

Chapter 3

Estate of Muslims

Introduction

- ▶ Islamic law principles, Hukum Faraid under Shafi school, govern the distribution of the estate of a Muslim
- ▶ Also governed by laws applicable in respective states and are influenced by local customs

Introduction

- The probate and administration process in this country is common to both non-Muslims and Muslims (the 1st step).
- It is in the distribution of the of the estate (the 2nd step) that the rules differ between non-Muslims and Muslims.
- The Probate and Administration Act 1959, The Small Estate (Distribution) Act 1955 and the relevant provisions of the Public Trust Corporation Act apply to Muslims as well.

Distribution of Estate of Muslims - the Basic Principles

- ▶ Only the assets owned by a Muslim **at the time of death** are subject to the Hukum Faraid.
- ▶ Only Muslims are entitled to inherit from the estate of a Muslim. Legal heirs must be Muslims.

Distribution of Estate of Muslims - the Basic Principles

The order of priority of payments :

- ▶ All reasonable expenses incurred for the deceased, including funeral and burial expenses.
- ▶ All debts owed by the deceased.
- ▶ “Valid dispositions” which are within limits.
- ▶ Distribution to “legal heirs” (after the payment of ‘common assets’ or harta sepencarian to spouses).

Wills for Muslims

- ▶ The formalities required under the Wills Act 1959 do not apply to a Muslim will.
- ▶ However, the Probate and Administration Act 1959 applies to Muslims as well. Therefore, the GP or LA is needed for the administration of the estate of a Muslim.
- ▶ The most effective way is to advise a Muslim to write a Will that complies with the requirements of the Wills Act 1959 as closely as possible.

Wills/Wasiyah for Muslims

Main purpose is to leave a gift, up to $\frac{1}{3}$ of the testator's estate, to non-legal heirs e.g. adopted children, non-Muslim parents and for charitable or religious purposes.

Wills for Muslims

- ▶ When the executor of the estate of a Muslim applies for Grant of Probate, he must also make an application to obtain the **Sijil Faraid** or **Letter of Distribution** from the Shariah Court or Islamic department
- ▶ There are no federal laws that regulate the distribution of the estate of a Muslim as these rules are governed by each state of the country. However, the following legislations are those available in the respective states:
 - The Muslim Wills (Selangor) Enactment 1999
 - The Muslim Wills (Negeri Sembilan) Enactment 2004
 - Muslim Wills Ordinance (Sarawak) 1967
 - Administration of Muslim Law Enactment (Sabah) 1977

Distribution of the Estate to Legal Heirs

- ▶ The rules of Islamic Law of inheritance are extremely complicated.....
- ▶ There are two classes of legal heirs i.e. the Quranic heirs and Agnatic heirs.
- The **Quranic heirs** are allotted fixed shares
- The **Agnatic heir** (or an agnate) is a person related to the deceased through the male side of the family.
- In the absence of the two classes of legal heirs, the estate goes to the **Bait-ul-mal**.

Distribution of the Estate to Legal Heirs: 12 relations constitute the Quranic heirs

1. Husband	7. Daughter
2. Wife	8. Son's daughter
3. Father	9. Full sister
4. True grandfather	10. Consanguine sister
5. Mother	11. Uterine brother
6. True grandmother	12. Uterine sister

Distribution of the Estate to Legal Heirs:

The Agnatic heirs

- ▶ The Agnatic heirs comprise of two groups: the males and the females.
- The males group is the largest and the most important class. It includes the son, the father, the brother, the paternal uncle, and his son and so forth.
- The 2nd group consists of 4 specified females:
 1. Daughter, 2. Son's daughter,
 3. Full sister, 4. Consanguine sister.

Common Examples of Distribution: If a Person Dies Leaving a Wife

1. No Children	W $\frac{1}{4}$ & bal to Bait-ul-mal
2. With Son (s) only	W $\frac{1}{8}$ & bal to S (s) equally
3. With a Son & a Daughter	W $\frac{1}{8}$, S $\frac{7}{12}$ & D $\frac{7}{24}$
4. With One Daughter	W $\frac{1}{8}$, D $\frac{1}{2}$ & bal to bros & sis of the decd, failing which to the U & A of he decd, failing which to Bait-ul-mal
5. With 2 Daughters	W $\frac{1}{8}$, D $\frac{2}{3}$ & balance to bros & sis of the decd, failing which to the U & A of he decd, failing which to Bait-ul-mal
6. With Son & Father	W $\frac{1}{8}$, $\frac{1}{6}$ F & bal to S
7. With a Daughter & Mother	W $\frac{1}{8}$, M $\frac{1}{6}$ & D $\frac{1}{2}$ & bal to bros & sis of the decd, failing which to the U & A of he decd, failing which to Bait-ul-mal
8. With Father & Mother	W $\frac{1}{4}$, F $\frac{1}{2}$ & the bal to M

Common Examples of Distribution: If a Person Dies Leaving a Husband

1. No Children	H $\frac{1}{2}$ & bal to bros & sis of the decd, failing which to the U & A of he decd, failing which to Bait-ul-mal
2. With son (s) only	H $\frac{1}{4}$ & bal to S (s) equally
3. With a Son & a Daughter	H $\frac{1}{4}$, S $\frac{1}{2}$ & D $\frac{1}{4}$
4. With One Daughter	H $\frac{1}{4}$, D $\frac{1}{2}$ & bal to bros & sis of the decd, failing which to the U & A of he decd, failing which to Bait-ul-mal
5. With 2 Daughters	H $\frac{1}{4}$, D $\frac{1}{2}$ & bal to bros & sis of the decd, failing which to the U & A of he decd, failing which to Bait-ul-mal
6. With Son & Father	H $\frac{1}{4}$, F $\frac{1}{6}$ & bal to S
7. With a Daughter & Father	H $\frac{1}{4}$, D $\frac{1}{2}$ & bal to F
8. With Father & Mother	H $\frac{1}{2}$, F $\frac{1}{3}$ & M $\frac{1}{6}$

EPF Moneys

- ▶ EPF Act 1991: moneys payable upon the death of a Muslim contributor, to a named nominee, must be distributed in accordance to the Islamic law principles.
- ▶ The nominee, do not receive it as beneficiaries but as “executors” of the estate of the deceased.

Insurance Moneys

- ▶ Islamic Financial Services Act 2013 (IFSA): Conditional Hibah of Takaful Contract allows participants to designate nominee to receive Takaful benefits either as Executor (Wasi) or Beneficiary (Waris)
- ▶ Wasi: moneys payable must be distributed in accordance to the Islamic law principles
- ▶ Waris : The nominee receives as beneficiary, “creditors proof”, regardless of relationship of nominee and participant

Trusts for Muslims

- ▶ The creation of irrevocable trust during one's lifetime is equivalent to a “gift” made during his lifetime. Assets of such arrangement will no longer deemed part of the estate of a Muslim upon his subsequent death.
- Being an outright gift made during his lifetime, that portion given to beneficiaries, which is declared in the trust deed, need not be distributed in accordance with the Hukum Faraid.