan Muis telah meminta maklum balas daripada anggota Persatuan Insurans Hayat (LIA) berhubung panduan yang dipertimbangkan itu.

Muis dan LIA, bagaimanapun, enggan mengulas apabila dihubungi.

Isu penamaan waris insurans ini timbul menyusuli pindaan Akta Insurans pada September 2009 yang membolehkan pemilik insurans se-

cara umum membuat perubahan nama bagi waris yang telah dicalonkan.

Namun, kebanyakan firma insurans hayat di sini tidak membenarkan orang Islam membuat perubahan nama waris disebabkan syarat tertakluk di bawah Akta Pentadbiran Hukum Islam (Amla) di bawah Seksyen 111 yang dipinda bersama pindaan Akta Insurans tersebut.

► Laporan lain 4

Beberapa wakil industri insurans yang dihubungi *Berita Harian* menyatakan percanggahan Amla dan Akta Insurans menimbulkan masalah bagi pemilik insurans Islam yang ingin mengubah nama waris.

"Ia merupakan satu masalah operasi yang dihadapi setiap masa. Apabila pelanggan Islam hendak mengubah nama waris, wakil insurans kami terpaksa meminta mereka merujuk kepada Amla atau mendapatkan penjelasan Muis.

"Jika Muis dapat memberikan panduan lebih jelas, ia amat membantu kami," kata seorang wakil se-

buah syarikat insurans yang enggan namanya disiarkan.

Sumber *Berita Harian* menyatakan meminda Amla dijangka memakan masa sedangkan mengeluarkan panduan akan dapat mengurahkan masalah yang dihadapi industri itu bagi tempoh masa pendek.

Diminta mengulas, Ustaz Mohd Hasbi Hassan berkata memang wajar Muis menyemak panduan penamaan waris bagi insurans kerana "keperluan dahulu dengan keperluan sekarang mungkin telah berubah dan Muis adalah badan yang berkuasa menyemakannya".

Mengenai pertimbangan menjadikan waris pemilik mutlak wang pampasan insurans, Ustaz Hasbi berkata hibah boleh digunakan kerana ia adalah salah satu instrumen yang dibenarkan dalam syariah.

Sebelum ini, Muis telah mengeluarkan fatwa membolehkan pencarum Tabung Simpanan Pekerja (CPF) membuat pilihan sama ada menamakan waris untuk menerima wang CPF sebagai hibah apabila mereka meninggal dunia atau tidak membuat sebarang penamaan pantas wang CPF peninggalannya akan diagih mengikut hukum faraid.

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Article published in the Malay newspaper Berita Harian dated 7 April 2011 addresses the issue of insurance nomination, highlighting Fatwa Committee's considerations in taking into account the latest developments and the community's needs.



2 INHERITANCE

﴿لِّلرِّجَالِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ وَلِلنِّسَاءِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ مِمَّا قَلَّ مِنْهُ أَوْ كَثُرَ ۗ نَصِيبًا مَّفْرُوضًا ﴿٧﴾ وَإِذَا حَضَرَ الْقِسْمَةَ أُولُو الْقُرْبَىٰ وَالْيَتَامَىٰ وَالْمَسَاكِينُ فَارْزُقُوهُمْ مِنْهُ وَقُولُوا لَهُمْ قَوْلًا مَعْرُوفًا ﴿٨﴾﴾

Which means: “For men, there is a share in what their parents and close relatives leave, and for women, there is a share in what their parents and close relatives leave — whether it is little or much. (These are) obligatory shares. If (non-inheriting) relatives, orphans, or the needy are present at the time of distribution, offer them a (small) provision from it and speak to them kindly.” (Surah *al-Nisā*: 7-8)

Inheritance and Changing Families in Singapore

As Singapore evolved into a modern nation-state, it underwent significant shifts that extended to its family structures. This, in turn, has repercussions on family law. Family law in Singapore is administered by two codes: The Women’s Charter, enacted in 1961 for non-Muslims, and the Administration of Muslim Law Act (AMLA), enacted in 1966 for Muslims. These laws regulate the process of marriage, divorce and inheritance in Singapore. While these laws are binding and enforced by the state authority, they are not static. Amendments to the laws have been made to respond to these changes. This section surveys the changes in Singaporean families over the years, and how these have impacted the ways people view concepts such as maintenance and inheritance. It also compares the legal evolution of Singapore’s dual family law code through the same period.

Marriage and Maintenance

There has been a noticeable decline in the marriage rates in Singapore over time. In 1990, the marriage rate stood at 59.2 per thousand unmarried females and 52.2 per thousand unmarried men. However, by 2013, these

figures had dropped to 40.5 and 36.9, respectively.⁵⁸ Nevertheless, in 2022, there was a resurgence in marriage rates, reaching 45.5 percent for women and 47.0 percent for men.⁵⁹ The same trend applies to the marriage rate among Muslims. It has been decreasing, but at a slower and less consistent pace.⁶⁰ Alongside the low birth rate of 1.19 recorded in 2013, the family size has also decreased. This figure falls below the ideal rate of 2.1.⁶¹

The impact of such changes on marriage, divorce, and inheritance can be characterized as complex and heavily influenced by the contemporary roles of women and men in marriage. When it was enforced in 1961, the Women's Charter took into account the traditional family structure at that time, where men typically went out to work and provide for the family. There are laws that can compel the husband to provide maintenance for his wife during the marriage, or for his ex-wife after divorce. However, the same regulations are not imposed on women. This is observed in both civil law and AMLA.

However, as early as 1963, the family structure began to show signs of change.⁶² One of the things is that more women are choosing to remain single, and family life is no longer their dream.⁶³ They are also presented with more opportunities and choices to build a career and pursue their aspirations, whereas this choice was not available to previous generations of women (their mothers and grandmothers).⁶⁴ As a result of this phenomenon, studies have found that more women are working full-time before and after marriage. The entry of women in their twenties into the workforce reached 88.6 percent in 2014.⁶⁵ Compared to the rate in 2004, where the number of working women fell to 20% among older women. This means that after 2004, more women chose to continue working even after getting married.

Meanwhile, official data shows that more working women are earning higher incomes compared to men, hence not all women need to rely on the maintenance provided. Many individuals and activists at that time criticized the Women's Charter for maintaining the existing maintenance structure, deeming it unequal and failing to emphasize gender equality in marriage.⁶⁶ Some members of the community also argued that such regulations did not take into account the freedom of independent women. For example, this view was emphasized by the High Court Judge in the case of *ADB v ADC*,⁶⁷ which ruled that the wife was not entitled to receive maintenance because her income was higher than that of her husband.⁶⁸

The evolving dynamics of modern family structures have also impacted numerous Muslim couples. In tandem with the exorbitant housing costs in

Singapore, more women are encouraged to work to help finance mortgage payments and living expenses.⁶⁹ Families with two sources of income have become common, while situations where men are the sole breadwinners are decreasing.⁷⁰

Despite these changes, in terms of Islamic inheritance law, men still receive a larger share in the estate distribution based on the understanding that they are the ones who will provide for the livelihood of women and the family. In other words, the *farā'id* system typically assigns a larger portion of assets to men in most scenarios, alongside bearing greater responsibilities.

Inter-marriage, Divorce and Maintenance

Another pressing concern revolves around strategising to provide for dependents who are not designated as heirs under *farā'id*. These individuals comprise adopted and stepchildren as well as non-Muslim spouses or children. This issue became more visible with the breakdown of the traditional family structure, high incidence of divorce and greater numbers of inter-marriages. The proportion of inter-ethnic Muslim marriages increased from 16.5 to 32.1 from 1990 to 2013.⁷¹ However, this rate has decreased by around 22 percent in recent years.⁷² In addition to this, there are several civil marriages which took place between Muslims and non-Muslims. As a result, the *farā'id* distribution for children born from such unions becomes uncertain, primarily due to potential differences in religion.

Adoption numbers had remained fairly constant at about 400 per year in Singapore.⁷³ Although this number is quite small, parents of adopted children are often anxious to ensure their adopted child's well-being in the event of their passing. While they could make a will under *farā'id* for up to one-third of their assets, some assets, such as properties, could not be split without considerable difficulty for the surviving tenants.

The escalating divorce rate among Muslim couples in Singapore is another significant factor that must be taken into account regarding estate distribution. Over the last 30 years, this rate has doubled, rising from 972 marriages ending in 1990 to 1,662 divorce cases in 2013. However, the divorce rate decreased to 1505 cases in 2022.⁷⁴ A declining trend is also observed in Singapore as a whole, with 6,959 marriages ending in divorce in 2020, compared to 7,623 cases in the previous year, 2019 – a decrease of 8.7 percent.⁷⁵

The family structure is also diversified with the occurrence of remarriages. In the context of divorce, former spouses cannot inherit assets under the Islamic law of *farā'id*. Nonetheless, children born from that marriage retain their rights. Asset inheritance could become complicated if the deceased remarried during their lifetime. Children from the first marriage may face difficulties in claiming their share. For example, there may be difficulties in balancing the interests of distributing assets to rightful heirs and the need to provide shelter for the deceased's second family. The deceased might have the desire to use their assets to support the livelihood of stepchildren from their subsequent marriage after their passing.

As such many questions about managing asset distribution after divorce and death, remarriage, and inheritance for adopted children were raised in the Religious Queries section of the local newspaper *Berita Harian Singapore*.⁷⁶ In such scenarios, confining asset distribution solely to *farā'id* would prove excessively restrictive and unsuitable. From the late 1990s to the early 2000s, various disputes arose among Muslims regarding *farā'id*-based distribution.⁷⁷ It is clear that there is a need to identify various types of financial planning tools so that Muslims can plan asset inheritance, especially for those who do not have traditional family structures as mentioned earlier.⁷⁸ However, all types of financial planning must adhere to the framework and principles of *maqāsid al-sharī'ah*.

Elderly and the Right to Maintenance (*Nafkah*)

The transition towards more single-nucleus families in Singapore has impacted elderly care and support. In the past, when multi-generational households were the norm, the family's head, often the eldest male, shouldered the responsibility of caring for both the elders and the children. However, as these living arrangements dissolve, elderly parents and their children's families increasingly live separately. In old age, more elderly choose to live away from their children, while children often move out immediately after marriage.⁷⁹ Maintenance of elderly parents – once a duty – became perceived as a choice. This is evident through a series of measures implemented by the state to encourage the younger generation to care for their parents. These measures include incentives, such as the Proximity Housing Grant (PHG), aimed at facilitating the purchase of a flat in close proximity to parents, the enactment of the Maintenance of Parents Act in 1995, and the establishment of family tribunals to mediate disputes related to parental maintenance.⁸⁰

With the onus for maintenance gradually shifting away from the younger generation to the elderly themselves, the fragmentation of the elderly's assets when their spouse passes away can impact their well-being in a devastating manner. The effect is particularly pronounced in the division of apartments according to *farā'id*. For example, following the fatwa decision on Joint Tenancy in 1997, if a man passes away, his wife should sell their joint property and share the proceeds with the other heirs, in this case, often the children. This move leaves the wife homeless and dependent on her children for maintenance. The surviving parent often had little means of buying another house. Several cases of disputes between children and their surviving parents led to homelessness for the latter, which is a socially undesirable outcome.⁸¹ This once again highlights the crucial importance of estate planning to handle these situations in a manner that aligns with Islamic principles.

In summary, families in Singapore, much like those in other developed economies, have transitioned towards smaller nuclear units, resulting in fewer close connections with extended family members. This trend also applies to Malay families, which observed a decrease in the number of multi-nuclei or extended families living together from 1957 to 1990.⁸² The weakening of these connections reduced the likelihood of male extended family members being responsible for the welfare of female members. The traditional concept of maintenance, where a man supports his wife and working children care for elderly parents, has been disrupted by these shifts in the Singaporean family structure. Moreover, the rise of unconventional family setups has resulted in dependents who are not specifically recognised as heirs under *farā'id*. Given these developments, there is a pressing need for extensive discussions on the most effective ways to plan and distribute these estates after death.

Inheritance Law (*Farā'id*)

Inheritance law or *farā'id* is a part of family law that plays a vital role in society. In Islam, inheritance law is a form of legislation that specifically regulates the transfer of assets from the deceased to their living heirs. The establishment of *farā'id* aims to safeguard the well-being of individuals, families, and communities by addressing matters of individual rights. Its basis is the Qur'an, Sunnah and consensus (*ijmā'*). The establishment of inheritance law occurs gradually, considering society's development during the period of revelation.

Farā'id

Farā'id is derived from the word *farada*, which means something that is prescribed or determined. From a religious perspective, *farā'id* represents the portion prescribed or determined by religious law for those entitled to receive it. The knowledge of *farā'id* constitutes a body of knowledge through which one can ascertain the rightful heirs, individuals ineligible to inherit, the appropriate share for each heir, and the method of distribution.

Allah ﷻ states in Surah *al-Nisā'* verse 11:

﴿يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثَيَيْنِ ۚ فَإِن كُنَّ نِسَاءً فَوْقَ اثْنَتَيْنِ فَلَهُنَّ ثُلُثَا مَا تَرَكَ ۚ وَإِن كَانَتْ وَاحِدَةً فَلَهَا النِّصْفُ ۚ وَلَا يُؤْتِيهِ لِكُلِّ وَاحِدٍ مِّنْهُمَا الشُّدُسُ مِمَّا تَرَكَ إِن كَانَ لَهُ وَلَدٌ ۚ فَإِن لَّمْ يَكُن لَهُ وَلَدٌ وَوَرِثَهُ أَبَوَاهُ فَلِأُمِّهِ الثُّلُثُ ۚ فَإِن كَانَ لَهُ إِخْوَةٌ فَلِأُمِّهِ الشُّدُسُ ۚ مِن بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ بَيْنِ آبَائِكُمْ وَأَبْنَاؤِكُمْ لَا تَدْرُونَ أَيُّهُم أَقْرَبُ لَكُمْ نَفْعًا ۚ فَرِيضَةٌ مِّنَ اللَّهِ ۚ إِنَّ اللَّهَ كَانَ عَلِيمًا حَكِيمًا ﴿١١﴾﴾

Meaning: "Allah commands you regarding your children: the share of the male will be twice that of the female. If you leave only two (or more) females, their share is two-thirds of the estate. But if there is only one female, her share will be one-half. Each parent is entitled to one-sixth if you leave offspring. But if you are childless and your parents are the only heirs, then your mother will receive one-third. But if you leave siblings, then your mother will receive one-sixth—after the fulfilment of bequests and debts. (Be fair to) your parents and children, as you do not (fully) know who is more beneficial to you. (This is) an obligation from Allah. Surely Allah is All-Knowing, All-Wise."

Allah ﷻ states in Surah *al-Nisā* ' verse 12:

﴿وَلَكُمْ نِصْفُ مَا تَرَكَ أَزْوَاجُكُمْ إِنْ لَمْ يَكُنْ لَهُنَّ وَلَدٌ فَإِنْ كَانَ لَهُنَّ وَلَدٌ فَلَكُمْ الرُّبْعُ مِمَّا تَرَكَنَّ مِنْ بَعْدِ وَصِيَّةٍ يُوصِينَ بِهَا أَوْ دَيْنٍ وَهُنَّ الرُّبْعُ مِمَّا تَرَكَتُمْ إِنْ لَمْ يَكُنْ لَكُمْ وَلَدٌ فَإِنْ كَانَ لَكُمْ وَلَدٌ فَلَهُنَّ الثُّمُنُ مِمَّا تَرَكَتُمْ مِنْ بَعْدِ وَصِيَّةٍ تُوصُونَ بِهَا أَوْ دَيْنٍ وَإِنْ كَانَ رَجُلٌ يُورَثُ كَلَلَةً أَوْ امْرَأَةٌ وَلَهُرَّ أَحٌّ أَوْ أُخْتُ فَلِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ فَإِنْ كَانُوا أَكْثَرَ مِنْ ذَلِكَ فَهُمْ شُرَكَاءُ فِي الثُّلُثِ مِنْ بَعْدِ وَصِيَّةٍ يُوصَى بِهَا أَوْ دَيْنٍ غَيْرِ مُضَارٍّ وَصِيَّةٍ مِنَ اللَّهِ وَاللَّهُ عَلِيمٌ حَلِيمٌ ﴿١١﴾﴾

Meaning: “You will inherit half of what your wives leave if they are childless. But if they have children, then (your share is) one-fourth of the estate — after the fulfilment of bequests and debts. And your wives will inherit one-fourth of what you leave if you are childless. But if you have children, then your wives will receive one-eighth of your estate — after the fulfilment of bequests and debts. And if a man or a woman leaves neither parents nor children but only a brother or a sister (from their mother’s side), they will each inherit one-sixth, but if they are more than one, they (all) will share one-third of the estate — after the fulfilment of bequests and debts without harm (to the heirs). (This is) a commandment from Allah. And Allah is All-Knowing, Most Forbearing.”

Allah ﷻ states in Surah *al-Nisā* ' verse 176:

﴿يَسْتَفْتُونَكَ قُلِ اللَّهُ يُفْتِيكُمْ فِي الْكَلَلَةِ إِنْ امْرَأَةٌ هَلَكَ لَيْسَ لَهُ وَلَدٌ وَلَهُ أُخْتُ فَلَهَا نِصْفُ مَا تَرَكَ وَهُوَ يَرِثُهَا إِنْ لَمْ يَكُنْ لَهَا وَلَدٌ فَإِنْ كَانَتَا اثْنَتَيْنِ فَلَهُمَا الثُّلُثَانِ مِمَّا تَرَكَ وَإِنْ كَانُوا إِخْوَةً رِّجَالًا وَنِسَاءً فَلِلذَّكَرِ مِثْلُ حَظِّ الْأُنثِيَيْنِ يُبَيِّنُ اللَّهُ لَكُمْ أَن تَضِلُّوا وَاللَّهُ بِكُلِّ شَيْءٍ عَلِيمٌ ﴿١٧٦﴾﴾

Meaning: “They ask you (for a ruling, O Prophet). Say, “Allah gives you a ruling regarding those who die without children or parents.” If a man dies childless and leaves behind a sister, she will inherit one-half of his estate, whereas her brother will inherit all of her estate if she dies childless. If this person leaves behind two sisters, they together will inherit two-thirds of the estate. But if the deceased leaves male and female siblings, a male’s share will be equal to that of two females. Allah makes (this) clear to you, so you do not go astray. And Allah has (perfect) knowledge of all things.”

Based on the three verses above, the principle of inheritance distribution in Islam stipulates that the share for a male child equals two shares allocated to a female child. In essence, this means that a male receives twice the share of a female.⁸³ The heirs, *aṣḥāb al-furūd* (those who receive a fixed share) and *‘aṣabah bi al-ghayr* (those who receive *‘aṣabah* with the presence of female heirs who share with male heirs in a ratio of 1:2), and the relevant inheritance procedures have all been specified.

Inheritance through *‘Aṣabah*

Qualified heirs who are entitled to inherit the estate will inherit either through *fardu* (i.e., the portion stipulated in the Quran) or through *‘aṣabah*.

The second method of inheritance is *‘aṣabah*, which generally refers to male family members (except for the father, grandfather, and husband). In terms of the terminology of *faraid*, *‘aṣabah* refers to heirs who inherit either by taking all the portions or the remainder after the distribution to the *fardu* heirs. In some cases, inheriting through *‘aṣabah* will not receive any assets if there is no remainder after the distribution to the *fardu* heirs.

One of the hadiths that elaborates on the recipients of inheritance and their respective shares is the saying of the Prophet ﷺ:

اقْسِمُوا الْمَالَ بَيْنَ أَهْلِ الْفَرَائِضِ عَلَى كِتَابِ اللَّهِ فَمَا تَرَكَتِ الْفَرَائِضُ فَلْأَوْلَى رَجُلٍ ذَكَرٍ

Meaning: “Distribute wealth among those who are entitled to shares of inheritance, according to the Book of Allah, then whatever is left over goes to the nearest male relative.” (Hadith narrated by Muslim, 1615c)

لِلْإِبْنَةِ النَّصْفُ، وَلِلْإِبْنَةِ الْإِبْنِ السُّدُسُ، وَمَا بَقِيَ فَلِلْأُخْتِ

Meaning: “The daughter gets half and the son’s daughter gets a sixth, and what remains goes to the sister.” (Hadith narrated by Al-Bukhārī, 6742)

In addition to evidence from the Qur’an and Sunnah, there is also consensus among scholars regarding the distribution of inheritance. For instance, a grandmother or a great-grandmother equally shares a one-sixth portion.⁸⁴ The wisdom and purpose behind *farā’id* can be grasped from the hadith narrated by Sa‘ad ibn Abī Waqqās r.a., wherein the Prophet ﷺ said:

إِنَّكَ أَنْ تَذَرَ وَرَثَتَكَ أَغْنِيَاءَ، خَيْرٌ مِنْ أَنْ تَذَرَهُمْ عَالَةً
يَتَكَفَّمُونَ النَّاسَ، وَإِنَّكَ لَنْ تُنْفِقَ نَفَقَةً تَبْتَغِي بِهَا وَجْهَ اللَّهِ
إِلَّا أُجِرْتَ بِهَا، حَتَّى مَا تَجْعَلُ فِي فِي امْرَأَتِكَ

Meaning: “To leave your inheritors wealthy is better than to leave them in poverty, begging from people. And (know that) whatever you spend in Allah’s Cause, you will get reward for it, even for the morsel of food which you put in your wife’s mouth.” (Hadith narrated by Al-Bukhārī, 6473; Muslim, 1628a)

In general, *farā’id* is a form of financial planning guided by the Shariah that aims for fairness so that beneficiaries can resume their lives. In addition, *farā’id* serves to protect family members from oppression after the deaths of their loved ones, as the Islamic inheritance system celebrates justice, equity, and compassion in estate division.⁸⁵ The concept of justice (*al-‘adālah*) grants rights to individuals as heirs in accordance with the positions and responsibilities they should bear within the family, society, state and under religious decrees. The distribution of wealth is not necessarily made equally or in the same portions between men and women as it is closely tied to rights and needs. Discriminatory elements should not exist in the distribution of inheritance through *farā’id*, provided it is executed correctly.⁸⁶

The inheritance share for males is twice as much as that for females because, originally, a man was responsible for providing for his wife and female family members.⁸⁷ Women, on the other hand, are among the *aṣḥāb al-furūd*,⁸⁸ who are assured individual shares, such as obtaining half, one-sixth, one-third, and so forth in estate distribution. This contrasts with men, most of whom fall under the category of *aṣḥāb al-‘aṣabah*⁸⁹ (except for the father, grandfather and husband), who receive the

Types of Assets

- **Permanent assets** such as buildings, land, farms and the like.
- **Movable or liquid assets** such as cash, equipment, vehicles, jewelry, clothing, and the like.
- **Debts** owed to the deceased person.
- **Pledged assets** of the deceased that can be redeemed.
- **Assets purchased** by the deceased during their lifetime, involving a payment made but the goods have not yet been received.
- **Dowry (*mahr*)** that has not been given to the wife until her passing.
- **Other assets** such as savings, CPF, stocks, mutual funds, bonds, insurance, etc., permissible under Islamic law and not tied to nomination.
- **Other tangible assets** with material value.

remaining portion of the estate after distribution to *aṣḥāb al-furūd*. There are also unique situations where males receive a smaller inheritance than females.⁹⁰

The laws of *farā'id* are divine rules (*rabbānī*), a foundation that relies on Allah's governance of this world. The inheritance laws are also comprehensive (*shumūl*) and applied to every Muslim, whether male or female, adult or child, strong or weak. Therefore, the obligation to observe *farā'id* in the estate distribution is fundamentally a religious duty (*wājib shar'i*) that is established by clear evidence from the Qur'an and Sunnah. This duty ensures the preservation of the rights of the heirs as long as all parties adhere to the principles of justice and trustworthiness.⁹¹

Allah ﷻ in Surah *al-Nisā'* verses 13 and 14 said:

﴿تِلْكَ حُدُودُ اللَّهِ ۚ وَمَنْ يُطِعِ اللَّهَ وَرَسُولَهُ يُدْخِلْهُ جَنَّاتٍ تَجْرِي مِنْ تَحْتِهَا الْأَنْهَارُ خَالِدِينَ فِيهَا ۗ

وَذَلِكَ الْفَوْزُ الْعَظِيمُ ﴿١٣﴾ وَمَنْ يَعْصِ اللَّهَ وَرَسُولَهُ وَيَتَعَدَّ حُدُودَهُ يُدْخِلْهُ نَارًا خَالِدًا فِيهَا وَلَهُ

عَذَابٌ مُهِينٌ ﴿١٤﴾﴾

Meaning: “*These (entitlements) are the limits set by Allah. Whoever obeys Allah and His Messenger will be admitted into Gardens under which rivers flow, to stay there forever. That is the ultimate triumph! But whoever disobeys Allah and His Messenger and exceeds their limits will be cast into Hell to stay there forever. And they will suffer a humiliating punishment.*”

The Qur'anic verses on inheritance often highlight key terms, like *waṣīyyah* (will), *farīdah* (allocation), and *ḥudūd* (limits). These terms outline specific obligations that need to be fulfilled. Justice among individuals will be preserved if these legal principles are adhered to. Under these provisions, no heir will be oppressed should fairness and trust are firmly upheld.

Section 112 of AMLA stipulates that the assets of deceased Muslims who are resident in Singapore and have not executed a will shall be distributed per Islamic regulation, namely *farā'id*.⁹² *Farā'id* is one of the instruments of estate distribution that has been detailed in the Shariah. However, it is **not the only instrument** of estate distribution available to Muslims. Shariah also recognises other planning tools, such as the gift (*hibah*) contract, wills (*waṣīyyah*) and endowments (*wakaf*). These serve as wealth distribution instruments distinct from *farā'id*. Unlike *farā'id*, which regulates wealth distribution after death, these planning instruments are established while a person is still alive.

Moreover, if an individual has set up a *hibah* contract, a will (*waṣīyyah*), or designated a portion of their wealth to become an endowment (*wakaf*) after their demise, all these intentions must be carried out on the estate before it is distributed according to *farā'id*. In this regard, the Fatwa Committee has explained various instruments that individuals can consider as part of financial planning for their families. The details are as follows:

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Distribution of Inheritance Amongst Family Members

Inheritance Distribution According to *Farā'id*

Question:

The question is on distribution of inheritance among nine siblings, consisting of four brothers and five sisters. The question is:

- (i) The distribution of inheritance among siblings, where one is not in Singapore. Can the distribution be carried out with their name excluded from the list of recipients?
- (ii) Can a male sibling relinquish his rights in writing? Can his rights be transferred to a sibling who is outside of Singapore?
- (iii) A sibling suggests that the distribution of inheritance be done equally. Can this be implemented even if it will cause dissatisfaction among the other heirs?

Answer:

The decision of the Fatwa Committee is as follows:

- (i) The relevant property shall be divided into 13 equal shares⁹³ (أَصْلُ الْمَسْأَلَةِ) among all siblings. An estimation shall be made by deferring the share of the sibling not in Singapore.
- (ii) The siblings who relinquish their right is entitled to determine to whom they wish to allocate their share of the mentioned property.
- (iii) Equal distribution of the inheritance can only be carried out if all the heirs are in agreement.

Fatwa Decision 16/10/1996⁹⁴

Excluding the Name of a Disobedient Child from Inheritance

Question:

Regarding their intention, neither she nor her husband wish to give their eldest son a share of their inheritance. The reason is that the son has deeply hurt their feelings. She also explained that she had removed her child's name from the list of CPF beneficiaries and replaced it with the Baitulmal. Her question is whether she is allowed to do so.

Answer:

Following deliberation, the Fatwa Committee asserts that acts of disobedience towards parents, specifically the mother, are categorised as major sins. In fact, the gravity of this sin comes after the sin of associating partners with Allah ﷻ. Nevertheless, it is not permissible for a mother or father to deny the rightful inheritance of a disobedient child as stipulated by the Shariah. The reason is that the distribution of inheritance has been ordained by Allah Himself in the Qur'an and established as a definitive decree and will from Him ﷻ.

﴿يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ﴾

Meaning: "Allah commands you regarding your children's (inheritance)."
(Surah al-Nisā': Verse 11)

﴿آبَاؤُكُمْ وَأَبْنَاؤُكُمْ لَا تَدْرُونَ أَيُّهُمْ أَقْرَبُ لَكُمْ نَفَعًا ۖ فَرِيضَةٌ مِّنَ اللَّهِ ۗ إِنَّ اللَّهَ كَانَ عَلِيمًا

حَكِيمًا ﴿١١﴾﴾

Meaning: "(Be fair to) your parents and children, as you do not (fully) know who is more beneficial to you. (This is) an obligation from Allah. Surely Allah is All-Knowing, All-Wise." (Surah al-Nisā': Verse 11)

Hence, it is not permissible in Shariah to deprive a disobedient child of their inheritance rights. Exercising patience and praying to Allah for the child to receive guidance and mercy from Him is the best way to approach such situations.

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Regarding the issue of CPF nomination that was implemented by Ms K in this matter, the Fatwa Committee has issued the following fatwa:

“According to Islamic law, the funds in the Central Provident Fund (CPF) are considered part of the deceased’s estate (pusaka) that must be distributed among the heirs according to the rules of farā’id.”

The nominee appointed by the contributors of the Central Provident Fund is merely a ‘Wakil’ (representative).⁹⁵ They do not receive anything unless they are one of the heirs of the deceased, in which case they are entitled to a portion of the inheritance according to the laws of farā’id.”

Based on the explanation provided by the fatwa above, the nominees that Ms K had designated are not absolute owners of her CPF after her passing. These nominees are trustees for her CPF assets, which must be distributed among the rightful heirs according to Islamic inheritance law (*farā’id*).

Fatwa Decision 29/10/2002

The fatwas above emphasise the importance of safeguarding the rights of heirs under *farā’id* law. Although the 2002 fatwa addressed several issues, such as inheritance and nomination, this chapter will focus on inheritance. Details on nomination and the current fatwa decision will be explained in Chapter 5.

When determining the rights of heirs, three conditions must be satisfied. **First**, there must be confirmation of the deceased’s death, either witnessed or substantiated by documents such as a death certificate. **Second**, the heir is alive at the time of the deceased’s passing. **Third**, the reasons for inheritance, such as familial ties and marital connections, should be understood. In the past, inheritance dynamics also included bondsperson and their masters.⁹⁶

The abovementioned fatwas also demonstrate the characteristics of *farā’id* that mandate the distribution of inheritance to eligible heirs. No one has the right to prevent any eligible heir from receiving their rightful inheritance unless that heir willingly renounces their entitlement. It is considered a violation of Shariah for heirs to disregard the rights of heirs who are residing

outside the country or are unaware of the deceased's passing. The same applies to missing heirs (*mafqūd*).⁹⁷ *Mafqūd* refers to a person who has been missing from their original location for an extended period to the extent that there is no news about them, and it is unknown whether they are still alive or have passed away. In the case of a missing heir (*mafqūd*), scholars have outlined three methods for distribution:

First: Heirs receive their entire shares if their portions are unaffected by the presence or absence of the missing person.

Second: Heirs do not receive their shares until the death of the missing person is proven as the missing person is possibly still alive.

Third: Heirs receive a portion of the inheritance as if the missing person exists and is not missing. As a form of precaution, the heirs are likely to receive a smaller portion.⁹⁸

Farā'id is a definitive (*qaṭ'i*) regulation that is fixed and cannot be changed in terms of its portion and rate according to the individual and societal preferences unless agreed upon by all heirs. Likewise, the practice of *hibah* (gift) should not be intended to deprive other heirs of their rightful shares. Such actions contradict the essence of the inheritance verses, which promote prudence in estate distribution and seek to uphold family bonds. Imam Muḥammad bin Ḥasan (a student of Imam Abū Ḥanīfah) mentioned:

ليس من أخلاق المؤمنين الفرار من أحكام الله بالحيل الموصلة إلى إبطال الحق

Meaning: "It is not from the character of a believer to evade Allah's law by resorting to trickery in order to negate the rights of others."⁹⁹

To ensure fairness for all parties, *farā'id* serves three important roles:

1. Identifying the relationship of an individual with the deceased, whether they are an heir or otherwise;
2. Determining the share of each heir entitled to receive the inheritance; and
3. Validating the calculation of each heir's share through mathematical calculation.¹⁰⁰

Equal Distribution of Inheritance

Question:

A law firm inquired on the validity of a will created by their client's child. The deceased (their client's child) had bequeathed his estate to be divided equally between his wife, son, and daughter. However, this implies that each party would receive one-third of the assets. Is this will valid?

Answer:

The will is not valid in the Shariah because it does not adhere to the laws of inheritance as prescribed by Allah in the Qur'an:

﴿يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثِيَيْنِ ۚ فَإِن كُنَّ نِسَاءً فَوْقَ اثْنَتَيْنِ فَلَهُنَّ ثُلُثَا مَا تَرَكَ ۚ وَإِن كَانَتْ وَاحِدَةً فَلَهَا النِّصْفُ ۚ وَلَا يُورِثُهُ لِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ مِمَّا تَرَكَ إِن كَانَ لَهُ وَلَدٌ ۚ فَإِن لَّمْ يَكُن لَّهُ وَلَدٌ وَوَرِثَهُ أَبَوَاهُ فَلِأُمِّهِ الثُّلُثُ ۚ فَإِن كَانَ لَهُ إِخْوَةٌ فَلِأُمِّهِ السُّدُسُ ۚ مِن بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دَيْنٍ ۚ وَأَبَاؤُكُمْ وَأَبْنَاؤُكُمْ لَا تَدْرُونَ أَيُّهُم أَقْرَبُ لَكُمْ نَفْعًا ۚ فَرِيضَةٌ مِّنَ اللَّهِ ۚ إِنَّ اللَّهَ كَانَ عَلِيمًا حَكِيمًا ﴿١١﴾ ۖ وَلِكُلِّ نِسْفٍ مَّا تَرَكَ أَزْوَاجُكُمْ إِن لَّمْ يَكُن لَّهُنَّ وَلَدٌ ۚ فَإِن كَانَ هُنَّ وَلَدٌ فَلِكُلِّ الرُّبْعِ مِمَّا تَرَكَنَّ ۚ مِن بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دَيْنٍ ۚ وَهُنَّ الرُّبْعُ مِمَّا تَرَكَتُمُ إِن لَّمْ يَكُن لَّكُمْ وَلَدٌ ۚ فَإِن كَانَ لَكُمْ وَلَدٌ فَلَهُنَّ الثُّمُنُ مِمَّا تَرَكَتُمُ ۚ مِن بَعْدِ وَصِيَّةٍ تُوصُونَ بِهَا أَوْ دَيْنٍ ۚ وَإِن كَانَ رَجُلٌ يُورِثُ كِلَالَةً أَوْ امْرَأَةٌ وَلَهُ أَخٌ أَوْ أُخْتٌ فَلِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ ۚ فَإِن كَانُوا أَكْثَرَ مِن ذَلِكَ فَهُمْ شُرَكَاءُ فِي الثُّلُثِ ۚ مِن بَعْدِ وَصِيَّةٍ يُوصَىٰ بِهَا أَوْ دَيْنٍ غَيْرِ مُضَارٍّ ۚ وَصِيَّةً مِّنَ اللَّهِ ۚ وَاللَّهُ عَلِيمٌ حَلِيمٌ ﴿١٢﴾﴾

Meaning: (11) "Allah commands you regarding your children: the share of the male will be twice that of the female. If you leave only two (or more) females, their share is two-thirds of the estate. But if there is only one female, her share will be one-half. Each parent is entitled to one-sixth if you leave offspring. But if you are childless and your parents are the only heirs, then your mother will receive one-third. But if you leave siblings, then your mother will receive one-sixth—after the fulfilment of bequests and debts. (Be fair to) your parents and children, as you do not (fully) know who is more beneficial to you. (This is) an obligation from Allah. Surely Allah is All-Knowing, All-Wise.

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(12) You will inherit half of what your wives leave if they are childless. But if they have children, then (your share is) one-fourth of the estate—after the fulfilment of bequests and debts. And your wives will inherit one-fourth of what you leave if you are childless. But if you have children, then your wives will receive one-eighth of your estate—after the fulfilment of bequests and debts. And if a man or a woman leaves neither parents nor children but only a brother or a sister (from their mother’s side), they will each inherit one-sixth, but if they are more than one, they (all) will share one-third of the estate—after the fulfilment of bequests and debts without harm (to the heirs). (This is) a commandment from Allah. And Allah is All-Knowing, Most Forbearing.” (Surah al-Nisā’: Verse 11 and 12)

The will is also considered invalid according to the hadith of the Prophet Muhammad ﷺ:

(فَلَا وَصِيَّةَ لَوَارِثٍ)

Which means: “and no will (wasīyyah) should be made to an heir.”¹⁰¹

Fatwa Decision 5/7/1995¹⁰²

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Distribution of Inheritance Based on Agreement Among Heirs

Distribution of Inheritance Based on Agreement Among Heirs

Question:

Can the inheritance of the deceased be equally divided among the heirs with their respective consent?

Answer:

Estate distribution follows the Islamic inheritance law. Each heir must know their respective share according to the Shariah. However, if the heirs agree to distribute the wealth equally, then it is permissible.

Fatwa Decision 5/7/1995¹⁰³

Both fatwas underline crucial facets of Islamic inheritance law, particularly the division of inheritance (*farā'id*) aimed at ensuring justice for the closest heirs. By examining the estate distribution outlined in the Qur'an regarding inheritance, it is apparent that the nearest family members typically receive a larger portion than others. This result signifies how *farā'id* is intended to give priority (*al-tafāḍul*) to women and young children in the distribution of inherited wealth compared to distant relatives, such as the father or grandfather of the deceased. It also takes into account the beneficiaries' needs. Often, fathers and grandfathers are advanced in age and may not require a substantial amount of financial support to sustain their livelihood. This differs from the circumstances of young children and individuals who have recently embarked on married life.¹⁰⁴

Furthermore, the law allows for the estate distribution after death through mutual agreement among heirs (*tarāḍī*). For example, if all heirs agree to allocate a larger portion to the deceased's wife or all family members agree to divide the inheritance equally, it is permissible. Nevertheless, some conditions must be fulfilled:¹⁰⁵

Farā'id is not the final resolution in the matter of estate distribution. It does not prevent those who are not listed as heirs from receiving their designated shares. Those without blood ties but acknowledged as family, such as adopted children, can receive up to one-third of the estate if stipulated in the will.

- 1) The consent must be obtained from all eligible heirs entitled to receive the inheritance if they have reached the age of maturity, are of sound mind and can manage the property properly according to the Shariah.
- 2) The agreement is not a result of coercion in case of disagreement. Additionally, it does not involve considerations related to the interests of other parties, such as the consent of individuals who are unwell or in financial distress, as these groups typically have a greater need for the property compared to others.
- 3) Certainty that Allah's law (established through inheritance) is the best and most just, even though an equal distribution will be carried out based on consensus. Just as Allah ﷻ has said in Surah *al-Tīn*, verse 8, which means: "Is Allah not the most just of all judges?". In 1998, the Fatwa Committee decided that *farā'id* distribution by mutual consent is permissible in Islam.¹⁰⁶ This is the best way to achieve the desired goal because it is a consultative approach recommended by Islam and beneficial for avoiding disputes.¹⁰⁷

In Singapore, the Inheritance Certificate can be requested through the Syariah Court. The Certificate will list the names of heirs and their respective inheritance shares. However, it must be emphasised that Islamic inheritance laws (*farā'id*) are not a barrier to estate distribution and do not prevent non-heirs from receiving a portion of the inheritance. In Islam, before *farā'id* distribution takes place, four prerequisites must be addressed initially:

1. **Zakat, kaffārah, and fulfilling the obligations of the deceased**, such as ensuring the wife of the deceased has a place to stay during her *'iddah* period.
2. **The necessities of handling the deceased**, such as shroud cloth, payment for the bath attendant, burial and grave, with the condition of not being excessive.
3. **Debts to humans or to Allah**, like dowry or obligatory pilgrimage (*hajj*).
4. **The will of the deceased to non-heirs**, which must not exceed one-third of the estate, except with the consent of the heirs.¹⁰⁸

Hence, individuals without blood ties but regarded as family by the deceased, like adopted children, are eligible to receive a maximum of one-third of the deceased's estate if specified in a will. Subsequent fatwas will reject the notion that a Muslim's estate can only be divided among heirs based on the laws of *farā'id* and the share for each heir cannot be altered as determined by the Qur'an and the Sunnah.¹⁰⁹

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Inheritance Distribution for Adopted Children

Inheritance for Adopted Children

Question:

In Shariah, is an adopted child entitled to inherit a share of the estate left by their adoptive father?

Answer:

The Committee has ruled that the adopted child is not entitled to any share of the inheritance from their adoptive father. However, the adopted child can receive no more than one-third of the share if there is a will or as a gift from all the heirs if there is no will.

Fatwa Decision 31/10/1968

Bequeathal of 1/5 of Inheritance to Adopted Child

Question:

Someone has made a will. In that will, the deceased has bequeathed one-fifth of their wealth to their adopted child. Is the will legally valid?

Answer:

The Fatwa Committee has ruled that the will is valid as the allocated portion does not surpass one-third of the deceased individual's estate and is not allocated to the rightful heirs.

Fatwa Decision 22/6/1994¹¹⁰

These fatwas give the right to family members not classified as heirs to receive a portion of the estate. However, this entitlement is contingent upon the essential condition of bequest (*waṣiyyah*), restricting their share to a maximum of one-third of the estate. This one-third limit is observed in all countries with Muslim citizens, including Singapore, in the formulation of wills.¹¹¹ This rule is based on the saying of the Prophet ﷺ from the story of Sa'ad ibn Abi Waqqās r.a.:

عَنْ سَعْدِ بْنِ أَبِي وَقَّاصٍ رَضِيَ اللَّهُ عَنْهُ، قُلْتُ: يَا رَسُولَ اللَّهِ، أُوصِي بِمَالِي كُلِّهِ؟ قَالَ: لَا، قُلْتُ: فَالشُّطْرُ، قَالَ: لَا، قُلْتُ: الثُّلُثُ، قَالَ: فَالثُّلُثُ، وَالثُّلُثُ كَثِيرٌ، إِنَّكَ أَنْ تَدَعَ وَرَثَتَكَ أَغْنِيَاءَ خَيْرٌ مِنْ أَنْ تَدَعَهُمْ عَالَةً يَتَكَفَّفُونَ النَّاسَ فِي أَيْدِيهِمْ

Meaning: *From Sa'ad ibn Abi Waqqās r.a. I said, "O Allah's Messenger (ﷺ)! May I will all my property (in charity)?" He said, "No." I said, "Then may I will half of it?" He said, "No." I said, "One third?" He said: "Yes, one-third, yet even one-third is too much. It is better for you to leave your inheritors wealthy than to leave them poor begging others."* (Hadith narrated by al-Bukhārī, 2742)

These fatwas further exemplify the attributes of equitable inheritance (*al-tawāzun*) by permitting a Muslim to designate specific portions in their will to non-heirs who would not inherit according to *farā'id*.¹¹² In the same breath, these fatwas affirm the Shariah's principle dictating that the remaining two-thirds is allocated to the rightful heirs in accordance with the Shariah. The equal distribution of wealth through a will written by the owner of the assets during his/her lifetime works in the same manner, where the validity of such a will is subjected to the agreement among heirs. In a situation where heirs disagree, they have the right to receive their shares from the estate as prescribed by the *farā'id* law.

Under the principles of estate distribution established by Islam, non-heirs can receive inheritance not exceeding one-third of the estate, especially for minors. Hence, Islam encourages Muslim communities to plan their estate distribution to safeguard the interests of the owner and potential heirs when the owner is still alive by considering the heirs' well-being and making financial arrangements for family members through wills and other instruments.

Surah *al-Hashr*, verse 18, touches on the importance of planning to achieve success. Allah ﷻ advised that Muslims should always be prepared to face any circumstances. The principle of estate planning in Islam rests upon the core values of fostering benefit (جَلْبُ الْمَصَالِحِ) and preventing harm (وَدَرْءُ الْمَفَاسِدِ). Notably, estate planning serves as a means to safeguard the interests and welfare of individuals not explicitly identified in the list of legal heirs.¹¹³

Welfare of Children Born Out of Wedlock

One of the topics addressed by the Fatwa Committee pertains to the inheritance rights of children born out of wedlock. Islam strongly prioritises the well-being and cohesion of a family unit. It advocates against the marginalisation or neglect of any family member, particularly when safeguarding essential benefits crucial for the welfare of every individual, particularly children. As children are a responsibility entrusted by Allah ﷻ. Therefore, every newborn baby must be protected and given their rights. Islam considers every baby to be born in a pure state of nature. Prophet Muhammad ﷺ said:

كُلُّ مَوْلُودٍ يُوَلَّدُ عَلَى الْفِطْرَةِ

Which means: *“All children born are in a state of purity and cleanliness.”* (Hadith narrated by al-Bukhārī, 1385).

The Fatwa Committee, as early as 1977, has discussed the issue of adopted children. While its primary focus was on determining the child’s lineage (whether they could be ‘linked’ to their biological father or not, typically identified through the usage of bin/binte), the fatwa also stressed the significance of drafting a will for the child.

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Adopted Children and Children Born Out of Wedlock

Question:

What is Islam’s view on adopted children and children born out of wedlock?

Answer:

According to Islam, adopting and raising a foster child is obligatory, but claiming them as one’s child through formal declarations or attributing the child to the foster father is prohibited.

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The evidence is stated in Surah *al-Aḥzāb*, verse 4:

﴿وَمَا جَعَلَ أَدْعِيَاءَكُمْ أَبْنَاءَكُمْ﴾

Which means: “Nor does He regard your adopted children as your real children.” (Surah *al-Aḥzāb*: Verse 4)

﴿ادْعُوهُمْ لِآبَائِهِمْ هُوَ أَقْسَطُ عِنْدَ اللَّهِ ۚ فَإِنْ لَمْ تَعْلَمُوا آبَاءَهُمْ فَإِخْوَانُكُمْ فِي الدِّينِ وَمَوَالِيكُمْ﴾

Which means: “Let your adopted children keep their family names. That is more just in the sight of Allah. But if you do not know their fathers, then they are (simply) your fellow believers and close associates.” (Surah *al-Aḥzāb*: Verse 5)

The Prophet Muhammad ﷺ said in the hadith:

مَلْعُونٌ مَّنْ اِنْتَسَبَ إِلَىٰ غَيْرِ أَبِيهِ

Which means: “People who claim to be the offspring or child of someone other than their biological father are cursed by Allah.”

مَنْ اِنْتَسَبَ إِلَىٰ غَيْرِ أَبِيهِ فَلْيَتَبَوَّأْ مَقْعَدَهُ مِنَ النَّارِ

In another hadith it is said that: “People who claim to be the offspring or child of someone other than their biological father has reserved their place in hell”.

The verses and hadiths support the idea that the act of claiming to be the offspring or child of someone other than their biological father is forbidden. According to the Shariah, a child born out of wedlock, whether male or female, is not considered an heir to the father and their birth is essentially unrelated to him. If the child is female, the biological father is also not considered her guardian (*wali*) for marriage.

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Muslims who adopt children are advised to either name their adopted children with their biological father's name if he is Muslim or to place the name Abdullah after the *bin* or *binte*. Children born out of wedlock should also be named with the father's name "Abdullah", with the purpose of avoiding confusion in marriage, estate distribution and facilitation of administrative matters.

An adopted child cannot inherit wealth from their adoptive father, and a child born out of wedlock cannot inherit from the man who fathered them. If the adoptive father wishes to give a portion of his wealth to the adopted child, he should make a will allocating no more than one-third of his estate to that child. The same applies to the situation of a child born out of wedlock.

Fatwa Decision 28/3/1977

In the 2000s, there were several issues related to inheritance and welfare of children born out of wedlock. The Fatwa Committee at that time decided that it remained an obligation upon the biological father to provide sustenance for the child. The form of sustenance required is the same as the obligatory sustenance provided by a legitimate father in Islam.

Regarding the suggestion of **mandatory will** (*waṣīyyah wājibah*) as an alternative tool for inheritance among certain groups, such as children born out of wedlock, the fatwa decision at that time did not accept such suggestion. Some Islamic countries in this region and the Middle East implemented the mandatory will as one of the inheritance tools. However, the practice **has not taken root in Singapore**. Therefore, at that time, the Fatwa Committee decided not to accept applications for the mandatory will. Details of the discussion on mandatory will shall be presented in the relevant section concerning the formulation of wills in Chapter 3.

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Financial Support for Children Born Out of Wedlock

Responsibility of the Biological Father in Providing Financial Support

Question:

Is the biological father obligated to provide financial support for his child born out of wedlock?

Answer:

The Fatwa Committee views that an illegitimate relationship does not deny the right to financial support for a child born from such a relationship. Imposing the responsibility of providing for the child on the biological father is also in line with the principle of justice in shouldering the responsibility towards the child. Therefore, the Fatwa Committee has determined that the biological father is obligated to provide for his biological offspring. The form of provision is the same as the obligatory provision upon a legitimate father in Islam.

Fatwa Decision 25/3/2008

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Estate Distribution for Children Born Out of Wedlock

Inheritance for Children Born Out of Wedlock

Question:

This particular case concerns a deceased person who, during his lifetime, had two children out of wedlock from two different women. Are these children considered legitimate heirs entitled to inherit portions of the estate? Can the mandatory will (*waṣīyyah wājibah*) be applied to this issue?

Answer:

The Fatwa Committee is of the view that the concept of mandatory will (*waṣīyyah wājibah*) is not suitable to be applied in this matter. Therefore, the children born out of wedlock for this deceased man will not receive a portion from his estate.

Fatwa Decision 22/5/2008

This issue was submitted once more to the Fatwa Committee around 2019 to 2021. Similar questions were raised on inheritance rights for children born out of wedlock, with consideration of their needs. The Fatwa Committee referred to the findings of various studies related to the needs and welfare of a child. Research showed that there could be a negative effect on the development of a child and society in general when the child does not receive comprehensive care. Children who lose the support of one or both parents, especially those born out of wedlock, are the most affected group because their well-being is neglected.¹¹⁴ Such studies also show that a child born without a father faces stigma and negative perception towards themselves and their mothers. It leads to the emergence of emotional and behavioural problems¹¹⁵ and a risk of not completing secondary education due to a lack of attention, guidance, and financial support.¹¹⁶

Given the increasingly challenging modern life, coupled with the growing needs of children (and the family), the welfare of a child should ideally be a shared responsibility among other family members. However, it is common for parents alone to be responsible for managing the affairs and welfare of their children. All of this underscores the importance of the role of parents in raising children.

In relation to children who lack a clear father figure, teenage girls who give birth to children out of wedlock also encounter societal stigma. These emotional and psychological effects may prevent them from maximising their potential and lead to physical vulnerabilities. This is particularly true if the woman is isolated and lacks support from her family.¹¹⁷ In addition to the above, studies found that most single mothers or fathers come from low-income families. In Singapore, the average monthly salary of single mothers or fathers aged 35 and below was \$600 in 2017.¹¹⁸ With low monthly income and pressure to adequately provide for the family, single mothers often take up two or three jobs. This decision may reduce the time spent with their children and subsequently create a negative impact.

Several studies have also looked into the effects of the presence of a father figure in children upbringing and how his absence brings about adverse impacts. In fact, his absence does not only negatively impact the child's psychology, but also his/her education, behaviour with family and even their career choices in adulthood.¹¹⁹ A study on 762 girls without fathers until the

age of 21 showed that they have a higher risk of being engaged in sexual relationships at a younger age and experience teenage pregnancy.¹²⁰ Another study indicated that the role and affection of a father are crucial for a child's psychological development and well-being. Children raised with a father tend to have better potential to develop intrinsic values and a positive identity. Paternal affection can protect children from behavioural problems that may lead to their involvement in crime,¹²¹ drug abuse,¹²² and other issues.

Issues faced by children born out of wedlock are complex. Moreover, they involve the perspectives of jurists (*fuqahā'*) regarding the determination of lineage. At present, this issue is still being discussed by the Fatwa Committee. Its primary goal is to safeguard the well-being of children by ensuring biological fathers are held responsible for their welfare. It is not intended in any way to mitigate the sin of fornication. Fornication remains a major sin that every Muslim should strive to avoid. The primary objective of the religious guidance is to protect the welfare of an innocent child by ensuring that their biological father is responsible for their welfare. Through this accountability, it is hoped to prevent more fornication as individuals are made aware that they must shoulder the responsibility.

Estate Distribution Following Schools of Thought (*Madhhab*)

The Fatwa Committee relies on the Shafi'i school of thought as stipulated in section 33(1) of AMLA when making fatwa decisions on estate distribution. Section 33(2) further establishes that the Fatwa Committee has the authority to embrace principles from any Islamic school of thought if the tenets of the Shafi'i school conflict with the public interest.¹²³ Therefore, subsequent fatwas will address questions on the matter of estate distribution for a deceased Muslim who adheres to other schools of thought as well as heirs who are non-Muslims.

Madhhab

The term 'madhhab' originates from the word 'dhahaba-yadhabu-dhababan', which means a path taken or passed through. In general terms, a 'madhhab' is a method or a result of personal reasoning (opinion) by an individual or a group, whether in the fields of creed, ethics, legal judgment, and others.

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Estate Distribution Based on Different Schools of Thought (*Madhhab*)

Inheritance Certificate of a Person with No Affiliation with Any *Madhhab*

Question:

A law firm has requested the Fatwa Committee to reconsider the Inheritance Certificate issued by the Syariah Court. The request was made to allow their client's child to reclaim the property and not have it placed with the Baitulmal. The client claims they are not bound by the Shafi'i school of thought.

Answer:

The Fatwa Committee declares that the surplus wealth from the distribution of inheritors must be given to the Baitulmal. This fatwa is in accordance with the provisions of AMLA, which stipulates that any issued fatwa should follow the Shafi'i school of thought.¹²⁴

Fatwa Decision 22/6/1994¹²⁵

AMLA stipulates that every issued fatwa must first be based on the Shafi'i school of thought.¹²⁶ However, opinions from other schools of jurisprudence (*fiqh*) can be considered and applied should the *mu'tamad* (official position) within the Shafi'i school not meet the requirements or achieve greater good (*maṣlahah*). This is in line with discussions among *uṣūl* scholars on the principles and processes of issuing fatwas, wherein the goal of achieving *maṣlahah* and avoiding *mafsadah* (harm) constitutes a primary consideration.¹²⁷

The majority of Muslims in Singapore follow the *Ahl al-Sunnah wa al-Jamā'ah* sect.¹²⁸ According to Imam al-Āmidī and al-Kamāl bin al-Humam, followers of a particular school are bound by that school's practice. The layperson is not bound by the practices of other school of thoughts and has the right to choose any school they believe has stronger evidence.¹²⁹ However, selecting a *madhhab* is conditioned on not seeking the easiest opinions from each school of thought so as not to undermine the laws of Allah ﷻ.¹³⁰ If a layperson does not have a specific school of thought, their school is the fatwa of their mufti (religious scholar who issues legal opinions).¹³¹

The fatwa decision above explains the role of Baitulmal and when it will inherit wealth. It is an institution that functions like a public treasury for Muslims and manages assets for common good. In Singapore, the Baitulmal is administered by Muis. The estate of a deceased person will become the property of Baitulmal in the following circumstances:

1. There are no rightful heirs;
2. All heirs have received their shares, but there is still a remainder;
3. Property of the deceased remains unclaimed; and
4. The deceased has no surviving heirs.

Based on a hadith of the Prophet ﷺ, the majority of scholars have established that the responsibility and authority for Baitulmal are vested in the estate. The hadith is as follows:

مَنْ تَرَكَ مَالًا فَلِوَرَثَتِهِ وَأَنَا وَارِثُ مَنْ لَا وَارِثَ لَهُ

Which means: “Whoever leaves behind wealth, it is for his heirs, and I am the heir of the one who has no heir.” (Hadith narrated by Abū Dāwūd, 2899)

The fatwa above explains estate distribution according to the Shafi'i school, asserting that in the absence of rightful heirs stipulated by inheritance law or will, the remaining wealth becomes the property of Baitulmal. The decision of this fatwa has served as a foundation for judges through the case of *Re Mutchilim alias Asbrin*. The deceased adhered to the Shafi'i school during his lifetime, left a widow and had no other heirs. The High Court of Singapore ruled that the widow would receive one-quarter of the estate while the remainder should be handed over to Baitulmal.¹³²

Inheritance and Schools of Thought (*Madhhab*)

The Fatwa Committee has also made several fatwa decisions for Muslims following schools other than the Shafi'i school of thought. For instance, the fatwa decision below provides guidance according to the Hanafi school.

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Inheritance According to the Hanafi School of Thought

Question:

Can a woman who follow the Hanafi school of thought distribute her wealth according to that school? The woman in question has already passed away.

Answer:

The estate of a deceased person who follows the Hanafi school of thought can be distributed according to the *al-Radd* method under the Hanafi school of thought.

Fatwa Decision 22/3/1995

In general, the four major schools of thought in Islam share similar views on inheritance (*farā'id*), albeit they differ in certain aspects. Upon closer scrutiny, two schools of thought—specifically the Shafi'i and Hanafi schools—exhibit notable differences:

Main Issue	Details
The differences related to Baitulmal ¹³³	<ul style="list-style-type: none"> Shafi'i School: Baitulmal functions as the heir of the estate of a deceased with no heirs. Hanafi School: Baitulmal does not function as the heir of the estate of a deceased person who has no heirs.
The difference related to the method of <i>al-Radd</i>	<ul style="list-style-type: none"> Shafi'i School: The remainder estate of the deceased person after distribution to heirs will be channelled to the Baitulmal. ¹³⁴ Hanafi School: The remainder estate of the deceased person after distribution to heirs can be further distributed according to the method of <i>al-Radd</i>. ¹³⁵
The difference regarding <i>zawil arḥām</i> (relatives) ¹³⁶	<ul style="list-style-type: none"> Shafi'i School: <i>Zawil arḥām</i> do not inherit any portion of the estate. Hanafi School: <i>Zawil arḥām</i> will inherit the estate.

The determination of the deceased's school of thought is the responsibility of the heirs, considering the owner has passed on. They must uphold the trust (*amanah*) while making the declaration. Family members do not have the right to change the deceased's school of thought for personal benefit based on differences among scholars. The Prophet ﷺ mentioned that some individuals are skilled at argument and can manipulate facts in such a way that they seem convincing. In reality, the objective will not be lawful because it started with dishonesty. He ﷺ said:

Meaning: "...it may be that one of you can present his case eloquently in a more convincing way than the other, and I give my verdict according to what I hear. So if ever I judge (by error) and give the right of a brother to his other (brother), then he (the latter) should not take it, for I am giving him only a piece of Fire." (Hadith narrated by al-Bukhārī, 7169; Muslim, 1713a).

The *al-Radd* method is a mechanism for the distribution of surplus wealth. According to the Hanafi school, it is returned to the heirs (*aṣḥāb al-furūd*) according to their respective shares.¹³⁷ This method differs from the Shafi'i school of thought, along with some other scholars, that state the remaining wealth of the deceased should be directed to Baitulmal. However, subsequent Shafi'i scholars (those who live after the year 500 Hijrah) stipulate a condition that the Baitulmal must be well-organised (*muntazam*) to be eligible to receive the wealth of the deceased. Otherwise, the *al-Radd* method takes precedence.¹³⁸

One of main reasons of different opinions among scholars is the absence of clear evidence in the Qur'an and hadith on this issue. The second reason is the varying approaches taken by scholars in understanding the Quranic texts. For example, according to Imam Shafi'i, Allah has designated specific portions for certain individuals as stated in Surah *al-Nisā'* verses 11, 12, and 176. Therefore, no one has the right to change these regulations.¹³⁹ However, other scholars believe that distributing the remaining inheritance to *dhawī al-furūd* does not contradict these verses.

Moreover, one of the reasons for divergent opinions among scholars stems from varying viewpoints regarding the acceptance of certain reports from the Prophet's ﷺ companions. For instance, Imam Shafi'i considers narrations from Ali bin Abi Talib r.a. and Ibn Mas'ud r.a., advocating for the distribution of the remaining net inheritance to the *dhawī al-furūd*, as unreliable.¹⁴⁰

The matter of distributing the surplus inheritance is an issue on which Muslim scholars hold different views. Nevertheless, Baitulmal will still address the needs of the closest family members of the deceased to ensure their well-being. If there are specific needs, the family members can appeal to Baitulmal for consideration of a particular share for them that is derived from the institution's portion.

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Distribution According to the Method of *Radd* (رد)

Question:

The Fatwa Committee has determined that the inheritance assets of those who passed away before 1 July 1968 are subjected to the *Radd* method. Can the Fatwa Committee provide an explanation on the issue of *Radd*?

Answer:

The estate of a deceased person who has no heirs or has heirs but there are remainders after distribution. At the same time, it was found that the Baitulmal at the time was disorganised due to an unjust or oppressive leader who did not spend the funds according to Shariah principles. Two opinions among scholars from the Shafi'i school of thought exist in such situations.

First: If there are heirs, the estate is returned to them (*radd*) according to the share they are entitled to receive. Otherwise, the estate will be distributed among “*zawil arḥām*.”¹⁴¹

Second: According to the original school of thought, the estate is neither subject to return (*radd*) nor distribution among the “*zawil arḥām*.” Rather, it should be expended for the welfare of the Muslim community.

1. The estate is returned to the heirs according to the received share, except for the husband and wife, and if there are no heirs, then it is distributed to “*zawil arḥām*”.
2. If no entitled beneficiaries exist, the estate is not returned to or divided among the “*zawil arḥām*”, as it is designated for and utilized by the Muslim community.

f

This does not mean that their (Muslims') rights have been forfeited and vanished; their rights still exist. Those who possess such wealth should spend it for the benefit of Muslims.

In *Fatāwā al-Kubrā* by Ibn Ḥajar, on the margins of page 116, there is a fatwa by al-'Allāmah al-Ramlī who holds the same view. He added ways to manage such inheritance. He said "If there is a qualified judge who is permitted to spend for the benefit of the Muslims, then the inheritance should be handed over to them to manage. And if the judge is not qualified and the inheritance is in the hands of a trustworthy person, then that person should spend it for the benefit of the Muslims. If the qualified judge is not permitted to spend it, there are several ways to manage: either the inheritance is given to him (the judge), or the person holding it spends it, or the wealth is frozen until a well-organised Baitulmal is established (to receive it). In his opinion, the clearer method is the first (giving it to the judge who is not permitted to spend it), which is preferred to be spent for the benefit of the Muslims."

Similar notions were found in other books, such as *Mughnī al-Muḥtāj* by Sheikh al-Shirbīnī, pages 6 and 7, which indicate that the original stance of the school – inheritance of that kind is not to be returned or divided among "zawil arḥām" even if the Baitulmal is disorganised. However, this statement does not mean the estate will be handed over to a disorganised Baitulmal. The intention here is to show that if the estate is in the hands of a trustworthy person and there is a qualified judge in that land permitted to spend for the benefit of the Muslims, it should be handed over to them. Otherwise, the entrusted person should spend it to attain *maṣlaḥah* المصالح.

On page 211 of the *Ḥāsiyah al-Syarqāwī 'alā Taḥrīr*, it has been explained that, based on the Maliki school of thought, Baitulmal will inherit the estate, whether it is organised or otherwise. Similarly, on our side (the Shafi'i school), the same explanation exists in the book *Al-Minhāj*. In *Ḥāsiyah al-Syarqāwī*, on page 207, has explained the purpose of the hadith that serves as evidence for *Baitulmal*, narrated by Ibn Ḥibbān (*أَنَا وَارِثٌ مَنْ لَا وَارِثَ لَهُ*), which, in his view, should be understood partly in reference to those who have no direct heirs and also to those who have heirs that do not exhaust the inheritance and are not involved in it.

f

These explanations show that the hadith, even though on the surface it seems applicable only to someone without heirs, may also be used in situations where heirs do not exhaust the estate or feature both criteria with the phrase *مُسْتَعْرِقٌ مَنْ لَا وَاثَ لَهُ*. Which means: “I am the heir for those whose inheritance does not deplete after its division.”

As such, an inheritance that is not entirely depleted will not be returned but placed in Baitulmal. Based on the Royal Mufti of Johor’s Fatwa 1356-1381, Baitulmal refers to wealth returned for the public good, not actual storage for assets that benefit Muslims. It refers predominantly to the objective or purpose of the initiative. Hence, when people say *Baitulmal Lil Muslimin*, it signifies all the interests and benefits for Muslims.

Overall, the method is applied to wealth not depleted and returned to heirs, but the amount placed into the newly-organised Baitulmal. An example of this application was done with the estate of Nahir bte Omar in Singapore, which cannot be characterised as incorrect and void. The reason is that scholars have shown a way to necessitate freezing the wealth until a proper Baitulmal exists.

However, based on the individual estate, many factors need to be resolved. It is possible that the existing heirs are facing issues in managing it, especially if both heirs are women. Therefore, the Fatwa Committee advised Muis to return the one-third allocation for Baitulmal to the heirs for compassionate reasons.

Fatwa Decision 12/10/1988

Inheritance Between Heirs of Different Religions

Another frequently raised issue involves inheritance amongst family members of different religions. This matter is intertwined with two scenarios: whether the marriage was civil (non-Islamic) and whether it pertains to family members who have undergone a change in religion, such as embracing Islam.

The 1998 fatwa decision concluded that a civil marriage fails to meet the criteria of a union from the Islamic standpoint. Consequently, Shariah does not acknowledge it as a valid marriage. As such, children born from such a marriage are also not recognised under the Shariah. Thus, there is no legal relationship (*nasab*) between the biological father and his children based on the Shariah despite the validity of a relationship with the biological mother. Due to the absence of legal lineage between the biological father and the children, the situation implies no estate distribution is mandated between them.

Another factor that may impede inheritance is religious differences. The Prophet ﷺ said in a hadith, which means “*A Muslim does not inherit from a non-Muslim, and a non-Muslim does not inherit from a Muslim.*” (Hadith narrated by al-Bukhārī, 6764).

Based on the hadith, most scholars affirm that differences in faith is one of the reasons that hinders the distribution of wealth to heirs.¹⁴² However, as previously highlighted, an individual’s wealth possesses the potential to fortify kinship ties. Thus, as long as there remains an opportunity for individuals to plan for family members who would not inherit according to *farā'id*, such acts of compassion are greatly encouraged in Islam.

Fatwa decisions in 1992 and 2006 allow Muslims to allocate one-third of their wealth through a will to (i) family members who do not inherit from them and (ii) family members who are non-Muslims. Issues related to the execution of wills between individuals of different religions will be discussed in the subsequent section.

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Estate Distribution for Heirs of Different Religions

Inheritance Distribution for a Non-Muslim Widow

Question:

A person named Abdul Aziz bin Hj Jaafar passed away on 23 August 1968, leaving a widow and four daughters. The widow is named Kathleen. She married Allahyarham at Registry of Marriages (ROM). Does Kathleen have the right to inherit her late husband's estate? All four children are from his first wife.

Answer:

The Fatwa Committee has determined that, according to the Shariah, the marriage of Abdul Aziz bin Hj Jaafar and Kathleen at the Marriage Registrar's Office for Non-Muslims is not valid. Therefore, after his death, Kathleen has no right to inherit his estate. As for the four children from his first marriage, if that marriage is recognised under Islamic legal procedures, are the rightful heirs to their father's estate.

Fatwa Decision 18/2/1975

Inheritance Distribution for a Non-Muslim Widow

Question:

Can a non-Muslim wife, married through civil marriage, become an heir?

Answer:

According to the Shariah, non-Muslims are not allowed to inherit from Muslims. Likewise, Muslims cannot inherit the wealth of non-Muslims. This explanation is based on the Prophet's ﷺ hadith which was narrated by Zaid r.a.:

لَا يَرِثُ الْكَافِرُ الْمُسْلِمَ وَلَا الْمُسْلِمُ الْكَافِرَ

Which means: "A non-Muslim does not inherit from a Muslim, and a Muslim does not inherit from a non-Muslim." – Hadith narrated by Muslim.

A non-Muslim wife married through civil marriage is not recognised as a wife in Islam. Therefore, is not considered an heir.

Fatwa Decision 17/10/1988

f

Inheritance Distribution Amongst Non-Muslim Heirs

Question:

A. H. firm inquired about the legal status of their ward, Ms N.M., on whether she is a Muslim and, therefore, is one of the rightful heirs entitled to a share of the inheritance of her brother, Mr M.S., who passed away on 29 June 2000. According to them, the facts in this matter are as follows:

- a. On 8 September 1963, Ms N.M. married a freethinker named G.K. in a civil marriage.
- b. According to Ms N.M., despite the manner of her marriage, she remained a Muslim and made a Statutory Declaration on 23 April 2003. She recited the Shahadah again to dispel any doubt.
- c. Representatives from A. H. also confirmed that Ms N.M. recited the Shahadah in front of Mr A.H. at his office on 2 March 2003 and changed her name from M.D. (a non-Islamic name) to N.M. They have included the Deed Poll executed by Ms N.M. on 23 April 2003.

The firm also attached a copy of a letter from the company G. R. dated 23 February 2003, stating that Ms N.M. is not a Muslim because she married a non-Muslim on 8 August 1963. At that time, under the Women's Charter, a Muslim could not marry a non-Muslim. All her children have Hindu names.

Answer:

After reviewing all pertinent documents and information, the Fatwa Committee concludes that the recognition of Ms. N.M. as a Muslim can only be established from the date she recited the declaration of faith (Kalimah Syahadah) in the presence of Mr. A.H. on 2 April 2003. This fact was stated in the letter from Mr A. H.'s firm dated 23 April 2003. Before that date, her status as a Muslim cannot be confirmed.

According to *farā'id*, one of the barriers to inheritance is following a different religion. In this situation, this factor was taken into consideration at the time of the person who left the estate's death. Hence, it cannot be confirmed that Ms N. M. was one of the heirs of Mr M. S., who passed away on 29 June 2000, because her status as a Muslim at that time cannot be verified.

Fatwa Decision 16/9/2003

The fatwa decisions highlighted emphasis that following different religions is a reason for the obstruction of wealth inheritance among heirs.¹⁴³ The *farā'id* law stipulates both the deceased and heirs are Muslims. The pivotal factor in cases involving religious differences is the time of the deceased's passing. In the event of a Muslim's demise, their non-Muslim spouses and non-Muslim children are ineligible to inherit the estate, even if they (according to the Shafi'i school) convert to Islam before the distribution occurs.¹⁴⁴ However, this does not mean they cannot appeal to Muis. Therefore, considering each family's and individual's needs, there are situations where the Baitulmal will relinquish its rights or a portion of its rights and transfer them to family members in need.

Conclusion

This chapter aims to pinpoint challenges stemming from shifts in family structures. Additionally, it delineates certain factors that might impact the distribution process, potentially resulting in injustices toward family members, particularly those not explicitly designated as heirs. For instance, these issues encompass scenarios involving adopted children, civil marriages, and divorces.

Understanding the basis of developing fatwa decisions regarding estate distribution can inspire financial planning for individuals encountering similar circumstances. As the Malay proverb suggests, "*Sediakan payung sebelum hujan*" (thatch your roof before the rain begins). Consequently, engaging in financial planning and leveraging specific tools in advance might safeguard the rights of heirs affected by divorce and remarriage. Initiating early planning steps could also serve to protect the rights of adopted children and non-Muslim family members.

These endeavours are geared towards exercising mercy (*rahmah*) and benevolence in the process of estate distribution. In the absence of these virtues, estate distribution might potentially sow seeds of division and conflict, particularly within family dynamics.

For a comprehensive discourse on wills, Chapter 3 offers an in-depth discussion, whereas Chapter 6 provides information pertaining to joint tenancy and joint accounts, especially on matters related to the elderly.

Farā'id Distribution Chart Main Heirs

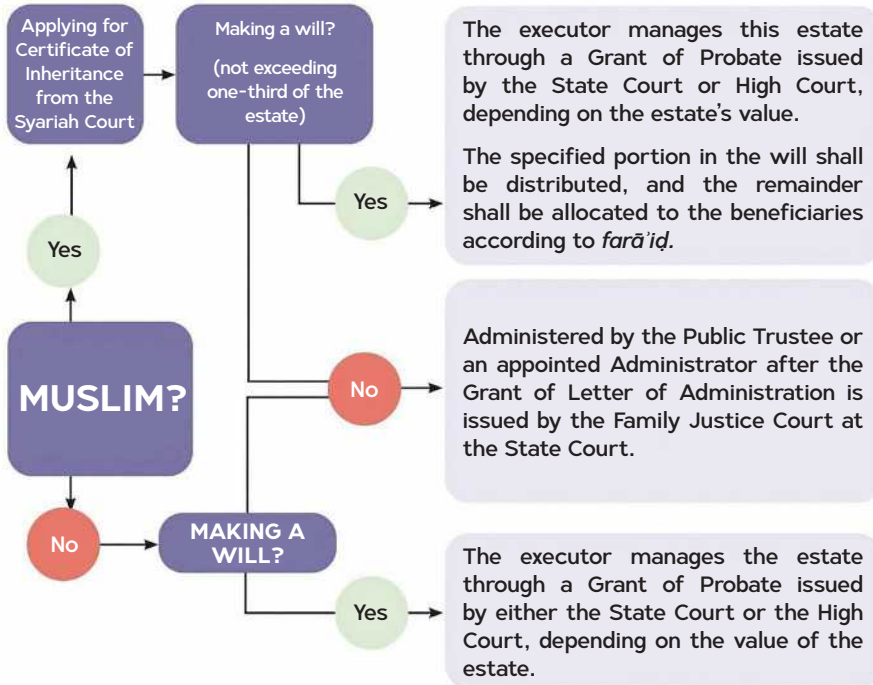
Husband	Son	Father
<ul style="list-style-type: none"> • $\frac{1}{2}$ If the deceased does not leave behind a child or grandchild. • $\frac{1}{4}$ If the deceased leaves behind a child or grandchild. 	<ul style="list-style-type: none"> • 'Aṣabah (Residual) This is the only way of the distribution in any situation. • 'Aṣabah (2:1) If deceased leaves behind daughter(s) 	<ul style="list-style-type: none"> • $\frac{1}{6}$ If the deceased leaves behind a son or grandson. • $\frac{1}{6}$ and 'aṣabah from the remaining If the deceased does not leave behind a son or grandson.
Wife	Daughter	Mother
<ul style="list-style-type: none"> • $\frac{1}{4}$ If the deceased does not leave behind a child or grandchild. • $\frac{1}{8}$ if If the deceased leaves behind a child or grandchild. 	<ul style="list-style-type: none"> • 'Aṣabah (1:2) if the deceased leaves behind a son(s). • $\frac{1}{8}$ if If the deceased leaves behind a child or grandchild. 	<ul style="list-style-type: none"> • $\frac{1}{3}$ If deceased does not leave behind (i) a child, (ii) grandchild (male or female), or (iii) more than one sibling. • $\frac{1}{6}$ If deceased leaves behind (i) a child, (ii) grandchild (male or female), or (iii) more than one sibling. • $\frac{1}{3}$ from the remaining If the deceased leaves behind a spouse; parents.

Farā'iq Distribution Chart Secondary Heirs

Maḥjūb (Blocked)
**Secondary heirs are excluded from inheritance
 if the deceased leaves closer 'aṣabah heirs.**

'Aṣabah	$\frac{1}{2}$
<ul style="list-style-type: none"> • Grandson or granddaughter from a son • Paternal brother • Full / Paternal sister • Nephew from a full brother / paternal brother • Uncle of same grandparents / grandfather • Cousin of same grandparents / grandfather 	<ul style="list-style-type: none"> • Granddaughter • Full sister • Paternal sister
$\frac{2}{3}$	$\frac{1}{6}$
<ul style="list-style-type: none"> • Granddaughter from a son • Full sister • Paternal sister 	<ul style="list-style-type: none"> • Paternal grandfather and above • Grandmother and above • Granddaughter from a son • Paternal sister • Maternal brother / sister
$\frac{1}{6}$ and 'Aṣabah	$\frac{1}{3}$
<ul style="list-style-type: none"> • Paternal grandfather and above 	<ul style="list-style-type: none"> • More than one maternal brother / sister

ESTATE MANAGEMENT PROCEDURE



APPENDIX: NUZRIAH¹

NAZAR STATEMENT

Bismillaahir Rahmaanir Rahiim

All praise to Allah ﷻ, Lord of the worlds. Peace and greetings to His Messenger Prophet Muhammad ﷺ and to all his family members and his companions.

I _____ holder of I/C number:
_____ living at the address:
_____ in sound health and
mind and have all the rights to my house which I own, hereby make my
nazar to relinquish all ownership of the house and give it to the person that
is mentioned in this nazar without any obligations.

With this, I make my nazar to transfer fully the ownership of my house at
the address _____ to my _____, holder
of I/C number

_____ who currently stays at: _____, and that
this transfer is enforceable 3 days before my death (if it is due to sickness),
or 1 hour before my death (if it is due to accident or sudden death).

I made this nazar according to the rules and conditions set by Islamic Law
and witnessed by the following people. And Allah ﷻ is the best Witness.

Date: _____

Signature: _____

First Witness:

Second Witness

Name:

Name:

I/C Number:

I/C Number:

Fatwa Decision 13/2/2007

¹ Please refer to chapter 6 regarding joint tenancy. Following the 2019 fatwa decision, Muslims no longer need to execute a nuzriah letter as a supporting document to confirm the transfer of home ownership to the surviving owner after their death.



3

WILLS

﴿كُتِبَ عَلَيْكُمْ إِذَا حَضَرَ أَحَدَكُمُ الْمَوْتُ إِنْ تَرَكَ خَيْرًا الْوَصِيَّةَ لِلْوَالِدَيْنِ وَالْأَقْرَبِينَ بِالْمَعْرُوفِ
حَقًّا عَلَى الْمُتَّقِينَ﴾

Meaning: “It is prescribed that when death approaches any of you — if they leave something of value — a will should be made in favour of parents and immediate family with fairness. This is an obligation on those who are mindful of Allah.” (Surah *al-Baqarah*: 180)

Wills in Singapore – Before and After AMLA

Writing a will (*wasiat*) serves as a means of asset distribution after one’s death. This practice has been observed in various societies worldwide for a long time. Assets refer to movable assets, such as savings, stocks, or livestock, and immovable assets, such as houses, plantations, or lands. The execution of wills is a multifaceted process influenced by several key factors such as the laws of the deceased’s place of residence, local customs, and, in some situations, one’s school of thought.

This chapter outlines the historical evolution of wills during Singapore’s colonial and post-colonial periods. It delves into the intricate interplay between secular law, Shariah law, and prevalent customs, elucidating the often-conflicting dynamics that have spurred the enactment, repeal, and subsequent amendments of some of these legal frameworks. In addition, the ethnic and class diversity of the Muslim community in Singapore is an important factor in the formation of Muslim law related to wills.

Before AMLA: Administration of Muslim Law in the 19th Century

Singapore was ruled as part of the British Straits Settlements after the Anglo-Dutch Treaty in 1824, which established two spheres of European influence on opposite sides of the Straits of Malacca. Along with Penang and

Malacca, the three port cities attracted many immigrants and visitors from different parts of the world, especially East Asia, South Asia, and Southeast Asia.

Legal historians argue that the administration of Shariah in the Muslim society was not comprehensive before the Mohammedan Law of Marriage Ordinance which was introduced in 1880. Prior to this milestone, British-appointed judges presided over inheritance cases involving Muslims, yet their decisions were not rooted in suitable or contextually appropriate legal frameworks. Moreover, the British colonial presence was relatively new compared to the Dutch, who ruled Malacca until 1824. Singapore, on the other hand, was contested by the two European powers from 1819 to 1824. Therefore, British judges had to consider the Dutch legal position that was still in use while examining Malay customs and jurisdiction over immigrants from Arab countries, China, and India.

In this era, when Muslim laws of inheritance, known as *farā'id*, diverged from English laws of inheritance, judges held the discretionary power to prioritise and enforce wills according to English law, effectively superseding *farā'id*. An example is the case of *Goods of Abdullah* in 1835, in which a British-appointed judge ruled that a Muslim merchant was allowed to give all his property to a non-family recipient. He noted in his ruling that, while this was not allowed in the Shariah, “the will is at all events good pro tanto.”¹⁴⁵ It is worth noting that the judge’s elevation of English law over all other forms of law was not just applied to Muslim law but also to European law, as even European legal systems like Dutch law, were considered foreign to the English legal milieu. For instance, in the case of *Rodyk v Williamson*, within the same period, the presiding judge ruled that Dutch law should be abrogated in Malacca and that neither Dutch nor Islamic law should be the preferred legal modality.¹⁴⁶

Until 1880, these judges tended to enforce wills aligned with English law even though they contradicted *farā'id*. However, it was also observed that there was no agreement among the judges on this issue. For example, in 1835, Judge Benjamin Malkin stated that “anyone who wants their property to be divided according to Mohammedan, Chinese or other laws just needs to make their will in accordance with that law, and the court will identify it and apply it to the testator.” Malkin said so even though English law was the original law in the Straits area, the British were willing to make certain adjustments when considering other influences in the decision, such as different cultural

practices.¹⁴⁷ Consequently, the boundaries of legal authority became ambiguous, creating fertile ground for exploitation by the residents in the vicinity.

At that time, the Strait of Malacca area was home to immigrants and visitors who usually arrived by sea. Many were more inclined to preserve their wealth by following English law as wills enforced through it offered a way to preserve assets, capital, agriculture, and business shares for future generations. This particular shift in approach garnered notable attention from the merchant class, particularly from Arab and South Asian traders, who notably frequented court proceedings to assert their claims, as observed by legal historian Nurfadzilah Yahaya.¹⁴⁸ These traders found that the provisions of the law through the Civil Court during the British colonial era were an important aspect, especially since there was vagueness in some aspects of the law at that time — a situation that Nurfadzilah described as a period of “fluid jurisdictions.”¹⁴⁹ Therefore, Muslim traders actively brought will-related disputes to court, thereby avoiding *farā'id* or charitable trusts (*wakaf*) management. For example, Arab immigrants such as the Alsagoff family established *wakaf* schools and orphanages through Islamic law.¹⁵⁰ At the same time, they used the provisions that existed in British law regarding wills. Furthermore, the socio-economic standing of an individual or a group within the Muslim community significantly influences their stance on laws dictating property inheritance via *farā'id*. This nuanced perspective reflects varying levels of support for such laws, often shaped by their position and interests within society.

During the period of self-rule in 1957, a new Muslim Ordinance was passed by Singapore’s Legislative Assembly. This bill was a precursor to the Administration of Muslim Law Act (AMLA). The ordinance included provisions that required the Muslim community to comply with religious law when distributing assets after death. This order did not encourage individuals to write wills based on civil law.

As a result, some Muslim entrepreneurs and wealthy individuals expressed concern that this bill could divide their businesses and force them to hand over assets to individuals who were not their preferred heirs. Their concerns were raised in a *Report from the Select Committee on the Muslims Bill* before its enactment. Within this report, approximately 50 Muslim merchants had appended their signatures to a document submitted to the Select Committee, articulating a collective aspiration for the freedom to choose between following Islamic or civil law in their respective inheritance issues. Their arguments were as follows:

“The hard work in developing businesses and accumulating wealth, so that our descendants can continue the good work, would be in vain if everything left behind had to be sold and divided immediately... For now, anyone who is Muslim can write a will with instructions for their assets to be managed according to Islamic law. That is reasonable. We have full freedom in this matter. However, we do not agree to be forced to give our assets to be divided according to Islamic law.”¹⁵¹

While this objection was eventually retracted, it underscored the profound inclination of the merchant class to retain ownership, ensuring the seamless transfer of businesses to succeeding generations. They articulated their discontent, citing the absence of an option to adhere to Islamic inheritance law. Consequently, many resorted to commercial law as an alternative strategy to avert division. For instance, they established limited liability companies as a means of safeguarding their business interests.¹⁵² Although most of the entrepreneurs who signed the petition were wealthy Arab and Indian traders, the issue sparked new debates within the Muslim population. Among other things, questions arose about how to protect profitable enterprises and how to share the proceeds of asset distribution after the owner’s death. Inheritance discussions gained significant traction in Singapore post-independence, eliciting active engagement from diverse segments of the Muslim community. There was a shared aspiration among many individuals, irrespective of their backgrounds, to retain ownership rights specifically concerning homes acquired through joint tenancy contracts. This particular aspect will be elaborated upon in Chapter 6 of this book.

Neglecting estate planning during one’s lifetime can lead to detrimental outcomes, fostering prolonged disputes and animosity among family members. Therefore, the perception of some individuals towards planning for the distribution of assets during their lifetime needs to be changed.

After AMLA: Administration of Muslim Law After Independence

Singapore inherited several structures of English administrative law. After independence, the Republic updated the system to suit the country’s needs. Notably, in 1968, significant amendments were made to the Administration of Muslim Law Act (AMLA), effectively nullifying the earlier Muslim Ordinance of 1957. This revised act sought to furnish a more comprehensive and detailed framework specifically tailored for the

application of Islamic laws within Singapore's legal landscape. In particular, sections 110 to 117 of the Act outline matters related to wills, list the parties entitled to administer the estate, discuss asset distribution and specify the court's role with specific jurisdictions.

Regarding inheritance, AMLA states that Muslims have the right to distribute their estate according to Islamic law. Additionally, in cases of intestacy, the distribution of estates must adhere to Islamic legal principles. Furthermore, local laws permit the adaptation of Islamic law to accommodate customs prevalent within the community. Notably, the Syariah Court is specifically designated as the authoritative body responsible for issuing a Certificate of Inheritance, detailing the rightful heirs in accordance with Islamic law.

AMLA protects a Muslim's right to use *farā'id* in the distribution of their assets. The power to decide on the portion of *farā'id* that eligible heirs can receive lies with the Syariah Court through the Certificate of Inheritance. In contrast, the power to hear disputes or applications for a Grant of Probate or Letters of Administration related to the inheritance of Muslims lies with the civil court.¹⁵³ AMLA also sets forth a compilation of authoritative texts that serve as reference sources for Islamic laws. These texts hold substantial weight, serving as reliable sources to guide civil courts when seeking opinions or interpretations rooted in Islamic law.

In addition to distribution using a Certificate of Inheritance, the estate can also be distributed based on a will.¹⁵⁴ However, the enforcement of a will is beyond the jurisdiction of Muis and the Syariah Court. In 1969, the Fatwa Committee discussed on the scope of jurisdiction concerning the enforcement of a will.

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Wills made before 1966

There is a will of a deceased Muslim woman before the enforcement date of AMLA in 1966. According to the will, $\frac{1}{4}$ of her assets should be used for burial expenses. The rest should be distributed to two people living in Mecca for charitable purposes. However, one of them has passed away. The other's whereabouts is unknown. Can this portion be distributed in Singapore for charitable purposes on the grounds of practicality?

Answer:

The meeting reached a consensus that the Majlis (Muis) lacks jurisdiction on this issue. One suggested course of action was to allocate the remaining balance (from the $\frac{1}{4}$ share) to the General Authority for Awqaf (*Al-Hai'ah al-'Āmmah li al-Awqāf*) in Mecca."

Fatwa Decision 19/11/1969

Wills According to Islamic and Civil Laws

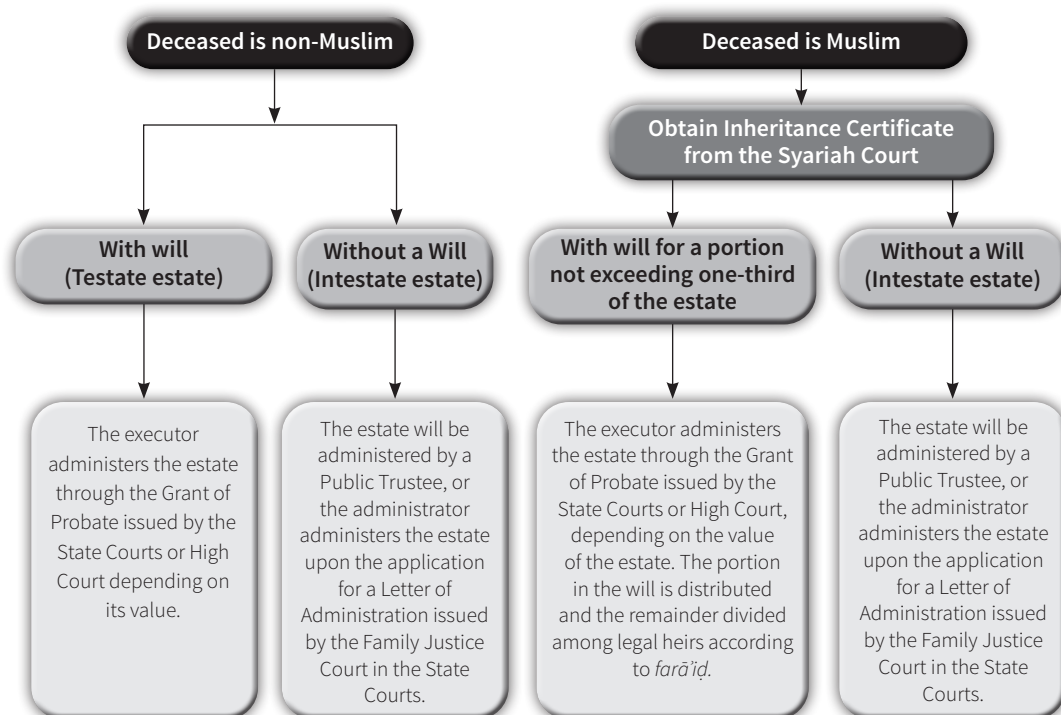
In Singapore, distinct legal processes apply based on an individual's religious affiliation. For deceased Muslims, the administrator can apply for a Letter of Administration from the civil court to distribute their assets according to *farā'id*. While Muslims can draft a will, dispersing assets beyond the parameters of *farā'id* law is confined to a maximum of one-third of the estate. If the deceased is not Muslim and has left a will, the executor appointed in the will shall apply for a Grant of Probate from the court to carry out the trust. In Singapore, the distribution of non-Muslim assets adheres to the Wills Act and the Intestate Succession Act. The validation and implementation of a will fall under the jurisdiction of the Family Justice Court. AMLA oversees the administration of a Muslim's estate, while the Syariah Court issues the Certificate of Inheritance. Subsequently, the civil court issues a Grant of Probate, finalising the estate settlement process.

Wills Act and Intestate Succession Act for Non-Muslim Citizens

The Wills Act provides provisions that allow a non-Muslim individual to distribute their estate after death. However, a will is considered invalid unless recorded in writing and signed by the testator or their chosen representative.¹⁵⁵ In the case of a will drafted prior to the individual's passing, the distribution of the estate, referred to as the testate estate, for a deceased non-Muslim, will be executed in accordance with the terms of the will.¹⁵⁶

In most cases, the deceased did not leave a will. Therefore, the distribution of their estate (referred to as intestate estate in this context) will be administered by the Intestate Succession Act. This act states that the surviving spouse is entitled to all the estate if the deceased dies without a will and only leaves behind their spouse. If they have children, the surviving spouse will inherit half of the deceased's estate while the rest will be distributed equally among their children. If the deceased has no spouse or children, their parents or siblings are entitled to the estate.¹⁵⁷

Diagram: Estate Administration in Singapore



Section 111 of AMLA permits Muslims to draft a will for the allocation of their assets posthumously. Nevertheless, adherence to specific regulations and compliance with the conditions outlined by the testator's school of thought are prerequisites for the validity of the will.¹⁵⁸ One of the hadiths advocating for the writing of a will is narrated by Abdullah bin Umar r.a., the Prophet ﷺ said:

مَا حَقُّ امْرِئٍ مُسْلِمٍ لَهُ شَيْءٌ يُرِيدُ أَنْ يُوصِيَ فِيهِ بَيْتٌ لَيْلَتَيْنِ إِلَّا
وَوَصِيَّتُهُ مَكْتُوبَةٌ عِنْدَهُ

Meaning: *“It is not befitting for a Muslim who has something which is to be given as a bequest to abide for two nights without having a written will with him.”* (Hadith narrated by Muslim, 1627)

This hadith pertains to a Muslim holding assets, rights, and responsibilities, including potential burdens like debts and obligations. Consequently, it underscores the critical significance of promptly initiating the will-writing process.

Imam Shafi'i said that *“a Muslim should always be cautious, and if he has something that can be bequeathed, he should immediately write his will because he does not know when death will come, as failure to do so would preclude conveying one's intentions.”*¹⁵⁹

Furthermore, some beneficiaries may be unaware that the deceased family member, or the *wāqif*, has designated their assets as *wakaf*, particularly after their passing. Suppose the *wāqif* has passed on, and the beneficiary is unaware regarding the *wakaf* arrangement, the written will serves as evidence if the *wāqif* explicitly expresses their intention to establish a *wakaf* in the will.¹⁶⁰

Neglecting estate planning in one's lifetime and overlooking essential preparations can lead to familial discord. This neglect not only causes harm, particularly if animosity endures, but it also impacts oneself. Hence, there is a pressing need for a paradigm shift towards prioritising estate planning. In this regard, scholars have held differing opinions on whether Prophet Muhammad

ﷺ ever made a will or otherwise, stemming from differences in narrations. In a hadith narrated by Imam Al-Bukhārī from Ibn Abi Aufa, it is explained that the Prophet Muhammad ﷺ did not make a will because, as per the hadith of Imam Al-Bukhārī, he ﷺ did not leave any assets. The land he ﷺ owned was dedicated to the cause of Allah ﷻ, while his ﷺ weapons and donkeys were inherited, as mentioned by Imam al-Nawawi.¹⁶¹ The four Sunni schools of thought maintain that making a will is not obligatory for those with assets. However, scholars have identified several situations and circumstances that can influence the ruling on making a will.¹⁶²

- **Obligatory (*wājib*):** The testator has a *sharʿī* responsibility that remains unfulfilled, such as outstanding zakat or an unperformed obligation to perform Hajj and is concerned that their assets will be depleted if not bequeathed. The same applies if they have debts or borrowed items.
- **Recommended (*sunnah*):** The testator bequeaths their assets to needy relatives who are not heirs under the *farāʿid* law. They also bequeath their assets to the poor and for other charitable purposes.
- **Permissible (*mubāḥ*):** The testator bequeaths their assets to close friends or wealthy individuals without specific needs.
- **Disliked (*makrūh*):** The testator is not financially capable and has many heirs who require the assets.
- **Prohibited (*ḥarām*):** The testator bequeaths their assets to a forbidden path, such as actions prohibited by Islam.

The practice of the Companions illustrates that their intention in bequeathing a portion of their assets is to draw closer to Allah ﷻ. According to a narration from Imam ʿAbd al-Razzāq, Anas r.a. said:

*“They (the companions) wrote in their wills: In the name of Allah, the Most Merciful and Compassionate. This is the will of so-and-so, who testifies that there is no God but Allah and that Muhammad is His servant and messenger. He also testifies that the Day of Judgment will surely come, and that Allah will raise people from their graves. He bequeaths his remaining family members to fear Allah and maintain their relationships with each other. They should obey Allah and His Messenger if they are believers. He bequeaths to them as the Prophet Ibrahim and Prophet Yaakub bequeathed to their descendants. Indeed, Allah has chosen this religion (Islam) as your way of life, so do not die except in a state of Islam.”*¹⁶³

“And let those (executors and guardians) fear (injustice) as if they (themselves) had left weak offspring behind and feared for them. So let them fear Allah and speak words of appropriate justice.”

Surah al-Nisā': 9

Since the time of the Companions, the consensus of the jurists is that the ruling on writing a will is permissible (*mubāḥ*), and there is no difference of opinion among them regarding this matter.¹⁶⁴

The Pillars and Conditions of a Will

A will has its pillars and conditions:¹⁶⁵

- Testator (*Mūṣī*): The testator must be legally responsible, meaning they are mature, sane, free, write the will of their own choice and the owner of the assets being bequeathed.
- Beneficiary (*Mūṣā labu*): The beneficiary must be known and identified (unless the will is for the public good), alive at the time of the testator’s death, eligible to own assets and not among the heirs who will receive a share of the estate according to most scholars (Hanafi, Maliki, Shafi’i, and Hanbali). Beneficiaries may encompass adopted children, the underprivileged, scholars, mosques, and educational institutions.
- Assets being bequeathed (*Mūṣā bibi*): The types of assets that can be bequeathed are movable or immovable (as explained at the beginning of this chapter) and has benefit according to the Shariah. These assets belong to the testator (if already determined) or exist at the time of the testator’s death (if not determined). According to most jurists,

including the Shafi'i and Hanafi schools of thought, the testator is not required to know the exact distribution ratio because the amount of assets considered is the assets at the time of death.

- Offer and Acceptance (*Ṣiġbah*): The *ṣiġbah*, which involves the offer (*ijāb*) and acceptance (*qabūl*), is considered valid if made after the testator's death. It can occur explicitly (clearly) or implicitly (figuratively) through speech, writing or gestures. One of the clear expressions of an offer is “*I bequeath this item to him to be his property after my death.*” The validity of the will (*luzūm al-waṣiyyah*) only takes effect after the testator's death. As for the acceptance of the bequeathed assets, they are not required to be received immediately after the testator's death.

In essence, a will only takes effect after the testator has passed on. The will becomes valid if its conditions are fulfilled but cannot be followed during the testator's lifetime. The testator can also revoke the will during his or her lifetime because a will is a non-binding contract (*'aqd ġhayr lāzim*).¹⁶⁶

Conditions for a Valid Will in Singapore

In Singapore, a will is considered legally valid and can be filed in civil court after the testator's death if the following conditions are met:

- The will must be in written form.¹⁶⁷ The name, Identity Card (IC) number and date of writing the will must be stated. This requirement aligns with Islamic law, which encourages writing wills while the testator is still healthy and witnessed by another individual.
- The testator must be at least 21 years old when writing the will.¹⁶⁸
- The testator must sign the final section of the will document.¹⁶⁹

Note

Invalid inheritance documents

Individuals drafting wills are encouraged to engage professional will-writing services to mitigate potential errors in the document. Islamic financial planning providers also need to understand the legal details related to various financial planning instruments and be aware of Islamic laws related to inheritance and relevant state laws to ensure the validity of the documents.

- The testator’s signature must be witnessed by at least two people, who must also sign the will in front of the testator.¹⁷⁰ While the Wills Act does not specify the gender of witnesses, Muslim scholars have provided insight. There is unanimous agreement among scholars that witnessing a will can be fulfilled by either two men or one man and two righteous Muslim women.¹⁷¹ This is based on the view that a will (or witnessing any matter) should be witnessed by two just men according to Qur’an in Surah *al-Mā'idah* verse 106:

﴿يَا أَيُّهَا الَّذِينَ ءَامَنُوا شَهَدَةُ بَيْنِكُمْ إِذَا حَضَرَ أَحَدَكُمُ الْمَوْتُ حِينَ الْوَصِيَّةِ اثْنَانِ ذَوَا عَدْلٍ مِّنكُمْ﴾

Meaning: “O believers! When death approaches any of you, call upon two just Muslim men to witness as you make a bequest.”

- The beneficiaries of the will and their spouses cannot be the two main witnesses.¹⁷²
- The executor or trustee (*wasī*) appointed by the testator must be at least 21 years old, not bankrupt, and of sound mind.¹⁷³ The heir can also be the executor.
- The will can encompass the following matters, yet it remains valid even in their absence. Some of the matters that can be included are:¹⁷⁴
 - (i) The portion of the bequeathed estate and the recipient’s name. In Singapore, assets that cannot be distributed through a will include: (i) CPF savings (Central Provident Fund) and (ii) jointly-owned property.
 - (ii) The appointment of a trusted guardian to care for children, especially minors.¹⁷⁵

All conditions must be met before the will is accepted in court. For example, the court ruled in the case of *Cheo Yeoh & Assocs v AEL* that the will was invalid because it was signed by only one witness.¹⁷⁶ Therefore, testators are encouraged to seek the services of financial planning providers based on Islamic principles, whether in writing wills (*wasiat*), *hibah* or *nuzriah*. It is also the responsibility of these service providers to understand

the legal details related to various financial planning instruments while understanding Islamic and existing state regulations to ensure the validity of the documents later.

The Office of the Mufti has encountered several instances involving wills, *hibah* (gifts), and *nuzriah* (bequests) that have been deemed invalid due to various reasons, including discrepancies with both Islamic law and state regulations. For instance, some individuals draft wills or gifts without accounting for legal constraints set by the law regarding gifts that occur after death.

Testators can also send information about their written wills to the Wills Registry for documentation.¹⁷⁷ It is advisable to inform the executor about the written will and its storage location to facilitate future distribution of assets.¹⁷⁸

Estate Inheritance in the Administration of Muslim Law Act (AMLA)

For the local Muslim community, the inheritance of estates is administered under AMLA. AMLA applies to all Muslims residing in Singapore from 1 July 1968. Under AMLA, the Syariah Court is authorised to issue a Certificate of Inheritance (*Sijil Warisan*) based on the recognition of heirs, thereby facilitating the estate distribution process according to Islamic inheritance law (*farā'id*).

One provision of AMLA is the inheritance of property among non-Muslim family members. Although they are excluded from inheriting a share of the Muslim's estate through the *farā'id* method, based on the fatwa decisions on 2 October 1992 and 14 February 2006, a Muslim can distribute up to one-third of their estate through a written will to such family members.

Another frequently debated aspect concerning *farā'id* revolves around the disparity in inheritance shares between male and female heirs. As per *farā'id* law, male heirs typically receive double the share allocated to female heirs, regardless of their similar positions, such as being siblings.¹⁷⁹ Furthermore, a Muslim is allowed to write a will to determine the recipient of their estate after death. However, if the will is for a family member who is also a recipient under *farā'id* law, the distribution through that will must be approved by all eligible heirs. Should disagreements arise among heirs, the estate must be distributed according to *farā'id*.

The principle of estate division based on *farā'id* will be applied to the estate of Muslims unless all heirs agree to divide the estate in a different manner.¹⁸⁰ The reason is that the estate of Muslims can only be divided into two, namely intestate estate and partly testate and partly intestate estate.

Regarding the identification of eligible heirs, the Syariah Court is the judicial body that issues the Certificate of Inheritance. Muis plays a crucial role empowered by AMLA, managing *wakaf* properties, overseeing Baitulmal (a community fund that may become the recipient of an estate if there are no eligible heirs according to *farā'id*), and offering guidance through fatwa guidelines on inheritance matters. Instances occur where Baitulmal receives a portion of the deceased's estate due to the absence of eligible living family members designated by *farā'id*. When disputes on estate distribution arise in the family, there are situations where they will seek the opinion of the Fatwa Committee or bring the case to court.

In providing solutions for issues on wills and inheritance, the Fatwa Committee will refer to the opinions of reputable scholars in the Shafi'i school of thought. They will also consider the opinions of scholars from other schools of thought to preserve the interests of individuals and society, which are increasingly complex today. The following are some fatwas on the implementation of wills:

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Bequeathing One-Third of the Estate

Inheritance and Wills

a) Question:

What is the ruling on a will that exceeds one-third of the estate?

Answer:

In a event that a will exceeds one-third of the estate, it is subject to the heirs' agreement. Should there be no agreement, the will must be reduced to the maximum limit of one-third of the estate, and the remainder must be distributed to the heirs. This approval is only valid if given by the heirs after the testator's death.¹⁸¹

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b) Question:

When does the right of inheritance begin?

Answer:

The right of inheritance begins after the certainty of the death of the person who bequeathed the estate after all matters related to the estate have been settled, namely:

First: Debts related to the estate, such as zakat and the like.

Second: Funeral expenses.

Third: Clearing the debts of the deceased.

Fourth: Wills that do not exceed one-third and are not designated for heirs¹⁸² become part of the estate that can be divided.

c) Question:

Do heirs have the right to claim the estate, and can the deceased impose restrictions or delays on the sale of their property or impose other conditions?

Answer:

Once all matters related to the estate are settled and it becomes part of the inheritance, any restrictions and delays are deemed invalid. The estate now belongs to the heirs. Therefore, they are entitled to claim their rights.

Fatwa Decision 25/3/1988¹⁸³

f

Bequeathing One-Third for Endowment¹⁸⁴

Question:

Someone has written a will to allocate one-third of their estate for the purpose of endowment. Is this will valid?

Answer:

The Fatwa Committee is of the opinion that the testator intended to perpetually contribute to a charitable cause. The will is intended to acquire a house or shop to generate continuous income. This will cannot be changed and must be honoured. Therefore, the house or shop must be purchased from the testator's estate, establishing a lasting endowment as per the testator's wishes.

Fatwa Decision 22/3/1995

The two fatwas above identified a common and important characteristic in the implementation of wills – the bequeathed amount before the *farā'id* process. A Muslim has the liberty to bequeath up to one-third of their property for charitable causes, following the settlement of funeral expenses and debt repayment. The responsibility for executing this will falls upon the family members and heirs. However, any portion exceeding this one-third limit is deemed invalid unless unanimous agreement is reached among all heirs. Otherwise, the will's validity extends only to one-third of the estate, and the remaining portion must adhere to the distribution stipulated by *farā'id*. This view is based on the hadith of Prophet Muhammad ﷺ:

عَنْ سَعْدِ بْنِ أَبِي وَقَّاصٍ رَضِيَ اللَّهُ عَنْهُ، قُلْتُ: يَا رَسُولَ اللَّهِ، أَوْصِي بِمَا لِي كُلِّهِ؟ قَالَ: لَا،
 قُلْتُ: فَالْشَّطْرُ، قَالَ: لَا، قُلْتُ: التُّلُثُ، قَالَ: فَالتُّلُثُ، وَالتُّلُثُ كَثِيرٌ، إِنَّكَ أَنْ تَدَعَ وَرَثَتَكَ
 أَغْنِيَاءَ خَيْرٌ مِنْ أَنْ تَدَعَهُمْ عَالَةً يَتَكَفَّفُونَ النَّاسَ فِي أَيْدِيهِمْ

Meaning: “Sa‘ad ibn Abi Waqqās asked the Prophet Muhammad ﷺ whether he should bequeath all his property, to which the Prophet ﷺ replied “no.” Sa‘ad then asked if he should bequeath half of it, to which the Prophet ﷺ again replied “no.” When Sa‘ad asked if he should bequeath one-third, the Prophet ﷺ replied “Yes, one-third.” And one-third is a lot. It is better to leave your children with wealth than to leave them poor, having to beg from people.” (Hadith narrated by Al-Bukhārī, 2742 and Muslim, 1628a)

According to the Hanafi school of thought, a will that exceeds one-third of the estate is considered valid if the testator has no heirs. However, the majority of jurists (*fuqahā’*) contend that exceeding the one-third limit in a will is impermissible, as it could potentially infringe upon the rights of Muslim heirs.¹⁸⁵ The practices of notable Companions like Abu Bakr r.a. and ‘Ali r.a. demonstrate that they did not implement the one-third rule. Rather, they distributed it at the rate of one-fifth. Umar r.a. distributed it at the rate of one-fourth. According to Qatādah, the best will is at the rate of one-fifth; this is also the view of *fiqh* scholars in Basrah. According to Imam al-Sha‘bī, most scholars have set the limit to one-fourth and one-fifth.¹⁸⁶

Based on the theory of *Maqāṣid al-Sharī‘ah*, one of the main objectives of establishing Islamic laws is to safeguard the overall well-being of humans. Setting the limit of one-third in a will allows the heirs to receive a sufficient amount of inheritance because they are the closest family members; fostering a sense of fairness and maintaining harmonious relationships within the family. Furthermore, it preserves the love and affection between parents and children.¹⁸⁷

In the same vein, the *farā’id* law maintains a balance (*al-tawāzun*). The testator is not given absolute autonomy to transfer property to others through a will or a *hibah* during a critical health condition or at the time of imminent death (*mard al-marwt*). Nevertheless, it is imperative to highlight that the *farā’id* law does not preclude the testator from transferring their

property. They retain the freedom to distribute their property to any recipient, within the bounds of one-third of the estate, while the remaining two-thirds are designated as the entitlement of heirs in accordance with *farā`id* law. The subsequent fatwas will discuss the intricacies of wills to heirs:

f

Wills Made for Heirs

Gifting Inheritance Estate

Question:

Someone has requested a fatwa regarding their father-in-law's property. According to them, when their father-in-law was in a state of terminal illness (مَرَضُ الْمَوْتِ), he told his wife to take a piece of land that exists at a certain location and gave the wife the right to sell it or otherwise. The Fatwa Committee was asked to give their fatwa as to whether the wife has the right to the land and whether the words spoken by the deceased constitute a will or gift (*hibah*).

Answer:

The Fatwa Committee decided that if the deceased had linked the ownership of the land to his death, such as the words "If I pass on," then it is a will. In such a situation, the will is invalid because the wife is one of the heirs (under *farā`id*). A will to a (*farā`id*) heir is invalid based on the hadith:

فَلَا وَصِيَّةَ لَوَارِثٍ

Meaning: "And there is no will to an heir."¹⁸⁸

However, if the deceased did not link the ownership of the property to his death, then it is considered a gift (هِبَةٌ). In this situation, the gift is also invalid because it was made in a state of illness that leads to death (مَرَضُ الْمَوْتِ).

The Fatwa Committee ruled that the land should be distributed to the heirs according to the law of *farā`id*. The wife is not entitled to the entire garden unless all heirs agree that she may fully own it.

Fatwa Decision 11/3/1996

f

Wills Made for Heirs

Wills Made for Heirs

Question:

This pertains to the will made by the late Asiah binte Hussain. In the will, the late Asiah appointed one of her daughters, Normah binte Ahmad Refaie, as a trustee. Additionally, in the content of the will, the late Asiah also directed her (the trustee, Normah) to sell her flat. The proceeds from the sale of the flat shall be used to manage her funeral affairs, and the remainder shall be distributed equally among heirs. The late Asiah left behind a son and two daughters.

The questions posed by S. Ratnam & Associates to the Fatwa Committee are as follows:

- i. Is the will considered valid according to Islamic law?
- ii. Is distributing the estate according to the late Asiah's will valid?
- iii. Will the trustee's appointment in the late Asiah's will be considered valid?
- iv. Can the trustee proceed to the court to register herself as the administrator as stated in the will and subsequently distribute the estate according to what is stated in the Certificate of Inheritance?

Answer:

After discussing and reviewing the attachments, the Fatwa Committee has ruled that the will of the deceased is invalid because it is intended for the heirs. Making a will for heirs is invalid according to the Shariah based on the instruction of Prophet Muhammad ﷺ :

إِنَّ اللَّهَ قَدْ أَعْطَى كُلَّ ذِي حَقٍّ حَقَّهُ، فَلَا وَصِيَّةَ لِرِوَارِثِ

Meaning: "Verily, Allah has given person who has rights his due, so no bequest must be made to an heir." (Hadith narrated by Al-Tirmidhī, 2120)

The deceased's estate is considered an inheritance that must be distributed to the heirs according to the law of *farā'id* as stated in the Certificate of Inheritance issued by the Syariah Court. Meanwhile, the appointment of one of the deceased's children as a trustee, as stated in her will, is considered valid. The trustee can take further action that is deemed appropriate to manage the estate.

Fatwa Decision 2/4/2002

In the early days of Islam, prior to the establishment of *farā'id*, the Qur'an commanded a Muslim to make a will of their wealth for their parents and closest relatives. Allah ﷻ says in Surah al-Baqarah verse 180:

﴿كُتِبَ عَلَيْكُمْ إِذَا حَضَرَ أَحَدَكُمُ الْمَوْتُ إِنْ تَرَكَ خَيْرًا الْوَصِيَّةَ لِلْوَالِدَيْنِ وَالْأَقْرَبِينَ بِالْمَعْرُوفِ
حَقًّا عَلَى الْمُتَّقِينَ﴾

Meaning: “It is prescribed that when death approaches any of you — if they leave something of value — a will should be made in favour of parents and immediate family with fairness. This is an obligation on those who are mindful of Allah.”

This ruling was later abolished with the revelation of verses that established the fair distribution of inheritance amongst heirs.¹⁸⁹ Most scholars view that a will made for heirs is invalid unless all the heirs approve.¹⁹⁰ If the heirs disagree, the will is thus deemed invalid. The agreement of the heirs must be obtained after the testator's death, and the heir who gives the agreement must be eligible to do so. Prophet Muhammad ﷺ said:

إِنَّ اللَّهَ قَدْ أَعْطَى كُلَّ ذِي حَقٍّ حَقَّهُ فَلَا وَصِيَّةَ لِيُورِثَ

Meaning: “Verily, Allah has given person who has rights his due, so no bequest must be made to an heir.” (Hadith narrated by Abu Dawud, 3565)

This injunction is rooted in the concern that a will to heirs might give rise to envy and allegations of unfairness directed towards the testator. In this scenario, an heir may receive from two avenues: one explicitly designated in the will and the other through *farā'id*, while other heirs are solely entitled to inherit through *farā'id* without any allocation specified in the will.¹⁹¹

Trustee

The 2002 fatwa above elaborated on supplementary characteristics of a will that are equally important to ensure its effectiveness, adherence to its principles, and the appointment of an executor (*wasī*). The element of trust in the testator (*mūsī*) holds significance as it involves the testator's reliability. Someone who breaches a written will not only is sinful, but also has the potential to cause harm upon the estate and its heirs.

Among the tasks that the executor of a will must perform are managing the burial of the deceased, applying for a certificate of confirmation of the will (an order allowing the executor to begin the process of distributing the estate) from the court, listing all the assets of the deceased, settling the debts of the deceased including taxes, and distributing the estate to heirs according to the will and *farā'id* law. If the deceased did not appoint a *wasī*, the court will issue a Letter of Administration to an individual who submits an application because they are considered the most eligible among the heirs according to Islamic law.

f

Wills Made for Unborn Heirs

Questions:

What stance does the Fatwa Committee adopt concerning a will made for heirs who are yet to be born?

Answer:

Upon reviewing the attached will, particularly paragraph 14 of the will, which mentions the word “heirs,” the Fatwa Committee opines that the will made by the late Hj Yousof Bin Hadjee Mohd Noor is rendered invalid as it was intended for the heirs. A will made for heirs is rendered invalid according to the Shariah, which is based on Rasulullah’s ﷺ injunction:

إِنَّ اللَّهَ قَدْ أَعْطَى كُلَّ ذِي حَقٍّ حَقَّهُ، فَلَا وَصِيَّةَ لِيُورِثِ

Meaning: “Verily, Allah has given person who has rights his due, so no bequest must be made to an heir.” (Hadith narrated by *al-Tirmidhī*, 2120)

The deceased’s estate is considered as an estate. A person who has passed on, they no longer have the authority to dictate when and to whom the inheritance should be, unless a valid will recognised by the Shariah is in place, which includes:

1. Not for the heirs.
2. Not exceeding one-third.

This is because the matter of inheritance is determined by Allah, as explained in Surah *al-Nisā*:

﴿فَرِيضَةٌ مِّنَ اللَّهِ﴾

Meaning: “This is an obligation from Allah.” (Surah *al-Nisā*: 11)

f

A person who has passed on cannot make a will that can cause harm. This is based on Allah's command in Surah *al-Nisā'*:

﴿مِن بَعْدِ وَصِيَّةٍ يُوصَىٰ بِهَا أَوْ دَيْنٍ غَيْرِ مُضَارٍّ ۗ وَصِيَّةً مِّنَ اللَّهِ وَاللَّهُ عَلِيمٌ حَلِيمٌ﴾

Meaning: "After the fulfilment of bequests and debts without harm (to the heirs). This is a commandment from Allah; and Allah is All-Knowing, Most Forbearing." (Surah *al-Nisā'*: 12)

And based on the *athar* of Ibn Abbas:

الإضرار بالوصية من الكبائر

Meaning: "Causing harm in the matter of wills is from major sins."

In this context, the executor handling the deceased's estate is obligated to distribute the estate to the heirs established as alive at the time of the deceased's passing, in accordance with the *farā'id*. This applies irrespective of whether these heirs are presently living or have since passed away. This can be implemented according to the *al-munāsakhāt*¹⁹² method in the science of *farā'id*.

Fatwa Decision 22/1/2002

In general, most scholars have established that a will made for unborn heirs is invalid. This is primarily because a will is intricately linked to ownership, which cannot be enforced for individuals who are yet to come into existence.¹⁹³ However, there is a discussion among scholars regarding a foetus. The scholars agree that it is valid to bequeath to a foetus, but it is subject to the following conditions:¹⁹⁴

- The foetus must have existed in the mother’s womb when the will was drafted. To ascertain the foetus’s presence, one can observe the mother’s condition or rely on her statement. The birth date of the baby is crucial to confirm its existence within the Islamic law’s stipulated period—typically six months after the will’s drafting in the case of a married mother.
- The foetus must be born alive, according to the opinions of the Shafi’i, Maliki, and Hanbali schools of thought. In instances where uncertainty persists regarding the baby’s birth status—alive or deceased—consultation with a specialised medical professional is imperative. If it is established that the baby was born deceased, the bequeathed property must be distributed accordingly.

The same condition is required under civil law, especially the Inheritance (Family Provision) Act, which defines “son” and “daughter” as a male or female child who is still in the womb (*en ventre sa mere*) at the time of writing the will.¹⁹⁵ Therefore, bequeathing to a foetus in the mother’s womb does not affect the validity of the will.

Wills for Non-Muslims

One of the pieces of evidence that confirms the absence of inheritance between individuals of different religions is the hadith of the Prophet ﷺ which means: “A Muslim does not inherit from a non-Muslim, nor does a non-Muslim inherit from a Muslim” (narrated by Al-Bukhārī, 6764). It should be clarified that this prohibition only refers to inheritance through *farā’id*.

“Although such a will is allowed, scholars have established that a will made for non-Muslim family members should not have a purpose of committing sin, such as a will that supports something prohibited in Islam.”

(Wahbah Al-Zuhaylī, *Al-Fiqh al-Islāmī wa Adillatuhu*, 10:7475)

As for inheritance through the written will, the *ijtihad* of reputable scholars allows for the implementation of a will involving non-Muslim family members. For example, the fatwa decisions in 1992 and 2006 allowed a Muslim to distribute one-third of his estate through a will to non-heir and non-Muslim family members. The following are the relevant fatwas:

f

Wills for Non-Muslims

Question:

Can a Muslim make a will where the beneficiary is a non-Muslim?

Answer:

The Fatwa Committee ruled that it is permissible for a Muslim to write a will (to bequeath a portion of the estate) to a non-Muslim as long as it does not exceed one-third of his estate.

Fatwa Decision 2/10/1992¹⁹⁶

Wills for Non-Heirs and Non-Muslims

The Fatwa Committee agrees that an estate can be bequeathed to non-heirs and non-Muslims.

Fatwa Decision 14/2/2006

Both fatwa decisions establish that bequeathing property to non-Muslims is considered valid. This opinion is aligned with the opinions of scholars from the Shafi'i, Hanafi, Maliki, and Hanbali schools of thought.¹⁹⁷ Allah ﷻ says in Surah *al-Mumtahanah* verse 8:

﴿لَا يَنْهَىٰكُمْ اللَّهُ عَنِ الَّذِينَ لَمْ يُقَاتِلُوكُمْ فِي الدِّينِ وَلَمْ يُخْرِجُوكُم مِّن دِيَارِكُمْ أَن تَبَرُّوهُمْ وَتُقْسِطُوا إِلَيْهِمْ إِنَّ اللَّهَ يُحِبُّ الْمُقْسِطِينَ﴾^(٨)

Meaning: “Allah does not forbid you from dealing kindly and fairly with those who have neither fought nor driven you out of your homes. Surely Allah loves those who are fair.”

This verse highlights an important principle regarding the relationship between Muslims and non-Muslims. It is clear that doing good and maintaining relationships with non-Muslims is not prohibited,¹⁹⁸ especially if they are family members. Differences in faith and religious beliefs should not harm the kinship between family members. Allah ﷻ says in Surah Luqmān verse 15:

﴿وَإِنْ جُهِدَاكَ عَلَىٰ أَنْ تُشْرِكَ بِي مَا لَيْسَ لَكَ بِهِ عِلْمٌ فَلَا تُطِعْهُمَا وَصَاحِبُهُمَا فِي الدُّنْيَا
مَعْرُوفًا وَاتَّبِعْ سَبِيلَ مَنْ أَنَابَ إِلَيَّ ثُمَّ إِلَيَّ مَرْجِعُكُمْ فَأُنَبِّئُكُمْ بِمَا كُنْتُمْ تَعْمَلُونَ ﴿١٥﴾﴾

Meaning: “But if they pressure you to associate with Me what you have no knowledge of, do not obey them. Still keep their company in this world courteously, and follow the way of those who turn to Me (in devotion). Then to Me you will ‘all’ return, and then I will inform you of what you used to do.”

While permitted, scholars stipulate that a will directed towards non-Muslim family members must not serve the purpose of encouraging sin, such as endorsing actions prohibited in Islam.¹⁹⁹ It is recommended to bequeath wealth to those in need among the closest relatives if they are not entitled to inherit the estate. This is because the most virtuous charity is wealth given to the closest relatives.²⁰⁰ The Prophet ﷺ said:

دِينَارٌ أَنْفَقْتَهُ فِي سَبِيلِ اللَّهِ وَدِينَارٌ أَنْفَقْتَهُ فِي رَقِيَّةٍ، وَدِينَارٌ تَصَدَّقْتَ بِهِ عَلَىٰ مِسْكِينٍ، وَدِينَارٌ
أَنْفَقْتَهُ عَلَىٰ أَهْلِكَ، أَعْظَمُهَا أَجْرًا الَّذِي أَنْفَقْتَهُ عَلَىٰ أَهْلِكَ

Meaning: “Of a dinar (unit of wealth) you spend as a contribution in Allah’s path, or to set free a slave, or as charity (ṣadaqah) to a needy, or to support your family, the one spent in support of your family produces the greatest reward.” (Hadith narrated by Muslim, 995)

The Prophet ﷺ also explained:

إِنَّ الصَّدَقَةَ عَلَى الْمِسْكِينِ صَدَقَةٌ وَعَلَى ذِي الرَّحِمِ اثْنَتَانِ صَدَقَةٌ وَصَلَةٌ

Meaning: “Giving charity to a poor person is counted as charity (ṣadaqah). And giving charity to a relative count as two virtues: a charity and maintaining ties of kinship.” (Hadith narrated by Al-Nasā’i, 2582)

Mandatory Will (*Waṣiyyah Wājibah*)

Drafting and implementing a will is regarded as a matter of personal choice. Hence, in the perspective of most jurists, there is not a will that is obligatory to be taken from the deceased's estate. Nevertheless, early jurists and authorities in *fiqh* and hadith, including Sa'īd bin al-Musayyib, Imam Aḥmad bin Ḥanbal, al-Ḥasan al-Baṣrī, Dāwūd bin 'Alī al-Zāhirī, Ishāq bin Rahāwayh, Ibn Jarīr, and Ibn Ḥazm, hold the opinion that making a will for closest relatives who do not inherit through *farā'id* is obligatory. They derive this view from the verse

in Surah al-Baqarah (verse 180) which means: “It is prescribed for you, when death approaches any of you, if he leaves wealth, that he makes a will for parents and next of kin, according to reasonable manners. (This is) a duty upon the righteous.”²⁰¹

Therefore, they believe that verse 180 of Surah *al-Baqarah* is related to the matter of will to parents and relatives, which is never invalidated even though there is *farā'id* law. Furthermore, they argue that the verse implies an obligation to create wills for family members not included in the inheritance entitlement, as the regulations of inheritance under *farā'id* have already been established.²⁰² Based on this understanding, a small group of jurists combined the understanding of this Quranic verse with the verse on inheritance, leading to the concept of *compulsory will* designated for the closest family members who are prevented from receiving a share of the estate.²⁰³

Note

Waṣiyyah Wājibah

A child whose mother or father passed on before the grandparent or whose mother and father passed on at the same time as the grandparent is entitled to receive a compulsory portion from the grandparent's estate. This entitlement is derived from the deceased parent's inheritance share and is capped at a rate not exceeding one-third if the parent's share is at or below one-third. The distribution should align with this specific rate if the parent's share falls within or below this threshold.

Hence, two perspectives emerge on this matter. The primary stance, held by most scholars, is that the allocation of the estate to the closest relatives not included as heirs is encouraged but not mandatory. Conversely, a minority opinion, championed by scholars like Ibn Ḥazm, asserts that under specific circumstances—such as providing wealth to closest family members excluded from inheriting due to various reasons, such as differing religious beliefs—a will becomes obligatory.²⁰⁴ Therefore, in some Islamic countries, the court has the right to direct the implementation of *waṣiyyah wājibah* if a Muslim does not write a will for such family members.

Ibn Ḥazm mentions:

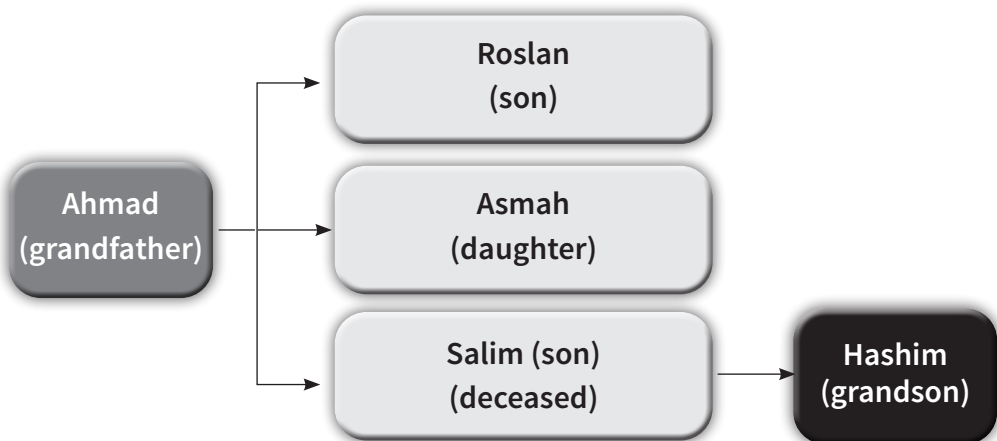
"وفرض على كل مسلم أن يوصي لقرابته
الذين لا يرثون..."

Which means: "And it is obligatory upon every Muslim to make a will to their relatives and family members who do not inherit..."

Ibn Ḥazm, *Al-Muḥallā*, 8:353.

The discussion of scholars who allow *waṣiyyah wājibah* usually focuses on the scenario of a grandfather's estate distribution for his orphaned grandchild (as depicted in the following diagram). Here, the grandchild's father has passed away before the grandfather, rendering the deceased father ineligible to inherit his own father's estate (i.e., the grandfather of the grandchild). Furthermore, this loss has a substantial impact on the child's welfare and life. If the grandchild's father were alive, he would inherit the grandfather's estate, providing the grandchild with a share through inheritance.

Illustration of Mandatory Will



This diagram illustrates the example given earlier. When “Salim” passed away before his father “Ahmad”, following the method of *waṣiyyah wājibah*, Salim’s son, “Hashim”, became a recipient under *waṣiyyah wājibah*. The reason is that “Hashim” will not receive his grandfather’s estate due to the “obstruction” of his uncle “Roslan” and aunt “Asmah” according to *farā’id*. Therefore, the grandfather should plan his finances for his grandson “Hashim” by writing a will. Through *waṣiyyah wājibah* practised in several Islamic countries such as Egypt, the grandchild will receive a certain share of the grandfather’s estate even if he does not write such a will.

Besides Egypt, there are several countries that accept the concept of *waṣiyyah wājibah*; which include, Syria, Morocco, Tunisia, Jordan, Malaysia and Indonesia.²⁰⁵ However, there are differences in the details of the application of the concept within these countries.

In 1946, Egypt implemented Act 76 concerning *waṣiyyah wājibah* within its inheritance laws.²⁰⁶ Under the Act, *waṣiyyah wājibah* only applies to the first generation of female descendants who passed away first. The same applies to male descendants who passed away before their children. However, the law does not limit *waṣiyyah wājibah* only to the first generation of male descendants.²⁰⁷

Syria and Morocco have also enacted comparable laws but have restricted them to the son or grandson of a deceased son, excluding descendants of a deceased daughter.²⁰⁸ After some time, the law in Syria was amended and stipulated that *waṣiyyah wājibah* is only for the first generation of male or female descendants who passed away. At present, Morocco follows the law of Egypt.²⁰⁹ Other Islamic countries, such as Tunisia and Malaysia, have provisions related to *waṣiyyah wājibah*. Jordan only allows male children or grandsons of deceased male children to benefit from *waṣiyyah wājibah*.²¹⁰

In Indonesia, the principle of representation in Article 185 of the Compilation of Islamic Law 1991 (KHI) enables orphaned grandchildren to inherit their grandparents’ estate.²¹¹ Notably, in several documented cases, the court even extends the meaning of “substitute heir” in Article 185 to include siblings’ children even though it is not specifically stated in the provision.²¹² Interestingly, Article 209 of the KHI uses the concept of *waṣiyyah wājibah* to allow adopted children or parents to receive a portion of the estate of a deceased adopted child, parent, or guardian.²¹³ One living party will receive the estate through *waṣiyyah wājibah* at a rate not exceeding one-third.

In Indonesia, adoption is a prevalent practice where an adopted child is regarded as a part of the adoptive parents' family based on customary law. Despite maintaining a biological connection with their birth parents, the child's legal ties to them are severed according to the country's laws. To reconcile societal customs with Islamic perspectives on adoption, scholars in Indonesia are exploring the application of the *waṣiyyah wājibah* system to safeguard the rights and well-being of adopted children.²¹⁴

The practice of *waṣiyyah wājibah* is also practised in Malaysia. Through a fatwa decision from the Department of Islamic Development Malaysia (JAKIM), there are several conditions, as follows:²¹⁵

- Grandchildren, great-grandchildren, and so on, regardless of gender, from the descendants of sons and daughters are eligible to receive a share under *waṣiyyah wājibah*. The distribution of *waṣiyyah wājibah* to eligible grandchildren will follow the principle of *farā'id*, where a male receives two shares, and a female receives one share.
- Both parents of the grandchild have passed away before the grandfather or grandmother. Or the grandchild's mother or father passed away at the same time or different incidents as the grandfather or grandmother.
- The grandchild is not an heir to the grandfather's estate. If they are among the heirs, they are not eligible to receive the *waṣiyyah wājibah* even though the original share they inherited is smaller than the *waṣiyyah wājibah* rate.
- If the grandchild follows a different religion from the mother or father, or if the grandchild is involved in the murder of their mother or father, they are not entitled to receive their share of the *waṣiyyah wājibah* from the grandfather's estate.
- Suppose the grandfather or grandmother has given property to the grandchild through a gift (*hibah*), endowment (*wakaf*), will, or other means, a portion that should be received by a son or daughter as if they were still alive. In that situation, the grandchild is no longer entitled to receive the *waṣiyyah wājibah* after the death of the grandfather or grandmother. However, if the given portion is less than what the grandchild should inherit from the deceased parent's share, the remainder must be completed through the *waṣiyyah wājibah*.

- The child will take a share of the father's or mother's estate who died first before the grandfather or grandmother. The rate should not exceed one-third. If the share reaches one-third or less than one-third, then the distribution should be made at that rate. If it exceeds one-third, it should be reduced to one-third unless other heirs agree.
- The distribution of *waṣiyyah wājibah* can be carried out after the funeral arrangements have been made, the optional will (will written voluntarily by the deceased) has been fulfilled, and all debts have been paid.

In Singapore, *waṣiyyah wājibah* is still not practised, but the law does not prohibit a citizen from bequeathing property to grandchildren or family members who are considered in need. In 2008, the Fatwa Committee made a ruling stating that the application of the concept of *waṣiyyah wājibah* is unsuitable for cases involving children born out of wedlock. This is because these children cannot be listed as legitimate heirs to receive inheritance through *waṣiyyah wājibah*.²¹⁶ However, the potential of *waṣiyyah wājibah* as an additional estate distribution instrument within the Singaporean Muslim community cannot be overlooked. Presently, there is no fatwa or legal provision permitting its use. This approach is anticipated to aid family members who would otherwise not inherit.

Adopted children, offspring born out of wedlock, and family members following different religions possess rights that can potentially be safeguarded through *waṣiyyah wājibah*, even if they are orphans or ineligible for *farā'id*.²¹⁷ This provides another option for adoptive parents or guardians who are elderly, thus potentially maintaining relationships with family members of different religions.

The absence of fatwas and legal provisions regarding *waṣiyyah wājibah* in Singapore does not mean their interests cannot be protected. At present, the community can use other instruments to protect their interests. For example, the Muslim community can distribute inheritance by writing a will based on Section 111 AMLA. The public can also consider using other planning instruments such as CPF nomination, insurance nomination, and joint ownership contracts. Therefore, the effectiveness of existing tools must continue to be studied, especially their ability to protect the interests of family

members who do not inherit property through *farā'id*. Community members must pay attention to family members and those in need. Their economy and welfare need to be strengthened so that they do not become a weak generation. Surah *al-Nisā'* verse 9 states:

﴿وَلْيَحْشَ الَّذِينَ لَوْ تَرَكُوا مِنْ خَلْفِهِمْ ذُرِّيَّةً ضِعَافًا خَافُوا عَلَيْهِمْ فَلْيَتَّقُوا اللَّهَ وَلْيَقُولُوا قَوْلًا سَدِيدًا﴾

Meaning: “Let the guardians be as concerned (for the orphans) as they would if they were to (die and) leave (their own) helpless children behind. So let them be mindful of Allah and speak equitably.”

f

Conditional Will

Conditional Will for Non-Heir Grandchild

Question:

A person has made a will for his granddaughter to receive the same share as his daughter from his estate. This share will be given to the granddaughter only when she gets married. His house cannot be sold until one of his named children reaches age 21 unless there is a conflict or difficulty in Islamic Shariah or civil law, in which case the Trustee is given the right to do what is deemed good to sell it. The Fatwa Committee was asked to give an opinion on whether this will is valid according to the Shariah.

Answer:

The Fatwa Committee is of the opinion that the will made by the deceased to give a portion of his estate to his named granddaughter is valid because the granddaughter is not an heir, and what is bequeathed to her is not more than one-third of the estate. The conditions set by the deceased, namely the delivery of the granddaughter's share to be carried out during her marriage contract and the condition that the house cannot be sold until his named child reaches age 21, are invalid. This is because these conditions prevent the heirs from possessing what has become their property without any reasons recognised by the Shariah.

Fatwa Decision 6/1/1997²¹⁸

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Conditional Will (*Taklik*)

Question:

The question concerns a will made by someone and his wife at a certain time. If something undesirable happens during their pilgrimage to Mecca for a specified period, the grant to their home will be given to their adopted daughter. The person who made the will passed away after the specified period. Is the will still valid, and does the house belong to their adopted daughter?

Answer:

The Fatwa Committee deems that the will has ended because it was made with a *taklik*.²¹⁹ The will was tied to the occurrence of something undesirable during the pilgrimage within the specified period. The person who made the will had set several conditions and time limits (*taklik*) for his will to take effect and be considered valid. The conditions and time limit he stated have already ended without the occurrence of those conditions, so his will is ineffective and no longer valid.

Fatwa Decision 17/4/1997

A conditional will entails specific conditions set by the testator. The two fatwas clarified that valid conditions in a will must align with the Shariah regarding property, purpose, and execution. Additionally, the will should bring benefit to both the recipient and the testator, as well as anyone involved, as it becomes binding on the recipient. However, acceptance or rejection of the will and its conditions rests entirely on the recipient.²²⁰

In Islam, wills have the purpose of *tabarru'* (donation) at the end of a Muslim's life. Allah ﷻ says in Surah *Āli 'Imrān* verse 92:

﴿لَنْ تَنَالُوا الْبِرَّ حَتَّى تُنْفِقُوا مِمَّا تُحِبُّونَ ۚ وَمَا تُنْفِقُوا مِنْ شَيْءٍ فَإِنَّ اللَّهَ بِهِ عَلِيمٌ ﴿٩٢﴾﴾

Which means: “You will never achieve righteousness until you donate some of what you cherish. And whatever you give is certainly well known to Allah.”

Wills also aim to draw closer to Allah ﷻ so that goodness increases and becomes a continuous charity (when directed for public benefit). Bequeathing a portion of one's wealth to a specific organisation or individual means the deceased has performed a good deed, especially if given to those in great need. When a Muslim makes a will of their property, they are considered to have provided assistance to the recipient.²²¹

On the other hand, imposing conditions can delay the distribution of the estate, for example, setting a specific period for distribution. This delay indirectly hinders or slows down the distribution of the inheritance, which contradicts the Shariah objective of safeguarding the welfare of the heirs, as shared in the fatwa decision.

Conditional will is one of the four types of wills. The other three types of will are absolute, general, and specific.²²² The details are as follows:

- (i) **Absolute will:** An absolute will is free or not bound by any specific conditions on the bequeathed property. According to the Shafi'i and Hanbali schools of thought, an absolute will is valid forever.
- (ii) **General will:** A general will is in a general form, for example, a will to the residents of a village or town and includes everyone regardless of whether they are Muslim or not.
- (iii) **Specific will:** A specific will refers to a will designated for a particular person, such as a will directed to a specific family member.

Revocation of Wills According to Fiqh and Its Legal Implications

For certain reasons, a will can be cancelled. Some circumstances involving revocation are listed below:

(i) *Revocation of will*

Drafting a will is the inherent right of the testator, allowing them to create it at their discretion and divide the estate according to Shariah principles. However, a will is regarded as a voluntary act. As an exceptional contract, its execution is not final as long as the testator is alive. Hence, revoking a will

can be openly declared. For instance, the testator might verbalize, “*I revoke my will,*” “*I cancel my will,*” “*This property is for my heirs or as an inheritance,*” and similar expressions.²²³

Under Section 15 of the Wills Act, revocation of a will can be done by writing a valid new will along with a written statement of intention to revoke the original will and implemented in accordance with the provisions of the law. The testator can also destroy the will document with the intention of revoking it.²²⁴

(v) *The recipient passes on before the testator*

All four Sunni schools of thought agree that a will is revoked if the recipient dies before the testator. This is because a will can only take effect after the testator’s death and the will recipient is alive to receive their share.²²⁵

In Singapore, where a will also functions as a document appointing an executor (in addition to the distribution of assets),²²⁶ it is considered valid. It can be filed in court even if the recipient has passed away. However, in the context of Muslims, the recipient’s share is revoked and will become part of the inheritance that needs to be distributed according to *farā’id*.²²⁷

(ii) *The testator loses mental capacity (in the Hanafi school of thought)*

Most scholars view that a will is not revoked even if the testator becomes insane until death. This is because the testator was in a sane state when writing the will. They only lost their sanity after writing it, so their will is unaffected.²²⁸ This opinion is consistent with civil law practice in Singapore, where the testator’s mental capacity is considered at the time of writing the will and not afterwards.²²⁹ However, the Hanafi school of thought holds on to the opinion that a will is revoked in such circumstances, irrespective of whether the condition persists until the testator’s passing.²³⁰

Conclusion

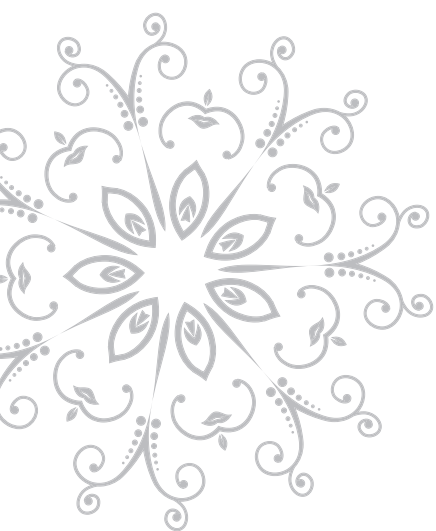
The fatwas outlined in this chapter delve into crucial aspects concerning the fundamental laws of drafting a will. These decisions also reflect an alignment with the hadith of Prophet Muhammad ﷺ, which provide guidance for a Muslim when he writes a will. These fatwas stand as a comprehensive guide for the Singaporean Muslim community in the process of drafting wills.

Fatwas concerning wills serve to safeguard the testator's welfare by stressing the importance of officially documenting all wills. This requirement indirectly reaffirms that oral wills lack validity as they require substantiation. This is also in line with the Shariah objective.

Consequently, adhering to the testator's wishes posthumously ensures seamless estate distribution without sparking disputes among heirs. Preserving the welfare of heirs, the process includes continuous oversight of will writing, limiting to one-third, and eliminating constraints or delays. The rights of non-Muslim heirs and family members who are not listed among heirs under *farā'id* are also protected through the one-third provision as stipulated.

The research findings of the fatwas show that not only wealthy individuals can write and execute a will, but all Muslims are encouraged to do so. The testator can appoint a *waṣī* to carry out the will, such as paying off debts and doing charitable work.

This chapter has delved into numerous facets of wills, beginning with their historical context and positioning within AMLA and civil law. It then outlined the procedures in managing inheritance matters. Moreover, it shed light on the complexities surrounding *waṣīyyah wājibah*, offering a groundwork for further studies. These discussions aim to encourage the Singaporean Muslim community to regard will-writing as an additional instrument for estate distribution.



4

WAKAF

﴿مَثَلُ الَّذِينَ يُنْفِقُونَ أَمْوَالَهُمْ فِي سَبِيلِ اللَّهِ كَمَثَلِ حَبَّةٍ أَنْبَتَتْ سَبْعَ سَنَابِلٍ فِي كُلِّ سُنْبُلَةٍ مِائَةٌ حَبَّةٌ ۗ وَاللَّهُ يُضَعِفُ لِمَنْ يَشَاءُ ۗ وَاللَّهُ وَاسِعٌ عَلِيمٌ ﴿٢٦١﴾﴾

Which means: “The example of those who spend their wealth in the cause of Allah is that of a grain that sprouts into seven ears, each bearing one hundred grains. And Allah multiplies (the reward even more) to whoever He wills. For Allah is All-Bountiful, All-Knowing.” (Surah al-Baqarah: 261)

Historical Development of Wakaf in Singapore

Wakaf (*Waqf*) is an institution that has been present in the Singaporean Muslim community for a long time, even before independence. Wakaf is a valuable legacy asset that embodies the spirit of progress for Singapore and its people. Beyond its symbolic value, it perpetually generates rewards and goodwill for the *wāqif*, ensuring a lasting impact that extends even beyond their lifetime.

The presence of wakaf land has been documented since the arrival of Muslim traders in this region and their subsequent migration to Singapore during the 19th and 20th centuries. The first recorded wakaf in Singapore was the Omar Kampung Melaka Mosque Wakaf, founded in 1820 by Syed Omar Ali Aljunied, an Indonesian trader from Yemen. In 1826 and 1827, Indian traders and money changers constructed wakaf properties under the name of Wakaf Jamae, including the Jamae Mosque and the Al-Abrar Mosque. Another Muslim trader, Ahna Ally Mohammad Kassim, established the Kassim Wakaf, which comprised the Kassim Mosque and a parcel of land at Changi Road.²³¹

Singapore’s strategic location made it a famous trading hub in the Nusantara region, providing golden opportunities for its residents to conduct business. This stimulated local economic growth and produced many wealthy and influential traders who owned a lot of property. In addition to traders from the Middle East and India, residents of the islands in the Nusantara often

visited Singapore for business. One known and still operating wakaf is the wakaf of two Bugis women entrepreneurs, Raja Siti Kraeng Chanda Pulih and Hajjah Daeng Tahira Daeng Tadaleh.

At that time, most wakaf consisted of immovable wakaf properties (*'aqārāt*), such as land, mosques, madrasahs, business premises and commercial properties. Wakaf *manqūlāt*, or movable assets, such as vehicles, books, clothing and equipment, were also established. This is in line with religious provisions that allow for various types of wakaf, such as cash wakaf, Wakaf Ilmu, (knowledge endowments), and medical wakaf, supplementing the traditional immovable wakaf. A historical review illustrates wakaf's pivotal role in fostering and supporting local Islamic educational centres. This instrument serves to ensure the sustainability and continual advancement of religious and scholarly institutions.

Initially, wakaf was established through the construction of mosques, which were then designated as wakaf. Subsequently, the *wāqif* would purchase commercial properties to be rented out. Proceeds from the rental would be channelled towards financing the mosque's religious activities, maintenance, upkeep and other expenses. This approach set a precedent, becoming a blueprint for socio-religious enterprises dating back to the early 1800s.²³²

In 1966, wakaf properties were affected by the Land Acquisition Act and urban renewal plans. Although the authorities provided cash compensation, Muis faced difficulties replacing it with assets of equivalent value. As a result, the compensation became the sole asset of the wakaf. Another predicament arose from residual capital that could not be invested due to insufficient amounts to yield substantial returns for beneficiaries. This circumstance posed a detriment as each wakaf had to bear its associated costs, such as audit expenses, for as long as it remained in existence.

The solution was the establishment of a low-risk investment structure that could guarantee the necessary income. This resulted in the creation of an investment structure resembling a Real Estate Investment Trust (REIT) tailored specifically for wakaf properties. Under this structure, all cash wakaf from various wakaf properties are combined into one fund. The fund is sufficient to purchase one or several other high-value properties. The decision to establish this combined fund was difficult as it required lengthy discussions and guidance from the Fatwa Committee members, especially regarding the legal aspects of asset transfer through methods such as *istibdāl*.

After the establishment of Muis and the introduction of the AMLA administration in 1968, all wakaf properties were required to be registered under Muis under Section 64 of AMLA.²³³ Muis assumed the role of administrator and trustee of wakaf properties in Singapore, with this role being undertaken by the Community Funds Administration Strategic Unit. This management approach has resulted in a systematic and comprehensive planning system at the national level, based on complete and easily accessible data, such as wakaf properties, income, expenses and payment information.²³⁴

During the early management of wakaf properties, Muis faced many challenges, including properties that were outdated and did not meet safety standards. One of the reasons was the lack of funds for a particular wakaf property, which was insufficient to cover maintenance costs. Consequently, if these properties could not be rented, no income was generated, impeding the distribution of proceeds to the intended wakaf recipients as per the *wāqif*'s wishes. This affected the value of the property, making it unable to compete in the market, despite being situated in favourable locations, as was the case with Wakaf Jabbar at Duku Road, Wakaf Kassim at Changi Road and Wakaf Abdul Hamid at Gentle Road. Wakaf properties should not be left to deteriorate with age. If left unattended, there is a high possibility that the authorities will take over the property for development purposes. At the same time, the cost of restoring such properties is also quite high.²³⁵ In this regard, Muis realises that the expertise to manage wakaf properties must be enhanced. Renewal efforts must be implemented in phases to effectively address these challenges.

In 1985, Muis formed the Jawatankuasa Pembangunan Wakaf (Wakaf Development Committee), comprising professionals from diverse disciplines like architecture, design, and business. The main financial source was the *baitulmal*. No external financing sources were used, such as taking loan from banks. After the property's development, a portion of the income was channelled back to the *baitulmal*. This approach significantly bolstered wakaf property management, fostering substantial progress within a relatively short span.

Following the establishment of the committee, the wakaf at Changi Road, which originally consisted of a small mosque and several dilapidated shophouses, was rebuilt in 1991, resulting in a larger mosque (Masjid Kassim),

along with commercial premises (Wisma Indah) and 20 two-storey maisonette units (formerly known as Telok Indah and now named East Bay Gardens at Lorong G Telok Kurau). The wakaf at Gentle Road was temporarily converted into a park to give Muis time to plan.²³⁶ Muis then collaborated with Warees Investments in a joint venture to develop the land after the temporary structures were demolished.

In principle, wakaf properties are intended to be perpetual and cannot be sold or transferred. However, considering the needs and benefits of the community and ensuring the sustainability of a wakaf asset, there are situations where the transfer of properties is necessary. Scholars have deliberated on this matter, permitting asset transfers under specific circumstances.

For instance, a wakaf property might be situated in a less strategic area, experiencing a decline in its annual income. In such cases, the wakaf manager evaluates multiple factors. If deemed necessary, a transfer is facilitated to ensure the asset continues generating adequate income for its recipients. Through this process, the wakaf asset can be saved. Presently, numerous wakaf assets remain capable of generating ample income, upholding the *wāqif*'s intended returns for the recipients.

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Fatwa – Selling Wakaf Property / Land

Question:

Is it permissible to sell wakaf property and use the proceeds to (i) develop other wakaf properties and (ii) construct buildings for the benefit of the Islamic community, such as madrasahs, Islamic centres and similar institutions?

Answer:

If a wakaf property must be sold for unavoidable reasons, it is permissible, but its proceeds must be replaced according to its type. Otherwise, it can be utilised for another type of wakaf. Utilising the proceeds from a general wakaf to build welfare homes, a madrasah, or a mosque for the general Islamic community is permissible. Nonetheless, if the wakaf's proceeds were initially designated by the endower for a specific purpose, then the proceeds must be utilised for the intended purpose.

Fatwa Decision 20/3/1997

This fatwa serves as crucial guidance, offering a pathway to safeguard wakaf assets and navigate potential challenges. In such scenarios, Muis engages investment experts, legal firms, real estate advisors, and financial institutions to secure the most appropriate assets, while developing a structure that allows joint ownership. Through these consultations and negotiations, coupled with the sale of 27 wakaf properties, a six-storey commercial building at 11 Beach Road was successfully purchased in 2001. In addition, Muis introduced the first-of-its-kind investment structure in Singapore called Sukuk Musyarakah.²³⁷ This sukuk is a bond that helps finance the purchase of the Beach Road property.

The Fatwa Decision also outlined three main issues, namely how to channel cash wakaf into Shariah-compliant investment instruments, allowing for the consolidation and transfer of low-performing wakaf properties to higher-value assets, and promoting the success of a wakaf asset to generate higher income for the recipients.

In 2001, Muis also established a subsidiary called Warees Investments, which carries out mosque development and manages the commercial aspects of wakaf properties, including maintenance and leasing. As Warees operates as a company, it can generate its income through project management services. The proceeds can be used to finance future wakaf development. Warees is also responsible for identifying wakaf properties that require repairs and developing appropriate plans.

With expertise in commerce, the company has successfully redeveloped wakaf assets at Gentle Road. The asset was transformed from a temporary park to a three-storey terrace house in 2015. Initially devoid of any income generation, this asset now yields an annual income of up to \$180,000. Subsequently, these earnings are directed towards supporting the Abdul Hamid Kampung Pasiran mosque.²³⁸

Wakaf in Islam

According to *fiqh*, wakaf means to withhold ownership of a property from a specific individual and manage the benefits of that property for the party to whom it has been endowed (*marwqūf 'alayh*).²³⁹ The fundamental principle is that any wakaf property must not diminish in value after a single use. Its existence must be permanent, and its benefits attainable. While the

property itself cannot be sold, purchased, or inherited, the generated proceeds can be allocated in accordance with the wishes of the *wāqif*, the individual establishing the wakaf.²⁴⁰

The practice of wakaf serves as a means of *taqarrub*, a way to draw closer to Allah ﷻ. Among the evidence that serves as the basis for promoting wakaf are:

﴿لَنْ تَنَالُوا الْبِرَّ حَتَّى تُنْفِقُوا مِمَّا تُحِبُّونَ ۚ وَمَا تُنْفِقُوا مِنْ شَيْءٍ فَإِنَّ اللَّهَ بِهِ عَلِيمٌ ﴿٩٢﴾﴾

Which means: “*You will never achieve righteousness until you donate some of what you cherish. And whatever you give is certainly well known to Allah.*” (Surah *Āli ‘Imrān*: 92)

﴿وَمَا يَفْعَلُوا مِنْ خَيْرٍ فَلَنْ يُكْفَرُوهُ ۗ وَاللَّهُ عَلِيمٌ بِالْمُتَّقِينَ ﴿١١٥﴾﴾

Which means: “*They will never be denied the reward for any good they have done. And Allah has (perfect) knowledge of those mindful (of Him).*” (Surah *Āli ‘Imrān*: 115)

The verses above elucidate that one of the hallmarks of the pious is their dedication to engaging in various acts of virtue, including the act of endowing their wealth. Upon hearing the verse, a companion by the name of Abū Ṭalḥah r.a. expeditiously endowed his cherished garden, *Bayrahā*[’]. The account is narrated as follows:

عَنْ أَنَسٍ، قَالَ لَمَّا نَزَلَتْ هَذِهِ الْآيَةُ (لَنْ تَنَالُوا الْبِرَّ حَتَّى تُنْفِقُوا مِمَّا تُحِبُّونَ) قَالَ أَبُو طَلْحَةَ أَرَى رَبَّنَا يَسْأَلُنَا مِنْ أَمْوَالِنَا فَأُشْهِدُكَ يَا رَسُولَ اللَّهِ أَيَّيَّ قَدْ جَعَلْتُ أَرْضِي بَرِيحًا لِلَّهِ. قَالَ فَقَالَ رَسُولُ اللَّهِ ﷺ: "اجْعَلْهَا فِي قَرَابَتِكَ." قَالَ فَجَعَلَهَا فِي حَسَنَانَ بْنِ ثَابِتٍ وَأَبِي بَنِي كَعْبٍ.

Which means: “*Sayyidina Anas reported that when this verse was revealed: ‘You will not attain righteousness until you spend of that which you love,’ Abū Ṭalḥah said ‘I saw that our Lord demands from our wealth. So, I make you a witness, O Messenger of Allah, that my land known as Bayrahā’, I give it for the sake of Allah.’ After that, the Prophet ﷺ said ‘Give it to your relatives.’ So, he gave it to Ḥasan ibn Thābit and Ubayy ibn Ka‘b.*” (Hadith narrated by Muslim, 998b).

The land in Khaibar that Sayyidina Umar al-Khattab r.a. endowed was the first wakaf in the history of Islam. Ibn Hajar narrated a hadith related to this endowment: *Ibn Umar reported that Umar r.a. acquired a piece of land in Khaibar and said “O Messenger of Allah ﷺ, I have acquired a piece of land in Khaibar, which is the most valuable property I have. What do you command me to do with it?” The Prophet ﷺ replied “If you wish, you may endow it and give it in charity.” Sayyidina Umar r.a. donated the land as a wakaf, which could not be sold, gifted or inherited to provide benefit for the poor, relatives, slaves, travellers and guests. It was not considered a transgression for anyone who looked after it to consume its yield in moderation and to feed others without making it their personal property.* (Hadith narrated by Al-Bukhārī, 2737).

The difference is that the wakaf of Sayyidina Umar r.a. was intended for the public’s use and benefit, not just for relatives. From this, Muslims can conclude that the Companions, since the early days of Islam, were familiar with the concept of wakaf. The following hadith of the Prophet ﷺ guided all of their actions:

"إِذَا مَاتَ ابْنُ آدَمَ انْقَطَعَ عَمَلُهُ إِلَّا مِنْ ثَلَاثٍ: صَدَقَةٍ جَارِيَةٍ، أَوْ عِلْمٍ يُنْتَفَعُ بِهِ، أَوْ وَلَدٍ صَالِحٍ يَدْعُو لَهُ."

Which means: “*When a person dies, all their deeds come to an end except for three things: continuous acts of charity, knowledge that brings benefit, and a righteous child who offers prayers on their behalf.*” (Hadith narrated by Muslim, 1631)

According to some scholars, *ṣadaqah jāriyah* refers to a wakaf in which the reward continues to benefit the *wāqif* as long as the endowed property remains intact and continues to be utilised.²⁴¹ Based on this, wakaf has two objectives: a catalyst for community development and an ongoing *ṣadaqah jāriyah* for the *wāqif*.

By instituting wakaf, a Muslim can draw closer to Allah ﷻ while earning rewards by directing their surplus wealth towards His cause. Wakaf enables a Muslim to manifest their servitude to Allah ﷻ through righteous deeds. It is also regarded as a person’s contribution to the welfare of the Muslim community at large or meeting the needs of specific groups like the poor, orphans, and travelers in need (*ibnu sabil*). In essence, it plays a role in enhancing the welfare of the country and society as a whole.

Pillars and Conditions of Wakaf

Wakaf has four pillars and main conditions that must be fulfilled:²⁴²

- (i) **The person who endows the property (*wāqif*):** Every *wāqif* must be free, mature, sane, eligible to give charity (*ahliyyah al-tabarru'*) and intend to release their property voluntarily. Individuals failing to meet these criteria, such as those facing bankruptcy, are unable to validly endow their property.
- (ii) **The endowed property (*marwqūf*):** The endowed property must be halal, beneficial, the absolute property of the *wāqif*, and its existence must be evident. Additionally, the nature of the endowed property must be permanent (*ta'bid*) to ensure continual benefit (*darwām*). A foundational standpoint upheld by the majority of scholars.²⁴³ In simpler terms, the endowed property ought to be durable and provide ongoing benefits to the recipients. Hence, neither the *wāqif* nor the wakaf beneficiaries can reclaim ownership as it is meant to remain a perpetual endowment for the community's welfare.²⁴⁴ However, this differs from the view of Imam Abū Ḥanīfah, who allows the *wāqif* to reclaim the endowed property.²⁴⁵ Yet, other Hanafi scholars, such as Abū Yūsuf, oppose this viewpoint.²⁴⁶ At the same time, Imam Abū Ḥanīfah believes that wakaf for mosques and cemetery land (in which a deceased person has been buried) is a perpetual endowment and cannot be reclaimed.²⁴⁷
- (iii) **The recipient of the wakaf (*marwqūf' alayh*):** The recipient of the wakaf must exist, be alive and capable of receiving (*imkān tamlik*) at the time the wakaf is made. Hence, a wakaf designated for an unborn child or a minor is deemed invalid unless the *wāqif* already has a child (if the wakaf is intended for a family member). The purpose of the wakaf must also not be something that is prohibited by Allah ﷻ and should not obstruct or deny rightful inheritance to the heirs.
- (iv) **The wakaf contract (*ṣiḡbah al-waqf*):** As per Islamic law, a valid wakaf contract takes immediate effect through words or similar communicative methods, including gestures that convey clear intent. Examples of clear wakaf declarations (*ṣiḡbah ṣarih*) are

“I endow this house for the benefit of the poor,” “It is endowed for them,” and “I donate this house to them.” In Islamic jurisprudence, a clear declaration holds weight and can be accepted without ambiguity. Sometimes, the wakaf declaration may be unclear (*kināyah*) because the *wāqif* may have used words with multiple meanings or figurative language, whether in writing or gestures. In such instances, an examination of the underlying intention is crucial, and supplementary evidence must substantiate the establishment of the wakaf.

Regardless of form, the wakaf declaration must meet the following conditions:

1. Clear expression during speech or gesture that **indicates the *wāqif*'s intention** to establish a wakaf based on their will.
2. The wakaf contract has **no time limit** because wakaf is permanent (*ta'bid*) and not subject to time constraints.
3. **The contract is not tied to any additional conditions on the property.** For example, a wakaf property will be inherited by the *wāqif*'s children after their death or the wakaf is intended for the *wāqif*'s descendants even though they do not have any.
4. The contract lacks any indication of the *wāqif*'s or their descendants' intention to reclaim the wakaf property. Nonetheless, scholars continue to debate this condition, offering diverse and detailed opinions concerning the revocation of a wakaf, as elaborated earlier.
5. The analysis of wakaf cases conducted by the Fatwa Committee and Muis shows that one of the causes of disputes among family members in cases involving wakaf properties is ambiguity regarding the *wāqif*'s intentions as articulated in the will. Furthermore, most wakaf properties were established before World War II, hence, the wakaf documents have become outdated, and the writing is unclear. Many cases involve wakaf contracts with ambiguous meanings, leaving uncertainty regarding whether the property owner intended to establish a wakaf or bestow it as a charitable contribution, among other uncertainties.

Wakaf and Limited Period Wakaf

The commonly established form of wakaf is land wakaf. However, due to the limited land in Singapore, the establishment of land wakaf in Singapore faces certain challenges, such as some wakaf assets being located within the Temporary Occupation Licence (TOL) boundaries.

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Fatwa – Wakaf on TOL Land

Question:

What is the definition of Wakaf land? Can government-designated lands, utilised for purposes like burial grounds, mosques, *suraus*, Islamic religious schools, etc., be classified as Wakaf land, despite being allocated by the government for these specific functions or being under Temporary Occupation Licence (TOL) or short-term leases (30 years)?

Answer:

Wakaf land is any beneficial land that has been dedicated and specified or endowed for religious purposes and others, such as burial grounds, mosque sites, *suraus* or Islamic schools for eternity. Therefore, the wakaf land cannot be sold and claimed by the wakaf donor or their heirs.

As for government lands used for burial grounds, mosques, *suraus*, Islamic religious schools etc, which the government has allocated for these purposes, they can be considered as wakaf land – if the land has been used for these purposes for a long period. On the other hand, government lands that have Temporary Occupation Licences (TOL) or short-term leases (30 years) used for burial grounds, mosques, *suraus*, Islamic religious schools etc cannot be considered wakaf land because these lands have limited licences.

Fatwa Decision 5/3/1970

Question:

Can land with a lease of 99 years be endowed as wakaf? Is it valid to endow a mosque, madrasah or *surau* building on leased land, whether it is a Temporary Occupation Licence (TOL) or other leased land?

Answer:

The Fatwa Committee has unanimously agreed to declare the wakaf valid and permissible, based on the opinion of Imam Shafi'i as recorded in the books *Sirājul Wahhāj*, *Mizān al-Kubrā*, and *al-Tuḥfah*.

Question:

What is the correct and formal phrasing to establish a building or land as wakaf?

Answer:

The wording to endow land as Wakaf is: *“I hereby endow this land/ building as a site or building for a mosque.”*

Fatwa Decision 27/2/1971

Both fatwas offer guidance concerning the clear (*ṣarīḥ*) declaration necessary for establishing a wakaf, emphasising its clarity and compliance with the requirements of a wakaf declaration. In addition, both fatwas explain the issue of wakaf on leased land. Originally, wakaf property must be permanent and not limited by time, but some scholars also believe that limited wakaf is allowed.²⁴⁸ Similarly, the same principle applies to wakaf properties built on leased land, TOL land or rented land because, based on the principle of wakaf, the “benefit of wakaf” lies in the wakaf building and not the land used.²⁴⁹ Therefore, the mosque building and the benefits obtained are subject to various conditions. Scholars have weighed the possibility of wakaf properties being susceptible to potential destruction or the loss of their benefits within a specific timeframe. Nevertheless, despite this temporary aspect, they still regard it as a valid wakaf asset.²⁵⁰

The discussion about the temporary nature of some wakaf properties is relevant to the context of Singapore. Despite the constraints imposed on land ownership, these properties effectively cater to the needs of the local Muslim community. Hence, the acceptance of wakaf endeavours remains viable even when the land is encumbered by time constraints or rental status. The paramount consideration for wakaf properties established on such lands is the consistent adherence to Islamic laws governing wakaf. A 99-year lease is considered reasonable because Wakaf properties usually require restoration work and must be redeveloped under certain conditions before the lease expires.

At times, the physical state of a wakaf property ceases to align with the community's evolving needs. Therefore, careful planning is needed, such as determining whether the property requires maintenance, renovation, or reconstruction. Apart from repairs, the most prudent and advantageous course of action for a wakaf property might entail its sale, transfer, or amalgamation with another wakaf. The resulting proceeds can be directed toward erecting new wakaf properties, ensuring that the asset sustains while continuing to deliver benefits in alignment with the endower's original intention.

Principles of Wakaf Management

In the field of asset management and wakaf assets, the underpinning principles serve as the foundation:

- i) **Wakaf property is perpetual (*ta' bīd*), and its benefits continuous (*dawām*)**

Two fundamental characteristics serve as guiding principles for the management of wakaf affairs. Firstly, wakaf property should endure perpetually (*ta' bīd*) to ensure sustained benefits and returns (*dawām*). Typically, a wakaf becomes immediately effective (*tanjīz*) upon its establishment. The property is then 'transferred' to become the possession of Allah ﷻ, ceasing to be owned by the *wāqif* (endower) or the recipients of its proceeds. Its administration becomes the trustee's responsibility, who is prohibited from selling the property, gifting it, or including it in an inheritance. The trustee is solely entrusted with the preservation and management of the property per the wishes of the *wāqif*. In addition to perpetuity, a wakaf asset should yield continuous benefits (*dawām*). This characteristic ensures the trustee's readiness to shoulder this

responsibility. To achieve this objective, the trustee must devise plans to ensure the asset can generate sufficient income, including funding the audit process and maintenance.

In this context, scholars actively deliberate the specific parameters of wakaf law. For instance, when al-Zuḥaylī expounded upon the characteristics of a wakaf contract within the framework of the Hanafi school of thought, he presented the viewpoint of the majority of Hanafi scholars vis-à-vis a minority within that school of thought. Most Hanafi scholars maintain that the wakaf contract attains completion upon the *wāqif*'s expression of intention. Once articulated, the wakaf property materialises, and the *wāqif* forfeits the right to retract their decision. Al-Zuḥaylī contends that this perspective proves more pragmatic and precise than others within the same school, where the wakaf property remains unformed upon the *wāqif*'s expression of intent. This alternative viewpoint introduces a scenario wherein the *wāqif* retains the ability to retract the wakaf,²⁵¹ posing challenges for communities that have already benefited from a wakaf property, as the *wāqif* retains the freedom to revoke the wakaf based on personal preferences.

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Fatwa – Conditions Contravening the Principle of Wakaf

Question:

A person has bequeathed their house as a wakaf for their children, grandchildren and great-grandchildren for up to 20 years after the death of their last child. Does this bequest establish a valid wakaf?

Answer:

The Fatwa Committee opines that, fundamentally, such an endowment is not valid because it is not perpetual (مؤبد) and is determined based on the wording (صيغة) of the bequest, namely “*This wakaf is effective until twenty years after the death of my last child.*” Therefore, it is not recognised as a wakaf because it is time-bonded, whereas the purpose of a wakaf is to be perpetual.

Fatwa Decision 3/2/1997

In this fatwa decision, the Committee views a wakaf property established for a specific period as invalid. This is due to the wakaf's inability to fulfil its perpetual nature.

The difference between this issue and a wakaf on TOL land lies in its purpose. Although a wakaf on TOL land for 99 years is 'temporary' in nature, the original intention of the endower is to establish a wakaf property. Therefore, the wakaf will remain perpetual even after the TOL period expires as the assets of a wakaf can be transferred through *istibdāl*. In Singapore, the decision to transfer assets requires the approval of the Fatwa Committee. In 1985, the Committee decided that a wakaf property could be sold to acquire other assets to obtain greater returns, with the condition of perpetuating the continuous charity. Additionally, in 1997, the Fatwa Committee ruled that implementing *istibdāl* by selling the original wakaf land is necessary to maintain the objective of the wakaf.

Istibdāl

Istibdāl means replacing the prior wakaf with new wakaf, through the process of exchange, purchase, sale or methods that complies with Shariah.

(ii) The administration of wakaf properties must align with the intentions of the endower

A Muslim establishing a wakaf has the prerogative to stipulate conditions, provided they do not contradict the conditions of validity and can fulfil each requirement. It is imperative to honour the endower's desires concerning the usage of the wakaf property and the distribution of its proceeds. This is per the legal maxim:

شرط الواقف كنص الشارع

Meaning: "*The condition set by the endower has the same legal status as the stipulations of the text of the Shariah.*"²⁵²

Based on this principle, jurists agree that the primary directive for the trustee of wakaf property is to adhere to all the conditions specified by the endower. The trustee is not authorised to alter or append any conditions unless a benefit is safeguarded. Any alteration requires authorisation from a judge or those entrusted.

As the ruling mandates the endower's adherence to the stipulated conditions, the trustee cannot arbitrarily modify them. This matter was deliberated by the Fatwa Committee in 2014 concerning the utilisation of a portion of the wakaf funds established by M.S.E. Angullia to cover the development costs of the Angullia Mosque. As outlined in *Aḥkām al-Awqāf fī al-Islām*,²⁵³ trustees need to emphasise two conditions when facing circumstances that allow them to deviate from the objectives and stipulated conditions: (i) when there is a specific benefit that necessitates the alteration of some conditions stipulated by the endower and (ii) only a judge has the authority to modify these conditions.²⁵⁴

On these grounds, taking into consideration the necessity for the mosque's development at that time, the Fatwa Committee concluded that the wakaf trustee was permitted to allocate a portion of the wakaf proceeds to the mosque development project.²⁵⁵

When discussing the intentions articulated by the endower, scholars are tasked with identifying a crucial principle, namely, the permissibility of interpreting and elucidating the endower's statement in greater detail, just as Muslims would meticulously interpret and elaborate religious texts, such as the Quran and the Sunnah, when needed. Al-Zuḥaylī stresses that understanding the conditions set by the endower should mirror the approach used in comprehending Islamic texts (*nuṣūṣ al-sharā'ī*), transcending a limited understanding, and not confined to the information explicitly stated.²⁵⁶

Preserving the Wakaf Assets

If wakaf assets must be sold due to unavoidable circumstances, such action is permissible. However, the asset must be replaced with another wakaf asset. The community must adhere to the fundamental principles of wakaf – perpetual and continuous – to maintain the endower's aspiration and intention. This, however, does not preclude the possibility of selling or replacing the endowed property (*mawqūf*), if necessary, to preserve the wakaf and its original value. In addition, the wakaf administrator must ensure that the endowed property yields optimal income to safeguard the future entitlements of the beneficiaries.

Historical records highlight instances where trustees acted irresponsibly, leading to the loss of wakaf land from the community. Many wakaf assets are neglected, losing value to the point where they no longer generate income, contributing to increased maintenance costs. To prevent this, the process of transferring wakaf assets needs improvement. Real estate experts can evaluate whether it is more advantageous to replace an asset with a higher-quality one or to undergo redevelopment.

Most endowed assets are the personal assets of the endower, with limited expanse and development potential. Therefore, the method of *istibdāl* can bring benefit to wakaf assets.

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Fatwa – Selling Wakaf Property to Preserve it

Question:

Is it permissible to sell wakaf property and use the proceeds to (i) develop other wakaf properties and (ii) construct buildings for the benefit of the Islamic community, such as madrasahs, Islamic centres and similar institutions?

Answer:

If a wakaf property must be sold for unavoidable reasons, it is permissible, but its proceeds must be replaced according to its type. Otherwise, it can be utilised for another type of wakaf. Utilising the proceeds from a general wakaf to build welfare homes, a madrasah, or a mosque for the general Islamic community is permissible. However, if the proceeds of the wakaf were intended by the endower for a specific purpose, they should be spent for that intended purpose.

Fatwa Decision 20/3/1997

(iii) *The Maqāṣid al-Sharī'ah as the Foundation for the Formation and Preservation of Wakaf Assets*

According to al-Zuḥaylī, the primary objective sought by Islamic law in the establishment of wakaf is similar to other forms of charitable endowments (*al-tabarru'āt*). Wakaf stands as perpetual charity (*ṣadaqah jāriyah*) benefiting both the endower and the recipients. Al-Zuḥaylī highlights jurists' endeavours in developing legal doctrines to ensure wakaf generates sufficient income. He stresses the need for these doctrines to adapt to contemporary needs through *ijtihād*, addressing issues not explicitly covered in the texts (*nuṣūṣ*).²⁵⁷ Thus, the *maqāṣid al-sharī'ah* should serve as a foundation while safeguarding the interests of the three parties involved in wakaf,²⁵⁸ namely, the endower, the endowed property and the recipients of the wakaf property.²⁵⁹

In contrast to other *fiqh* discussions, al-Zuḥaylī noted that the rulings concerning wakaf are not explicitly detailed in the texts (*nuṣūṣ*); rather, they are largely developed through jurists' *ijtihād*.²⁶⁰ He argues that all *ijtihād* aims to preserve the three types of benefits as mentioned above. In most scenarios, al-Zuḥaylī noted that the benefit of a wakaf asset will be prioritised over others. This prioritisation ensures the perpetuation of the endower's intention while successfully generating income from the wakaf asset and distributing it to the beneficiaries. Consequently, the preservation of a wakaf asset takes precedence over other interests and needs.

Under this principle, wakaf properties are not necessarily required indefinitely remain in their original form. For instance, certain wakaf assets may yield greater benefits after being appropriately modified to meet contemporary needs. Similarly, for cases where the funds of a wakaf property are depleted and its returns are insufficient to cover management and maintenance, the Fatwa Committee opines that as one of the objectives of Shariah for wakaf is to ensure the perpetuity and optimal utilisation of such endowments; hence to prevent the discontinuation of wakaf returns, the Shariah permits necessary changes to the endower's conditions to preserve the asset.

The Fatwa Committee has elaborated on issues like consolidating wakaf assets, aiming to prevent the neglect of smaller wakaf properties with diverse objectives. There is a concern about their potential disappearance, as seen in specific cases. Consequently, the Fatwa Committee has exerted *ijtihad* and endeavoured to identify the most suitable alternatives for the preservation of wakaf assets. The details of the fatwa decision are as follows:

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Fatwa – Merging Several Wakaf Properties Into Wakaf Ilmu

Question:

The Fatwa Committee received a query from the Zakat and Wakaf Unit of Muis, dated 20 January 2015, regarding the consolidation of eight wakaf property accounts with small values (around \$20,000) into a single wakaf or merging them into *Wakaf Ilmu*.

Seven of the wakaf assets originally constituted separate wakaf properties, which the government acquired through the Land Acquisition Act. The amount of money in each wakaf account represents the balance of the compensation provided by the government. Additionally, one of the wakaf assets is cash wakaf.

Answer:

The Fatwa Committee is of the opinion that the Zakat and Wakaf Unit may explore better options to safeguard the welfare of these wakaf assets. Among the suggestions is to return the entire remaining amount from the savings of a particular wakaf to the original recipient of the wakaf proceeds (beneficiary). Provided the recipient can be identified, easily reached, and is willing to accept the remaining savings. In that case, the management may close the wakaf account, considering there are no remaining savings.

If the first option is difficult to implement for some of the wakaf assets, the management may consider another option, which is to merge the wakaf assets into *Wakaf Ilmu* and realign its objectives following the *Wakaf Ilmu*'s objective.

Fatwa Decision 24/2/2015

The issue of merging wakaf assets is often deliberated by scholars. While jurists concur on the *fiqh* principle, compliance with the conditions set by the endower is like compliance with the text of the Shariah (*shart al-wāqif ka naṣ al-shāri'*). Al-Zuhaylī underscores the potential need to alter or reinterpret these conditions to ensure the continuity of the wakaf (*istimrār al-waqf*).²⁶¹

Therefore, the fatwa decision on this matter necessitates a significant *ijtihad*. The decision takes into account the primary objective behind the establishment of a wakaf. In light of this understanding, the Fatwa Committee presents various approaches, such as closing the wakaf account and returning all its proceeds to the beneficiaries if they can be identified and reached, or merging it into a combined wakaf asset (such as the *Wakaf Ilmu*), which allows (i) to generate benefits for the community and (ii) continued rewards for the endower.

The Existence of Wakaf is Contingent Upon the Presence of Endowed Assets

The presence of assets is crucial in maintaining a wakaf, not only in terms of ensuring the continuity of benefits but also as a fundamental pillar of wakaf that must be fulfilled for the property to be considered a wakaf property. Without these assets (*marwqūf*), the wakaf contract is deemed null, leading to the loss of the endowed property.

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Fatwa – Wakaf with No Remaining Assets

Question:

The Fatwa Committee received an inquiry from the Zakat and Wakaf Unit of Muis, dated 20 January 2015, regarding several wakaf properties that no longer have assets or reserves.

Both wakaf properties were acquired through the Land Acquisition Act in 1987 and 1988, with a specific amount of compensation given. The compensation was subsequently invested in the wakaf property at No. 11 Beach Road under Fusion Investments.

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However, the investment failed to generate sufficient returns to be beneficial as the compensation received was too little. The value of the assets diminishes each year, consumed by the costs of auditing the accounts of both properties. Currently, neither of the Wakaf properties has any remaining funds. As both wakaf accounts are still active, the management costs must continue to be paid. The *baitulmal*, the party responsible for managing the wakaf, currently bears these costs.

Given that both properties no longer have any assets, and that *baitulmal* is covering the management costs without yielding any benefit as intended by the endower, the Fatwa Committee is requested to decide whether Shariah permits their closure.

Answer:

The Fatwa Committee concurs that the wakaf management has made every effort to ensure the continuity of the wakaf properties even after they no longer possess any assets. As both wakaf accounts have depleted to the extent that no value remains, the Fatwa Committee opines that both wakaf properties are considered to have been ceased, and their accounts should be closed.

This opinion is based on the position held by scholars that assets or property, known as *al-māl al-mawqūf*, is one of the pillars of wakaf. The existence of a wakaf is contingent upon the existence of the assets/property endowed. When the endowed property vanishes to the extent that no assets remain, the wakaf in question is considered to no longer exist.

Fatwa Decision 24/2/2015

Despite considerable preventive measures, wakaf properties are inherently susceptible to natural elements like weather and seasonal changes, leading to their inevitable deterioration. The religious ruling on this hinges on the property's nature. If the property is irreparably damaged by events like flood, fire, or natural decay, the wakaf terminates. If the utility of a wakaf ceases, such as when a tree designated as wakaf falls or dies due to natural causes, its benefits can still be preserved by utilising the trunk and other parts of the tree. In the context of a mosque carpet or a decaying or broken pillar, the material can be sold, and the proceeds can be utilised to acquire other beneficial items.

In this context, the Fatwa Committee acknowledges the exhaustive efforts made by the administrator to ensure the continuity of the wakaf, even in the absence of tangible property. As the wakaf account has been fully depleted, rendering it without value, the Fatwa Committee concludes that the wakaf asset has ceased, prompting the closure of the account. This decision is in line with the scholarly position that assets or property, known as *al-māl al-marwūf*, constitute one of the pillars of wakaf.²⁶² Therefore, the existence of a wakaf is intrinsically linked to the presence of the endowed assets or property. When the property dissipates, the wakaf is also considered to have ceased.

Funding Wakaf Asset for its Preservation Factoring in Maintenance of Wakaf Properties from the Wakaf Proceeds

Thorough supervision of wakaf properties is imperative. Apart from ensuring the fulfilment of all its requirements, the administrators must ensure adequate proceeds for the recipients designated by the endower. Regardless of the wakaf property, preservation efforts are crucial for its effective function and market competitiveness. Maintenance costs necessitate substantial funding, which depends on the property's size, age, and condition. Hence, directing all proceeds and income from a wakaf property to the recipients would result in losses as no proceeds are earmarked to cover maintenance.

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Fatwa – Funding Wakaf Asset for its Preservation

Background

- 1 The Fatwa Committee received a question from the Zakat and Wakaf Unit of Muis dated 20 January 2015 regarding the establishment of a dedicated fund for the maintenance and preservation of wakaf properties generated from the income of these wakaf properties.
- 2 All properties require ongoing maintenance and preservation to ensure their continued optimal functionality and maintain their market value. Wakaf properties are no exception to this requirement. There are several reasons why these wakaf properties require preservation, such as the ageing of some properties, land movements and other factors necessitating immediate preservation to ensure that the wakaf properties do not lose income and returns.

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- 3 As the maintenance of a wakaf property requires funding and expenses, the Zakat and Wakaf Unit of Muis suggests that a portion of the income from a wakaf property be set aside for a certain period to cover the maintenance expenses when needed.

Opinion of the *Fuqahā'*

- 4 After an in-depth study of the opinions of jurists (*fuqahā'*) on this matter, the Fatwa Committee has identified religious provisions that allow the allocation of a portion of wakaf proceeds for maintenance, restoration and expansion through acquisition. This is substantiated by references from the Shafi'i school of thought, notably from the work of *al-Qalyūbī wa 'Umairah*:

وَيَجِبُ عَلَى نَاطِرِ الْوَقْفِ ادِّخَارُ شَيْءٍ مِمَّا زَادَ مِنْ غَلَّتِهِ لِإِعْمَارَتِهِ وَشِرَاءِ عَقَارٍ بِبَاقِيهِ

Meaning: "...it is obligatory for the wakaf trustee (*naẓir*) to set aside a portion of the profits from the wakaf for the purpose of developing (the wakaf property) and buying other properties with what remains."²⁶³

- 5 It is stated in *al-Mawsū'ah al-Kuwaytiyyah*:

إذا احتاجت عين الوقف إلى ترميم، فإنه يبدأ به من غلته قبل الصّرف إلى المستحقين، لأنّ قصد الواقف صرف الغلّة مؤبّداً، ولا تبقى دائماً إلّا بعمارتها، وما بقي بعد العمارة يصرف للمستحقين، هذا ما عليه الحنفية والمالكية والشافعية.

Meaning: "If a wakaf asset requires maintenance, then (the cost of maintenance) is deducted from the wakaf's income before it is distributed to the rightful beneficiaries. This is because the main goal of the *wāqif* (behind the wakaf) is for the income from the wakaf property to be continuously channelled (to those entitled). Therefore, continuous income cannot be sustained without proper maintenance. After maintenance, all remaining income is distributed to those entitled to receive it. This is the consensus of the Hanafi, Maliki, and Shafi'i schools of thought."²⁶⁴

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Fatwa Decision

- 6 The Fatwa Committee is of the opinion that there are no religious impediments in establishing a specific fund (sinking fund) sourced from wakaf income as deemed reasonable by the administrators. This fund is intended to be allocated for the comprehensive maintenance and preservation needs of current and future wakaf properties.
- 7 The Fatwa Committee emphasises that the percentage taken from the income of wakaf properties should consider their preservation while ensuring the welfare of the wakaf beneficiaries.

Fatwa Decision 24/3/2015

Based on this fatwa, the wakaf administrators are authorised to procure specific funds for maintenance purposes from wakaf proceeds, even if the *wāqif* did not designate this purpose in his bequest. As a result, a portion of the wakaf proceeds will not be distributed to the beneficiaries but will be set aside for maintenance purposes.²⁶⁵

Redevelopment of Wakaf Assets

To ensure that wakaf properties function properly, they must meet contemporary society's needs and remain relevant to serve greater *maṣlahah* (benefit) in a given era. Hence, some scholars allow the sale of wakaf properties that have become obsolete due to the passing of time, have depreciated, or are no longer utilised. The funds from such sales can be used to develop new wakaf properties more suited to the community's needs or in locations that better serve the public interest.²⁶⁶

The effort to redevelop wakaf properties is part of the process of *istibdāl al-waqf*,²⁶⁷ which means replacing a former wakaf with new assets,²⁶⁸ for instance, selling a particular wakaf property and using the proceeds to purchase a new wakaf property to replace the old one, whether of the same type or otherwise. The Shafi'i school limits this concept of *istibdāl al-waqf*,

which is the transfer of wakaf property. This restriction is particularly stringent when the property is a wakaf land for a mosque, as long as it remains functional.²⁶⁹ Albeit, in cases of exigency, the judge is permitted to exercise this concept.²⁷⁰ This perspective is rooted in the principle that wakaf must be perpetual (*ta'bid*), as evidenced by the hadith regarding the wakaf of Sayyidina Umar r.a. in Khaibar, which cannot be sold, gifted or inherited. The Hanbali and Hanafi scholars allow for the alteration or replacement of wakaf property if it serves a greater good (*maṣlahah*). Their stance is based on the restoration and improvement efforts near the Kaabah at a certain time. The Prophet ﷺ said to Sayyidatina Aisha r.a.:

"يَا عَائِشَةُ لَوْلَا أَنَّ قَوْمَكَ حَدِيثُو عَهْدٍ بِشَرِكٍ لَهَدَمْتُ الْكَعْبَةَ فَأَلَزَقْتُهَا بِالْأَرْضِ وَجَعَلْتُ لَهَا
بَابَيْنِ..."

Meaning: "O Aisha, had it not been the fact that your people had recently converted to Islam, I would have demolished the Kaabah, and would have brought it to the level of the ground and would have constructed two doors..." (Hadith narrated by Muslim, 1333e)

The Prophet ﷺ himself acknowledged the importance of maintenance work for the Kaabah. Therefore, if there is a need to repair or rebuild a wakaf property, it is not prohibited. In fact, if maintenance can only be achieved by relocating it to a more suitable or better area, then the property should be moved. It has been narrated:

كَتَبَ عُمَرُ (إِلَى عَبْدِ اللَّهِ): ...وَأَنْقُلِ الْمَسْجِدَ، وَاجْعَلْ بَيْتَ الْمَالِ مِمَّا يَلِي الْقِبْلَةَ، فَإِنَّهُ لَا
يَزَالُ فِي الْمَسْجِدِ مَنْ يُصَلِّي.

Meaning: "Umar wrote a letter to Abdullah saying: Move the mosque and establish the baitulmal in the direction of the qibla of the mosque. Verily, there are still people praying in the mosque." (Hadith narrated by *Al-Ṭabrānī*, 8949)

Although the Shafi'i school is particularly stringent regarding the relocation of wakaf, several exigencies allow for the relocation of wakaf property to preserve the interests of these wakaf properties. For instance, circumstances that render a wakaf non-functional or no longer generate sufficient financial resources to sustain the rights of wakaf beneficiaries indicate exigency. Hence,

making necessary adjustments to the wakaf to ensure its perpetuity and prevent its cessation does not fundamentally alter the wakaf itself; rather, it preserves it. This issue has been deliberated by scholars of the Shafi'i school, as shown by the statement attributed to Imam Al-Nawawī:

لو وقف على قنطرة، فانخرق الوادي، وتعطلت تلك القنطرة، واحتيج إلى قنطرة أخرى جاز النقل إلى ذلك الموضع.

Meaning: “If someone endowed a bridge, as a wakaf, over a valley, and its spans erode, rendering the bridge unable to serve its primary function, then it is permissible to relocate the bridge.”²⁷¹

The following fatwa decisions provide legal guidance concerning the reconstruction of wakaf properties:

First Issue: Reconstruction to Enhance Wakaf Income

The efforts to redevelop wakaf properties can ensure the establishment of a sustainable and robust income stream, thereby fulfilling the intentions of the *wāqif* to the fullest extent possible. This issue is further motivated to seek elucidation on preserving the function of a wakaf property, including the means to finance the maintenance expenses.

f

Fatwa – Issue on Wakaf Assets

a) Question:

According to Shariah, is it permissible to redevelop the purpose of a wakaf to obtain a more lucrative return?

Answer:

Redeveloping a wakaf property is permissible as long as the original purpose and intention (الصيغة) of the endower are not altered.

b) Question:

If the funds are insufficient to cover the expenses in Question (A), can the wakaf administrator seek a loan from a financial institution that will charge interest on the loan?

f

Answer:

If there are no alternatives, the state of exigency permits it as long as it is not excessive.

c) Question:

Arising from Question (A), can a specific wakaf be converted into a general wakaf?

Answer:

It is not permissible unless with the consent and approval of the beneficiaries or those entitled to receive from the wakaf. When the beneficiaries have passed on, the wakaf automatically becomes a general wakaf.

d) Question:

During his lifetime, a *wāqif* endowed a large piece of land with a small building to be used as a school for boys. Now, the expenses for maintaining the school are increasing after some time. To save this wakaf from cessation, the administrator plans to develop the additional land for commercial purposes so that the wakaf can become financially independent. Is this permissible in Shariah? And can girls be allowed to study in the school?

Answer:

Yes, it is permissible. Prophet Muhammad ﷺ prohibited the wastage or loss of wealth, as narrated in a hadith. If the squandering of wealth is prohibited, then the preservation of wakaf property assumes a greater significance in safeguarding the public interest.

Seeking knowledge is obligatory for both men and women. If the *wāqif* intended to prohibit women's education, then the wakaf is invalid. In addition, it is permissible for female students to study there to safeguard the public interest, such as preventing the school's closure. Since the intention of the *wāqif* cannot be altered, the beneficiaries' consent (*mawqūf 'alayh*) must be obtained.

Fatwa Decision 21/10/1985

The fatwa decision establishes several guidelines for the management of wakaf properties. It serves as a guide indicating that wakaf properties are eligible for redevelopment under certain conditions, namely:

- The *wāqif*'s intention is still fulfilled.
- Safeguarding the wakaf from discontinuation.
- Making improvements within defined boundaries.
- Obtaining explicit approval from the beneficiaries for any alterations to the wakaf.

Second Issue: Redevelopment of wakaf as an investment asset

One of the contemporary issues related to wakaf is whether investment methods can be considered to generate income for a wakaf property. This question arises when the maintenance expenses surpass the income generated by the wakaf. Consequently, the wakaf property faces challenges in functioning effectively, thereby hindering the beneficiaries from reaping the intended benefits envisioned by the *wāqif*. At the same time, investments may provide opportunities to generate additional income. Such additional income can be used to cover property maintenance.

f

Liquidating a Portion of Wakaf Assets for Redevelopment

Question:

When a wakaf property no longer serves its purpose or is no longer maintained because the income derived from it is insufficient to meet the wishes of the endower, can these wakaf properties be sold and the proceeds invested under the Trustees Act to ensure their continuity? If such investments fail, what are the implications? Can the wakaf be dissolved, relieving the administrator of religious responsibility?

Answer:

Fundamentally, the purpose of a wakaf is the preservation and continuity of rewards for the endower. As long as the wakaf continues, the property that serves as the source of income for the wakaf can be sold to acquire other assets to obtain greater returns provided that the perpetual charitable deeds are maintained. The wakaf administrator is fully responsible for all decisions made regarding the wakaf in question. If the investment fails without any negligence from the administrator, they are absolved of religious responsibility.

Fatwa Decision 28/10/1985

When managing wakaf properties, the principle of continuous effort to preserve wakaf assets to ensure their continuity as a perpetual charitable act according to the intentions of the *wāqif* is paramount. Hence, every endeavour to protect them is undertaken with meticulous care, responsibility, and trust. This position is in line with the emphasis placed by Prophet Muhammad ﷺ on trust and responsibility during the wealth management of orphans, as narrated in a hadith:

أَلَا مَنْ وَّلِيَ يَتِيمًا لَهُ مَالٌ فَلْيَتَّجِرْ فِيهِ وَلَا يَتْرُكْهُ حَتَّى تَأْكُلَهُ الصَّدَقَةُ

Meaning: “As for one who is the guardian of an orphan who has wealth, then let him do business with it and not leave it until it becomes consumed by charity.” (Hadith narrated by *Al-Tirmidhī*, 641)

The same approach can be applied in managing endowments to ensure maintenance costs do not immediately deplete the proceeds. Both share the common objective (*maqāṣid*) of safeguarding the endowment from loss, thereby ensuring the welfare of the beneficiaries. While the fatwa permits the sale of a portion of the endowment property for profit and other benefits, it also underlines the responsibilities of the trustee. This consideration is crucial as the investment of a portion of the endowment proceeds carries risks, necessitating the formulation of preventive measures or the selection of lower-risk investments.

Third Issue: Reconstruction of Wakaf Assets

The fatwa concerning the redevelopment of wakaf properties was issued in 1988. The significance of this fatwa lies in its allowance for wakaf administrators to undertake the redevelopment of such properties. However, this perspective diverges from the opinion of some *fuqahā*; for instance, some Shafi'i scholars only allow the redevelopment of wakaf properties when an urgent necessity exists, as Imam al-Nawawī articulated earlier.²⁷²

In Singapore, the administration of wakaf assets is regulated by the laws established under AMLA. As the administrator, Muis holds the authority over wakaf matters, including the preservation of the assets, ensuring their productive yield, safeguarding the rights of the wakaf beneficiaries, and planning and implementing various initiatives to redevelop wakaf properties.

f

Fatwa Redevelopment of Wakaf Assets

Question:

Is the Islamic Religious Council of Singapore (Muis) allowed to redevelop the wakaf assets under its care?

Answer:

Muis, as the administrator of wakaf properties, is mandated to redevelop the wakaf assets under its care to safeguard the interests of the Muslim community. Therefore, from the perspective of Islamic jurisprudence, there exists no prohibition for Muis to, for instance, redevelop the Jabar, Kassim and Abdul Hamid wakaf properties. Muis is also allowed to establish a corporate entity to redevelop wakaf properties if no better alternative exists, with the primary aim of preserving the wakaf assets from cessation.

Fatwa Decision 17/10/1988

This fatwa allows for the redevelopment of a wakaf property specifically to resolve maintenance-related issues. Without such redevelopment, the wakaf property remains in its original form and structure. The high maintenance costs of the original building, combined with minimal or no rental income (as is the case with a wakaf mosque), will exacerbate the issue of covering the maintenance expenses.

Fourth Issue: Using Baitulmal Funds to Redevelop Wakaf Properties

In general, the development of a property involves high costs. The Fatwa Committee regularly receives numerous inquiries regarding funding options for developing wakaf properties. One common query revolves around using *baitulmal* funds to finance these redevelopment costs.

There are differing opinions among scholars on this issue. According to the Shafi'i and Hanbali schools, the maintenance costs and requirements should be covered by *baitulmal* unless the *wāqif* (endower) has explicitly permitted wakaf income (or a portion of it) for these purposes.²⁷³ Conversely, Maliki scholars suggest that administrators should use these funds to ensure proper

management, considering the potential impact on the wakaf's continuity if the property is not adequately maintained.²⁷⁴ The Hanafi school deems it necessary to use a portion of the wakaf income to maintain the property as it was when the *wāqif* endowed it.²⁷⁵

During the early stages of developing wakaf assets in the 1980s and 1990s, *baitulmal* played a pivotal role, particularly in financing large-scale projects, such as restoration and redevelopment. Thus, *baitulmal* fulfils the needs of the properties while simultaneously serving the interests of the local Muslim community.

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Fatwa – Utilisation of Baitulmal Funds for Wakaf Redevelopment

Question:

Can the funds from the *baitulmal* be used to redevelop wakaf properties?

Answer:

Baitulmal funds are meant to benefit Muslims. The *amin* (trustee) of the *baitulmal*, entrusted to safeguard the funds, is allowed to use these funds for purposes they deem to benefit the Muslim community. The trustee will be held accountable for the destruction of a wakaf property or for any actions that lead to a loss to the Muslim community. These actions are acts of irresponsibility and sinful. As such, the *baitulmal* funds can fund projects to redevelop a wakaf.

Fatwa Decision 17/10/1988

Fifth Issue: Temporary Cessation of Wakaf Income

The wakaf trustee is responsible for ensuring the continuity of an asset. Nevertheless, income may temporarily cease during redevelopment. In light of this, the following fatwa decision provides clarification on the issue:

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Fatwa – Temporary Cessation of Wakaf Income

Question:

A wakaf property currently yields small returns. If the wakaf were to be redeveloped, its revenue would temporarily cease. Is this permissible?

Answer:

A wakaf property can be redeveloped to ensure better returns or to ensure that it remains permanent. It is natural for the earnings from the wakaf property to cease temporarily during the period of redevelopment. In such a situation, it is not considered wrong. However, it is crucial to safeguard the beneficiaries of the wakaf from being adversely impacted by this interruption.

Fatwa Decision 20/3/1997

The Fatwa Committee views these temporary circumstances as unavoidable. The original intent of the renovation is to reap the benefits of the property, ensuring its long-term sustainability and creating better financial returns. Nevertheless, wakaf beneficiaries must be informed, and their situation must be considered. Hence, this fatwa sets forth a condition for the redevelopment of wakaf properties. It stipulates that wakaf beneficiaries' well-being must be taken into account if the income is interrupted.

Sixth Issue: The Types of Goods Sold through Wakaf Properties

For wakaf assets in the form of real estate, one of the sources of income is leasing. Continuous rental income can help fulfil the endower's intention to benefit the beneficiaries. However, the reality of Singapore's diverse society entails the possibility of a property (whether wakaf or not) being leased to non-Muslims, leading to a situation where some activities or goods sold in certain premises are halal while others are not. Fundamentally, the conditions

of wakaf involve matters that can be sold within the wakaf building – even the act of commerce (within the wakaf building) is discussed. The utilisation of the property is categorised into three:

- (i) Activities aligned with the Shariah.
- (ii) Activities that contravene the Shariah, such as gambling and prostitution.
- (iii) Activities involve a mixture of halal and haram, like a retail store that sells a mixture of halal and haram products.

For such scenarios, the Fatwa Committee is of the opinion that commercial transactions, particularly involving businesses in shops in the wakaf building, are permissible. This is particularly encouraged for Shariah-compliant and beneficial enterprises, such as education centres. The items for sale are not mandated to be exclusively halal products, but this category cannot be the primary objective of the tenant. The detailed guidelines given by the Committee are as follows:

f

Fatwa – The Types of Commodities Transacted Within Wakaf Properties

Question:

Must the items sold in the shops of a redeveloped wakaf building constitute only halal items?

Answer:

There are no specific conditions explicitly stating that only halal items can be sold. However, if we become aware that renting a shop on the wakaf property entails selling haram items, it becomes our obligation to decline renting the place to the prospective tenant. However, if it is found that a tenant sells haram items after renting the shop to him, then it becomes incumbent upon us to take action to stop such practices by the tenant.

Fatwa Decision 20/3/1997

The primary consideration of the Fatwa Committee is the context of land utilisation in Singapore. Particularly examining the mixing of halal and haram activities within a wakaf property and their acceptable boundaries. The following offers a detailed explanation:

(i) **The objective of the use of wakaf properties in Singapore**

In Singapore, the use of wakaf property is broad, ranging from rental activities for development to income generation. Given that the Muslim community constitutes a minority in Singapore, restricting rentals solely to the Muslim community imposes limitations on the development of wakaf properties. Wakaf properties should be developed and utilised in the best possible way and fulfil the aspiration and intention of the *wāqif*. Sheikh Waliyullah al-Dahlawi in *Hujjatullāh al-Bālighah* explained that the objective of wakaf is to ensure that the beneficiaries, such as the needy, will continue to benefit from the property for a long time.²⁷⁶ Such a goal can only be achieved should the wakaf property continue to generate sufficient income and remain functional.

Generally, scholars allow for the rental of property to non-Muslims for all activities that align with the Shariah. As for activities that contravene the Shariah, scholars differ in opinion. The Shafi'i school opines that it is not permissible because non-Muslims are subjected to the branches of Shariah as well. This contrasts the Maliki school, where such rental is disliked (*makrūh*), even if the property owners know that some activities are being carried out that are not in line with the Shariah. This is based on the legal maxim: Non-Muslims are not subject to the branches of Shariah (*al-kuffār ghayr mukhāṭabīn bi furū' al-shari'ah*). In a contemporary discourse, Sheikh Abdullah bin Bayyah opines that it is permissible to rent property to non-Muslims, even if their intended use does not align with Muslim halal standards. However, if the sale/rental of forbidden items occurs between Muslims, then the contract is considered invalid.²⁷⁷

The Fatwa Committee is of the view that the use of wakaf property in the Singaporean context must (i) be based upon clear principles and (ii) consider the diversity of our society and the status of Muslims as a minority. As such, it is not appropriate to set a policy that limits the rental of wakaf properties only to Muslims. Since there is a need to ensure that a wakaf property continues to generate sufficient rental income, there is also a need to consider an approach that preserves the objectives of a wakaf, provided there is room for *ijtihād* in the matter.

(ii) The Wakaf Contract Remains Unaffected

Given that this issue concerns wakaf property, the question arises as to whether the sale of non-halal goods, from the perspective of Shariah, impact the validity of the wakaf. In this context, it is crucial to apply the principles of *uṣūl al-fiqh*. According to the scholars of *uṣūl al-fiqh*, when discussing the chapter of prohibitions (*al-naṣwābī*) within transactions (*mu‘āmalāt*), it is established that a prohibition which pertains to a matter external to the contract (*‘aqd*) does not render the contract invalid.²⁷⁸

النهي لأمر خارج لا يقتضي الفساد في المعاملات

Meaning: “Prohibition of a matter external to the subject matter does not invalidate the contract in the transactions (*mu‘āmalāt*).”

A common example is the validity of a transaction (contract) made during the Friday call to prayer (*adhān*). Even though transactions made during this call to prayer are prohibited, the transaction is considered valid as the prohibition against the sale and purchase of items is external to the contract itself. In other words, as long as the main pillar of the contract has been fulfilled, it is considered valid.

In essence, the wakaf remains valid as long as its fundamental elements—such as the pillars and terms of the contract—are satisfied. Therefore, selling goods against Shariah principles does not nullify the wakaf.

(iii) The Mixture of Halal and Haram Activities Within a Wakaf Property

The 2022 fatwa discussed on the permissible limits and the nature of activities, including Islamic banking transactions that involve a blend of halal and non-halal elements. Due to limited prior scholarly discourse, differing views among scholars emerge, allowing for *ijtihād* or independent legal reasoning.

Ibn Subki’s opinion, as cited in the book *Al-Ashbāh al-Nazā’ir* by Imam Al-Suyūṭī, posits: “Declaring something that contains a mix of halal and haram as haram is a caution approach, not necessarily making the matter haram.”²⁷⁹ Referring to Islamic literature, there are several examples related to the mixing of forbidden elements with permissible ones. Scholars have discussed three levels of indications in this regard:

(iv) One-Third Limit

Prophet Muhammad ﷺ once advised Sa'ad ibn Abi Waqqās r.a. to draft a will as a form of charitable bequest. The limit set by the Prophet ﷺ was one-third (33.33%) of his wealth – a proportion deemed generous. The Prophet ﷺ said: “*One-third (of your possessions can be willed away), but even one-third is a lot*” (Hadith narrated by Al-Bukhārī, 2743; Muslim, 1629). Even though this hadith refers to the maximum limit of an individual's possessions that can be bequeathed, namely, one-third, it has become a guide to scholars in setting limits on other issues. Scholars such as Ibn Daqīq al-‘Īd is of the opinion that the one-third principle has been applied in various fiqh issues to denote a significant limit based on the hadith of the Prophet ﷺ (الثالث كثير), even though the hadith originally pertains to the matter of wills.²⁸⁰

The General Benchmark

In Islamic banking, several benchmarks have been identified and applied to different products and transactions.²⁸¹ A **25% benchmark** is used to gauge the level of mixing in income generated from activities or transactions that are generally Shariah-compliant and necessary for the public but also involve non-halal elements. Transactions that use this benchmark include the operation of hotels and resorts, stock trading, brokerage, and the like, as these activities may involve non-Shariah-compliant elements.²⁸² Similarly, there exists a 20% benchmark to gauge the mixing level in rental income stemming from non-Shariah-compliant activities, such as renting premises engaged in gambling or sales of alcohol.²⁸³

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Fatwa on the Sale of Non-Halal Items on Wakaf Property

Background

The Fatwa Committee received several queries on 7 July 2021 and 18 August 2021 from two (2) law firms regarding the sale and distribution of non-halal goods or food on wakaf properties. Based on these queries, the Fatwa Committee has discussed issues regarding the use of wakaf properties, specifically when it involves activities or products that are not halal.

Answer:

The Fatwa Committee decided that the wakaf property and its objective should be preserved, notably generating benefits for the beneficiaries (*al-mawqūf lahu*) now and for all times. In the current context of wakaf properties, where it is open to participation from people of various religious backgrounds, avoiding mixing halal and non-halal products is difficult. This mixing does not affect the validity of the wakaf contract as long as the main elements of the wakaf (legal tenets, terms and conditions) are met.

Nevertheless, the administrator of the wakaf property (*mutawalli*) should be informed in advance of products that will be sold or activities that will be carried out on the wakaf property and should assess and consider the tenant's request based on the rate and the effects of the use of the property for the benefit of the wakaf and the Muslims of Singapore.

Should the non-halal activities or products (i) be targeted at non-Muslims in general, (ii) limited to a small proportion and are not the main activities or products on offer, and (iii) do not breach the 25% limit, the administrator of the wakaf can permit it, as long as they are satisfied that the overall use of the wakaf property will not bring any harm to the property and to Muslims. The sanctity of the wakaf property must be maintained.

Otherwise, the administrator of the wakaf property should discuss with the tenant to find a reasonable solution and mutual understanding to avoid any harm and maintain good personal relationships.

Fatwa Decision 16/3/2022

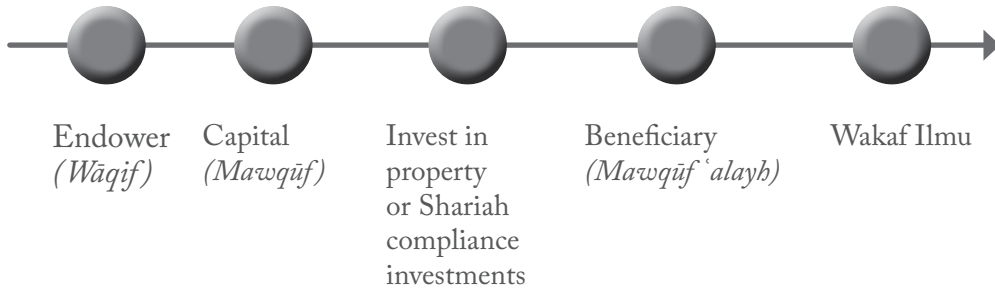
Given that this benchmark is a matter of *ijtihādi*, the main consideration in determining the limit must be clear: to preserve the interests of wakaf properties and the Muslim community. Therefore, the Fatwa Committee distinguishes activities that contravene the Shariah, such as gambling or prostitution, regardless of the background and profile of the clients. According to the Shariah, such activities are forbidden, whether on wakaf properties or properties owned by Muslims. The Shariah distinguishes the mixture of activities or products on wakaf property. Activities or products that contravene the Shariah are only allowed if they are targeted at non-Muslims and are not the main feature of business or activities on a wakaf property. They should only exist in a limited manner. In this matter, the Fatwa Committee is of the opinion that the appropriate benchmark is set at a maximum limit of 25%.

Wakaf Masyarakat Singapura (Singapore Community Wakaf): Ensuring Welfare and Development

The scarcity of land and escalating property prices challenge the Muslim community to establish new wakaf assets in Singapore. The most recent wakaf property was established by Shaikh Taha bin Abubakar Mattar in 1978.

Several initiatives have been introduced to tackle this issue and promote and preserve the wakaf culture. One such initiative involves the contribution of every Muslim in Singapore towards the Mosque Building and Mendaki Fund (MBMF) from their monthly CPF contributions. This collective effort has successfully facilitated the development of 22 mosques. The development of wakaf assets is not confined to the affluent; it is a right for all Muslims to participate and contribute to mosque development. In 2012, the launch of Wakaf Ilmu marked a pivotal initiative aimed at elevating the standard and sustainability of madrasah education in Singapore. Several madrasahs rely on this fund for their ongoing operations. This reliable income stream ensures the continual fulfillment of these madrasahs' needs and long-term sustainability.²⁸⁴

The Structure of Wakaf Ilmu



Wakaf Masyarakat Singapura (WMS)

WMS was established to enable Muslims who wish to bequeath their assets towards supporting religious institutions, promoting asatizah development and funding the community's long-term needs and initiatives.

Until today, there is a need to enhance the capabilities of wakaf institutions in Singapore. In June 2020, the Minister-in-charge of Muslim Affairs Masagos Zulkifli Masagos Mohamad unveiled plans for the establishment of the Wakaf Masyarakat Singapura (WMS) or Singapore Community Wakaf. The WMS encompasses various objectives, specifically targeting religious institutions, asatizah development, and the broader community's needs.²⁸⁵ This collective wakaf addresses future needs, such as the development of the Singapore Islamic College (SIC), covering the costs of expired mosque land leases, and empowering the local Muslim community, particularly the disabled and those in need during unforeseen crises, such as a pandemic. The opportunity to contribute to WMS is also not limited to the affluent; the entire community is expected to have the chance to participate.²⁸⁶

Conclusion

The fatwas presented in this chapter cover a broad spectrum of wakaf-related issues, from its pillars, conditions to contemporary challenges in its management. Scholars have also recognised the vast scope for *ijtihad* and, thus, the need to invigorate this spirit. Such vigour can be achieved by identifying new wakaf instruments, exploring diverse methods for wakaf asset management, and exercising *ijtihad* in legal dimensions. These efforts promise considerable benefits and serve the community. Fatwas on wakaf assume paramount significance as they underpin the formulation of pertinent guidelines that align with the realities of the Muslim community in Singapore. The community stands to derive important lessons from the fatwas on wakaf:

1. The *wāqif's* intention must align with the Shariah and be explicitly defined in terms of the wakaf's establishment, the *wāqif's* desire to allocate proceeds to specific recipients, and other relevant aspects.
2. The current wakaf landscape in Singapore faces diverse challenges, necessitating the community to exercise judicious deliberation when planning and establishing an asset. For instance, careful consideration is warranted regarding the relocation of a wakaf property, its replacement with an alternative asset or its conversion into cash wakaf.
3. The *wāqif* should consider maintenance costs to ensure long-term sustainability.

4. Participation in wakaf endeavours does not demand substantial wealth. Cash wakaf, whether directed towards the Islamic Education Fund (IEF) or MBMF, offers substantial rewards even with modest capital.
5. Wakaf serves as a framework to foster unity. Its principles posit that wealth is not the exclusive domain of an individual or a specific cohort; rather, it represents a shared blessing. Grounded in this principle, Muslims are directed to establish a system of social justice, thereby positively impacting societal, economic and religious spheres.

This chapter has traced the intricacies of the wakaf institution. It covers the history and regulatory framework in Singapore alongside juristic principles. Specific issues within the Singaporean context were also expounded: temporary wakaf, wakaf on leased land, and selling products that contravene the Shariah in wakaf premises. These issues were highlighted to provide deeper insight into the approach and deliberation adopted by the Fatwa Committee. Ultimately, it is hoped that this discourse will inspire the Muslim community to revitalise the wakaf culture and remain attuned to the well-being of fellow Muslims.



Wakaf Development in Singapore



Bencoolen Mosque before undergoing redevelopment.
Image obtained from Warees Investment



Bencoolen Mosque after redevelopment. Image obtained from Community Funds Administration, Islamic Religious Council of Singapore (Muis).



The redevelopment of Alias Villas that is located next to Wakaf Al-Huda. Image obtained from Warees Investments.



Warees Investment's signature Wakaf Revitalisation Scheme, The Red House, was bequeathed by Sheriffa Zain Alsharoff Mohamed Alsagoff. Image obtained from Warees Investments.



The transfer of the wakaf asset (*istibdāl* wakaf concept) belonging to Haji Pitchay Meerah Hussain to a commercial property at 11 Beach Road in 2002 aims to fulfil the objective of wakaf and the endower's intention.

Image obtained from Community Funds Administration, Islamic Religious Council of Singapore (Muis).



5

CENTRAL PROVIDENT FUND (CPF) AND INSURANCE NOMINATION

﴿وَأَوْفُوا بِالْعَهْدِ إِنَّ الْعَهْدَ كَانَ مَسْئُولًا﴾ (٣٤)

“Honour (your) pledges, for you will surely be accountable for them.”
(Surah *al-Isrā*: 34)

This chapter focuses on the development of fatwas related to Central Provident Fund (CPF) funds and insurance nomination for Muslims. It begins with the background of CPF, policy developments over the past 60 years, and fatwa decisions regarding it.

Background of CPF in Singapore

The Central Provident Fund (CPF) scheme helps Singaporeans manage their retirement. CPF funds are considered part of an individual's assets and are subject to specific laws.²⁸⁷ Due to Singapore's emphasis on self-reliance among its citizens and the fact that it is not a welfare state, CPF funds are one way to ensure that individuals can live independently without relying on others after retirement.

CPF funds involve the allocation of a particular portion of Singaporean workers' wages, augmented by a matching percentage from their employers. These accrued funds become accessible for withdrawal once an individual reaches the age of 55.²⁸⁸

It is clear that CPF funds are necessary for Singaporeans, including members of the Muslim community, as many of them require savings to support their living expenses after retirement and bear some of the increasing costs of living. When assessing the need for CPF and the level of preparedness to face the cost of living in retirement, the socio-economic context of the community (including monthly income and savings rates) has been factored in. Therefore, the CPF scheme was established to ensure Singaporeans have sufficient savings to receive a steady monthly income after retirement.

As for the local Malay community, especially Muslims, many still practise the concept of living with extended family members. At the same time, the community adheres to familial values such as caring for elderly parents. Nonetheless, the current economic strains pose challenges wherein elderly parents might not entirely depend on their children without prioritising their personal savings and financial assets. Compounded by the escalating cost of living in Singapore, attributed to factors like inflation,²⁸⁹ this predicament particularly impacts the low-income demographics and the baby boomer generation (born between 1946 and 1964).²⁹⁰ Meanwhile, the average life expectancy of the Malay community as of 2021 is 79.4 years,²⁹¹ emphasising the importance of strengthening one's retirement savings to ensure a comfortable standard of living.

From a policy perspective, CPF has established several usage limits on the funds saved in the account. Account holders, or contributors, are allowed to use the funds for specific purposes, such as financing housing costs and children's education, paying annual insurance premiums such as life insurance and the Dependants' Protection Scheme (DPS), and investing in funds in the Ordinary Account (OA). In addition, other CPF accounts, such as the Special Account (SA), may be utilised in a limited manner, such as when the OA funds are depleted. The same applies to the Medisave account, which can only be used to pay certain medical bills.²⁹²

The policy established upon CPF funds generally aims to safeguard the interests of workers and their family members who have reached retirement age. In the context of Muslim law, this is in line with the concept of *siyāsah shar'iyah* (state administration) based on the principle of preserving *maṣāliḥ al-mursalah* (public interest that has not been explicitly mentioned in religious texts). Such a policy aims to safeguard the public interest and uphold justice in matters of state administration.

According to Section 15 of the CPF Act, CPF funds are a type of ownership that remains with the account holder despite being subject to certain usage limitations. Under Muslim law, such ownership does not seem to meet the criteria of complete ownership (*al-milk al-tām*) as viewed from a *fiqhī* perspective. Nevertheless, in 1986 and 1995, the Fatwa Committee determined that these funds could be liable for zakat and deemed as part of the owner's estate. The reason is the owner still has the right to use the funds to pay for certain expenses (such as housing and healthcare) and maintain possession for a defined period. This perspective mirrors the stance of the *fuqahā'* who impose zakat on debts expected to be repaid to the owner upon maturity.

Since its introduction in 1955, the CPF scheme has undergone various policy changes. For example, the government introduced the Minimum Sum Scheme (MSS) in 1987. Under this scheme, contributors must save at least \$30,000 in their retirement account by age 55. In 1995, the minimum sum was increased to \$40,000, and an additional \$5,000 had to be contributed yearly. In 2020, the Basic Retirement Sum (BRS) was raised to \$90,500 and reached \$99,400 in 2023.²⁹³

Currently, every contributor must accumulate the BRS under the CPF Retirement Account (RA) by age 55. After reaching this age, contributors are allowed to withdraw their CPF funds anytime.²⁹⁴ However, they can only withdraw the excess amount, not the entire sum in their Retirement Account. The excess amount can be disbursed to contributors through one of two ways: the CPF LIFE (Lifelong Income for the Elderly) ensuring monthly payouts throughout their lifetime,²⁹⁵ or the Retirement Sum Scheme (RSS), providing monthly payouts until they reach 90 years of age.²⁹⁶

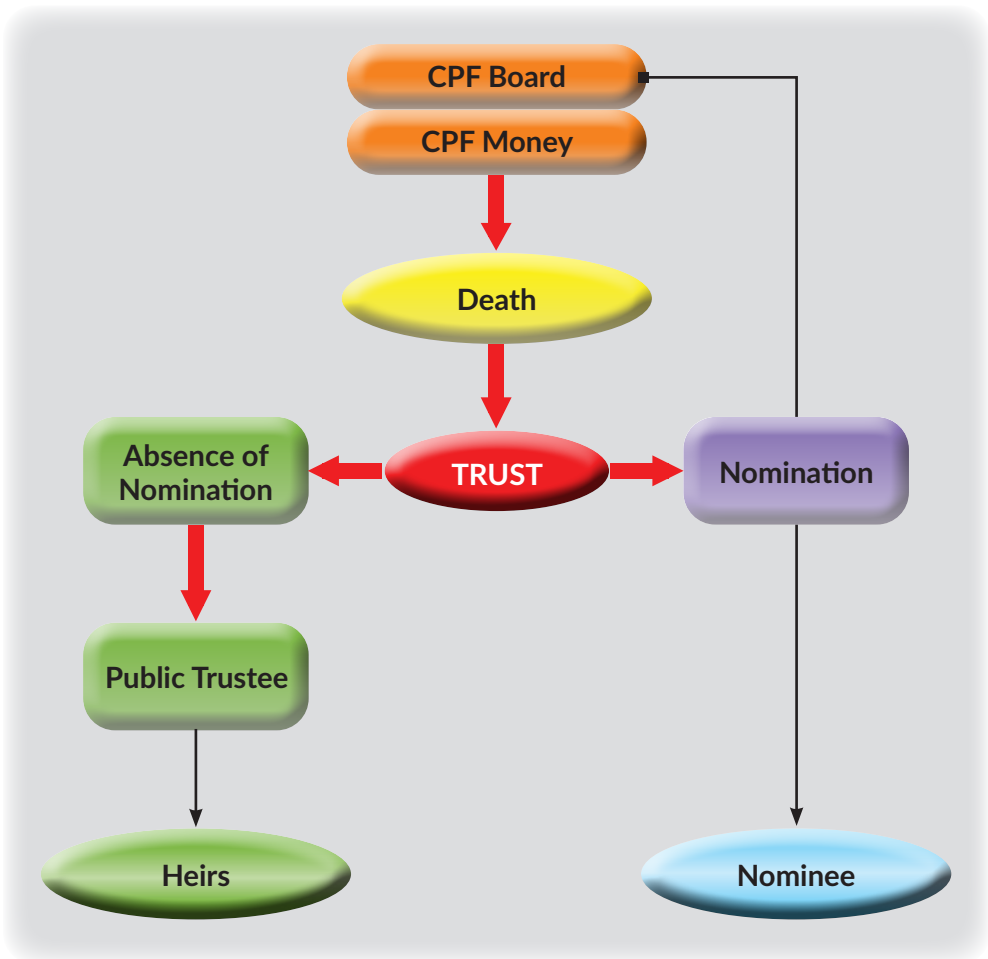
The establishment of the Minimum Sum Scheme indicates the increasing costs of living. In 2014, members of the public raised questions about zakat on CPF funds. During that period, the Fatwa Committee deliberated on individuals' retirement necessities. As living expenses and costs continue to rise, individuals require more substantial CPF savings to sustain themselves throughout their retirement years. Moreover, the *fuqahā'* engaged in discussions revolving around the concept of complete ownership (*al-milk al-tām*), which stands as one of the prerequisites for zakat to become obligatory on an asset. If these conditions are not met, zakat is not obligatory upon the asset. After scrutinising the characteristics of CPF savings, the Fatwa Committee determined that CPF savings do not fulfil the conditions of complete ownership (*al-milk al-tām*).

Given these developments, the Fatwa Committee decided that utilising the compounded arrears calculation method for zakat payment is no longer viable. This is due to the community's pressing needs for the monies after retirement age, resulting in most contributors not receiving their CPF monies in bulk after retirement age. Therefore, if an individual receives an amount of CPF monies after deducting the minimum sum, then he is only obliged to pay zakat on the amount, a year after he receives it, with the condition that the amount has reached the *nisab*. Nevertheless, there is no prohibition for the individual from choosing to pay his zakat as soon as he receives the money in

lump sum should he choose to do so and if he is capable of doing so.²⁹⁷ If an individual has passed away but still has CPF funds and has not paid zakat, family members may choose to pay the outstanding zakat.

CPF Nomination

The concept of nomination refers to an instrument that can be utilised during the owner’s lifetime and only takes effect after death. The nominee is a legitimate recipient, and the funds allocated through the nomination method are not considered part of the account holder or contributor’s estate after death.²⁹⁸ When a contributor makes a nomination, he is creating a type of trust for himself. The nominee then holds the trust. Therefore, the contributor has the right to change the nomination at any time based on Section 26 of the CPF Act, which stipulates that the CPF Board has the power to distribute and dispose of certain shares after death.²⁹⁹



Based on the process outlined above, the usage and distribution of CPF funds are different from the assets that an individual fully owns during his lifetime and after death. For example, contributors can determine the amount they wish to give their nominees after death based on Section 25 of the CPF Act.³⁰⁰ The main purpose of nomination is to provide assurance to the nominee that they will receive the contributor's CPF savings. As a result, no other party can claim the funds channelled through nomination, even to pay off debts or if the contributor becomes bankrupt.

The Development of Inheritance Rights for CPF Nomination Funds and Muis-AMLA's Position

The CPF nomination contract needs to be understood through its status in civil law and from the perspective of Muslim law. When a CPF contributor passes away after making a nomination, the nominee will inherit the funds according to Section 25 of the CPF Act. If no nomination has been made, the CPF funds will become part of the deceased's estate and be administered by the Public Trustee. For Muslim contributors, their estate will be distributed according to *farā'id*.

In 1977, the President of Muis, Haji Buang Siraj, cautioned the Muslim community who were nominated to receive funds under this scheme. He emphasised that nominees should not exploit the opportunity to disadvantage other rightful beneficiaries entitled to inherit the funds. He clarified that the nominee's role was akin to that of an administrator of the deceased's estate, entrusted with the responsibility of distributing the funds among all individuals entitled to a share according to *farā'id*.

This issue was raised in 1977 following a case of inheritance through nomination. In this instance, a parent nominated to receive his son's CPF savings withheld the funds instead of distributing the rightful portion to his daughter-in-law and two grandchildren. In such cases, Haji Buang encouraged Muslims to approach Muis and the Syariah Court for help.³⁰¹

Following the confusion over CPF nominations, Muis sought a legal resolution, calling for the CPF Board to treat CPF monies as inheritable assets (*harta pusaka*), and hence, subjected to *farā'id* under AMLA. However, CPF Board rejected Muis' suggestion, after which Muis raised the issue to Parliament in 1978 and urged them to study the matter.³⁰² A special Parliamentary committee was subsequently convened to formulate an amendment to the law.

The proposal put forward at that time regarding CPF funds, that have gone through the nomination process was that 50% were legally placed for distribution according to *farā'id*, while the remaining percent was given to the nominee. If the deceased dies without making a nomination, the entire CPF savings would be treated as part of the deceased's estate and thus, would be entirely subjected to *farā'id*.³⁰³

However, some organisations and members of the Singaporean community did not agree with the proposed amendment. After further discussion and examination, the proposal was eventually dropped as it was not widely accepted, especially among people who had disagreements with family members.³⁰⁴ Until 1987, the Muslim community in Singapore was still uncertain whether Islamic law allowed an individual to nominate and whether such a nomination would violate *farā'id*. Therefore, the guidance given at that time was for a Muslim to abstain from making a nomination. In 1987, data showed that almost 40% of Muslim did not make a nomination.³⁰⁵ Some Muslims sought to appoint a nominee to prevent their family from inheriting the money because of poor relations between them or conversely, sought to nominate their child born out of wedlock or an adopted child.³⁰⁶

In 1987, after the data on the number of Muslims making nominations was made public, some members of the public asked Muis to clarify their stand on nominations.³⁰⁷ Until 2010, Muis held the position that a nominee functioned solely as a representative or trustee responsible for distributing the wealth in accordance with *farā'id*. The nominee was not entitled to the funds unless they were among the heirs defined by *farā'id*. However, this position cut out the needs of those who do not receive an inheritance through *farā'id*, such as children born out of wedlock and adopted children. If nominated, they would not inherit the funds unless all other heirs with a claim to the money reached an agreement. This results in a conflict between the fatwa position and the established policy. Under the CPF Act, CPF money will be awarded to the nominee when a nomination is made. Additionally, CPF funds were not covered by AMLA or wills. This implies that under the law, distributing CPF funds to the nominee is legally permissible, despite the fatwa's stance at that time, considering a nominee as a trustee obliged to follow *farā'id* for fund distribution. For that reason, Muis advised Muslim account holders not to make nominations if they wished to ensure that their money should be distributed according to *farā'id*.³⁰⁸ This differs from the CPF's approach, which encourages nominations, especially on behalf of immediate family members.³⁰⁹

In 2010, the Fatwa Committee once again reviewed the issue of CPF nomination. It considered the series of changes to the scheme, which generally limited the freedom of contributors to spend their savings except through specific transactions. In the same year, the Fatwa Committee decided that CPF nomination is like *hibah*, a gift different from other assets. CPF money is not liquid income and thus can be seen as a gift made in the account holder's lifetime, which the beneficiary is not yet permitted to receive. In light of changing times and the increasing rate of asset ownership among the Muslims in Singapore, there was a growing interest in estate planning.³¹⁰ Hence, this fatwa decision provides the community with an avenue to engage in estate planning for their family members, especially since CPF savings represent a significant portion of inheritable assets.

The historical changes in this CPF nomination issue highlight the important role of Muis as an intermediary between the authorities and the local Muslim community. Since its inception, AMLA has functioned as 'living law' to apply Islamic law in accordance with the cultural and social context of contemporary society.

For example, during the early implementation of AMLA around 1968, scholar M. Siraj found that modifications had been made to inheritance laws to suit local customs and culture. This phenomenon occurred in regions that practised customary law (*adat perpatih*), such as Negeri Sembilan and Malacca, as described in the first chapter of this book. Therefore, all ancestral property would be given to female family members according to *adat perpatih*. The consideration of these customs at that time also involved inherited property. *Farā'id* was applied to the property acquired by an individual during their lifetime through work and other efforts.

Since the establishment of Muis' Fatwa Committee in 1968, they have received various inquiries on CPF savings, such as the obligation to pay zakat and nomination issues. The following is the fatwa decision on the CPF nomination issued in 1971:

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Fatwa on CPF Nomination (1971)

CENTRAL PROVIDENT FUND (CPF)

Question:

In my husband's CPF application form, my name was stated as the nominee. Would my husband's CPF become my property or part of his estate?

Answer:

Based on Shariah law, the CPF money is included in the *tarikah* (inheritance) of the deceased that must be divided amongst the heirs according to *farā'id*. The nominee is only a trustee. He will not receive anything unless he is one of the heirs, whereby he would be given part of the inheritance according to *farā'id*.

Fatwa Decision 30/10/1971

The fatwa position elaborated on the issue regarding the status of the nominee, such as the spouse of the contributor and their role as trustee. However, this fatwa did not touch on the issue of the status of the CPF savings itself, as the focus back then was to clarify on the status of the nominee. The fatwa decision also highlighted the view that CPF savings are considered part of the contributor's estate and should be distributed according to *farā'id*. Therefore, a CPF nominee is responsible for distributing the funds to heirs.

The 1971 fatwa appears to contradict the provisions outlined in civil law, specifically the CPF Act. As per the Act, CPF savings are distinct from other forms of savings; if a contributor passes away before withdrawing these savings, the savings are not considered part of the contributor's estate. This discrepancy in defining the status of CPF savings between these legal perspectives creates challenges in implementing the fatwa decision in everyday scenarios. Consequently, when heirs bring up this matter in court, it often leads to disputes due to these conflicting interpretations.

An example is the case of *Saniah bte Ali v Abdullah bin Ali [1990]*³¹¹ which was heard in the High Court. The contributor was the late Salleh bin Ali. Saniah was his stepsister, while Abdullah was his biological brother. Two portions of CPF savings were the subject of dispute in this case: the first portion

amounted to \$8,038.76, while the second portion amounted to \$60,607.71. Abdullah received the first portion, while Saniah received the second portion. The plaintiff (Saniah) requested the court to clarify the status of the funds received by the defendant (Abdullah) and whether it is considered part of the deceased's estate. The court found that the portion of \$60,607.71 was not part of the deceased's estate and, therefore, not subject to section 112(1) of AMLA. Therefore, the plaintiff was entitled to all the funds under the CPF Act.

The court reasoned that CPF savings are distinct from the deceased's estate and differ from other forms of savings. Hence, CPF savings do not need to be distributed according to *farā'id* for Muslims. Taking into account feedback and recent changes in CPF policy, the Fatwa Committee revisited the matter of CPF nomination in 2010. The following is the fatwa decision resulting from the discussion:

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Fatwa On CPF Nomination

- 1 The Shariah has determined that all property an individual owns forms part of his *tarikah* (estate). *Tarikah* is subject to several religious obligations, such as the payment of the deceased's outstanding debts (e.g., zakat or hajj debts) and/or disbursement of the deceased's estate before the remainder is distributed according to *farā'id*.
- 2 Regarding CPF monies owned by the deceased CPF contributor, the Fatwa Committee decided in 1971 that it is considered part of his estate and has to be distributed according to *farā'id*. The Fatwa Committee also discussed the status of a CPF nominee. It held that a nominee is only a trustee and responsible for the distribution of the estate to the heirs according to the *farā'id*.
- 3 Based on feedbacks received, there are many cases where Muslim families face difficulties because the previous fatwa did not recognise the nominations made for dependants and family members who are in greater financial need.
- 4 At the same time, there have been many changes in the administration of CPF monies since 1971, especially in terms of the disbursement to the contributor during his lifetime. One latest and significant change is the gradual decrease of the withdrawal amount that the contributor will receive upon reaching the draw-down age. Instead, contributors will receive a monthly sum, which, in most probability, is only sufficient for their personal needs.

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- 5 Based on the findings above, the Fatwa Committee deduces the following:
- i. Every fatwa issued to the public should not limit the available options. A fatwa must take into consideration the different circumstances and conditions faced by each individual. Hence, a fatwa must provide options for the public to determine their individual needs and welfare (*maṣlahah*).
 - ii. The Fatwa Committee maintains that CPF monies form part of one's *tarikah* (estate). Accordingly, for those who did not make a nomination, it is to be distributed according to *farā'id*.
 - iii. From the religious perspective, the nomination system is a contemporary form of financial planning instrument not found in the works and writings of classical scholars. However, there are several similarities between the nomination system and *hibah*.³¹²
 - iv. A comparison between the nomination system and *hibah* led to the following findings:

CPF Nomination	Hibah
Nomination is limited only to personal CPF savings.	<i>Hibah</i> is only valid with one's personal property.
CPF monies remain under the ownership of the account holder so long as they have not been disbursed to the nominee.	Money intended as <i>hibah</i> (gift) remains under the ownership of the giver until the giftee receives it (<i>qabḍ</i> takes place). ³¹³
CPF contributor reserves the right to revoke nominations provided there has been no payout (<i>qabḍ</i>) for that nomination.	An individual who makes a <i>hibah</i> reserves the right to revoke/change, provided there has been no disbursement (<i>qabḍ</i>) of the gift.
CPF contributor may name his <i>farā'id</i> beneficiary as a nominee.	<i>Hibah</i> may be made to <i>farā'id</i> beneficiaries.
There is no limit to nomination.	There is no limit to <i>hibah</i> .
The nominee will only receive CPF monies after the account holder's death.	<i>Hibah</i> may be received (the execution of <i>qabḍ</i>) after the giver's demise, subject to conditions.

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- 6 However, the Fatwa Committee had also found that *hibah* and the CPF nomination system differ in these two aspects:

CPF Nomination	Hibah
Nomination can be made for CPF monies which are yet to be owned by the contributor.	An individual may only make a <i>hibah</i> of property already under his ownership.
CPF nomination system has made it a condition that disbursement (<i>qabḍ</i>) may only take place after the contributor's demise without the need for the consent of heirs.	Some scholars have made it a condition that when no disbursement of a <i>hibah</i> (<i>qabḍ</i>) takes place before the death of the giver, the <i>hibah</i> may only be executed with the consent of the heirs of the giver.

- 7 The Fatwa Committee is of the opinion that the condition in *hibah*, which requires the property intended as a gift to be under the ownership of the giver at the time the gift was made, is intended to avoid any ambiguity which may lead to deceit (*gharar*) or abuse (*zulm*) of the recipient. Whereas regarding CPF savings, despite the gradual increase in the contributor's savings, elements of deceit or abuse do not exist as the contributor's intention and purpose were already made clear at the start. This is in addition to the protection of the monies provided by the CPF Act.
- 8 The Fatwa Committee is also of the opinion that the CPF nomination system may be considered as *hibah* as it is made by the contributor during his lifetime. However, *qabḍ* has not occurred due to the restrictions imposed by the CPF Act. This differs from the classical *hibah*, which requires the heirs' consent if the giver passes away before the execution of the *qabḍ*. Therefore, when a contributor makes a formal nomination, it is proof of his intention and promise to give his money to the nominee.

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Allah ﷻ mentions in the Quran:

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا أَوْفُوا بِالْعُقُودِ﴾

Which means: "O you who believe! Fulfil [all] contracts."
(Surah al- Mā'idah: Verse 1)

Allah ﷻ also mentions:

﴿وَأَوْفُوا بِالْعَهْدِ إِنَّ الْعَهْدَ كَانَ مَسْئُولًا﴾

Which means: "And fulfil the covenant; verily, the covenant shall be asked about." (Surah al- al-Isrā': 34)

- 9 The original legal status of transactions is "permissible" based on the following legal maxim:

الأصل في العقود والشروط الصَّحَّةُ إلا ما أبطله الشارع أو نهى عنه

Meaning: "The original [legal status of] contracts and conditions is permissible except what is nullified or prohibited by the Muslim law (Shariah)." ³¹⁴

Thus, the main principle in Islam on matters relating to financial transactions (*mu'āmalāt*) is to recognise needs (*maṣlahah*) and avoid harm (*mafsadah*).

- 10 Based on the reasons above, the Fatwa Committee decrees that:

- i. Each CPF contributor is responsible for evaluating the option most suited to fulfil the needs and protect the welfare of his family in the administration of his CPF savings. The account holder may utilise the nomination instrument, distribute it according to *farā'id*, or exercise both options together. This evaluation and assessment must consider the financial condition of the beneficiaries and who needs the money more.

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- ii. The nomination system is a contemporary form of property distribution not found in the writings and scholarly works of scholars of the past. However, it is permitted as it is considered a new form of *hibah*. It is also able to preserve the spirit of *farā'id* in ensuring the welfare of one's dependants. This is particularly true considering the amendments to the CPF Act when contributors will no longer receive a substantive amount that would enable them to spend on their dependants. At the same time, CPF contributors must be aware that a nomination cannot be made with the intention and purpose of unfairly denying the rights of the other beneficiaries.
- 11 The recipient of CPF funds, whether through inheritance or the nomination system, must ensure that all debts of the deceased, if any, are settled before taking the funds.

Fatwa Decision 3/8/2010

The 2010 fatwa decision stands as the most recent ruling concerning CPF and nomination. It underscores that the CPF nomination system constitutes a novel instrument of fund management, lacking parallels in the works of previous scholars. Yet, upon analysis, the Fatwa Committee found resemblances between the CPF's nomination system and the act of giving *hibah*. As most of the CPF nomination conditions are found in the *hibah* contract. This alignment signifies that the principles fundamental to *hibah* are similarly reflected within the concept of nomination.

In this regard, the form of the contract based on civil law in the concept of nomination has been considered for its compatibility with the Shariah.³¹⁵ However, it is crucial for the public to understand that, despite sharing some resemblances, there exist distinctions between these two concepts. On the whole, the Fatwa Committee has concluded that the nomination contract stands as a distinct and innovative form of contract.

Hibah

Hibah originates from the Arabic word '*wahaba*,' which means benevolence or giving without expecting anything in return. In the book *Lisān al-'Arab*, the definition of *hibah* has been expanded as a gift that is not intended for any return and has no purpose. *Hibah*, from the inheritance perspective, refers to a contract of giving ownership of property to someone else during one's lifetime without seeking anything in exchange.

Nomination as a Contemporary Form of *Hibah*

When discussing issues related to agreements or contracts that come in the form of giving, scholars of the past established that the property owner has the right to use the property (*taṣarruf*) as long as the recipient has not received their share. This opinion stands even if the owner has expressed their desire to give their property so long as the transfer of ownership (*qabḍ*) has not occurred. Scholars of the Hanafi, Shafi'i and Hanbali schools established that the giver of *hibah* has the right to revoke their intention before *qabḍ* occurs.³¹⁶ Scholars of the Maliki school, on the other hand, believe that ownership of the property will be transferred to the recipient through *ijāb* and *qabūl* even if *qabḍ* did not take place.³¹⁷

This situation is similar to the case of a CPF contributor who has the right to revoke the nomination at any time, even if he initially intended to give the CPF funds to the nominee. Hence, in this particular aspect, the concept of giving through nomination bears resemblance to the *hibah* contract. The evolution of *fiqh* revolves around addressing the needs and concerns of society across different eras. The emergence of giving through nomination is a recent matter, presenting today's *fuqahā'* with challenges in finding solutions and establishing its legal standing. While the explicit text of Shariah does not encompass every facet of human life until the end of time, the methodologies of *fiqh* and *uṣūl al-fiqh* serve as guiding principles to derive the law. Al-Zanjānī mentioned:

"The considerations behind a contract lies in its objectives (maqāṣid) and not based on its expression [purely]."

*Marwūsū'ah al-Qawā'id
al-Fiqhiyyah, 7:378.*

... أن الوقائع الجزئية لا نهاية لها، وكذلك أحكام الوقائع لا حصر لها، والأصول الجزئية التي تقتبس منها المعاني والعلل محصورة متناهية، والمتناهي لا يفي بغير المتناهي، فلا بد إذن من طريق آخر يتوصل بها إلى إثبات الأحكام الجزئية، وهي التمسك بالمصالح المستندة إلى أوضاع الشرع ومقاصده...

Which means: *"Indeed, all issues that are specific in nature (juz'ī) are endless. Likewise, the laws of these specific issues (juz'ī) too are endless. Meanwhile, principles which are specific in nature (juz'ī) – from which meanings and causes are derived from – are limited and finite, and something finite cannot possibly fulfil the infinite. Therefore, another way must be sought to decide the laws of specific issues (juz'ī) namely by adhering to something that is general in nature (kullī) such as the principle of public interest (maṣāliḥ)."*³¹⁸

Based on this, most scholars believe that the original ruling for all new transaction contracts is that they are permissible.³¹⁹ Based on a *fiqh* principle: “*The original ruling for a contract is that it is valid unless it is annulled or prohibited by the Muslim law (Shariah).*”³²⁰ This perspective is also echoed in the aforementioned fatwa. Ibn Qayyim emphasised that Shariah assesses the intended meaning (*ma‘ānī*) behind a contract,³²¹ differing from the laws governing worship, which possess limited room for interpretation. Ritual acts of worship are strictly bound by the content within the Shariah text (*nuṣūṣ*).³²²

When discussing the opinions of scholars regarding modern banking transactions (*mu‘āmalāt*), Sheikh Ali Gomaa stated that most modern conventional banking transactions are classified as new types of contracts, and therefore, their rulings are not explicitly stated in the texts (*nuṣūṣ*) and classical *fiqh* books.³²³ He emphasised the necessity for a new *ijtihād* that places paramount importance on addressing the needs and welfare of society. Additionally, he referenced instances from *fiqh* writings illustrating how earlier *fuqahā’* attended to societal needs and deliberated on resolving novel contractual issues that had not been previously addressed.

An example is the discussion within the Hanafi school of thought regarding the sale of *al-Wafā’*. Sheikh Mustafa al-Zarqa mentioned that back then, most members of the Bukhara community were in debt, the Hanafi school identified a new type of contract called *al-Wafā’*. This contract aimed to protect the rights of the creditor while ensuring that the debt would be repaid.³²⁴

The contract of *al-Wafā’* from the perspective of the Hanafi school of law

The transaction of buying and selling that occurs between two parties with a condition that the sold item can be repurchased by the seller at the initial price. At times, the item sold serves as collateral for the buyer’s debt. Scholars hold varied opinions on this transaction due to its resemblance to elements of ribā (usury/interest).

Regarding CPF nomination, it is a new issue which requires new *ijtihād* to understand the rule regarding its implementation. This *ijtihād* must be based on the Quran and Sunnah while prioritising the needs of society. In this context, the Fatwa Committee scrutinises the specifics of the nomination procedure and juxtaposes it with other *mu‘āmalāt* contracts found in chapters related to giving (*al-tabarru‘āt*) within the realm of *mu‘āmalāt*. Such an examination ensures that the new contract aligns with Shariah principles, preventing any contradictions. Additionally, the Fatwa Committee seeks to identify the

maqāṣid al-sharī'ah related to this issue, which includes the examination of aspects related to the protection of religion, life, intellect, lineage and property. At the same time, the fatwa decision is not intended to circumvent *farā'id*.

Rather, the decision gives the Singaporean Muslim community an option when distributing CPF funds – whether to distribute the funds according to *farā'id* or through nomination. Nominating CPF funds becomes essential when contributors aim to allocate the funds to needy heirs or those who are not entitled to *farā'id*.

Insurance Nomination

Any issue related to insurance in Singapore, whether conventional or takaful, is subject to the Insurance Act enacted in 2002. Insurance and takaful policies purchased from various insurance companies to cover the cost of living will be considered the policy owner's assets. Examples of insurance available in the market include health, travel and vehicle insurance.

Similar to CPF schemes, account or policyholders will be given the option to nominate their insurance funds. This provision enables individuals without heirs, e.g. converts or those living independently, to allocate their savings to deserving recipients. Common nominees include foster families, non-Muslim family members, acquaintances and various charitable organisations. In this context, insurance nomination offers individuals greater freedom in allocating their assets compared to inheritance, which often carries limitations.

Nomination also allows the policyholders to bequeath some of their insurance funds to family members in need. These family members may face issues such as huge medical expenses and educational expenses, or circumstances where they are unmarried or have dependents who are not entitled to *farā'id*, such as grandchildren, stepsiblings or stepparents.

Insurance policyholders are not mandated to make a nomination. In the absence of a nomination, the heirs may still contact the insurance company to claim and manage the funds. The heirs would only be required to present the Grant of Letters of Administration or Grant of Probate to allow the funds to be withdrawn and distributed to the beneficiaries. This contrasts with the process of claiming CPF funds, whereby heirs must furnish the Certificate of Inheritance from the Syariah Court to enable the Public Trustee to channel

the funds to the recipient. Therefore, nominations can facilitate family affairs as the insurance funds can be channelled directly to the nominee without the requirement of Grant of Letters of Administration, Grant of Probate, or Certificate of Inheritance.

Sections 49L and 49M1 of the Insurance Act, amended in 2009, outline two types of nominations applicable to policies with death benefits. Here are the specifics:

- a) **Revocable nomination:** The policyholder retains the right to modify or revoke the nomination. While the policyholder receives all current life benefits, the nominee is entitled solely to the death benefits.
- b) **Irrevocable nomination:** The policyholder has relinquished ownership of all returns from the policy. All returns are directed to the nominee. Any alterations or revocations to this nomination mandate the nominee's consent, as stipulated in the Insurance Act.

These two approaches differ notably. For instance, a revocable nomination might appear more limiting compared to an irrevocable one. In today's dynamic economy, an individual's assets often traverse different phases and experience numerous changes. Consequently, it becomes challenging for someone to completely surrender ownership of assets while they are still alive.

Similar to the CPF fund nomination, it is imperative to determine the status of the insurance nomination – whether it is part of the estate or otherwise. Until 2007, the Fatwa Committee issued three fatwa rulings related to insurance nomination. An analysis of these fatwas showed that the Fatwa Committee's understanding of the concept of nomination had evolved. The fatwa rulings issued in 1971 and 1998 did not differentiate between types of nomination, whereas the 2007 fatwa ruling considered only irrevocable nomination as a valid gift (*hibah*). However, the fatwa ruling did not delve into the status of the nominated insurance funds – whether the funds are lawful or not.

Fatwa Decisions on Insurance Nomination

Year	Fatwa Topic	Fatwa Summary
1971	CPF & Insurance Nomination	The nominee acts as a representative to distribute the assets to the heirs. The nominee will not obtain the assets unless they are also deemed as an heir.
1998	Insurance Nomination	Insurance policies are part of the deceased's estate and should be distributed according to <i>farā'id</i> among heirs. The nominee's role remains that of a representative without ownership rights.
2007	<i>Revocable</i> and <i>Irrevocable</i> Nominations	<p>Revocable nominations are deemed invalid, necessitating distribution of insurance funds in accordance with <i>farā'id</i>. Nominees act as representatives.</p> <p>Irrevocable nominations resemble <i>hibah</i> (gift), granting the nominee rights to receive their allocated share.</p>

In 2012, the Fatwa Committee revisited the 2007 fatwa ruling, which had permitted only irrevocable nominations, after receiving feedback from the community. The community expressed challenges with irrevocable nominations because of their restrictive nature. Consequently, the fatwa ruling was revised in 2012, affording policyholders the option to opt for revocable nominations. The Fatwa Committee further asserted that nomination constitutes a contemporary form of *hibah* that is in line with the principles of the Shariah. The details of the fatwa are as follows:

Background

The Fatwa Committee has received some questions from members of the Muslim community on the ruling of making a revocable nomination for their insurance policies. This matter was also reported in *Berita Harian* on 7 April 2011.

This issue arose following the amendments to the Insurance Act in September 2009. This amendment allows insurance policyholders, in general, to make a revocable nomination.³²⁵ A consequential amendment was subsequently made to section 111(1)³²⁶ of the Administration of Muslim Law Act (AMLA). The consequential amendment disallows Muslims from making a revocable nomination except when it is in accordance with Islamic law.

General Explanation

The Fatwa Committee acknowledges that Muslim scholars differ in their opinions on purchasing insurance. Some view it as permissible in Islam based on protecting the welfare of Muslims,³²⁷ while others view it as prohibited due to the elements of *shubhah*³²⁸ and *gharar*,³²⁹ whether in the process of how the fund is accumulated or the method in which it is invested.³³⁰

In its discussion, the Fatwa Committee considers the changes to the economic and demographic aspects that lead someone to plan for his finances in preparation for old age or his family's future needs. With limited investment options for low- and middle-income members of the community, some of them may choose to undertake financial planning in the form of insurance.

The Fatwa Committee opines that each Muslim who intends to participate in any insurance scheme is responsible for choosing a scheme which best fulfils the requirements of the Shariah based on the views of the jurists that he is most convinced with.

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Necessity of a nomination

The Fatwa Committee is of the opinion that a nomination for insurance is an instrument that can fulfil the needs of those who plan for their monies to benefit those in need. On this basis, a fatwa decision was issued by the Fatwa Committee in 2007, which allows insurance nomination for Muslims. However, only irrevocable nominations were allowed in the 2007 fatwa as this form of nomination fulfilled the description and requirement of *hibah*³³¹ as described in Islamic *Fiqh* (jurisprudence) literature.

Based on the Fatwa Committee's observation of the application of irrevocable nomination since the issuance of the 2007 fatwa, the Committee found several limitations within the irrevocable nomination which could pose difficulties to the insurance policyholder. Some of the limitations are:

- Only the spouse or children can be made nominees (beneficiaries) for an irrevocable nomination.
- An irrevocable nomination cannot be revoked or amended even after a divorce (except with the consent of the nominee(s)).
- Any payout from the life benefits of the insurance policy (if any) is payable only to the nominee(s). If the policyholder is involved in an accident, he will not benefit from the insurance payout.
- If the nominee passes on before the insurance policyholder, the nominee's portion of the nomination is considered part of his estate and does not return to the insurance policyholder.

Comparison between CPF nomination and insurance nomination

During the review of the fatwa position on revocable nomination, the Committee studied the fatwa regarding CPF nomination issued in 2010 to analyse the characteristics of both nomination types. Based on this study, the Fatwa Committee found that there are similarities between the two as follows:

- a. The returns from both types of accounts become the right of the nominees upon the demise of the CPF account holder or the insurance policyholder.

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- b. The nomination is invalidated or revoked upon the nominee's demise, and the monies remain within the rights of the CPF account holder or the insurance policyholder.
- c. The CPF account holder or insurance policyholder can amend his nomination without seeking prior consent from any nominee.

The concept of *hibah* and nomination

The Fatwa Committee also finds multiple similarities between *hibah* and nomination. For instance, the *wāhib* or gifter has the right to revoke or change his *hibah* provided no *qabḍ*³³² has occurred. In the instance of revocable insurance nomination, like CPF nomination, *qabḍ* has not taken place before the death of the policyholder according to the provisions of civil law.

The Fatwa Committee is of the view that such a form of nomination can be regarded as a form of *hibah* as it is completed while the CPF account holder or insurance policyholder is alive. Furthermore, when the insurance policyholder makes an official nomination, it becomes a clear testimony of his commitment to give away his monies to the nominee(s). It is mentioned in the Quran:

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا أَوْفُوا بِالْعُقُودِ﴾

Which means: *Oh, you who believe! fulfil (all) your indentures.* (Surah *al-Mā'idah*: Verse 1)

The Quran also says:

﴿وَأَوْفُوا بِالْعَهْدِ إِنَّ الْعَهْدَ كَانَ مَسْئُولًا﴾

Which means: *And keep the covenant. Lo! of the covenant it will be asked.* (Surah *al-Isrā'*: Verse 34)

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Decision of the Fatwa Committee

The Fatwa Committee decided that a revocable insurance nomination is a contemporary form of *hibah*. It is a new form of financial planning that aligns with Islamic principles. Although it is not found in classical writing, it can be accepted. This is based on the legal maxim that allows novel *ijtihad* for financial transactions, especially in contemporary issues not previously discussed in detail in past Islamic literature. Ibn Qayyim Al-Jawzi mentions this:

الأَصْلُ فِي الْعُقُودِ وَالشُّرُوطِ الصَّحِيحَةِ إِلَّا مَا أَبْطَلَهُ الشَّارِعُ أَوْ نَهَى عَنْهُ

*"The original status of a contract is permissible unless it is declared prohibited by the Shariah."*³³³

The Fatwa Committee is of the opinion that a revocable insurance nomination is the same as a CPF nomination. Both are accepted as valid forms of *hibah*. The Fatwa Committee further advises the Muslim community against making a nomination to cause injustice towards beneficiaries. At the same time, every Muslim is responsible for ensuring that all the debts of a deceased Muslim are settled before using any of his monies that he leaves behind, whether by way of *farā'id*, will or nomination.

Fatwa Decision 2/2/2012

Following the abovementioned fatwa ruling, amendments were made to the relevant AMLA sections in 2018 allowing Muslims the option of selecting revocable nominations.³³⁴ While insurance and CPF nomination methods share the common aim of allocating funds to nominees after death and grant policyholders the liberty to continue or annul nominations, they differ in fund origins and creditor claims on the deceased's estate. CPF funds are personal savings with additional benefits from the government, whereas insurance funds result from monthly premium contributions by policyholders and insurance companies. Legal distinctions exist as well; for instance, creditors retain the ability to pursue debt repayment using insurance funds even after the nomination process. In contrast, creditors cannot access nominated CPF funds for debt repayment purposes.

Nonetheless, it should be noted that in Islam, debt repayment is mandatory upon death. Therefore, the condition to pay off the deceased's debts take precedence before the nominee recovers their share in line with the objective of Muslim law. Such was the advice of the Fatwa Committee to the community through the CPF Nomination fatwa in 2010:

“The recipient of CPF monies – whether by way of farā'id distribution or nomination – is obliged to ensure that all of the deceased debts are settled before using the money for personal use.”

The fatwa also addresses the matter of revoking *hibah*. Within the framework of nominating heirs, CPF funds, and revocable nominations, account holders retain the right to rescind their nominations during their lifetime. This is in line with the concept of a *hibah* contract, in which scholars of the Shafi'i, Hanafi and Hanbali schools have established that the giver of the *hibah* (gift) has the right to revoke their intention before acceptance (*qabd*).³³⁵

Dependants' Protection Scheme (DPS)

The Dependants' Protection Scheme (DPS) is a term life insurance policy that aims to assist its members who are under the protection of the insurance scheme, along with their dependants, for a certain period after death. This insurance scheme also protects members who are terminally ill or permanently disabled before reaching the age of 65.³³⁶ Under the rules of DPS, dependants are defined as individuals who depend on the deceased for their livelihood, such as immediate family members.

Members up to 60 years old will be covered for a maximum sum assured of \$70,000. Members who pass away between ages 60 and 64 will receive \$55,000.³³⁷ If the protected member has made a nomination through DPS with the insurer's knowledge, the DPS funds will be disbursed to the nominee based on their nomination. If the policyholder has not made a nomination, the DPS funds will be disbursed to the claimant and must be distributed to the heirs according to *farā'id*. Claims payments for terminally ill or disabled members will be disbursed directly to them.³³⁸ Nominations can also be made for specific individuals or organisations.³³⁹

DPS is categorised as a revocable nomination. If the policyholder does not make a nomination, the claim proceeds will be disbursed either to the estate administrator or the deceased's family members. The estate must then be distributed according to the Certificate of Inheritance.³⁴⁰ If the policyholder has previously made a nomination, the DPS funds will still be regarded as part of the deceased's estate. According to the 1997 fatwa ruling, these funds must be distributed among beneficiaries following the guidelines of *farā'id*.³⁴¹ This concurs with the broader 2007 fatwa ruling on insurance nominations.

In 2023, the Fatwa Committee revisited this matter to reconcile several interconnected fatwa decisions. During this review, a point of contention arose: the ambiguity surrounding the nature of the DPS funds—whether they are a product of the deceased's lifetime efforts or otherwise. For example, the deceased's last salary is the result of their efforts. From there, the funds become part of their estate. The matter was discussed in the 2009 fatwa decision related to death gratuity, in which the opinion of Ibn Hajar al-Haytamī was cited.

Death Gratuity'

The monetary compensation generated when a person dies while in service with their employer. The compensation is later given to family members as financial assistance.

According to al-Haytamī, everything a person endeavours during their lifetime becomes part of their estate.³⁴² According to this perspective, any assets or benefits received after death are categorised as part of the estate if they are a consequence of the deceased individual's actions while alive.

Given this viewpoint, a review of the fatwa ruling on DPS is warranted. One of the primary goals of DPS is to offer financial aid to the immediate family members of the deceased member. While the 1997 fatwa ruling stipulated that DPS funds received by family members should be distributed in accordance with *farā'id*, certain developments necessitate consideration.

In addition, a group insurance scheme possesses a similar objective to DPS, which is to provide financial protection for surviving family members. The Fatwa Committee in 2014 discussed group insurance schemes (for instance, the case of the estate of "H bin N"). The Fatwa Committee established that if the policyholder has made a nomination, the nominee is entitled to receive the allocated funds as it is considered a hibah. If the policyholder does not nominate, it is considered part of the deceased's estate.

Different kinds of group insurance schemes exist in the market, with some specifying the employee as the policy beneficiary, while others remain unspecified. According to Islamic law, group insurance is like *ijtimā'ī* insurance. The employer has obtained the policy on a cooperative basis (*al-takāful al-ijtimā'ī*) to safeguard employees' dependent on their employment.

Here are the specifics of the 2014 fatwa decision:

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Group Insurance

1. If a group insurance policy designates an employee as the recipient (beneficiary) of the policy proceeds, then the proceeds will be considered part of the deceased's estate and distributed through *farā'id*.
2. However, if a group insurance policy does not designate the employee as the recipient (beneficiary) of the policy proceeds, and all insurance proceeds will be distributed to the employee's closest family members (named dependants), then the proceeds of the policy are not subject to *farā'id* distribution as it is not part of the deceased's estate.

Fatwa Decision 26/8/2014

The 2014 fatwa ruling is a continuation of the 1988 fatwa ruling on group insurance. The 1988 ruling did not provide a definitive ruling on the legal status of group insurance. The fatwa stated: "...since the Group Insurance Scheme cannot be determined whether it is included in this cooperative insurance or not, the Fatwa Committee is of the opinion that it is up to each individual to choose which opinion is necessary for him."

These advancements underscore the necessity of such schemes, especially for communities residing in cosmopolitan cities like Singapore. It becomes an individual's endeavour to ensure the financial security of their family members, particularly in the immediate aftermath of their demise. These protective measures uphold the welfare of immediate family members in alignment with Shariah principles and objectives.

For example, Allah’s command in Surah *al-Nisā’*, verse 9, which means: “Let the guardians be as concerned (for the orphans) as they would if they were to (die and) leave (their own) helpless children behind. So let them be mindful of Allah and speak equitably.” Similarly, the Prophet ﷺ urges caution when making wills to prevent descendants from facing poverty and hardship. (Hadith narrated by Al-Bukhari, 2742; Muslim, 1628a)

The matters deliberated upon here were thoroughly assessed by the Fatwa Committee during the re-evaluation of the fatwa stance on the DPS scheme. In 2023, the Committee decided that the DPS funds received by the nominee constitute their unequivocal entitlement. Consequently, if a nomination has been made, these funds will not form part of the estate, and there will be no requirement to distribute them among the heirs through *farā’id*. However, in the absence of a nomination, the DPS funds will be included in the deceased’s estate. Here are the specifics of the 2023 fatwa ruling:

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Nomination for the Dependants’ Protection Scheme (DPS):

INTRODUCTION

1. The Fatwa Committee received a question from the Office of the Mufti (OOM) on 20 July 2023 regarding nomination in the Dependants’ Protection Scheme (DPS), whether it is subject to the principles of *farā’id* and needs to be distributed to the estate according to the principles.
2. This question is also related to the fatwa decision on the DPS scheme issued in 1997. The Fatwa Committee at the time decided that the assured sum in the DPS should be distributed to the heirs according to the rules of *farā’id* (whether it had been nominated or not) because the assured sum is considered part of the policyholder’s estate after their death.³⁴³
3. However, there is a need to review the 1997 fatwa decision as fatwas related to nominations (2010) and insurance (2012) have since been reviewed, where nomination is considered as a new form of giving recognised in Islamic law. This review is necessary also to ensure that the fatwa can be properly implemented to secure human welfare and ensure its alignment with the objectives of the DPS scheme.

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DPS NOMINATION SCHEME

4. The DPS is a term life insurance scheme owned by many Singaporean workers. It aims to alleviate the financial burden that family members may face at an early stage if the policyholder (i) passes away, (ii) suffers from a terminal illness, or (iii) loses all physical abilities permanently (Permanent Disability) before age 65.
5. The policyholder has the right to nominate the benefits from this scheme to a nominee, whether the nominee is (i) an individual, whether they are an heir or not, or (ii) a legal entity.³⁴⁴

LEGAL CONSIDERATIONS

a) Discussion of the DPS nomination contract

6. The nomination contract for the DPS scheme is a new kind of contract not found in the issues of past jurists in the *fiqh* tradition (*turāth*). According to the general *fiqh* principle, all new contracts are valid if they have not been explicitly prohibited by the Shariah.

لأصل في العقود والشروط: الجواز والصحة ولا يجرم منها ويبطل إلا ما دل الشرع على تحريمه وإبطاله

Meaning: "The original ruling for a contract and its conditions is permissibility and validity, it is not prohibited and invalidated except for what Shariah indicates as prohibited and invalidated."³⁴⁵

7. The DPS nomination contract falls also under the category of *'aqd al-tabarru'āt* (contract without any exchange in return). This is because nomination is a form of giving by the policyholder to the nominee without any payment/exchange of assets between the two parties. Therefore, the contract remains valid, even if the nominee only receives the compensation after the policyholder's death. It is similar to a will contract, when the distribution of money only occurs after the testator's death.³⁴⁶ The policyholder is free to determine (*ḥaq al-taṣarruf*), during his/her lifetime, who will receive the DPS assured sum.

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b) Distribution of DPS Assured Sum

8. In addition to considering the validity of the nomination contract, two aspects require further consideration, namely: (i) the issue of *al-qabḍ* and (ii) the likelihood of the nominee not receiving the DPS assured sum.

First: The issue of *al-Qabḍ*

9. Although the nominee does not receive the DPS assured sum (*al-qabḍ*)³⁴⁷ before the policyholder's death, this does not necessarily invalidate the contract.
10. This is because the general principle (*al-aṣl*) in contracts is that *al-qabḍ* is not a prerequisite unless specifically required. This is also the more accurate view in the Shafi'i school as written by Imam al-Nawawi in his book *Rawḍah al-Ṭālibīn*.³⁴⁸ This is also the view of Ibn Rusd Al-Hafid in *Bidāyah al-Mujtahid wa Nihāyah al-Muqtaṣid*.³⁴⁹

Second: the likelihood of the nominee not receiving the DPS assured sum

11. The DPS assured sum will be distributed to the nominee if only the policyholder passes away before the age of 65 and the sum has not already been paid to the policyholder. Therefore, there is a possibility that the nominee may not receive anything.
12. Nevertheless, from an Islamic viewpoint, these terms do not affect the contract's validity as the policyholder has willingly consented to all the terms and conditions outlined in the DPS agreement. The Qur'an underscores the importance of honouring agreements made by individuals. Allah ﷻ said:

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا أَوْفُوا بِالْعُقُودِ﴾

Meaning: "O you who have believed, fulfil [all] contracts."
(Surah al-Mā'idah, verse 1)

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13. The Prophet ﷺ also explained the importance for every Muslim to fulfil all agreements:

وَالْمُسْلِمُونَ عَلَى شُرُوطِهِمْ إِلَّا شَرْطًا حَرَّمَ حَلَالًا أَوْ أَحَلَّ حَرَامًا

Meaning: "And the Muslims are bound by their conditions, except for a condition that forbids what is permissible or permits what is forbidden."³⁵⁰

14. The terms and conditions contained in the DPS are also included in the general *fiqh* principle:

الأصل في الشروط اعتبارها

Meaning: "The original ruling for conditions is to recognise them."³⁵¹

15. The Fatwa Committee is of the view that the two terms of the DPS mentioned above do not affect the validity of the nomination contract. Both matters do not conflict and negate the original purpose of the DPS scheme contract.

FATWA COMMITTEE DECISION

16. Based on the considerations above, the Fatwa Committee has decided:

- i) The assured sum in DPS received by the nominee is the absolute right of the nominee. If the policyholder has made a nomination, the money does not become part of the deceased's estate and, therefore, is not subject to distribution according to *farā'id*.
- ii) As for the assured sum in DPS that is not nominated, it becomes part of the deceased's estate and can only be distributed according to *farā'id*.

17. The Fatwa Committee advises individuals to meticulously plan for their estate, especially when making nominations via DPS. They should avoid causing injustice or harm to other heirs, while, at the same time, considering the needs of dependants or others who may be in greater need. This is based on the Prophet's ﷺ advice in his hadith:

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...إِنَّكَ أَنْ تَدَعَ وَرَثَتَكَ أَغْنِيَاءَ خَيْرٌ مِنْ أَنْ تَدَعَهُمْ عَالَةً يَتَكَفَّفُونَ النَّاسَ...

Meaning: "...Indeed, for you to leave your heirs well-off is better than to leave them dependent on others..."³⁵²

18. May Allah ﷻ grant us wisdom and prudence in planning and managing our assets during our lifetime.

Fatwa Decision 21/9/2023

Special Needs Trust Company (SNTC)

The Special Needs Trust Company (SNTC) plays a role in administering trusts for the disabled, including those with dementia, autism, Down Syndrome, and other mental disabilities. Through the SNTC Trust Fund, funds designated by their guardians (whether via wills, insurance, or CPF nomination) are safeguarded over the long term. The government guarantees the principal value of the SNTC Trust Fund as the fund is managed by the Public Trustee.³⁵³

In this regard, the Fatwa Committee received a question regarding the legality of participating in the SNTC Trust Fund, the status of the accumulated funds, and whether or not they will be considered part of a Muslim's estate. The details are as follows:

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Hibah SNTC

The Fatwa Committee received a question from the Disability Office, Ministry of Social and Family Development (MSF), regarding the trust managed by SNTC. The question asked was: What is the status of this trust fund from the Shariah perspective?

Background of Special Needs Trust Company (SNTC)

The Ministry of Social and Family Development (MSF) and the National Council of Social Service (NCSS) formed the Special Needs Trust Company (SNTC) in the period of 2008 to 2009. It is registered as a company limited by guarantee with Charity and IPC status. SNTC manages the trust fund set up by parents or caregivers of Persons with Special Needs (PSN).³⁵⁴ This trust fund includes a care plan and a savings component and is only exercised when the parents or caregivers pass away or are incapacitated. When this happens, SNTC administers the beneficiary's expenses based on the plan drawn up in the trust deed.³⁵⁵

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The needs of persons with disabilities

SNTC Trust was established to fulfil the needs of Singaporeans with special needs. According to an official estimate in 2010, there were 97,200 persons with special needs in Singapore or about 3% of the population.³⁵⁶

Persons with special needs require specific support. Statistics have shown that 63% of them cannot work outside of the special centres that are set up to employ persons with disabilities and, hence, are not capable of being financially independent. Findings have also shown that the life expectancy for people with disabilities is generally like others. Therefore, they would incur higher expenses for their intensive caregiving and financial needs. The government has provided various assistance schemes for those with disabilities. However, many parents wish to ensure that their children will continue to be cared for and have sufficient savings, even after their passing.

Comparison of instruments for the transfer of wealth and the SNTC trust fund

As the SNTC trust fund is activated upon the parents' demise, this has led to questions as to whether the fund is part of the parents' estate and whether there are financial instruments like the fund in classical *fiqh*. As such, there is a need to study and compare the SNTC trust fund contract and other wealth transfer instruments in Islamic law. The conclusions of the comparison are as follows:

- The SNTC Trust does not fulfil the conditions of the will because the transfer of wealth through SNTC is not limited to one-third of the entire estate, and the beneficiary can be an inheritor. This differs from the rules of leaving a will in Islam, whereby the beneficiary cannot be among those who will inherit the estate.
- The SNTC Trust is not the same as a special *wakaf* as it is not perpetual.
- The SNTC Trust is also different from that of a *nuzriah* as a *nuzriah* is an instrument which requires *ṣiġhah* or special pronouncement, which is not found in the SNTC trust.³⁵⁷

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- While there are elements of *hibah* which can be found in the trust, the trust is not the same as *hibah* as it does not fulfil the conditions of *hibah*. The reason is because the transfer of property ownership does not happen completely during the giver's lifetime. The trust also has elements of *hibah al-ruqbā* because the giver has the option to take back the property if the beneficiary predeceases the giver. However, the trust is also not the same as *hibah al-ruqbā* because there is a third party that functions as a trustee – the SNTC – before the *qabḍ* takes place fully. It is on these grounds that the Fatwa Committee considers it a Specific Hibah Trust, and it is a new instrument of gifting.³⁵⁸

Decision of the Fatwa Committee

Based on the above considerations, the Fatwa Committee has decided that pledging wealth to the SNTC Trust by the parents or caregivers of a person with a disability is permissible. This trust is an instrument of wealth transfer that is different from the instruments contained in the classical *fiqh* but is in line with the objectives of shariah (*maqāṣid al-Sharī'ah*). It is, hence, a **special trust hibah (hibah amanah khas)** and does not have to comply with the rules of *farā'id*.

As stated in the fatwa ruling on the issue of CPF nomination and insurance nomination,³⁵⁹ the approach to create a new contract (*akad*) can be taken as long as it fulfils two main conditions:

- I. It does not conflict with any explicit Islamic rulings, as per a fundamental principle articulated by Ibn Qayyim al-Jawziyyah concerning *ijtihād* in matters of *mu'āmalāt* (transactions). He stated:

الأَصْلُ فِي الْعُقُودِ وَالشُّرُوطِ الصِّحَّةُ إِلَّا مَا أَبْطَلَهُ الشَّارِعُ أَوْ نَهَى عَنْهُ

Meaning: "The basic rule for contracts and conditions is their validity, except what the Shariah invalidates or prohibits."³⁶⁰

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II. It is in line with the goals of Islamic law and fulfils the *maqāṣid*. Specifically, it caters to the requirements of individuals with disabilities, ensuring their well-being. It meets the *maqāṣid* of **preservation of religion** because it ensures that the needs of the person with a disability, which includes his religious needs, will be well cared for by a trusted party. It also ensures the **preservation of life** because his daily needs, including physical development and specialised training, are being met. For those who are unable to live independently, long-term care is available through institutions dedicated to assisting persons with disabilities. Furthermore, the **preservation of intellect** is met through special education classes for those with such needs. The classes are often offered through educational programs that begin at a young age, at special schools, and in the form of additional support at mainstream schools.

With the trust fund, **the wealth needed** for the person with a disability will be protected, and it will be managed in a way that ensures that their needs are fulfilled. Prophet Muhammad ﷺ emphasised the importance of caring for and protecting the weak in society in a hadith reported by Imam al-Nasāī:

إِنَّمَا نَصَرَ اللَّهُ هَذِهِ الْأُمَّةَ بِضَعْفِهَا بِدَعْوَتِهِمْ وَصَلَاتِهِمْ وَإِخْلَاصِهِمْ

Which means: “Verily Allah only **supports** this nation due to **the weak among them**, through their supplications and prayers and their sincerity.”

Following the principle of *hibah qabla al-qabḍ*, if the beneficiary passes away before the giver (mother, father, or caregiver), the wealth can be returned to the giver. If the beneficiary of the trust passes away before the fund is exhausted, then the remaining amount is to be included as part of his estate and must be disbursed according to appropriate Islamic guidelines upon death.

The Fatwa Committee strongly asserts that the transfer of wealth in the SNTC trust fund solely serves the purpose of safeguarding the interests and needs of individuals with disabilities.

Fatwa Decision 23/6/2015

Similar to the fatwa ruling on CPF nomination and insurance, the fatwa decision on the SNTC trust fund highlights the concept of a new form of gift (*hibah*) to meet the needs of today's society. The *hibah* contract has been widely used in Islamic countries, such as the *Amanah Hibah* in Malaysia. The SNTC trust fund was thus established to provide opportunities for parents or guardians to plan their finances and distribute a portion of their assets to the disabled individuals under their care, especially after their death.

This 2015 fatwa ruling permits asset transfer through the SNTC trust fund. The Committee recognised the fund's purpose in safeguarding the interests and needs of disabled individuals. Hence, this ruling not only aids in estate planning for Singapore's Muslim community but also addresses the concerns of guardians, particularly parents, in ensuring sustained financial resources for their children with special needs.³⁶¹

This fatwa ruling employed various *fiqh* principles, including *fiqh al-taysir*, which considers the ease and circumstances of the inquirer, within the scope of permissibility. It also integrated the concept of *al-mashaqqah tajlib al-taysir*, where difficulty prompts facilitation, aiming to streamline the affairs of guardians responsible for their disabled children.³⁶² The principle of *al-taysir* also forms a part of the main principle of the religion,³⁶³ wherein the Shariah seeks to simplify and avoid burdening individuals beyond their capacity. This is in line with the words of Allah ﷻ:³⁶⁴

﴿يُرِيدُ اللَّهُ بِكُمُ الْيُسْرَ وَلَا يُرِيدُ بِكُمُ الْعُسْرَ﴾

Which means: “Allah intends for you ease and does not intend for you hardship.” (Surah *al-Baqarah*: 185)

Conclusion

Multiple fatwa rulings outlined in this section focus on estate planning and underscore the significance of organising finances for the family's welfare. While acknowledging the enduring importance of *farā'id*, which will remain until the end of time, these rulings aim to capture the practical nuances and circumstances of contemporary life. In this day and age, an individual's obligations extend beyond ensuring the needs and obligations of immediate family members. It also encompasses the care and well-being of dependents, including other family members and especially daughters, regardless of their inheritance under *farā'id*. The law of *farā'id* holds the essence of trust and responsibility, observed by Muslims from the time the verses on inheritance and wills were revealed. However, the present reality and societal customs have evolved significantly. Thus, Muslims today need to proactively secure the well-being of their nearest family members after their demise through adequate estate planning.

Singapore places significant emphasis on social justice as an entrusted value in line with ongoing modernisation. However, this also introduces new challenges for the Muslim community. Considering Singapore's current landscape and the discussions outlined in this section, it is essential for the community to recognise that Estate distribution should not be confined solely to *farā'id* or wills. Various estate planning instruments such as *hibah* can be considered as alternatives when resolving various issues related to the distribution of Muslim estates in Singapore. In this regard, Muslims in Singapore can now allocate their assets through CPF nomination and insurance nomination without the need to write a will.



6

JOINT TENANCY AND JOINT ACCOUNT

وَالْمُسْلِمُونَ عَلَى شُرُوطِهِمْ

Meaning: "And Muslims must keep to the conditions they have made."
(Hadith narrated by *al-Tirmidhi*, 1352)

Home ownership remains an important matter in the lives of the Muslim community in Singapore. Despite the escalating cost of living and diminishing savings, approximately 90% of Singaporeans own their own homes,³⁶⁵ reflecting the phenomenon of being *cash-poor and asset-rich*. As a result, the division of properties often becomes a primary source of contention among the heirs to an estate,³⁶⁶ alongside other disputes involving assets like Central Provident Fund (CPF) savings and bank deposits.

As such, this chapter will delve into the topic of inheriting a house under housing law, understanding government policies, the principles of fatwa regarding joint tenancy and instruments such as *hibah* and *nuzriah*. It will conclude with a discussion on joint bank accounts and the relevant fatwa decision.

Developments of Inheritance Rights

From the 1970s onwards, contested cases of inheritance in the Muslim community usually involves a deceased's Central Provident Funds (CPF) savings, apartments purchased through Singapore's public housing scheme or both. Such contestations reflect the changing nature of property holdings in the community after independence. Following the introduction of a national compulsory savings scheme in 1955 and a mass drive towards home ownership spearheaded by the Housing and Development Board (HDB) since 1960, asset accumulation extended beyond the confines of a privileged, affluent Muslim merchant class. Most adult and employed Muslims in Singapore possess CPF savings and own property; with about 90% of the city's residents currently live in HDB flats.³⁶⁷

Amidst these socio-economic shifts, inquiries emerged regarding the distribution of assets post-death and the compatibility of *farā'id* with CPF and HDB regulations on nomination and succession. While AMLA safeguarded Muslims' rights to implement *farā'id* and limited will-making to external beneficiaries receiving up to one-third of the estate, CPF regulations, for instance, permitted Muslims to nominate a sole beneficiary to inherit their savings entirely. This led to questions on whether the CPF nominee's position is as a beneficiary or simply an administrator who divides the savings according to *farā'id*. Similarly, HDB joint tenancy rules allow a person to inherit the flat intact should the spouse pass away. However, at that juncture, the fatwa instructed that the property should be partitioned according to the deceased's estate (*farā'id*).

Background of Joint Tenancy

In line with the rising standards of living in Singapore, home ownership among the Malays rose sharply over the years. In 1980, 49.7% of Malays owned public housing flats (HDB), a figure that nearly doubled to 92.3% by 1990.³⁶⁸ As these flats became part of the deceased's estate after death, it was not surprising that questions arose about the management of the inherited shares of flats through *farā'id* from the 1990s. A crucial point of contention is the rights of 'joint tenants' and 'tenants-in-common.'

The concept of 'joint tenants' originated from British law. Singapore law has its roots in English common law, and land law is no exception, although it is one area that now diverges significantly from the original.³⁶⁹ One of the vestiges of land law that originates from feudal times in England is the legal function of the state as the residual owner of all land parcels, with the authority to grant estates in the parcels of land to individuals. It was introduced in Singapore by the Second Charter of Justice Charter 1826. Its application was reaffirmed by the English Law Act in 1993.³⁷⁰

Two forms of co-ownership apply in Singapore: joint tenancy and tenancy-in-common.³⁷¹ HDB grants 99-year leases to the public. The law, however, still recognises that holders of such leases from HDB have certain rights referred to by both the Government and HDB as 'ownership.'³⁷² Joint tenancy is a form of home ownership where everyone on the title deed owns the property together. Tenancy-in-common refers to ownership where each co-owner owns a specific, definite and possibly unequal share in the title deed.

After a person's demise, in accordance with the Land Titles Act, the flat becomes the property of the joint tenant. However, in the case of tenants-in-common, the shares of the deceased co-owners are included in their estates and allocated according to their wills (for non-Muslims) or *farā'id* (Muslims). Essentially, joint tenants retain the right of survivorship, while tenants-in-common do not.

The concept of joint tenancy preserves the rights of joint owners while taking into account the needs of the surviving co-owner. A will cannot override the rights of joint tenants. In practice, one common form of co-ownership involves married couples jointly owning a specific property,³⁷³ a practice regularly seen in Singapore among married couples.

Countries such as Malaysia and Brunei seldom employ this public housing system.³⁷⁴ Studies find that the tenancy-in-common concept is more recognised and practised in Malaysia.³⁷⁵ The reason is Malaysia's National Land Code (Kanun Tanah Negara, KTN) only recognises the tenancy-in-common practice.³⁷⁶

In the 1990s, a series of legal disputes emerged in Singapore among both Muslim and non-Muslim communities, largely stemming from joint tenancy ownership. The crux of the issue lay in the inability of an individual to bequeath their share, potentially resulting in unfairness toward their dependents. As the Ministry of Law sought to amend joint tenancy rules, they highlighted cases like a father and son co-owning a flat. In this scenario, when the son passed away, the entire property went to the father, giving him the authority to evict his daughter-in-law and grandchildren, who did not have any claim.³⁷⁷

One landmark case in 1997 highlighted how crucial it was to have a mechanism in which a joint tenant could sever the joint tenancy unilaterally to give a perceived deserving party a share in the property through a will.³⁷⁸ In this instance, a mother who co-owned a house with one of her daughters attempted to sever the joint tenancy to allocate a share of the house to her other daughter. However, the daughter who originally co-owned the house disputed this decision and declined to release a duplicate certificate to register the change.³⁷⁹

In summary, civil law aimed to resolve disputes over joint ownership by providing homeowners with the flexibility to allocate their house share in their wills during their lifetimes. However, conflicts persisted, particularly concerning the timing of severing a joint tenancy contract.

Joint Tenancy According to the Shariah

While estate distribution through *farā'id* stands as the primary guideline for Muslims, it lacks specific provisions regarding the right of survivorship in joint tenancy. Although the joint-owner inherits the property of the deceased partner under civil law, this matter is not explicitly stated in the Shariah. Therefore, it has been brought to the attention of the Fatwa Committee.

In the fatwa decisions of 1997 and 2008 on joint tenancy contracts, the Fatwa Committee decided that the surviving co-owner retains his share, while the portion belonging to the deceased should be distributed to the heirs according to *farā'id*. In this way, there is no significant difference between joint tenancy and tenancy-in-common for Muslims. However, from a civil law standpoint, these contracts differ. As a result, enforcing these fatwas posed challenges, particularly since the joint-tenant, holding legal ownership rights over the property, could not be evicted by law if they declined to comply.

Furthermore, the Fatwa Committee noted that joint tenancy raised questions and disputes among Muslims and non-Muslims alike. For instance, in the case of non-Muslims, disputes often occur in connection with the will created by the joint co-owner to allocate a share of their house to safeguard the interests of specific heirs. For Muslims, conflicts occur when people living in the house have to give the deceased's share to other parties who wish to monetise the asset rather than live there. This forces one party to sell a property at a time when they might not be able to do so.

For example, a son who is a joint tenant with his father will have to sell the place when his father passes away to give his siblings their father's share unless all of them agree to let him stay there.³⁸⁰ A widow with only daughters will also find themselves in similar circumstances since a portion of the estate must go to a male relative of her deceased husband. Conversely, heirs to the estate also had problems claiming the rightful share if the tenant refused to move out.³⁸¹

Recognising these difficulties, in 2003, the Office of the Mufti identified a short-term solution that could be adopted for those who wish to leave a portion of the house to parties not entitled to it. The giver could make a *hibah* document, a will for up to a third of his property or make a declaration in the event of his death (*nuzriah*).³⁸² Simultaneously, ongoing feedback collection

from the community helps identify the challenges encountered in adhering to these directives and the inheritance disputes linked to property. Here is an example of a fatwa related to inheritance using the *nuzriah* instrument:

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Distribution In Writing Via Nazar³⁸³

Question :

A person has bought a 4-room HDB flat using his parent's name. He had also paid all costs and expenses incurred in the purchase of the flat.

It is a policy by the Housing and Development Board (HDB) that a person cannot register for 2 flats under one name, i.e., a person cannot own two flats or more. As such, the enquirer is concerned that the house which he has bought under his parents name will be claimed by his siblings as a property of inheritance from their parents. He sought the advice of the Fatwa Committee on drafting a Shariah-compliant will to affirm ownership of the 4-room HDB flat in his name.

Answer :

The view of the Fatwa Committee is that the enquirer may draw up a written statement of nazar (نُذْرِيَّة) to achieve his purpose.

Fatwa Decision 1/8/1995³⁸⁴

A Gift by Nazar

Question:

An individual inherited a portion of wealth from her late husband and intended to allocate this portion to her two daughters. She made a vow and a will to transfer this wealth to them. How can she ensure the validity of this will under Shariah law?

Answer:

The Fatwa Committee stipulates that the mentioned will can only be valid within the framework of a nuzriah (vow or declaration نُذْرِيَّة). This implies that the wealth must be distributed to the two daughters before her passing.

Fatwa Decision 23/2/1998

The term *hibah* in Arabic means *gift* and *beneficial giving*.³⁸⁵ In technical terms, *hibah* refers to the transfer of ownership to someone without receiving any compensation during the giver's lifetime.³⁸⁶ The property intended to be given as *hibah* must be owned by the giver, be in existence at the time of the *hibah*, and fulfill the conditions of ownership as per Islamic law. Property not yet owned by the giver cannot be given as a *hibah*.³⁸⁷

There are several types of *hibah*, including *hibah al-'umrā* and *hibah al-ruqbā*. Both are bound by specific conditions and time frames. *Hibah al-'umrā* involves the direct transfer of ownership to the recipient, with the provision that it must be returned should either the recipient or the giver pass away.³⁸⁸ The majority of jurists (*jumhur fuqahā'*) consider *hibah al-'umrā* valid, except for scholars such as al-Ṭabarī, al-Māwardī, Dāwūd al-Zāhirī, and his followers.³⁸⁹

On the other hand, *hibah al-ruqbā* refers to the transfer of ownership from one person to another upon the passing of either party.³⁹⁰ Most jurists (*fuqahā'*) disallow the usage of *hibah al-ruqbā* due to the uncertainty of ownership, which hinges on the occurrence of death. Therefore, some jurists regard the *hibah al-ruqbā* contract as invalid due to its dependency on an uncertain event. However, the Shafi'i and Hanbali schools of thought have regarded *hibah al-ruqbā* as akin to *hibah al-'umrā*, with the additional condition of reclaiming the *hibah* property should the recipient pass away. According to the Shafi'i school of thought (the newer opinion), a *hibah* accompanied by the condition of *al-ruqbā* is considered valid³⁹¹ citing the hadith of the Prophet Muhammad ﷺ: "*Al-'Umrā is allowed for its owner, and likewise al-ruqbā is allowed for its owner.*" (Hadith narrated by *al-Tirmidhī*, 1351)

Nuzriah

Nuzriah means making a vow or promise. *Nazar* refers to a person's sworn promise to do something when the time comes or when a certain event occurs. From a technical perspective, *nuzriah* refers to a transfer of a part or the entirety of their wealth to another party before their demise.

The owner of wealth is allowed to make 'nazar' (vow) to donate part of their wealth to some heirs before a terminal illness. This 'nazar' can be delayed until their death to postpone its execution.

(Ibn Hajar al-Haytamī, *Tuḥfah al-Muḥtāj fi Sharḥ al-Minhāj*, 10:77)

Regarding vows (*nazar*) in Islamic jurisprudence, they are generally deemed permissible and at times even obligatory, especially if they serve to save a life. Nevertheless, a *nazar* might become impermissible if it entails elements of injustice towards others or poses a threat to lives.

The situation is likewise with *nuzriah* – it is prohibited (*haram*) if it involves injustice and prevents rightful heirs from receiving their inheritance without valid reasons. An example of prohibited (*haram*) *nuzriah* is to erase the share of a disobedient child choosing instead to transfer all their assets solely to the wife or other family members. This specific case was deliberated upon by the Fatwa Committee in 2007, where counsel was sought concerning a man who deliberately barred his child from inheriting wealth for certain reasons. The Fatwa Committee ruled that such *nuzriah* is prohibited (*haram*).

The ruling on *nuzriah* becomes permissible when practised for the welfare of those alive. For example, a Muslim can make a *nuzriah* to transfer a portion of their wealth to an adopted child they have raised. The rest of their wealth will be distributed to the rightful heirs according to *farā'id*.

Nuzriah is considered valid if the following conditions are met:

1. It is witnessed by two righteous and just Muslim men.
2. The specification of its execution should occur within a certain period before death, usually set as three days before the passing. According to Islamic law, *nuzriah* will be immediately enforced once the specified time arrives.

Those seeking to revoke the *nuzriah* before the stipulated time must pay a penalty (*kaffārah*) through the following methods:

1. Feeding 10 poor people with the type of food they usually eat;
2. Providing clothing to 10 poor people;
3. Freeing a slave; or
4. Fasting for three days (if the above three actions cannot be performed).

From a religious perspective in Singapore, *nazar* must adhere to the guidelines of *nuzriah* issued by the Fatwa Committee. To strengthen *nuzriah* within the country's legal framework, a Muslim can engage a lawyer's services to validate it or make a Statutory Declaration. The cancellation of a *nuzriah* that has been validated by a lawyer or supported by a Statutory Declaration must be carried out according to the appropriate legal procedures of the country.

Overall, *nuzriah* is an estate planning instrument that is similar to *hibah*. The difference lies in the period to enforce the transfer of ownership of the respective assets. According to Ibn Ḥajar al-Haytamī, the owner can vow (*nazar*) to transfer assets to heirs before facing a terminal illness.³⁹² The execution of *nazar* can be postponed until death. The period for the execution of the *nazar* is within three days or an hour before death. This contrasts with *hibah al-`umrā*, which is not bound by a specific timeframe, and *hibah al-ruqbā*, where the transfer occurs at the moment of death.

The Use of *Hibah* and *Nuzriah* in Society

The term *hibah* has been used in society, largely due to its conventional meaning as a gift. Since the 1980s and 1990s, it has often been used in Singapore to encapsulate various gifts or benefits derived from initiatives made by Muslims in areas of charity and finance. The term entered public discourse when Abdullah Tarmugi, then Minister of Muslim Affairs, used it to encourage the local Muslim community to contribute to a newly launched unit trust, the Amanah Saham Mendaki (Mendaki Growth Fund), by characterising it as an ideal *hibah* for needy children.³⁹³

During the 1990s, Islamic financial products started appealing to the Muslim market, specifically labeling earned dividends as *hibah* to differentiate

them from *riba* or interest.³⁹⁴ Islamic banks in Singapore and Malaysia adopted this terminology to signify rewards for account holders, portraying *hibah* as a strategy to draw in customers and safeguard their assets amidst economic fluctuations.³⁹⁵

In matters of inheritance, there have been several cases since the 1980s when *hibah* has been a contested aspect. These conflicts often revolve around when the gift came into effect and the terms and conditions linked to it when it was granted. For instance, there were debates on whether a cash gift given to underage children could be deemed their property or whether a mother could give her jewellery to a specific child after her death.³⁹⁶

From such small bequests after death, the concept of *hibah* evolved into a method for asset management. In 2001, Syarikat Bumiputera in Malaysia introduced a *hibah harta* plan, allowing individuals to bestow gifts during their lifetime. These gifts were entrusted to a trustee for the benefit of a specified beneficiary.³⁹⁷ The advantage of such an arrangement was that the gift was now owned by the nominated beneficiary and could not be claimed by other heirs after the giver's death. It remains in possession of the giver for his lifetime. The was particularly useful in certain situations, a case in point, individuals who require assets throughout their lifetime.³⁹⁸

In Singapore, prior to 2019, individuals in a joint tenancy agreement needed to create a *hibah al-ruqbā* or *nuzriah* contract to ensure compliance with Islamic law. This step also plays a role in harmonising the conflict between civil law and Islam. After the fatwa issuance in 2019, the Fatwa Committee recognised the joint-ownership contract as a new contract that fully transfers ownership to the joint-owner after death.

Limitations of *Hibah al-Ruqbā* and *Nuzriah*

In essence, *hibah al-ruqbā* and *nuzriah* aim to resolve inheritance matters. Yet, implementing these methods in Singapore poses challenges. AMLA lacks explicit provisions acknowledging *hibah al-ruqbā* and *nuzriah*, while joint-ownership contracts have distinct and specified provisions within the law. In addition, *hibah al-ruqbā*³⁹⁹ and *nuzriah* are asset distribution instruments whose validity is disputed by some scholars.

Nevertheless, apart from Muslim inheritance laws (*farā'id*), members of the Muslim community have other instrument choices to manage asset distribution in Singapore. These include utilising CPF or insurance nominations, drafting wills, and engaging in joint-ownership contracts. The fatwa decisions regarding these financial planning instruments aim to identify religious principles that can serve as a basis for these instruments. Hence, when a fatwa endorses a specific instrument, additional Shariah documents are unnecessary to ensure alignment with the Shariah.

However, in the past, there were groups of Muslims who had already drawn up *hibah*, *hibah al-ruqbā* and *nuzriah* documents to manage various assets owned. In this regard, the limitations of such instruments in the context of the country's legislation need to be clarified. Therefore, past fatwa decisions allowing *hibah al-ruqbā* and *nuzriah* only serves as an additional contract to support joint-ownership contracts. These fatwas do not advocate the widespread adoption of these two instruments for financial planning in Singapore. As there have been instances where individuals, via *hibah al-ruqbā* or *nuzriah*, distributed all their assets to specific individuals. Documents formulated in this manner cannot be accepted, particularly when no heirs are willing to comply with them.

Based on the explanation, the community and Islamic financial advisors must know the limitations of using *hibah al-ruqbā* and *nuzriah* in Singapore. Section 111 of the AMLA establishes the law regarding the distribution of assets through *farā'id*; hence, other financial planning tools – if not provided for in the legislation (except for the nomination of CPF and insurance beneficiaries) – are likely to be considered invalid under Singapore law.

Members of the community who still wish to draft financial planning documents such as *nuzriah*, *hibah*, and *hibah al-ruqbā* are advised to study the following fatwa decisions to ensure compliance with the regulations and laws of the country. Those considering wealth planning through *hibah* should understand its valid conditions and have a thorough understanding of the country's legal framework.

In 2004, a dispute was brought to court over the provisions of a will made by the late Ibrahim Abdul Samad. In his will, he divided his property into three: one-third was given to two mosques, one-third was divided according to *farā'id*, and the final third to selected relatives as *nuzriah*. This provision specified that the gift would take effect either three days before his fatal illness or one hour before his sudden death. The will faced a challenge from two of his children who were not included as beneficiaries under the *nuzriah* condition.⁴⁰⁰

The case went to the High Court, where witnesses on the plaintiff's side testified that *nuzriah* was not a recognised practice in the Shafi'i school of thought. In contrast, others, including Singapore's Mufti at the time, opined that it was an acceptable and recognised practice.⁴⁰¹ Since the Fatwa Committee certified the will, Mufti Syed Isa Semait gave evidence on the permissibility of *nuzriah* at the hearing.⁴⁰² Additionally, several religious scholars outside Muis argued that this method should not supersede *farā'id*.⁴⁰³ The High Court passed a ruling that the *nuzriah* in the disputed will was invalid as it contravened AMLA.

The following is an example of a fatwa decision concerning *hibah*. Although the *hibah* may be considered valid in terms of Muslim law, it does not consider the provisions of the relevant country's regulations and laws:

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Bequest by hibah: Estet ZB

Question:

In August 2016, the High Court issued an order to Muis to provide a religious position regarding the validity of the gift deed made by Ms. ZB.

Answer:

After discussing, the Fatwa Committee agreed to the following response:

Under Muslim law, the conditions of a valid inter vivos gift (hibah) are as follows:

- i. *The offer (ijāb) of Hibah is conveyed clearly in action, writing or speech, expressing the intent to give to the recipient with no monetary return;*
- ii. *The giver (wāhib) must be of age and sound mind;*
- iii. *The gifted asset (mawhūb) must be readily available at the time of the offer;*
- iv. *The gifted asset (mawhūb) must be of value and of a known description;*
- v. *The gifted asset (mawhūb) must be fully owned by the giver (wāhib)*
- vi. *Receipt (qabd) of the gifted asset by the recipient is established.*

Having assessed the English translation of the gift deed (hibah) you have provided based on the above-stated requirements, and assuming the gift deed had been executed by the deceased when she was of sound mind, we are of the opinion that the gift is a valid inter-vivos gift (hibah) under Muslim law.

Fatwa Decision 17/11/2016

The Fatwa Committee assessed the *hibah's* validity based on Muslim law, identifying the following key points:

- The giver explicitly offered an HDB flat to the recipient through a *hibah* document without expecting anything in return.
- The giver was of legal age, sound mind and made the *hibah* voluntarily.
- The giver maintained valid ownership rights over the HDB flat, being the rightful owner and grantor during the *hibah*. There was no record in the gift deed (*hibah* document) or any other documents that the giver had revoked the *hibah*.

Although the Fatwa Committee confirmed the compliance of the *hibah* ZB made in 2011 with Muslim law, the court ruled that the document did not comply with the provisions under section 50 of the Housing and Development Act. According to this section, HDB flats cannot be sold, rented out, mortgaged or disposed of without written permission from HDB.⁴⁰⁴ In this case, the giver did not obtain permission from HDB before gifting the HDB flat.⁴⁰⁵ Consequently, the *hibah* was considered invalid, resulting in the flat becoming part of the estate of the late ZB, who was the sole owner.

In Singapore, the validity of a *hibah* made by a Muslim individual is closely tied to civil law, which falls under the jurisdiction of the civil court. Asset transfers, whether through *nuzriah*, wills, or *hibah*, need to be interpreted with reference to existing laws such as *common law*.⁴⁰⁶ This is because the determination of rights and interests in land in Singapore is governed by legislation, unless the legislation specifically provided that it does not apply to Muslims.⁴⁰⁷ In this context, the jurisdiction of the Fatwa Committee is to confirm whether the presented document complies with Muslim law.

Joint Tenancy (Ownership Status of HDB Flat of the deceased late YBA)**Question:**

Will the house of residence that was bought by a person together with his ex-wife through a “joint tenancy” scheme become the rightful property of the ex-wife upon the death of the ex-husband?

Answer:

After evaluating the standing on “joint tenancy”, the Fatwa Committee deems that the stated house is not the rightful property of the ex-wife of the deceased. The Fatwa Committee has ruled that the ex-wife of the deceased is to receive half (50%) of the total monetary value of the property, This portion is allowed because of her rights as a joint buyer in the “joint-tenant” scheme.

The other half of the property, which is owned by the deceased, rightfully belongs to his heirs. This portion of the property cannot be given to the ex-wife of the deceased, as they had divorced before his death. As such, the ex-wife is not entitled to receive any inheritance from the portion of the deceased’s property as she is no longer his wife and, thus, no longer a valid heir to the deceased.

Fatwa Decision 5/5/1997⁴⁰⁸

The 1997 fatwa established that joint tenancy is akin to the concept of “*sharikah*” or the *mushārahah* contract. This arrangement involves multiple individuals coming together to form a partnership, each holding a distinct share of the collective assets. In the Shafi’i school of thought, *mushārahah* signifies the joint ownership of a specific asset by two or more individuals.⁴⁰⁹

The *mushārah* concept allows the owner to share assets with anyone, especially close heirs such as spouses, children and parents. Through this partnership, the partners can give and jointly own a portion of the assets. Therefore, the deceased's share will become part of their estate. The surviving partner's share will remain their own.⁴¹⁰ In practice, it was notable that the concept of *sharikah* bore greater resemblance to the tenancy-in-common concept rather than joint tenancy.

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Fatwa on Joint Tenancy – 2008

After receiving feedback regarding the issues faced by Muslims who purchase a house through joint tenancy upon the death of one of the joint-owners, and after considering the aspects of Islamic law in this issue, the Fatwa Committee has decided that in the case of a house purchased through joint tenancy:

- (i) If there is no other agreement between the joint-tenants of the house, then the house left by the deceased is not the absolute property of the surviving joint-tenant. The surviving joint-owner is only entitled to half (50%) of the value of the house. This share is obtained by virtue of their right as a joint-tenant.

However, other heirs cannot force the surviving joint-tenant to sell the house until the appropriate time for doing so arrives. At the same time, the surviving joint-tenant cannot unreasonably delay the sale, as such an action would unjustly harm the rights of the other heirs.

- (i) If there is another contract for the purchase of the house, such as a *hibah al-ruqbā* or *nuzriah* documents, which clearly states that the house is to be fully given to the surviving joint-owner, upon the demise of the other joint-tenant, the house becomes the full property of the surviving joint-tenant. The division of the house is the same as stipulated by the joint tenancy laws in Singapore.

Fatwa Decision 3/4/2008

The fatwa issued in 1997 differs from the 2008 fatwa decision. The 2008 fatwa stipulated the condition for joint owners to enter into a contract, such as *hibah al-ruqbā* or *nuzriah* among the co-owners. *Hibah al-ruqbā* and *nuzriah*, in that context, aim to ensure that the intention/desire of the joint owners aligns with religious stipulations.

Although both fatwa decisions view joint tenancy as a partnership or *mushārahah*, there are differences in civil law related to joint tenancy compared to the concept of *mushārahah*. In *mushārahah*, ownership is separate for each owner, unlike in civil law concerning joint tenancy. As joint-owners collectively own an asset, meaning both owners have 100% ownership and are not divided according to a specific ratio, such as 50% for each owner.

The conflict between these two concepts is evident in the case of Shafeeg bin Salim Talib and others v Fatimah bte Abud bin Talib and others in the High Court (see infobox).⁴¹¹

Therefore, if a Muslim wishes to designate a portion of their home as matrimonial property and another as inheritance, he has to follow the tenancy-in-common concept rather than joint tenancy.

THE CASE OF SHAFEEG BIN SALIM TALIB AND OTHERS V FATIMAH BTE ABUD BIN TALIB AND OTHERS

CASE FACTS: The plaintiff, as the *wāsi* (executor) of the estate of the late Obeidillah bin Salim bin Talib, is demanding that a portion of the jointly owned ancestral home with the defendant (the late's wife) be distributed according to Islamic law as stipulated in section 112(1) of AMLA. However, under civil legislation, the house is no longer considered a part of the estate. During the trial, the plaintiff presented a fatwa decision by the Muis Fatwa Committee stating that such assets are considered matrimonial property of the deceased and his wife. Therefore, a portion of the ancestral home needs to be distributed according to *farā'id*

ISSUE: Is the ancestral home subject to *farā'id* or the joint ownership contract?

COURT DECISION: The family home is subject to a joint tenancy contract. The court found that there is no provision under AMLA or any other legislation that stipulates that common law in matters of joint-ownership cannot be applied to Muslims.

In 2019, the Fatwa Committee reviewed the fatwa position regarding joint-ownership contracts by analysing several contracts and other instruments that scholars had discussed. As a result of various studies and discussions, the Fatwa Committee found that, although there were no contracts similar to joint tenancy contracts in the past, Islamic literature shows that scholars permitted the establishment of new contracts, such as the *wafā'* contract within the Hanafi school. The reason is that society needed such transactions or contracts at that time, and there were no elements that contradicted the Shariah (such as unclear intentions, deception, and so on), so the contracts and their conditions were considered valid. This is based on the hadith of the Prophet ﷺ:

وَالْمُسْلِمُونَ عَلَى شُرُوطِهِمْ إِلَّا شَرْطًا حَرَّمَ حَالًا أَوْ أَحَلَّ حَرَامًا

Which means: “*And the Muslims should fulfil the conditions they have agreed upon, except for a condition that makes something halal haram or makes something haram halal.*” (Hadith narrated by *Al-Tirmidhī*, 1352)

Based on this reasoning, the Fatwa Committee acknowledged the joint tenancy contract under HDB. One of the main arguments is that it represents a new type of contract. Based on the 2019 fatwa decision, the community no longer needs to establish *nuzriah* to protect the interests of the surviving joint owners. This issue also demonstrates the importance of Fatwa Committee and AMLA. Although there are sections in AMLA that ensure a Muslim’s right to distribute their wealth according to Muslim inheritance laws (*farā'id*), there is a need to identify alternative financial planning instruments apart from *farā'id* for the community. In this context, fatwas serve to bridge this gap, providing explanations on various pertinent issues impacting the community amid changing circumstances.

The following are the details of the 2019 joint tenancy fatwa, which is the latest fatwa position on this issue:

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Fatwa Joint Tenancy – 2019

1. The Fatwa Committee received a question from the Office of the Mufti on 24 July 2018 regarding a fatwa decision on joint tenancy issued by the Fatwa Committee in 2008. The Office of the Mufti has brought to the attention of the Fatwa Committee that it has received various feedback from the practitioners in the financial management and planning sector, legal experts, as well as the public with respect to the challenges and difficulties that persist even after the issuance of the reviewed fatwa on joint tenancy in 2008. The Office of the Mufti hence asked the Fatwa Committee if the fatwa on the joint tenancy can be reviewed again to address this issue.

BACKGROUND

2. The Fatwa Committee decided in 1997 that joint tenancy is a form of partnership based on the concept of *sharikah* in which the two joint tenants have an equal share of the asset, i.e., 50%-50%. When one of the joint tenants dies, the surviving joint tenant is only a trustee for the share owned by the deceased tenant. The surviving joint tenant, hence, needs to distribute the share of the deceased to his beneficiaries according to *farā'id*.
3. In 2008, the Fatwa Committee made its first revision after considering feedback from various parties, especially from members of the public who held properties under joint tenancy. There was a request for the joint tenants to be given an alternative option so that they could make appropriate plans.
4. The Fatwa Committee at that time had reconsidered the application of the concept of partnership (*sharikah*) on a joint tenancy contract and compared it with several existing contracts in *fiqh*. Based on that consideration, the Fatwa Committee in 2008 decided that each joint tenant should still have the same share (50%-50%). However, the joint tenants have the option of either making additional documents, *nuzriah* or *hibah al-ruqbā*, to give their share to the surviving joint tenant, or to not make any additional document so that their share can be divided according to *farā'id* after his death.⁴¹²

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5. Since the 2008 fatwa decision, the Fatwa Committee continues to examine the effects of its implementation and implications on the public. Feedback has been received from various parties, including the Muslim Financial Planners Association and the Muslim Law Practice Committee. Based on the reports on the challenges that arose from the application of the 2008 fatwa, the Fatwa Committee has thus decided to review the existing fatwa.

ISSUES ARISING FROM THE 2008 FATWA ON JOINT TENANCY

6. The Fatwa Committee has identified several challenges in the implementation of the fatwa issued in 2008. These are due to several reasons:

- I. **Conflict between joint tenant's intention and method of property distribution after his death, due to ambiguity of his intentions.**

There are members of the community who, despite their intention to give their share to the joint tenants, did not manage to prepare *nuziah* or *hibah al-ruqbā* documents in time. This resulted in some beneficiaries demanding the surviving joint tenant to sell the house and divide the proceeds according to *farā'id*.

- II. **The surviving joint tenant is pressured by the beneficiaries**

to sell the property owned together with the deceased and to move to another house, so that the share owned by the deceased can be divided according to *farā'id*. In many of these cases, the situation caused hardship to the surviving joint tenant.⁴¹³

- III. **Challenges of implementing 2008 fatwa**

It is legally established that joint tenancy contract is a form of contract in which each of the joint tenants together own the whole interest in the property. In joint tenancy, the right of survivorship applies. This means that upon the death of any joint tenant, his interest in the property would automatically be passed on to the remaining joint tenant(s). This is hence different from the concept of 50%-50% ownership as decided in the 2008 fatwa.⁴¹⁴ Thus, there were cases where joint tenants had intended to distribute their property according to *farā'id* as per the 2008 fatwa decision, but this could not be fully implemented due to the statutory law.

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FATWA COMMITTEE'S CONSIDERATIONS

7. Acknowledging the facts, the Fatwa Committee believes that there is a need to eliminate existing difficulties in order to safeguard public interest. Several issues have been taken into consideration:
 - I. Understanding the joint tenancy contract. Is it a *sharikah* contract where the share of each joint tenant is set at 50%? What is the meaning and purpose of the right of survivorship concept in the joint tenancy contract?
 - II. The Fatwa decision in 2008 was intended to give every joint tenant the option to decide whether the property is to be divided in accordance with *farā'id*, or to let it be wholly owned by the surviving joint tenant based on the concept of right of survivorship, and in accordance with joint tenancy law. However, there is still the prevailing issue of the ambiguity of the deceased joint tenant's intention.
 - III. Based on the established law, there are two types of ownership in Singapore, i.e., joint tenancy and tenancy-in-common.⁴¹⁵ Joint tenancy is a form of ownership, in which the joint tenants own the entire property together without distinguishing the size of their share. The joint tenant's interest in the property ceases upon his death. On the other hand, the second type of ownership, i.e., tenancy-in-common is one where each joint tenant holds a separate and distinct share in the property. Therefore, the share of the owner in the tenancy-in-common contract becomes a part of his inheritance upon his death.
 - IV. The ambiguity that arises is caused by the option between *farā'id* distribution and right of survivorship, under the joint tenancy contract. However, distribution based on *farā'id* is more appropriate and clearer under the tenancy-in-common contract, in which the owner can determine his share of the property owned. His share can then be distributed according to *farā'id* without any legal restrictions after his death. This is in parallel with the earlier fatwas.

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FATWA DISCUSSION AND DECISION

8. The Fatwa Committee observes that there are discussions in our *fiqh* on common ownership, such as the concept of “one ownership” (*tamlīk wāḥid*), which is discussed among some scholars of the Hanafi school of thought as stated in the book *al-Hidāyah*.⁴¹⁶ However, there is a difference between the concept of common ownership as stated in *al-Hidāyah* and the concept of right of survivorship as stipulated by the law. In the right of survivorship, ownership of the deceased joint tenant will cease upon his death. Therefore, the surviving joint tenant will have 100 percent absolute ownership of the property, without the need for a transfer of ownership (from the deceased to the surviving joint tenant). On the other hand, based on the understanding of the *fiqh* relating to “one ownership” (*tamlīk wāḥid*), although they are considered as joint owners, they only partially own the property upon death of one of the joint owners.
9. Therefore, the Fatwa Committee believes that this contract is different from the concept of *sharikah* and is also different from the concept of “one ownership” (*tamlīk wāḥid*). It is thus a new form of contract with its own benefits that serves the community’s needs. Islamic scholars are of the opinion that the general ruling of a new contract is permissible.⁴¹⁷ According to Al-Kāsānī from the Hanafi school of thought, a contract that can cultivate wealth is permitted. This is explained in his book, *Badā’i’ al-Ṣanā’i’*:

إن هذه العقود شرعت لمصالح العباد وحاجتهم إلى استنماء المال متحققة، وهذا النوع طريق صالح للاستنماء، فكان مشروعاً.

Meaning: “Indeed, these contracts are permitted for the benefit of humankind and their need to cultivate wealth is a real need. And this form of contract is a righteous way to cultivate wealth, therefore it is religiously valid.”⁴¹⁸

Imām Al-Shāṭibī, in his book, also shares the same view that if the contract can safeguard the interest of human beings, it is indeed permissible:

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فإننا وجدنا الشارع قاصدا لمصالح العباد والأحكام العادية تدور معه حيثما دار فترى الشيء الواحد يمنع في حال لا تكون فيه مصلحة فإذا كان فيه مصلحة جاز... ولم نجد هذا في باب العبادات مفهوما كما فهمناه في العادات.

Meaning: "We establish that God intends to safeguard the interests of humankind and laws relating to their daily affairs [apart from the acts on worship] evolves around this intention. Therefore, you will find that something may be forbidden in certain situations where there is no benefit [for humankind], however where there is benefit [for humankind], it becomes permissible ... And this is not found in matters of worship as understood in other chapters apart from it."⁴¹⁹

10. With that, as long as the contract does not contradict the requirements of Shariah, such as 1) the objective of the contract is unclear, 2) the contract contains ambiguity, 3) there are elements of injustice and oppression, 4) there are elements of deceit; then the contract is considered to be valid, and the terms set out in the contract are legally binding. This is based on the hadith of Prophet ﷺ:

وَالْمُسْلِمُونَ عَلَى شُرُوطِهِمْ إِلَّا شَرْطًا حَرَّمَ حَلَالًا أَوْ أَحَلَّ حَرَامًا

Meaning: "And the Muslims must fulfill the conditions they have agreed upon, except the conditions that prohibit something lawful and legalise something illegal."⁴²⁰

11. In conclusion, joint tenants during their lifetime have the option of selecting joint tenancy contracts or tenancy-in-common contracts. Both forms of joint ownership have their own advantages. By selecting one of the above common ownerships, the owners agree to meet the conditions set out, and the objectives of each of these agreements that they had made during their lifetime. Allah ﷻ says:

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا أَوْفُوا بِالْعُقُودِ﴾

Meaning: "O ye who believe! Fulfill all obligations." (Surah al-Mā'idah: 1).

12. A joint tenancy contract would mean the following for the joint tenants:

- a. They have expressed their desire that a shared property remains wholly owned by a surviving joint tenant after their death;

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- b. Each joint tenant is aware that their interest in the property ceases upon death;
 - c. Joint tenants no longer need to make any additional documents.
13. On the other hand, a tenancy-in-common contract would mean the following for the owners:
- a. They have expressed their desire to own a part of a shared property;
 - b. They want their share to be part of their inheritance after their death.
14. With the option between two different instruments i.e., joint tenancy and tenancy-in-common being made available, additional contract documents, such as *hibah al-ruqbā* or *nuzriah* grants are no longer required. This will also help to avoid the issue of ambiguous intentions mentioned earlier.
15. The Fatwa Committee advises members of the public to seek expert advice and opinions before making any decision in choosing or changing from joint tenancy to tenancy-in-common contracts. Owners need to be clear with the decision made because there are certain implications for owners who choose a tenancy-in-common contract, such as the need to sell the house as soon as one of the co-owners dies, and this can cause difficulties to other owners involved who has a share in the tenancy-in-common contract.
16. The Fatwa Committee would also like to remind the owners to make due considerations before choosing the desired type of ownership. Owners should ensure that no negligence and injustice is inflicted on the family.
17. If there are still properties that are not distributed according to *farā'id*, the 2019 fatwa can be applied to validate the ownership of the surviving joint tenant in accordance with the law on joint tenancy (*right-of-survivorship*). However, it is advised for the surviving joint tenant to discuss amicably with the rest of the beneficiaries to find the best way out possible.

Fatwa Decision 19/2/2019

Between 2018 and 2019, the Fatwa Committee conducted an extensive review to assess the validity of joint tenancy contracts under the Shariah. The objective was to pinpoint fundamental principles to be considered. This involved an exhaustive analysis of diverse contract types in the Islamic literature, as recognised by earlier scholars, alongside contemporary scholarly dialogues concerning modern transactions.

Findings revealed that there is no concept similar to a joint tenancy contract in Islamic literature, albeit scholars had discussed the concept of ownership (*milkiyyah*) extensively. Furthermore, the findings highlighted that scholars consistently prioritise the welfare and needs of the community in their conduct of transactional dealings (*mu'āmalāt*).

Based on the fatwa above, the Fatwa Committee found that joint tenancy contracts effectively protect the interests of immediate family members. Consequently, home ownership of the surviving co-owner, based on the principle of *right of survivorship*, is considered valid according to the Shariah. However, the surviving co-owner and other heirs are advised to always engage in respectful discussions to find an amicable solution.

In essence, it should be emphasised that at the time of this book's publication, writing a will or executing *hibah al-ruqbā* and *nuzriah* related to home ownership rights are no longer necessary. Therefore, the Muslim community should follow the HDB rules and regulations regarding property ownership which are in force from time to time.

Latest Development: Presumption of Resulting Trust

To conclude the discourse on joint tenancy contracts, it is pertinent to highlight a case brought to the Court of Appeal in 2021 involving property in the joint names of a father and daughter.⁴²¹ In principal, the law on joint tenancy ownership contract is conclusive. Therefore, when a co-owner passes away, the asset or property becomes the ownership of the surviving co-owner.

The Court of Appeal's decision on a case involving the father and his daughter shows that there are circumstances in Singapore where the ownership of the surviving co-owner is contested. Although both parties in this case are non-Muslims, such facts and situations may present themselves in the case of a Muslim estate. The following is a summary of the case:

In 1976, Mr. Lim Guan Heong purchased an HDB flat, becoming its sole registered owner. In 1981, Mr. Lim included his daughter, Lim Sai Ing Peggy, as a joint tenant of the flat. Subsequently, in 2001, Lim Choo Hin, another daughter, was also added as a joint tenant. However, in 2013, Choo Hin voluntarily removed her name from the flat's ownership as she intended to acquire her own HDB flat.

Upon Mr Lim's death in 2015, Peggy became the Flat's sole registered owner under the *right of survivorship*. At the same time, Mr Lim executed a Will dated 27 April 2015, outlining that Mr Lim's 'share' in the Flat, savings in his bank accounts, and his residual estate would all be given to his only son, Kwong Yin.

Choo Hin, the Executrix of Mr Lim's estate, then applied to the Court for a declaration that Peggy only held the Flat on trust for the Estate of their late father. Choo Hin argued that Mr Lim had only transferred the Flat to Peggy as a matter of administrative convenience, concerned that the Flat might be repossessed by the HDB since he, as the owner of the house, did not occupy the Flat after 1981 when his wife passed away. In 2021, the High Court judge of the original application decided that the documentary evidence – in particular, a stamp on the title deed to the Flat – showed that Mr Lim had intended to confer his *beneficial interest* in the Flat to himself and Peggy as joint-tenants by way of gift. It saw no need to engage in any analysis relating to the *presumption of resulting trust*.

In the same year, 2021, Choo Hin submitted an appeal to the Court of Appeal. The Appellate Court reassessed the decision of the Judge, particularly concerning the documentary evidence, conclusive of Mr Lim's intention to gift a beneficial interest in the Flat to Peggy.

In general, the Court of Appeal found that the total evidence was sufficient to establish, *on a balance of probabilities*, that Mr Lim did *not* intend to gift a beneficial interest in the Flat to Peggy. Initially adding her as a joint tenant did not demonstrate a clear intent to donate the property to Peggy alone.

The Court of Appeal relied on the following three indicators:

- 1) Mr Lim was illiterate in English and signed documents only in Chinese. There was no evidence that he had been advised on the legal implications of the 1981 Transfer or that he had even read or understood the words “BY GIFT” on the Title Deed Stamp.
- 2) Mr Lim’s conduct showed that he continued exercising control over the Flat as if he was its sole owner. Mr Lim demanded that his children, including his two joint-tenants, pay him rent whenever they were residing in the Flat. In 2001, Mr Lim had arranged for Choo Hin to be made a joint-tenant of the Flat without first obtaining Peggy’s consent.
- 3) No evidence was produced to show that Mr Lim had a particularly close relationship with Peggy. Instead, evidence pointed to Mr Lim favouring his only son, Kwong Yin. This is seen from the fact that Mr Lim had executed a Will which gave all his “share” in the Flat, the money in his bank accounts, and his residual estate to Kwong Yin alone. The Court also found that Peggy’s conduct did not show that she genuinely believed she owned the flat as a joint-tenant. This was because when Peggy moved to the United Kingdom with her husband, she neither gave any instructions about the maintenance or upkeep of the Flat nor continued paying for any related expenses.

With this recent decision of the Appellate Division of Singapore’s High Court, it is timely to consider how the 2019 fatwa can be further refined to allow for such nuances and if such facts present themselves in the case of a Muslim estate. Further study can delve into various legal principles, such as the *presumption of resulting trust* and whether it can be considered within the wider ambit of the Shariah.

Joint Account

The principle of *presumption of resulting trust* can also be extended to the savings in a joint account. In this context, the Fatwa Committee decided in 2002 regarding joint accounts. The details of the fatwa are as follows:

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Fatwa Decision Regarding Joint Account

“...The Fatwa Committee is of the opinion that in the event of the death of a joint account holder, the assets in the joint account are regarded as jointly owned (*milik bersama*) equally among all the account holders, regardless of their individual contributions.

The portion belonging to the deceased is to be distributed to the heirs in accordance with Islamic inheritance law (*farā'id*)...”

Fatwa Decision 9/7/2002

The fatwa on joint accounts issued in 2002 exhibits similarities to the joint tenancy fatwa in 1997. In 2002, the Fatwa Committee decided that the rights to ownership of funds in a joint account should be equally divided, entitling each owner to half or 50% in the case of two account holders. However, in light of the evolving nature of the recent fatwa on joint tenancy in 2019, a review of this joint account fatwa is warranted. Given that joint account is a concept within civil law, the determinations under that legal framework must be considered.

When one of the holders of a joint bank account dies, the bank will transfer the balance of the funds in the account to the surviving joint account holder. This is the *right of survivorship* – the survivor gets the legal right to the funds. Whether he also gets the *beneficial right*, i.e., having the right to benefit from it, depends on the circumstances of the case.

A dispute might arise concerning the rightful access to the funds will arise between the surviving joint bank account holder and the beneficiaries identified in the estate of the deceased joint account holder. The beneficiaries could be either the *farā'id* beneficiaries under Muslim law or the beneficiaries under the will of the deceased, in which the will is consistent with Muslim law. If the funds had been jointly contributed by both account holders, the survivor will be *legally* as well as *beneficially* entitled to the balance in the joint account as of the date of the deceased's passing.

However, the situation becomes complicated when the deceased is the sole or predominant contributor of the funds in the joint bank account. The *beneficial right* will be determined per the facts of each case. The Court will inquire into the intention of the deceased when he deposited the funds into the joint account.

For this purpose, an important consideration is the **proximity of the relationship** between the two joint account holders. The following guiding principles have been established. If there is close proximity between them, such as husband and wife or between a parent and child, there is the presumption in law that the deceased intended to gift or advance the funds to the surviving joint account holder. This is known as the *presumption of advancement*. However, this is not a conclusive presumption. It can be rebutted if evidence to the contrary is presented by the party challenging the presumption of advancement. Two cases with different outcomes can be cited to illustrate the presumption of advancement and its rebuttable nature:

First case: In *Re Harrison's case*,⁴²² the husband opened a joint account with his wife, and it was recorded in the bank's ledger that the account was "repayable to either or to survivor." The court concluded that there was sufficient evidence of the husband's intention to gift the funds in the account to his wife. The *presumption of advancement* was applied, and she became *beneficially* entitled to the funds upon his death.

Second case: In *Marshall v Crutwell's case*,⁴²³ the terminally-ill husband opened a joint account with his wife. Upon his death, the legal interest in the funds vested in his widow. However, other beneficiaries of his estate successfully rebutted the presumption of advancement. Evidence was tendered to show that he had set up the joint account to make it convenient for his wife to manage his financial affairs during his illness and that there was no intention to gift the funds to her upon his death.

In various relationships such as siblings, grandparents, grandchildren, uncles, aunts, nephews, nieces, or cousins, the *presumption of advancement* does not apply. This includes relationships between siblings, grandparents and grandchild, uncles and nephews/nieces/cousins. It also has no application where there is no family relationship between the deceased and the surviving account holder, for example, the survivor is an unrelated third party.

In these circumstances, the legal ownership over the funds may vest with the survivor under the *right of survivorship*. In addition to this, there is also a presumption in law that the deceased intends to vest the *beneficial interest* with the beneficiaries of his estate. This is known as the *presumption of resulting trust*. The court will then presume that the surviving joint holder holds the funds as trustees for these beneficiaries.

This *presumption of resulting trust* can also be rebutted by clear evidence tendered by the party challenging the presumption. In *Aroso v Coutts & Co*,⁴²⁴ involving a joint bank account between an uncle and nephew, the Court held sufficient evidence in the bank's records to rebut the *presumption of resulting trust*. It held that the bank properly handed the funds to the nephew.

In *Russell v Scott's case*,⁴²⁵ an old woman who opened a joint bank account with her nephew informed her lawyers that the nephew was to take over the account as a survivor. The court held that there was sufficient evidence to show that she had intended for the nephew to have the *beneficial right* to the balance in the joint account upon her death.

Evidence relevant to challenge the *presumption of advancement* or the *presumption of resulting trust* may include:

- Bank documents relating to the opening or operation of the joint bank account;
- Evidence relating to the control and use of the joint account;
- Any power of attorney granted by the deceased to the survivor; or
- Documentation such as a *nuzriah* or any other written instrument signed by the deceased that intended to benefit the surviving joint account holder.

The deceased joint account holder's intention will be determined by the careful assessment of the particular facts of the case by the Court. This is not an easy task. The *presumption of advancement* and *presumption of resulting trust* serve as guiding principles for the party challenging them to prove the contrary in the interest of a fair administration of justice in the resolution of the dispute before the Court.

The discussions above highlight the importance of re-evaluating past fatwa decisions on joint account. The re-evaluation should consider not only the fatwa decision on joint tenancy in 2019, but also the principles of resulting trust and advancement, in addition to other pertinent legal concepts of presumptions.

Conclusion

This chapter presented the details of fatwa decisions related to the ownership of assets in the form of (i) joint tenancy, (ii) joint accounts, and (iii) various estate distribution instruments, namely *hibah*, *hibah al-ruqbā*, and *nuzriah*. In the same breath, this chapter presented the developments seen in the fatwa decisions. Although the joint tenancy fatwa in 2019 has effectively resolved the matter, there remains a need for further study of related issues, specifically joint accounts and the various legal concepts of presumptions.

ENDNOTE

Preface

- ¹ Ibn 'Āshūr, *Al-Taḥrīr wa al-Tanwīr*, (Tunisia: Al-Dār al-Tunīsiyyah, 1984), 17:169.
- ² Ibn Qayyim al-Jawziyyah, *I'lām al-Muwaqqi' in 'an Rabb al-'Ālamīn* (Beirut: Dār al-Kutub al-'Ilmiyyah, 1991) 3:11.
- ³ Al-Ghāzalī, *Al-Mustafā*, (Beirut: Dār al-Kutub al-'Ilmiyyah, 1993), 174.

Chapter One: Inheritance Matters and Estate Planning

- ⁴ Memorandum by Sir Stamford Raffles cited in R. Braddell, *The Law of the Straits Settlements: A Commentary*, Singapore, 1931, 1:159.
- ⁵ For studies on British India and Muslim law during that period, see: P. Hardy, *The Muslims of British India*, (New York and London: Cambridge University Press, 1972); Michael R. Anderson, "Themes in South Asian Legal Studies in the 1980s," *South Asia Research*, 10, 2 (1990), 167.
- ⁶ Nurfadzilah Yahaya, *Courting Jurisdictions*, PhD Dissertation (unpublished), Princeton University, (2013), 10.
- ⁷ *Ibid.*, 39.
- ⁸ Noor Aisha Abdul Rahman, "Muslim Personal Law within the Singapore Legal System: History, Prospects and Challenges," *Journal of Muslim Minority Affairs*, 29, 1, (2009), 110.
- ⁹ *Ibid.*, 110.
- ¹⁰ *Paremesuari v Ayadurai*, *Malayan Law Journal* 195, 1959, as an example of Hindu customary marriage; *Woon Ngee Yew and others v Ng Yoon Thai and others*, *Malayan Law Journal* 37, (1941); and the Six Widows case in "Six Widows Case," *The Straits Times*, 19 December 1908, 7.
- ¹¹ There was a long-running debate about this issue between a man called SLO Alsagoff and an anonymous writer who used the pseudonym advocate in the Straits Times letter-writing section. See: "A Law like this can ruin Muslim Rich: The Bar Committee Opposes Wills Bill," *The Straits Times*, 25 January 1957, 5; "Inheritance law and Muslim Businessmen," *The Straits Times*, 29 January 1957, 6; "Freedom of choice and the Muslim law," *The Straits Times*, 30 January 1957, 8; "Inheritance bill has support of Muslims," *The Straits Times*, 7 February 1957; "Give it away before death," *The Straits Times*, 7 February 1957; "Present Provision is adequate," *The Straits Times*, 11 February 1957, 6; "General will of Muslims," *The Straits Times*, 14 February 1957.
- ¹² "Now 50 say it: This Bill will Ruin our Trade," *The Straits Times*, 26 January 1957.
- ¹³ The colonial practice allows Muslims to choose between Islamic law and civil law inheritance matters.
- ¹⁴ Wilkinson R.J. was the first colonial scholar to attempt to analyse Malay customs as a unitary of system of law. See: Wilkinson R.J., *Papers on Malay Subjects selected and introduced by P.L Burns*, (Kuala Lumpur: Oxford University Press, 1971); For information on adat perpatih, refer to: Taylor E.N., Inheritance in Negri Sembilan, *Journal of Malayan Branch of the Royal Asiatic Society*, 21, 2, (1948), 41-130.

- ¹⁵ Bauxbaum C., *Family Law and Customary Law in Asia*, (Bangkok: *Association of Southeast Asian Institutions of Higher Learning*, 1964), 52.
- ¹⁶ See for example, *Hasnah bt Omar v Abdul Jalil*, *MLJ* 10 in which a divorced wife successfully claimed *harta sepencarian* and part of her former husband's land on the basis of adat perpatih. Special provisions for customary land in areas such as Negeri Sembilan where adat perpatih was commonly adhered. See: Hooker M.B., *The Personal Laws of Malay: An Introduction*, (Kuala Lumpur: Oxford University Press, 1976), 78.
- ¹⁷ A high-level colonial administrator.
- ¹⁸ Winstedt R.O, *A History of Malaya. Malayan branch of the Royal Asiatic Society*, 13, 1, (1935), 85.
- ¹⁹ "On the Margin," *The Straits Times*, 5 March 1951, 4
- ²⁰ *Ibid.*, 4.
- ²¹ "NS Malays wants adat changed," *The Straits Times*, 27 March 1951, 4.
- ²² "They still prefer the old 'adat'," *The Straits Times*, 6 April 1951, "Matriarchal System," *Singapore Free Press*, 12 March 1951; "NS Malays wants adat changed," *The Straits Times*, 27 March 1951, 4.
- ²³ "Muslim Wills Bill is now Law," *The Straits Times*, 27 April 1957, 5.
- ²⁴ For information on these laws, see Iza Hussin, "The Pursuit of the Perak Regalia: Islam, Law, and the Politics of the Colonial State," *Law and Social Inquiry*, 32, 3 (Summer 2007): 759-788.
- ²⁵ Wilkinson, *Papers on Malay Subjects*, 40.
- ²⁶ Zanariah Noor, Muhammad Akramin Kamarul Zaman dan Husna Husain, "An Analysis of Harta Sepencarian Cases in the Syariah High Court of Ipoh," *International Journal of Islamic and Civilizational Studies* 3, (2023), 89.
- ²⁷ "Shafi v Lijah," *Malayan Law Journal*, 49, 1948.
- ²⁸ Ahmad Ibrahim, "Undang-Undang Keluarga Islam di Malaysia, Malaysia," *Malayan Law Journal*, (1999), 309-310.
- ²⁹ Ibn Hajar al-Haytamī, *Tuhfah al-Muhtāj bi Sharḥ al-Minhāj*, (Beirut: Dār Iḥyā al-Turāth al-‘Arabī, 1983), 10:77.
- ³⁰ Suruhanjaya Sekuriti Malaysia, *Ketetapan Majlis Penasihat Syariah Suruhanjaya Sekuriti*, (Kuala Lumpur: Suruhanjaya Sekuriti, 2007), 129-33. *Hibah al-ruqbā* is "a conditional gift where the recipient will have ownership of the gifted property when the giver passes on. However, if the recipient predeceases before, the gift will be returned to the giver." Refer to: Al-Shawkānī, *Nail al-Awḍār*, (Beirut: Dār al-Fikr, 1994) 6:112-113; Ibn Qudāmah, *Al-Mughnī*, (Beirut: Dār al-Fikr, 1994), 5:335; Al-Zuhaylī, *Al-Fiqh al-Islamī wa Adillatuh*, (Damascus: Dār Al-Fikr, 1989), 5:10; *Al-Mawsū‘ah al-Fiqhiyyah*, (Kuwait: Wizārah Al-Awqāf wa al-Shu‘ūn al-Islāmiyyah, 1992) 23:5-6.
- ³¹ Abdul Malik Karim Amrullah, (Hamka), *Islam dan Adat Minangkabau*, (Jakarta: Pustaka Panjimas, 1984), 102-106.
- ³² Al-Qurṭubī, *Al-Jami‘ Li Ahkām al-Qur‘ān*, (Cairo: Dār al-Ḥadīth, 2002) 3:45.

- ³³ Ibid., 3:46.
- ³⁴ One such scholar is the learned companion and cousin of the Prophet, ‘Abdullah ibn ‘Abbās. See: Al-Qurṭubī, *Al-Jami’ Li Ahkām al-Qur’ān*, 3:48.
- ³⁵ Al-Marāghī, *Tafsīr Al-Marāghī*, (Egypt: Sharikah wa Maṭba‘ah Muṣṭafā al-Bāba al-Halabī, 1946), 4:192.
- ³⁶ Al-Qurṭubī, *Al-Jami’ Li Ahkām al-Qur’ān*, 6:88.
- ³⁷ Ibid., 6:88.
- ³⁸ Ibid., 6:87.
- ³⁹ Ministry of Health, “I Feel Young in My Singapore: Action Plan for Successful Ageing” (Makalah, Ministry of Health, 2016), 3. https://sustainabledevelopment.un.org/content/documents/1525Action_Plan_for_Successful_Aging.pdf
- ⁴⁰ Section 4-5, Mental Capacity Act, (2020 Revised Edition).
- ⁴¹ Section 11, Mental Capacity Act, (2020 Revised Edition).
- ⁴² Section 15, Mental Capacity Act, (2020 Revised Edition); Office of the Public Guardian, *The Mental Capacity Act: A Donee’s Guide*, (Singapore: Ministry of Social and Family Development, 2022).
- ⁴³ Section 19-20, Mental Capacity Act, (2020 Revised Edition).
- ⁴⁴ Fatwa Lasting Power of Attorney, Muis, <https://www.muis.gov.sg/%20officeofthemufti/%20Fatwa/Malay-Lasting-Power-of-Attorney>
- ⁴⁵ <https://www.publicguardian.gov.sg/opg/Pages/The-LPA-The-Lasting-Power-of-Attorney.aspx> - *The Lasting Power of Attorney*
- ⁴⁶ Office of the Public Guardian, *A Guide to: The Lasting Power of Attorney*, 15.
- ⁴⁷ <https://www.publicguardian.gov.sg/opg/Pages/What-Is-A-Court-Appointed-Deputy.aspx> - *What is a Court appointed Deputy*; See also, Section 20, Mental Capacity Act (Cap. 177A).
- ⁴⁸ *Wiṣāyā* or *iṣā’* means a trust given to a person to administer and manage the affairs of *musī* (the person who entrusts) once he passes away. Such matters include administering the affairs of his children, executing a will, settling debts and returning the goods in his custody. Please see: Al-Zarqā, Muṣṭafā Aḥmad, *Al-Madkhal al-Fiqh al-‘Am*, 1:54-55 & 628-629; See also: Al-Zuḥaylī, *Al-Fiqh al-Islāmī wa Adillatuh*, vol. 8, 131; Muṣṭafā al-Bughā, et al., *Al-Fiqh al-Manhajī ‘alā Madkhal al-Imām al-Shāfi‘ī*, (Damascus: Dār al-Qalam, 1992), 5:59.

- ⁴⁹ *Wakālah* is a form of transactional contract, where one authorizes another to perform certain affairs, executed during the life of the principle. *Wilāyah*, (or guardianship) on the other hand, is a legal authority according to Islamic law to manage the welfare of an individual or property who is restricted from doing so for reasons such as bankruptcy, being underage, those who are *feeble-minded* (*Al-Safih*) and imbecile (*Al-Ma'tūh*) etc. The authority of *Wilāyah* to manage the affairs of others may occur naturally due to kinship between two parties. Such as a father managing the affairs of his child, or a representative authorised via a will or ordered by the Court to manage the affairs of other individuals. Please refer to: Al-Shibīnī, *Mughnī Al-Muhtāj*, 2:281. See also: Al-Buhūti, *Kashf al-Qanā'*, 3:416-452; Ibn Qudāmah, *Al-Mughnī*, 4:510-512; Al-Damīri, *Al-Durar fī Sharḥ al-Mukhtaṣar*, 1:1634-1636; Ibn 'Ābidīn, *Radd al-Muhtār*, 9:200-219; 'Abd al-Karīm Zaydān, *Al-Madkhal li Dirāsah al-Sharī'ah al-Islāmiyyah*, 279; Muḥammad Salām Madkūr, *Al-Madkhal li al-Fiqh al-Islāmi: Tārīkhuh wa Maṣādiruh wa Naẓariyātuh al- 'Ammah*, 472-473; 'Alī Al-Khafif, *Aḥkām al-Mu'āmalāt al-Shar'īyyah*, 281-284.
- ⁵⁰ The concept of *sadd al-dharā'i'* is to block any means which could lead or has the potential to lead to something unlawful and harmful.
- ⁵¹ The *fiqh* maxim stated: “the fundamental principle of worship *ḥaẓr* dan *taḥqīf* (impermissibility until there is an evidence). See: Muḥammad al-Zuhaylī, *Al-Qarwā'id al-Fiqhiyyah wa Taṭbīqātuhā fī al-Madhāhib al-'Arba'ah*, (Damascus: Dār al-Fikr, 2006), 2:769.
- ⁵² Ibn Qayyim al-Jawziyyah, *I'lām al-Muwaqqi'in 'an Rabb al-'Ālamīn*, 3:11.
- ⁵³ *Ibid.*, 1:259.
- ⁵⁴ Kamar Oniah Kamaruzaman, *Understanding Islam: Contemporary Discourse*, (Malaysia: Saba Islamic Media, 2009), 264.
- ⁵⁵ Ibn Hajar al-'Asqalānī, *Fath al-Bārī fī Sharḥ Ṣaḥīḥ al-Bukhārī*, (Beirut: Dār al-Ma'rifah, 1968), 10:418.
- ⁵⁶ “Nazar am” means a nazar intended wholly or in part for the benefit of the Muslim community generally...” Section 2 AMLA (2020 Revised edition).
- ⁵⁷ “All money and property in the Fund are vested in the Majlis which is to administer all such money and property in accordance with the rules made under this Act.” Section 2 and 57(3), AMLA, (Revised 2020).

Chapter Two: Inheritance

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- ⁵⁹ *Statistics on Marriages & Divorces*, Singapore Department of Statistics, (2022), refer to: https://www.singstat.gov.sg/-/media/files/visualising_data/infographics/population/marriages-and-divorces-2022.ashx
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- ⁶⁶ Leong Wai Kum, *Elements of Family Law in Singapore*, (Singapore: LexisNexis, 2013); Kelvin Low et. Al., “Towards a Maintenance of Equality: A Study of the Constitutionality of Maintenance Provisions that Sexually Discriminate (Part 1),” *Singapore Law Review*, (1998), 45.
- ⁶⁷ *ADB v ADC*, [2014] SGHC 76.
- ⁶⁸ Siyuan Chen, “Maintenance under the Women’s Charter,” (report, School of Law, Singapore Management University, 2014).
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- ⁷⁰ There are also cases of husbands staying at home while the wives go out to work, read: “Apabila suami beraja di rumah,” *Berita Harian*, 18 May 2006, 9.
- ⁷¹ Department of Statistics, *Statistics on Marriages and Divorces*, 2013, 8.
- ⁷² Department of Statistics, *Statistics on Marriages and Divorces*, 2022, 8.
- ⁷³ Ministry of Social and Family Development, “Adoption Statistics,” 2014, <http://app/msf.gov.sg/Adoption-Statistics>
- ⁷⁴ Department of Statistics, *Divorces Under the Administration Of Muslim Law Act By Ethnic Group Of Couple*, 2023, refer to: <https://tablebuilder.singstat.gov.sg/table/TSM830226>
- ⁷⁵ “Pasangan Melayu/Islam Raih Sokongan Lebih Kukuh Tetapi Terlalu Awal Nilai Kesan Pada Perceraian,” *Berita Harian*, 22 May 2022; “Kadar Perkahwinan, Bercerai di SG Turun Tahun Lalu,” *Berita Harian*, 8 July 2021.
- ⁷⁶ “Isteri terbela kalau perceraian berlaku” *Berita Harian*, 28 September 1999, 11; “Cara bagi harta peninggalan suami” *Berita Harian*, 20 January 1998, 5; “Waris sah berhak mendapat harta peninggalan ayah,” *Berita Harian*, 25 October 1998, 8.
- ⁷⁷ “Kes abai hukum faraid bertambah,” *Berita Harian*, 5 August 2000, 3; “Bagaimana hendak pastikan ciri-ciri lebih adil dalam pembahagian harta,” *Berita Harian*, 12 August 2000, 15; “Kes gaduh rebut harta si mati meningkat,” *Berita Harian*, 17 July 2001, 3.
- ⁷⁸ Sekurang-kurangnya 600 orang menghadiri forum *Berita Harian* mengenai perancangan kewangan, baca: “Pastikan dulu harta sah untuk dimiliki,” *Berita Harian*, 8 August 2005, 6.

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- ⁸² Tham Seong Chee “Malay Family Structure: Change and Continuity with Respect to Singapore,” *Occasional Paper Series Academic Session No. 13*, Department of Malay Studies, National University of Singapore, 1994.
- ⁸³ Al-Sha‘rāwī, *Tafsīr Al-Sha‘rāwī*, (Cairo: Dār Akbār al-Yawm, 1997), 4:2024-2025.
- ⁸⁴ ‘Azīz bin Farḥan al-Anzī, *Maṣū‘ah al-Ijmā‘ fī Fiqh al-Islāmī*, (Egypt: Dār al-Hady al-Nabawī, 2014), 8:555.
- ⁸⁵ Mushaddad Hasbullah, *al-Kbulāṣah fī Fiqh al-Marwārith wa al-Waṣīyyah wa al-Waqf*, (Negeri Sembilan: USIM, 2012), 22.
- ⁸⁶ Ṣāliḥ ibn Fawzān, *al-Taḥqīqāt al-Marḍiyah*, (Riyadh: Maktabah al-Ma‘ārif, 1986), 18-19.
- ⁸⁷ Ibn Kathīr, *Tafsīr Ibn Kathīr*, (Beirut: Dār al-Kutub al-‘Ilmiyyah, 1998), 2:197; Al-Sha‘rāwī, *Tafsīr Al-Sha‘rāwī*, 4:2025.
- ⁸⁸ The people who receive portions that have been predetermined like half, one-sixth, one-third, and so on.
- ⁸⁹ The person who receives a share of the wealth after distribution among the *aṣḥāb al-furūd*.
- ⁹⁰ Firdaus Yahya, *Pengenalan Ilmu Faraidh* (Singapore: Deehaz Services, 2002), 204.
- ⁹¹ *Ibid.*, 12.
- ⁹² Section 112(1) AMLA, (Revised 2020).
- ⁹³ The minimum amount that allows the inheritance or heir’s share to be taken without needing to be divided.
- ⁹⁴ Majlis Ugama Islam Singapura (Muis), *Kumpulan Fatwa 3*, (Singapore: Majlis Ugama Islam Singapura, 1998), 34-35.
- ⁹⁵ This fatwa has been reviewed. Refer to the updated fatwa issued on 3/8/2010, chapter 5.
- ⁹⁶ Muṣṭafā al-Bughā, et al., *Al-Fiqh al-Manhajī ‘alā Madhhab al-Imām al-Shāfi‘ī*, 4:74; Firdaus Yahya, *Pengenalan Ilmu Faraidh*, 4-5.
- ⁹⁷ *Ibid.*, 218.
- ⁹⁸ Muṣṭafā al-Bughā, et al., *Al-Fiqh al-Manhajī ‘alā Madhhab al-Imām al-Shāfi‘ī*, 5:133.
- ⁹⁹ Ibn Ḥajar al-‘Asqalānī, *Fatḥ al-Bārī Sharḥ Ṣaḥīḥ al-Bukhārī*, (Beirut: Dār al-Ma‘rifah, 2010), 329.

- ¹⁰⁰ Wan Noraini Mohd Salim, Islamic Law of Succession, *CLJ Publication*, 2014, 7.
- ¹⁰¹ Ābādī, *ʿAwn al-Maʿbūd ʿalā Sharḥ Sunan Abi Dāwūd*, (Beirut: Dār al-Kutub al-ʿIlmiyyah, 1994), 2486.
- ¹⁰² Majlis Ugama Islam Singapura (Muis), *Kumpulan Fatwa 3*, (Singapore: Majlis Ugama Islam Singapura, 1998), 32-33.
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- ¹⁰⁶ Majlis Ugama Islam Singapura (Muis), *Kumpulan Fatwa 3*, (Singapore: Majlis Ugama Islam Singapura, 1998), 33.
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- ¹³⁶ Al-Zuḥaylī, *al-Fiqh al-Islāmī wa Adillatuhu*, 10:7851-7853.
- ¹³⁷ Ibid., 10:7825.

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- ¹³⁹ Al-Shāfi‘ī, *Mawṣū‘ah al-Umm al-Shāfi‘ī*, (Beirut: Dār Ihyā‘ al-Turāth al-‘Arabī, 2001), 4:446-447.
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Chapter Three: Wills

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- ¹⁶⁰ Ibn Qayyim al-Jawziyyah, *I‘lām al-Muwaqqi‘in ‘an Rabb al-‘Ālamīn*, 174.
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- ¹⁶² Al-Sayyid Sābiq, *Fiqh al-Sunnah*, 3:416-417.
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- ¹⁷⁷ Ministry of Law. Public Trustee’s Office. Will Registry Information Sheet 4, 2017.
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- ¹⁷⁹ Muṣṭafā al-Bughā et al., *Al-Fiqh al-Manhajī ‘alā Madhhab al-Imām al-Shāfi‘ī*, 5:139.
- ¹⁸⁰ Fatwa Decision 5/7/1995.
- ¹⁸¹ Ibn Qudāmah, *Al-Mughnī*, (Saudi: Dār ‘Ālam al-Kutub, 1999), 8:516.

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- ¹⁹⁸ Al-Qurṭubī, *Al-Jāmiʿ li Ahkām al-Qurʿān*, 18:59.
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- ²¹² *Ibid.*, 140.
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- ²²⁹ Al-Zuḥaylī, *al-Fiqh al-Islāmī wa Adillatuhu*, 10:7554.
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Chapter Four: Wakaf

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- ²⁴¹ Al-Shirbinī, *Mughnī al-Muḥtāj ilā Maʿrifah Maʿānī Alfāz al-Minhāj*, 2:485.
- ²⁴² Muṣṭafā Al-Zarqāʾ, *Aḥkām al-Awqāf*, (Amman: Dār ʿAmmār, 1998), 38-40.
- ²⁴³ Al-Nawawī, *Rawḍah al-Ṭālibīn*, (Beirut: Al-Maktab Al-Islāmī, 1991), 5:325-326.
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- ²⁵¹ Al-Zuḥaylī, *Al-Fiqh al-Islāmī wa Adillatuhu*, 10:7605.
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- ²⁵³ Al-Kubaysī, *Aḥkām Al-Awqāf fi Al-Islām*, (Baghdad: Matbaʿah al-Irshād, 1977), 2:196.
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- ²⁶⁸ Al-Kubaysī, *Aḥkām Al-Awqāf fī Al-Islām*, 2:9.
- ²⁶⁹ Al-Nawawī, *Al-Majmū' Sharḥ al-Mubadḥab*, 15:361; Al-Nawawī, *Minhāj al-Ṭālibīn wa 'Umdah al-Muḥtāj al-Fiqh*, 179; Al-Shirbinī, *Mughnī al-Muḥtāj ilā Ma'rifah Ma'ānī Alfāz al-Minhāj*, 3:551.
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- ²⁷⁵ Ibid., 4:123.
- ²⁷⁶ Waliyullah Al-Dahlawī, *Hujjatullāh al-Bālighah*, (Beirut: Dār al-Jīl), 2:180.
- ²⁷⁷ Ibn Bayyah, *Maqāṣid Mu'āmalāt wa Marāṣid al-Wāqī'āt*, 203.
- ²⁷⁸ Al-Zarkashī, *Tashnīf al-Masāmi' bi Jam' al-Jawāmi'*, 2:633.
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Chapter Five: Central Provident Fund (CPF) and Insurance Nomination

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- ²⁹⁵ Reutens, L., dan Lee M., *A People’s Wealth, a Nation’s Health: The CPF Story*, Singapore: Central Provident Fund, 2000. Refer: <https://mycpf.cpf.gov.sg/Members/Schemes>
- ²⁹⁶ Refer: <https://www.cpf.gov.sg/member/infocenter/cpf-clarifies/policy-faqs/why-do-payout-durations-vary-under-retirement-sum-scheme>
- ²⁹⁷ Fatwa Decision on CPF Zakat, dated 19 August 2014.
- ²⁹⁸ Feirul Maliq Intajalle dan Luqman Abdullah, “Alternatif Pembahagian Harta Pusaka Islam di Singapura: Analisis dari Perspektif Fiqh,” 39.

- ²⁹⁹ “Where the Board is notified that a designated shareholder has died and the designated shareholder died before 1 January 1996 or did not execute a memorandum under section 25(1), the Board must transfer the designated shareholder’s designated shares to — (a) the securities account (if any) belonging to and in the sole name of the deceased designated shareholder...” Section 26 CPF Act (Revised 2020).
- ³⁰⁰ “Subject to such conditions as the Board may prescribe, any member of the Fund who is at least 16 years of age may, by a memorandum executed in such manner as the Board may prescribe, nominate any person to receive in his or her own right — (a) such portion of the amount payable on the member’s death out of the Fund as the memorandum indicates...” Section 25 CPF Act (Revised 2020).
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- ³⁰³ *Ibid.*
- ³⁰⁴ “The good for nothing relatives,” *New Nation*, 22 October 1978, 5.
- ³⁰⁵ “CPF: 40% tidak menamakan waris,” *Berita Harian*, 19 January 1987, 2
- ³⁰⁶ Refer: Minutes of Fatwa Muis, 2001 and 2005. Refer also: “Ingin menuntut wang CPF ayah,” *Berita Harian*, 12 February 1983, 5; “Masalah untuk wariskan wang CPF,” *Berita Harian*, 29 May 1982, 5; “Adik tiri menerima CPF si mati,” *Berita Harian*, 14 July 1990; “Janda tidak mahu harta jatuh ke tangan adik-beradik,” *Berita Harian*, 11 April 1993, 5; “Ibu kurang pasti hak atas harta anak,” *Berita Harian*, 12 May 1993, 5.
- ³⁰⁷ “Muis diminta menjelaskan,” *Berita Harian*, 24 February 1987, 5
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- ³⁰⁹ “Lebih ramai orang disaran lantik waris CPF,” *Berita Harian*, 18 January 1978, 8.
- ³¹⁰ “Rancang harta pusaka,” *Berita Harian*, 23 July 2006, 14.
- ³¹¹ *Saniah Bte Ali v Abdullah bin Ali* [1990] SLR(R) 584.
- ³¹² *Hibah*: A form of gift *inter vivos* (during lifetime) without expecting any return or exchange.
- ³¹³ *Qabḍ*: An undisputed transfer of the gift from the giver to the giftee.
- ³¹⁴ Ibn Qayyim al-Jawziyyah, *I’lām al-Muwaqqi’in ‘an Rabb al-‘Ālamīn*, 1:470; Al-Shāṭibī, *Al-Muwāfaqāt*, (Cairo: Dār ibn ‘Affān, 1997), 305.
- ³¹⁵ Feirul Maliq Intajalle dan Luqman Abdullah, *Alternatif Pembahagian Harta Pusaka Islam di Singapura: Analisis dari Perspektif Fiqh*, 42.

- ³¹⁶ Al-Nawawī, *Rawḍah al-Ṭalībīn*, 6:111; Al-Zayla‘ī, *Tabayīn al-Ḥaqā‘iq*, (Cairo: Al-Maṭba‘ah al-Kubrā al-Amīriyyah, 1894), 5:92; Ibn Qudāmah, *Al-Mughnī*, (Saudi: Dār ‘Ālām al-Kutub, 1997), 8:242.
- ³¹⁷ Ibn Rushd, *Bidāyah al-Mujtahid wa Nihāyah al-Muqtaṣid*, (Saudi: Dār al-Ḥadīth, 2004), 4:114.
- ³¹⁸ Al-Zanjānī, *Takhrīj al-Furū‘ alā al-Uṣūl*, (Beirut: Mu‘assasah al-Risālah, 1977), 322.
- ³¹⁹ Ibn ‘Ābidīn, *Radd al-Muḥtār*, 6:304; Ibn Muflīh, *al-Furū‘*, 7:395; ‘Alī Ḥaidar, *Al-Durar al-Aḥkām fī Sharḥ Majallah al-Aḥkām*, 2:418.
- ³²⁰ Ibn Qayyim al-Jawziyyah, *I‘lām al-Murwaqqi‘in ‘an Rabb al-‘Ālāmīn*, 1:259.
- ³²¹ *Ibid.*, 3:97.
- ³²² Muḥammad al-Zuhaylī, *Al-Qawā‘id al-Fiqhiyyah wa Taṭbīqātuhā fī al-Madhāhib al-‘Arba‘ah*, 2:769.
- ³²³ ‘Alī Jumū‘ah, *Fatāwā ‘Aṣriyyah*, (Egypt: Dār al-Salām, 2005), 1:133-134.
- ³²⁴ Al-Zarqā’, *Sharḥ al-Qawā‘id al-Fiqhiyyah*, (Damascus: Dār al-Qalam, 1989), 119.
- ³²⁵ **Revocable Nomination:** It is a form of nomination where the policy holder still retain full rights to amend or revoke the nomination, All life benefits will be payable to him/her, and only death benefits are payable to the nominee(s).
- Irrevocable Nomination:** It is a form of nomination where the policy holder loses all rights over the payouts of the policy, because all benefits are payable to the nominee(s). If a policy holder wishes to revoke or amend the nomination, he/she requires consent from each nominee or a trustee. (Please refer to Insurance Act, 49L & 49M).
- ³²⁶ Section 111(1) of AMLA is as follows:
- 111. —(1) Notwithstanding anything in the provisions of the English law or in any other written law, no Muslim domiciled in Singapore shall, after 1st July 1968, dispose of his property by will, or by any nomination under section 49M(2) of the Insurance Act (Cap. 142), except in accordance with the provisions of and subject to the restrictions imposed by the school of Muslim law professed by him.*
- ³²⁷ Among Muslim scholars who view insurance as permissible are Dr. Mustafa Zarqa’, Dr. Ali Jumaah, the *Mufti* of Egypt and House of Fatwa of Egypt (Dār al-Iftā’ al-Miṣriyyah).
- ³²⁸ *Shubbah*: Dubious nature of the Shariah compliancy of a transaction.
- ³²⁹ *Gharar*: Uncertainty which could lead to the prohibition of a transaction.
- ³³⁰ Among Muslim scholars who prohibit all forms of insurance are Sheikh Ibn Abidin Al-Hanafi, Sheikh Jadal Haq Ali Jadal Haq, and the Fiqh Academy for the Organization of the Islamic Conference (OIC).
- ³³¹ *Hibah*: A form of life-time gift (*inter-vivos*) with no expectation of anything in return.
- ³³² *Qabd*: Delivery and physical acceptance of a gift.

- ³³³ Ibn Qayyim al-Jawziyyah, *I'lām al-Muwaqqi'in 'an Rabb al-'Ālamīn*, (Beirut: Dār al-Jīl, 1973), 1:470; Al-Shāṭibī, *Al-Muwāfaqāt*, (Dār al-Kutub al-'Ilmiyyah), 399.
- ³³⁴ BERITA, Zhulkarnain Abdul Rahim, KOMENTAR: Fatwa Hartanah - Amanah untuk Masyarakat, Refer: <https://berita.mediacorp.sg/komentar/komentar-fatwa-hartanah-amanah-untuk-masyarakat-175711>
- ³³⁵ Al-Nawawī, *Rawḍah al-Ṭālibīn*, 6:111; Al-Zayla'ī, *Tabyīn al-Ḥaqā'iq*, (Cairo: Al-Maṭba'ah al-Kubrā al-Amīriyyah, 1894), 5:92; Ibn Qudāmah, *Al-Mughnī*, (Saudi Arabia: Dār 'Ālam al-Kutub, 1997), 8:242.
- ³³⁶ Dependants' Protection Scheme, Great Eastern, refer: <https://www.greateasternlife.com/sg/en/personal-insurance/our-products/life-insurance/dependants-protection-scheme.html>
- ³³⁷ CPF, Dependants' Protection Scheme, Great Eastern, refer: <https://www.greateasternlife.com/content/dam/corp-site/great-eastern/sg/homepage/personal-insurance/our-products/life-insurance/dps/dps.pdf>
- ³³⁸ CPF, Dependants' Protection Scheme, refer: CENTRAL PROVIDENT FUND BOARD, <https://www.cpf.gov.sg/members/FAQ/schemes/Other-Matters/Dependants27-Protection-Scheme/FAQDetails?category=Other%20Matters&group=Dependants%27%20Protection%20Scheme&folderid=12019&ajfaqid=2187388>
- ³³⁹ CPF, Dependants' Protection Scheme, CENTRAL PROVIDENT FUND BOARD, refer: <https://www.cpf.gov.sg/members/FAQ/schemes/Other-Matters/Dependants27-Protection-Scheme/FAQDetails?category=Other%20Matters&group=Dependants%27%20Protection%20Scheme&folderid=12019&ajfaqid=2187399>
- ³⁴⁰ CPF, Dependants' Protection Scheme, CENTRAL PROVIDENT FUND BOARD, refer: <https://www.cpf.gov.sg/Members/Schemes/schemes/other-matters/dependants-protection-scheme>
- ³⁴¹ Fatwa Decision 19/8/1997.
- ³⁴² Ibn Ḥajar al-Haytamī, *Tuḥfah al-Muḥtāj fī Sharḥ al-Minhāj*, (Cairo: Al-Maktabah al-Tijāriyyah al-Kubrā, 1983), 6:382; Al-Ramlī, *Nihāyah al-Muḥtāj ilā Sharḥ al-Minhāj*, (Beirut: Dār al-Fikr, 1984), 6:4.
- ³⁴³ The Fatwa Committee is of the opinion that the payment of the DPIS (Dependants' Protection Insurance Scheme) should be distributed according to *farā'id*. (Fatwa Decision 19/8/1997)
- ³⁴⁴ Great Eastern, *Dependants' Protection Scheme*. Refer to: <https://www.greateasternlife.com/content/dam/corp-site/great-eastern/sg/homepage/dps/tnc.pdf>
- ³⁴⁵ Ibn Taymiyyah, *Majmū' al-Fatāwā*, (Madinah: Majma' al-Malik Fahd li Ṭibā'ah al-Muṣḥaf al-Sharīf, 1995), 29:132.
- ³⁴⁶ Al-Shādzulī, *Naẓariyyah al-Sharḥ fī al-Fiqh al-Islāmī*, (Riyadh: Dār Kunūz Ishbiliyyā, 2009), 159.
- ³⁴⁷ *Al-Qabḍ*: An undisputed transfer of the gift from the giver to the giftee.
- ³⁴⁸ Al-Nawawī, *Rawḍah al-Ṭālibīn*, (Beirut: Dār 'Ālam al-Kutub, 2003), 4:437.

- ³⁴⁹ Ibn Rushd Al-Ĥafid, *Bidāyah al-Mujtabid wa Nihāyah al-Muqtaṣid*, (Cairo: Maktabah Ibn Taymiyyah, 1994), 4:163.
- ³⁵⁰ Al-Tirmidhī, *Jāmi‘ al-Tirmidhī*, hadith no. 1352.
- ³⁵¹ Al-Zuḥaylī, *Al-Qawā‘id al-Fiḥhiyyah*, (Damascus: Dār al-Fikr, 2006), 2:833.
- ³⁵² Al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, hadith no. 2742. Refer also: Muslim, *Ṣaḥīḥ Muslim*, hadith no. 1628.
- ³⁵³ Yayasan RHT Rajan Menon, “Mencapai Kebahagiaan di Usia Emas: Buku Panduan untuk Warga Tua dan Penjaga Mereka,” *Berita Harian*, 14 May 2017, 26-27, <https://www.beritaharian.sg/setempat/tabung-amanah-anak-keperluan-khas-kekal-rendah>
- ³⁵⁴ Persons with special needs include those with Alzheimer/dementia, autism, cerebral palsy, Down syndrome, intellectual disability, mental disabilities, multiple disorders and physical disability.
- ³⁵⁵ Further information can be obtained through the website: <http://www.sntc.org.sg/Pages/Home.aspx>
- ³⁵⁶ Due to the lack of official statistics regarding the disabled population in Singapore, the figures provided are only an estimate. Read: “No clear data on disability situation in Singapore,” *The Straits Times*, 13 March 2014. Read: Enabling Masterplan Steering Committee, “Enabling Masterplan 2012-2016,” 8. <http://app.msf.gov.sg/Portals/0/Topic/Issues/EDGD/Enabling%20Masterplan%202012-2016%20Report%20%288%20Mar%29.pdf>
- ³⁵⁷ Further information on nuzriah can be obtained through the Office of the Mufti’s website.
- ³⁵⁸ Al-Zuḥaylī, *Fiḥḥ al-Islāmī wa Adillatuhu*, 5:9.
- ³⁵⁹ Fatwa on CPF nomination on 3 August 2010 and fatwa on Insurance nomination on 2 February 2012.
- ³⁶⁰ Ibn Qayyim al-Jawziyyah, *I‘lām al-Muwaqqi‘in ‘an Rabb al-‘Ālamīn*, 1:259; Al-Shāṭibī, *Al-Muwāfaqāt*, (Beirut: Dār al-Kutub al-‘Ilmiyyah, 2004), 399.
- ³⁶¹ “Keluarga Lega Sumber Anak Istimewa Terjamin,” *Berita Harian*, 2 February 2019, refer: <https://www.beritaharian.sg/setempat/keluarga-lega-sumber-kewangan-anak-istimewa-lebih-terjamin>
- ³⁶² Al-Subkī, *Al-Ashbāḥ wa al-Naṣā‘ir*, (Beirut: Dār al-Kutub al-‘Ilmiyyah, 1991), 1:49; Muḥammad Al-Zuḥaylī, *Al-Qawā‘id al-Fiḥhiyyah wa Taṭbīqātuhā fī al-Madhābib al-Arba‘ah*, 1:257.
- ³⁶³ Ibn ‘Āshūr, *Maqāṣid al-Shari‘ah al-Islāmiyyah*, (Qatar: Wizārah al-Awqāf wa al-Shu‘un al-Islāmiyyah, 2004), 2:485-486.
- ³⁶⁴ Abd. Latif Muda dan Rosmawati Ali @Mat Zin, *Perbahasan Kaedah-Kaedah Fiḥḥ* (Kuala Lumpur: Ilham Abati Enterprise, 2000), 139-141.

Chapter Six: Joint Tenancy and Joint Account

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- ³⁶⁶ “Kes rebut harta si mati meningkat,” *Berita Harian*, 17 July 2001, 3.
- ³⁶⁷ “Singapore private homes now priciest to own, rent in Asia-Pacific in absolute terms: Report,” *The Straits Times*, 30 May 2023.
- ³⁶⁸ Tham Seong Chee, Malay Family Structure: Change and Continuity with Respect to Singapore, *Occasional Paper Series Academic Session No. 13*, Department of Malay Studies, National University of Singapore, (NUS), (1994), 6.
- ³⁶⁹ Tan Y.L., *The Reception of English Law: Essays in Singapore Legal History*, (Singapore: Marshall Cavendish, 2005), 7.
- ³⁷⁰ Tan S.Y, *Private Ownership of Public Housing in Singapore*, Times Academic Press, (1988), 126-128.
- ³⁷¹ WJM Ricquier, Land Law Second Edition, *Butterworths Asia*, (1995), 45.
- ³⁷² Tan S.Y, *Private Ownership of Public Housing in Singapore*, (1988), 126-128.
- ³⁷³ Ricquier, J.M, *Land Law*, (1995), 47.
- ³⁷⁴ Hairani Saban Hardjoe, Will the right of survivorship survive?, (2009); Tham Seong Chee, Malay Family Structure: Change and Continuity with Respect to Singapore, (1994); The Law Society of Singapore, *Law Gazette January 2009*.
- ³⁷⁵ National Land Code 1965, Malaysia.
- ³⁷⁶ Nur Akmal Adnan, et al., The Preliminary Study on the Application of Joint Tenancy in Malaysia, *Journal of Islamic, Social, Economics and Development*, 7, 51, (2022), 20-29.
- ³⁷⁷ “Joint tenants may soon be able to will share of property,” *The Straits Times*, 18 November 1992, 40.
- ³⁷⁸ “A landmark decision,” *The Straits Times*, 27 November 1997, 3.
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- ³⁸⁰ Such a case is not uncommon and sometimes appear in the press. See: “Usah lambat-lambatkan pembahagian harta pusaka: Kemusykilan Agama,” *Berita Harian*, 11 July 1999, 9; “Pastikan dulu harta sah dimiliki,” *Berita Harian*, 8 August 2005, 6.
- ³⁸¹ “Harta pusaka mesti dibahagi pada waris: Islam larang seseorang ambil hak orang lain, termasuk keluarga sendiri,” *Berita Harian*, 9 May 1999, 10.
- ³⁸² “Bukan Waris boleh dapat harta melalui 3 cara,” *Berita Harian*, 19 July 2003, 21.

- ³⁸³ A promise to do something when the desire is fulfilled, pledge, intend. (Berjanji akan membuat sesuatu apabila tercapai hajat, berkaul, berniat). *Kamus Dewan*.
- ³⁸⁴ Majlis Ugama Islam Singapura, *Kumpulan Fatwa 3*, (Singapore: Majlis Ugama Islam Singapura, 1998), 29.
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- ³⁹⁰ Sa‘ di Abū Jayb, *Al-Qāmūs al-Fiqhī: Lughatan wa Iṣṭilāḥan*, 151.
- ³⁹¹ Al-Shirbīnī, *Mughnī al-Muḥtāj ilā Ma‘rifah Ma‘ānī Alfāz al-Minhāj*, 3:563; Muṣṭafā al-Bughā, et al., *Al-Fiqh al-Manhajī ‘alā madhhab al-Imām al-Shāfi‘ī*, 6:123.
- ³⁹² Ibn Ḥajar al-Haytamī, *Tuḥfah al-Muḥtāj fī Sharḥ al-Minhāj*, 10:77.
- ³⁹³ Examples that allow such hibah can be accessed here: “Abdullah gives 4 needy children unit trust gifts: Minister sets example,” *The Straits Times*, 13 November 1994, 25; “Membuat hibah melalui Amanah Saham mendaki juga diedarkan secara meluas di akhbar melayu,” *Berita Harian*, “Pak Oteh: Tak Habis Bertekad,” *Berita Harian*, 28 December 1994, 4; “Gagas kreatif, rancak kejayaan,” *Berita Harian*, 15 November 1994, 4; “Hibah lain macam,” *Berita Harian*, 19 November 1994, 4.
- ³⁹⁴ One such product specific to Singapore is the *Dana Modal Terjamin Mendaki*. Read: Aspek halal DMTM diperjelas,” *Berita Harian*, 17 August 2001, 12.
- ³⁹⁵ “Memahami prinsip-prinsip sistem bank Islam: Satu alternatif untuk menambah sumbangan kepada kemakmuran negara,” *Berita Harian*, 1 February 1998, 4; “Perbankan Islam kurang digugat kemelut ekonomi,” *Berita Harian*, 27 March 1998, 24.
- ³⁹⁶ “Gunakan wang anak belum baligh,” *Berita Harian*, 22 March 1987, 5; “Abang tak puas hati amanat ibu,” *Berita Harian*, 9 August 1987, 5.
- ³⁹⁷ “Skim Hibah bagi permudah pembahagian harta si mati,” *Berita Harian*, 24 April 2001, 14.
- ³⁹⁸ Ibid.
- ³⁹⁹ Asaf A.A. Fyzee, *Outlines of Muhammadan Law*, (England: Oxford University Press, 1964), 213.
- ⁴⁰⁰ This case was widely reported in the Malay and English press. Refer: “Dua beradik pertikai wasiat ayah \$1.3 juta,” *Berita Harian*, 25 March 2004, 1; “Family tussle over gift in dad’s 1.3 mil will,” *The New Paper*, 25 May 2004, 2.

- ⁴⁰¹ “MUIS: Nuzriah diiktiraf, diamal Mazhab Syaf’ii,” *Berita Harian*, 26 September 2004, 2; “Mufti: Nuzriah Sah,” *Berita Harian*, 25 March 2004; “Seminar: Boleh bagi nuzriah jika payah bagi harta ikut faraid,” *Berita Harian*, 3 October 2004, 1.
- ⁴⁰² Hooker M.B, “Succession to Muslim Estates in Singapore: Sources and Choice of Law,” *Australian Journal of Asian Law*, 15, 2, (2014), 19-20.
- ⁴⁰³ “Ustaz: Usah abai amalan bagi harta ikut faraid,” *Berita Harian*, 8 October 2004, 8.
- ⁴⁰⁴ The Law Revision Commission, *The Statutes of the Republic of Singapore, Housing and Development Act (Chapter 129)*, 2004, 49.
- ⁴⁰⁵ [2017] SGHC 164.
- ⁴⁰⁶ Section 2, 4, 6, 10, 15 and 20 Wills Act, (2020 Revised Edition); Section 111, 112, and 115 AMLA, (2020 Revised Edition); section 50 HDB Act (2020 Revised Edition); Mohamed Ismail bin Ibrahim and Another v Mohammad Taha bin Ibrahim [2004] SGHC 210 dan Teo Song Kheng v Teo Poh Hoon [2020] SGHC 47.
- ⁴⁰⁷ Haja Maideen s/o Mohd Ali Maricar v Roshan Begum Md Ali M [2017] SGHC 164.
- ⁴⁰⁸ *Ibid.*, 38.
- ⁴⁰⁹ Al-Shirbīnī, *Mughnī al-Muhtāj ilā Ma’rifah Ma’ānī Alfāḥ al-Minhāj*, 3:221; Feirul Maliq Intajalle dan Luqman Abdullah, *Alternatif Pembahagian Harta Pusaka Islam di Singapura: Analisis dari Perspektif Fiqh*, 39-40.
- ⁴¹⁰ *Ibid.*, 40.
- ⁴¹¹ *Shafeeg bin Salim Talib and another v Fatimah bte Abud bin Talib and others* [2010] SGCA 11.
- ⁴¹² “The *fatwa* sets that a joint tenant owns half of the house, the heir cannot force the owner to sell the said property and if there is ‘*aqd hibah ruqbā* or *nuzriah*, the living owner becomes the absolute owner of the property” **Decision of the fatwa on Joint tenancy 2008.**
- ⁴¹³ In 2017 alone, the Muis Call Center received about 371 calls regarding the estate. It increased to 455 calls in 2018. 70% of the questions raised were on joint tenancy.
- ⁴¹⁴ Refer to the case of *Shafeeg bin Salim Talib and another v Fatimah bte Abud bin Talib and others* [2010] 2 SLR 1123 at 43 where CJ Chan Sek Keong held: “It is therefore clear from these authorities that legally no interest in the Property passed to the 1st Respondent upon the Deceased’s death. Whatever interest the Deceased had in the Property simply ceased to exist, and the 1st Respondent became the sole absolute owner because she would no longer be subject to the right of survivorship.”

⁴¹⁵ Section 53(1-3), Land Titles Act (Cap. 157) “Manner of holding by joint tenants

53.—(1) *In every instrument affecting registered land, co-tenants claiming under the instrument shall, unless they are described as tenants-in-common, hold the land as joint tenants; and if they are described as tenants-in-common, the shares in the registered land to be held by them shall, subject to subsection (2), be specified in the instrument.*

(2) *Persons described as tenants-in-common shall, in the absence of any expression to the contrary, be presumed to be entitled in equal shares.*

(3) *Tenants-in-common entitled in equal shares who intend to hold their estate or interest in land as joint tenants may jointly declare by an instrument of declaration in the approved form that they hold the estate or interest in their respective shares in the registered land as joint tenants of the entire estate or interest thereof.”*

⁴¹⁶ The text, as quoted from kitab *al-Hidāyah* is as follows:

و إن وهبها واحد من اثنين لا يجوز عند أبي حنيفة، وقالوا: يصح؛ لأن هذه هبة الجملة منهما؛ إذ التملك واحد، فلا يتحقق الشيوع، كما إذا رهن من رجلين دارا.

Meaning: “*And if an owner gifts a house to two persons, it is not allowed by Imam Abu Hanifah. However, his two disciples are of the opinion that it is valid because the gift is of the whole of the house to each of the two persons, which would become a sole possession, which would not constitute al-shuyū‘ (a situation in which the shares of the respective individuals in that property are not distinguishable), similar to as if to charge a land to two people.*” See: Al-Marghīnānī, *Al- Hidāyah*, 6:253.

⁴¹⁷ Only the al-Zāhiriyyah school of thought argues that the origin of the law for the new contract is haram or forbidden. Ibn Taymiyyah, *Majmū‘ al-Fatāwā*, 29:126–127; see also, al-Qarhadāghī, *Buḥūth fi Fiqh al-Mu‘āmalāt al-Māliyah al-Mu‘āṣarah*, page 137; Al-Qardāwī, *Maqāṣid al-Sharī‘ah al-Muta‘alliqah bi al-Māl*, 76–77.

⁴¹⁸ Al-Kāsānī, *Badā‘i‘ al-Ṣanā‘i‘*, 13:76.

⁴¹⁹ Al-Shāṭibī, *Al-Muwāfaqāt*, 305.

⁴²⁰ Al-Tirmidhī, *Sunan al-Tirmidhī*, 1352; Al-Dāraquṭnī, *Sunan al-Dāraquṭnī*, 2856; Abū Dāwūd, *Sunan Abi Dāwūd*, 3594; Ibn Ḥajr, *Fath al-Bārī bi Sharh Ṣaḥīḥ al-Bukhārī*, 7:327.

⁴²¹ Lim Choo Hin (as the sole executrix of the estate of Lim Guan Heong, deceased) v Lim Sai Ing Peggy [2021] SGHC(A) 22.

⁴²² Re Harrison (1920) 90 LJ Ch 186.

⁴²³ Marshal v Crutwell (1875) LR 20 Eq 328.

⁴²⁴ Aroso v Coutts & Co [2002] 1 All ER (Comm) 241.

⁴²⁵ Russell v Scott (1936) 55 CLR 440.



GLOSSARY

- Baitulmal:** The institution functions as the trustee of public treasury for Muslims, managing assets for the public welfare.
- Dalil:** The explanation that serves as evidence of a fact or truth. *Dalil naqli* refers to the evidence derived from the Qur'an, Sunnah, Qiyas, and Ijma.
- Farā'id:** The Islamic law of inheritance, in which Shariah determines the share for each heir and the matter of distribution.
- Fatwa:** An explanation of Muslim law, considering the realities of individual or collective life, based on the sources and principles of Shariah.
- Hibah:** The transfer of ownership of one's property to another person during their lifetime, without any compensation.
- Hibah al-Ruqbā:** Transfer of ownership from one person to another, contingent upon the death of either party.
- Ijtihād:** The diligent effort exerted by a jurist in formulating a religious ruling, in accordance with the requirements of *ijtihad*.
- Istibdāl:** Refers to the act of substituting a pre-existing wakaf with a new wakaf property/asset through the process of exchange, acquisition, or sale.
- Mafqūd:** Refers to an heir whose whereabouts are so obscure that all connections have been severed, rendering their current status, whether they are still alive or deceased, unknown.
- Mafsadah:** Harm.
- Maqāsid al-Sharī'ah:** The higher objective of Islam, encompassing the preservation of religion, life, intellect, progeny, and wealth.
- Maṣlahah:** Consideration of the public interest, welfare, and benefit.

- Mu'āmalāt:** Transactions between individuals within the financial and economic system, involving activities like buying, selling, leasing, and other related financial dealings.
- Mushārah:** Refers to the shared ownership right held by two or more individuals over an asset.
- Nuṣūṣ:** Religious texts (the Quran and Hadith).
- Nuzriah:** A vow (promise) made by an individual to donate a portion or the entirety of their wealth to another party prior to their demise.
- Qabd:** An undisputed transfer of the gift from the giver to the recipient.
- Qādi:** Judge
- Qat'ī:** Refers to evidence that is certain and fixed and cannot be amended or altered.
- Radd:** The method of distributing the remaining inheritance assets to the heirs (*ashāb al-furūd*) according to their respective shares.
- Sadd al-Dharā'i':** Blocking the means to an expected danger or harm.
- Wakaf:** The act of donating wealth/assets/land to draw closer to Allah, with the intention of benefiting and serving the public interest.
- Wakālah:** Representative; where an individual is entrusted with the authority to act on behalf of or in lieu of the principal who confers such permission.
- Wilāyah:** Guardianship, a legal authority established by Islamic law to manage and oversee the welfare of an individual who is unable to do so for reasons such as bankruptcy, underage, those lacking mental capacity (*al-safīh*), mental impairment (*al-ma'tūb*), etc.
- Wiṣāyā / Waṣīyyah:** The act of a Muslim creating a will to distribute their wealth upon their death, with the specified limit for the will being one-third.

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INDEX

A

- Abū Dāwud 61, 94
- Abū Ḥanīfah 47, 118,
- Abū Ṭalḥah 116
- Adat Perpatih 8, 9, 10, 12,
- Adat Resam 164,
- Adat Temenggung 9, 10,
- Advance Care Planning (ACP)* 18, 19
- Advanced Medical Directive (AMD)
16, 18
- Ahna Ally Mohammad Kassim 111
- Akad al-Wafā'* 172, 211
- Act
- CPF Act 159, 161, 162, 163, 165,
166, 168, 170
- Housing and Development Act
207
- Insurance Act 173, 174, 176
- Intestate Succession Act 80, 81
- Land Acquisition Act 112, 128,
129
- Land Titles Act 197,
- Maintenance of Parents Act 37
- Mental Capacity Act 16, 18
- Wills Act 80, 81, 86, 108
- Administration of Muslim Law Act
(AMLA) 1, 2, 5, 10, 22, 23, 34, 35,
43, 59, 60, 75, 77, 78, 79, 80, 82, 87, 88,
104, 109, 113, 138, 162, 163, 164, 166,
176, 179, 196, 203, 204, 205, 210, 211
- Adoptive father / Foster father 52, 54,
56
- Al-Āmidī 60
- Al-Bukhārī 15, 41, 42, 53, 54, 63,
67, 83, 91, 97, 117, 145, 183
- Al-Ḥasan al-Baṣrī 100
- Ali Gomaa 172
- Ali r.a. 91
- Al-Kamāl bin al-Humam 60
- Al-Kāsānī 215
- Al-Māwardī 200,
- Al-Nasā'ī 99, 191
- Al-Nawawī 83, 135, 138, 185,
- Al-Qurṭubī 12, 13
- Al-Sha'bi 91
- Al-Shīrāzi 64
- Al-Suyūṭī 144
- Al-Ṭabarī 200
- Al-Ṭabrānī 134
- Al-Tirmidhī 93, 95, 138, 195, 200,
211
- Al-Zanjānī 171
- Al-Zuḥaylī 97, 123, 125, 127, 129,
- Anti-Islam 7
- 'Aqārāt* 112
- 'Aqd al-tabarru'āt* 184
- Al-Ramlī 65
- Aṣḥāb al-furūd* 41, 42, 43, 63
- ## B
- Baitulmal 21, 45, 60, 61, 62, 63,
64, 65, 66, 70, 88, 113, 130, 134, 139,
140,

Basic Retirement Sum (BRS) 160
Beneficial right 221, 222, 223
 Beneficiary 13, 82, 84, 98,
 128, 148, 164, 167, 182, 189, 190, 191,
 196, 203
 Biological father 54, 55, 56, 57,
 59, 67
 Business 7, 77, 78, 111, 112, 113,
 138, 147

C

Cawangan Naning 8
 Cawangan Rembau 8, 9
 Cecil Street 9
 Changi Road 111, 113
 Children/ Child Born Out of Wedlock
 54, 55, 56, 57, 58, 59, 104, 163
 China 76
 Circumscription 6
 Civil marriage 67, 68, 69
 Colonial 5, 6, 8, 9, 10, 75, 76, 77
 Complete ownership (*al-milk al-tām*)
 159, 160
 Community Funds Administration
 Unit 113
 Conclusive Presumption 222
 Conditional *nazar* 12
 Contemporary form of *hibah* /
 contemporary gift 171, 175, 179
 Court
 Appellate Court 219
 Court of Appeal 218, 219
 Civil Court 77, 79, 80, 85,
 207
 The High Court 35, 61, 165,

205, 206, 210, 219
 The Syariah Court 7, 8, 10, 14, 51,
 60, 79, 80, 81, 87, 88, 93, 174

CPF

CPF Board 161
 CPF Nomination 2, 24, 46, 104,
 161, 162, 164, 165, 166, 167, 168,
 170, 172, 176, 177, 178, 179, 188,
 190, 192, 193,

D

Dāwūd al-Zāhirī 100, 200
 Dhāwul arḥām 62, 64, 65
 Death Gratuity 181
 Disobedient child 45, 201
 Divorce 6, 7, 18, 34, 35, 36, 37,
 70, 177
 Donee 16, 17, 18, 19, 20
 Donor 16, 17, 18, 20, 120
 Dependents 11, 12, 13, 14, 15, 16,
 36, 38, 173, 193, 197
 Dependents Protection Scheme (DPS)
 159, 180, 181, 183, 184, 185, 186, 187

E

Estate administration 81
 Estate distribution ix, xiii, 11, 36,
 42, 43, 47, 49, 50, 51, 53, 56, 57, 59, 60,
 61, 67, 68, 70, 87, 88, 101, 104, 109,
 198, 224
 Estate planning ix, x, xii, 1, 3, 5,
 14, 15, 21, 38, 53, 78, 82, 164, 192, 193,
 202,
 Executor (*wasī*) 86, 94, 95, 109,
 210

F

Financial planning 1, 2, 5, 11, 21,

24, 37, 42, 44, 70, 85, 86, 167, 176, 179, 204, 211

Financial planning instrument 2, 167

Foster Families 173

G

Grant of Letters of Administration
173, 174

Grant of Probate 79, 80, 81, 173,
174

Group Insurance 181, 182

H

Haji Abdul Malik Karim Amrullah
12

Hajjah Daeng Tahira Daeng Tadaleh
112

Ḥasan ibn Thābit 116

HDB 195, 196, 199, 207, 208, 211,
218, 219

Hibah

Hibah al-ruqbā 12, 24, 190,
200, 202, 203, 204, 209, 210, 212,
218, 224

Hibah al-‘umrā 200, 202

Hindu 7, 69

I

Ibn Abī Aufā 83

Ibn Daqīq al-‘Īd 145

Ibn Ḥajar al-Haytamī 181, 201, 202

Ibn Ḥazm 100, 101,

Ibn Jarīr 100

Ibn Mājah 13

Ibn Qayyim al-Jawziyyah 20, 179, 190

Ibn Subkī

Ibn Abbas 96

Iḥsān ix, x, xi

Ijtihād 20, 21, 97, 127,
128, 129, 143, 144, 149, 172, 179, 190

Imam Abū Ḥanīfah 47, 118

Imam Al-Sha‘bī 91

Imam Shafi‘i 63, 82, 121

Imam Al-Shāṭibī 215

Inflation 159

Inheritance Certificate 51, 60, 81

Instrument 2, 12, 19, 22, 23,
43, 104, 109, 112, 161, 167, 169, 170,
177, 189, 190, 199, 202, 204, 223

Insurance 2, 13, 24, 42,
104, 158, 159, 173, 174, 175, 176, 177,
178, 179, 180, 181, 182, 183, 184, 188,
190, 192, 193, 204

Irrevocable 174, 175, 177

Ishāq bin Rahāwayh 100

Islamic Administration of Inheritance
7

J

Joint account 2, 24, 70, 195,
220, 221, 222, 223, 224,

Joint tenancy xiii, 2, 24, 38,
70, 73, 78, 195, 196, 197, 198, 203, 208,
209, 210, 211, 212, 213, 214, 216, 217,
218, 219, 221, 223, 224

L

Lasting Power of Attorney (LPA)
16, 17, 18, 19

Legal right 221

Legal system 6, 76

Legislative Assembly 7, 77

Lorong G Telok Kurau 114

M

- Maḥqūd* 47
Mafṣadah xi, 60, 169
Maintenance (*Nafkah*) 13, 34, 35, 36, 37, 38, 112, 113, 115, 122, 123, 126, 127, 131, 132, 133, 134, 135, 137, 138, 139, 149, 220
Manqūlāt 112
Maqāshid 2, 11, 12, 138, 171, 191
Maqāshid al-Sbarī'ah 1, 5, 11, 19, 20, 37, 91, 127, 173, 190
Marriage 6, 7, 8, 16, 18, 34, 35, 36, 37, 55, 56, 67, 68, 69, 76, 105
Maṣāliḥ al-Mursalah 159, 171
Masjid Al-Abrar 111
Masjid Jamae 111
Masjid Kassim 111, 113
Maṣlaḥah xi, xii, xiii, 60, 65, 133, 134, 167, 169
Matriarchal 9, 12
Marwūf 115, 118, 125, 129, 130, 131, 136, 146, 148
Marwūf 'alayh 118, 136, 148
Milkiyyah 218
Minimum Sum Scheme 160
Ministry of Health (MOH) 16
Ministry of Social and Family Development (MSF) 188
Minority 5, 101, 123, 143
Mu'āmalāt 20, 21, 144, 169, 172, 190, 218
Mufti Syed Isa Semait 205
Muḥammad bin Ḥasan 47
Municipal Council 6

- Mushārakah* 208, 210
Muslim Financial Planners Association 213
Mustafa al-Zarqa 172
Mutawalli 22, 146

N

National Council of Social Service (NCSS) 188
Nazar 12, 22, 73, 199, 201, 202
Nominee 46, 161, 162, 163, 165, 166, 167, 168, 171, 174, 175, 177, 178, 180, 181, 183, 184, 185, 186, 187,
Nuzriah 24, 73, 86, 87, 189, 195, 198, 199, 201, 202, 203, 204, 205, 207, 209, 210, 211, 212, 213, 217, 218, 223, 224

O

Office of the Public Guardian (OPG) 16
One ownership (*tamlīk wāḥid*)
Orphan 138

P

Patriarchal 9
Permanent Disability 184
Petition 6, 7, 78
Power of attorney 223
Presumption of advancement 222, 223, 224
Presumption of resulting trust 218, 219, 220, 223, 224
Proximity Housing Grant 37, 222
Public Trustee 81, 161, 162, 174, 188

Q

Qabd 167, 168, 171, 178, 180, 185, 190, 191, 206

Qatādah 91

Qat'ii 47

R

Radd 62, 63, 64

Rahmah ix, x, xi, 26, 70

Raja Siti Kraeng Chanda Pulih 112

Real Estate Investment Trust (REIT) 112

Retirement Account (RA) 160

Revocable nomination 2, 30, 174, 176, 177, 181

Repeal 8, 75

Richard Olaf Winstedt 8

Right of survivorship 197, 198, 213, 214, 215, 217, 218, 219, 221, 223

Ruler 8, 64

S

Sa'ad ibn Abi Waqqās 41, 52, 53, 91, 145

Sadd al-Dharā'i' 20

School of thought

Hanafi School of thought 62, 63, 84, 91, 98, 108, 118, 123, 132, 134, 140, 171, 172, 180, 211, 215

Hanbali School of thought 84, 97, 98, 107, 134, 139, 171, 180, 200

Maliki School of thought 65, 84, 97, 98, 132, 139, 143, 171

Shafi'i School of thought 10, 59, 60, 61, 62, 63, 64, 65, 70, 85, 88, 107, 132, 133, 134, 200, 205, 208

Sharikah 10, 208, 209, 212, 214, 215

Shighab 85, 118, 189

Social xi, xiii, 8, 9, 13, 150, 164, 193

Socio-economic 11, 77, 158, 196

Socio-historical 1, 2

Socio-religious xiii, 112

Statutory Declaration 69, 202

Stepchildren 36, 37

Straits Times 9

Special Needs Trust Company (SNTC) 188

Syed Omar Ali Aljunied 111

T

Tamlīk wāḥid 215

Tarikah 165, 166, 167

Taşarruf 171, 184

Temporary Occupation Licence (TOL) 120, 121, 124,

Tenancy-in-common 196, 197, 198, 209, 210, 214, 216, 217

Terminal Illness 92, 184, 186, 201, 202

Terminally ill 18, 180, 222

Testator 23, 76, 81, 83, 84, 85, 86, 90, 91, 94, 106, 107, 108, 109

Traditional *hibah* 13

Tribal chief 8

Trustee 22, 81, 86, 93, 94, 105, 113, 122, 123, 124, 125, 132, 138, 140, 141, 161, 162, 163, 165, 166, 174, 188, 190, 203, 212

U

Ubayy ibn Ka' b 116

Umar r.a. 91, 116, 134

UMNO 8

Law

British law 8, 77, 196

Civil law 2, 8, 35, 77, 97, 105, 108, 109, 162, 165, 170, 178, 197, 198, 203, 207, 210, 221

Colonial law 6

Customary law 6, 7, 103, 164

English law 7, 76, 77, 196

Family law 7, 10, 34, 39

Farā'id law 1, 46, 53, 70, 80, 83, 87, 91, 92, 95, 100

Islamic law x, 1, 5, 6, 8, 11, 12, 13, 17, 18, 19, 20, 21, 24, 37, 42, 43, 45, 46, 48, 49, 50, 52, 53, 55, 67, 68, 73, 76, 77, 78, 79, 85, 87, 93, 95, 102, 105, 118, 127, 163, 164, 176, 182, 183, 189, 191, 200, 201, 203, 209, 210

Islamic inheritance law 13, 36, 46, 49, 50, 78, 87, 221

Inheritance law 13, 39, 61, 87,

Muslim family law 7

Muslim inheritance law 10,

Muslim law 5, 6, 7, 22, 75, 76, 78, 159, 162, 169, 172, 180, 206, 207, 213, 221

Religious law 5, 6, 39, 77

W

Wakaf Abdul Hamid 113

Wakaf 'ām 22

Wakaf Development Committee
(Jawatankuasa Pembangunan Wakaf)
113

Wakaf Ilmu 112, 128, 129, 147, 148

Wakaf Jabbar 113

Wakaf Jamae 111

Wakaf Kassim 113

Wakaf *khās* 12, 22

Wakaf Masjid Omar Kampung Melaka
111

Wakaf Masyarakat Singapura (WMS)
32, 147, 148

Waliyullah ad-Dahlawī 143

Wāqif 22, 82, 111, 112, 113, 114, 115, 117, 118, 119, 122, 123, 129, 132, 133, 135, 136, 137, 138, 139, 143, 148, 149,

Warees Investments 114, 115, 154, 155

Waṣī 86, 94, 109, 210

Waṣīyyah Wājibah 24, 56, 57, 100, 101, 102, 103, 104, 109

Wiṣāyā 19

Wisma Indah 114

Women's Charter 34, 35, 69

Z

Zakat 22, 51, 83, 89, 128, 129, 131, 132, 159, 160, 164, 166

Zawil Arham 64, 65

Notes

Notes

Notes

FATWAS OF SINGAPORE

The Fatwa Rulings Compilation and Analysis series is part of the Fatwa Rulings Documentation Project which aims to increase awareness and enhance the understanding of readers on fatwas produced by Singapore's Fatwa Committee, its development and thinking since 1968.

This second volume comprises 56 fatwas pertaining to issues on inheritance, estate planning and distribution. It elaborates on the socio-historical context and background that have influenced the formulation of these fatwas. Moreover, it allows readers to track the evolution of certain fatwa decisions and understand the decision-making process behind their issuance. Furthermore, this publication includes commentaries regarding these fatwas.

This volume provides valuable insights into the historical evolution of Singapore's fatwa institution and sheds light on the challenges faced by the Fatwa Committee in maintaining the relevance of fatwa positions in alignment with Singapore's national policies. This is a translated and adapted version of the original Malay publication entitled *Fatwa-Fatwa Singapura Jilid 2: Pewarisan dan Perancangan Kewangan*.



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