

Topic 3: Muslim Inheritance

PART B MODULE: MUSLIM FAMILY & SUCCESSION LAW
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Core Knowledge

What you NEED to know (WYNTK) :

- Who comes under Muslim law of Inheritance ? What is *Faraid* ?
- What are the basic restrictions of a Muslim Will ?
- Which Court has jurisdiction over disputes in cases involving Muslim estates ?
- What is the approach taken by the Courts in handling such disputes ? *Shafeeq's case*

What you DO NOT need to know (for purposes of exam) :

- How to calculate the share apportionments between beneficiaries under Hukum Faraid
- Drafting of muslim estate planning instruments

01 APPLICABILITY OF INHERITANCE LAWS IN SINGAPORE

Which statutes are applicable?

Applicability of Inheritance laws in Singapore

Non-Muslim	Muslim
Intestate Succession Act	Administration of Muslim Law Act (AMLA)
Wills Act	Wills Act (only as to formalities)
Section 23 Civil Law Act	Not applicable to Muslim Wills
Probate & Administration Act	Applicable (on court application)
CPF Act	Applicable (on nominations)
Legitimacy Act	Children conceived out of marriage are not beneficiaries
Adoption Act	Adopted children do not inherit automatically
Inheritance (Family Provisions) Act	Not applicable to Muslims
Insurance Act on Revocable Nominations	Applicable (since 2017)

02 MUSLIM LAW OF INHERITANCE

(HUKUM FARAIÐ)

Distribution of Estate

- 1. Where there is a Will**
- 2. Where there is no Will (intestacy)**
- 3. Other instruments , eg. Deed of Family Arrangement**

Distribution by Will

Section 111 AMLA: Distribution by will ... to be in accordance with Muslim law (ie. Must comply with Faraid)

(1) "... no Muslim domiciled in Singapore may, after 1 July 1968, dispose of his or her property by will except in accordance with the provisions of and subject to the restrictions imposed by the school of Muslim law professed by him or her.

(2) Nothing in this section affects —

- (a) the provisions of the Wills Act, other than s 3 thereof;
- (b) the provisions of the Insurance Act;
- (c) the provisions of the Probate and Administration Act; or
- (d) the will of a Muslim dying before 1 July."

Intestacy

Section 112 AMLA: Distribution of Muslim estate to be according to Muslim law

- (1) “In the case of any Muslim person domiciled in Singapore in Singapore dying intestate, the estate and effects shall be distributed according to the Muslim Law as modified, where applicable, by Malay custom.
- (2) This section shall apply in cases where a person dies partly intestate as well as in cases where he dies wholly intestate.
- (3) In the case of a Malay dying intestate, the Court may make an order for the division of the harta sepencarian or jointly acquired property in such proportions as to the court seems fit.”

(Shafeeq Bin Salim Talib v Fatimah Bte Abud Bin Talib [2010] SGCA 11)

BENEFICIARIES UNDER FARAID

BENEFICIARIES UNDER MUSLIM INHERITANCE LAW

Who are the prescribed beneficiaries?

Prior to Islamic Law, prevailing system was based on cultures of ancient Arabs –

- Nearest male relatives
- Females excluded
- Descendants preferred to ascendants (ie. Parents excluded)

The main changes under Islamic Law were to reform the injustice of that period –

- Husband or wife became entitled to inherit
- Females could inherit
- Parents could inherit

Note: You are NOT required to know the exact shares entitlement of each beneficiary (father, mother, son, daughter, brother etc) . This can be done via the Syariah Court Inheritance Online Calculator.

Basis of Faraid

Male heirs generally receive more than the female heirs. This was to reflect the degree of responsibility within the family unit. General Rule: a daughter is given ½ of the share of a son.

➤ But with rights come responsibility. A male who chooses to accept the extra inheritance portion must realise that the rights come with added responsibility to provide for the female member's living needs and to secure their welfare.

Increasingly common now for the males to renounce their additional portion and instead redistribute it with the female beneficiaries (mother, sister) via Deed of Family Arrangement .

➤ Such an act of renunciation and redistribution which is agreed upon by the heirs' consensus is allowed under Islamic law as declared by the Fatwa Committee of MUIS.

What happens when there
are no male beneficiaries
or no beneficiaries at all?

Baitulmal (General Endowment Fund)

Section 57 AMLA – “General Endowment Fund” commonly known as Baitulmal. Consists of money and property received from the deceased’s estate in certain circumstances .

Circumstances where a share of the deceased person’s estate goes to Baitulmal include:

- There is no rightful beneficiary to the estate (eg a single person with no living relatives, a convert who dies leaving only non-Muslim heirs and did not provide for this under Will).
- Where there are no male beneficiaries .
- In Singapore , MUIS administers Baitulmal.
- Baitulmal not applicable where the deceased was from Hanafi school.

Beneficiaries can appeal for MUIS to ‘return’ share. Based on hardship.

03 MUSLIM WILLS

(HUKUM FARAIID)

Formalities of Muslim Wills

Section 3(1) - Wills Act does not apply to Muslims BUT **Muslim Wills must comply with the formalities in Wills Act:**

- Section 4 – Capacity (above 21 years old except for soldier in actual military service)
- Section 6 – Execution in Writing
- Section 10 – Witnesses cannot be a beneficiary or a spouse
- **Section 13 – Revoked by marriage**
- Section 16 – Alteration not valid
- Section 28 – Rectification of Will by Court based on clerical error or failure to understand Testator's intention

Formalities of Muslim Wills

Formalities and Restrictions of Muslim Wills

Under Muslim Law

- Appointment of Executor and Trustee
 - Executor should be (1) Muslim; (2) Adult; (3) Sane; (4) Free of irreproachable character; and (5) Fit person to perform duties entrusted to him. (Note: so far, no challenge in Court on this)
- Witnesses
 - 2 witnesses who are Muslim males (no known challenge in Court)
- Quantum of assets and to whom
 - **Can bequeath up to 1/3 of estate (except with Consent of all beneficiaries)**
 - If there is no consent from all beneficiaries, the 1/3 must be to non-Faraid beneficiaries, egs.
 - Adopted children
 - Stepchildren/step-parents
 - Child out of wedlock *
 - Unrelated third parties (e.g.friends, charitable organizations)

Invalid Muslim Wills – Examples

- 1) “I give everything to my Wife, in accordance with Muslim Law, and no one can object to this.”
- 2) “If I do not return from Haj (pilgrimage), my house shall belong to my adopted Daughter , with my other children getting nothing.”
- 3) “I give 1 house at Jalan Avocado (valued at \$3million) to my first Daughter, my other house at Banana Road (valued at \$2million) to my second Daughter and my condo at Coconut Drive (valued at \$1million) to my only Son.”

*However, can be validated by Consent of all beneficiaries. Hence, importance of Deed of Family Arrangement.

04 MUSLIM INHERITANCE IN CIVIL COURTS

JURISDICTION AND APPROACH OF THE COURTS

Things to note – applications for Grant of Probate/Letters of Administration

1. All Grants of Probate or Letters of Administration are issued by the FJC or High Courts , not Syariah Court
2. Prior to filing application for Grants of Probate or LOA, you **must obtain** an Inheritance Cert first from the Syariah Court. This is so regardless whether there is a Will, Deed of Family Arrangement etc. This Inheritance Cert MUST be filed together with all other papers .
3. The Syariah Court will issue the Inheritance Certificate listing the names of beneficiaries and proportion of shares, based on the deceased's school of law (majority of Singaporeans are Shafii).
4. When filing the application for Grant of Probate/LOA, also submit any Will or other instruments such as Hibah (Gift), Nuzriah (vow), Deed of Family Arrangement.
5. When filling out the Schedule of Assets, do know what does and do NOT fall within the pool of assets to be distributed (exclude joint-tenancy , CPF (if already nominated).

How do the Civil Courts approach Muslim Inheritance Issues?

Case Studies in the Civil Courts

The case studies revolve around the following Muslim inheritance issues:

- Disputes on **who** are the lawful beneficiaries.
- Disputes on **which** assets fall within “the estate of a Muslim”.
- Disputes on **how** the assets are to be distributed.

WYNTK : - What is the approach taken by the Civil Courts in dealing with Muslim Law of Inheritance issues?

LS Investments Pte Ltd v MUIS [1998] 3 SLR 369

MUSLIM LAW IS PART OF THE LAW OF THE LAND

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LS Investments Pte Ltd v MUIS [1998] 3 SLR 369

Court of Appeal :

- “Muslim Law need not be proved like foreign law. Muslim law is part of the law of the land which the Court would take cognizance”
 - Note : while the English translation of **wakaf** is a charitable trust, it is wrong to apply common law of trusts to a wakaf . Instead, as was done by Justice Judith Prakash at the High Court below, the Court must apply Muslim Law in determining whether a wakaf had been created .
- Approach in LS Investments followed Justice Aedit Abdullah in **MUIS v Saeed Salman and Another [2016] SGHC 4.**

Re Will of Shaikh Ahmad

Bin Abdullah Wahdain

Basharil [2002] SGHC 165

INHERITANCE CERTIFICATE

Inheritance Certificate

Re Will of Shaikh Ahmad Bin Abdullah Wahdain Basharil [2002] SGHC 165

- **1938:** Deceased made Will in Singapore.
- **1953:** Deceased passed away in Surabaya.
- **1974:** Date of distribution of the Estate according to the Will.
- **1976:** Public Trustee appointed trustee of the Will. Properties vested in the Public Trustee.

2000: Inheritance Certificate issued by Syariah Court of Singapore as per the Indonesian Order	Grandchildren of other wives applied to High Court challenging the Inheritance Certificate
<ul style="list-style-type: none">• One wife and six children.	<ul style="list-style-type: none">• Five wives in his lifetime. At time of death, only one surviving wife.• 13 children

Inheritance Certificate

Re Will of Shaikh Ahmad Bin Abdullah Wahdain Basharil [2002] SGHC 165

Issue: (Lee Sieu Kin JC) “*The key issues is whether the testator had been married under the Muslim Law to the second to fifth wives*”.

This is a question of fact .

Key observations :

➤ *The Syariah Court’s role is to issue an Inheritance Certificate based on the information provided by an applicant . But if there is a challenge, then the High Court is the forum for adjudication .*

Shiraz Abidally Husain
[2007] SGCA 16

LETTER OF WISHES &
DEED OF FAMILY ARRANGEMENT

Letter of Wishes and Deed of Family Arrangement

Shiraz Abidally Husain [2007] SGCA 16

- **13 January 1992:** Deceased made a Will.
- **15 November 2000:** Deceased wrote a Letter of Wishes to give his monies equally to his six children (sons and daughters).
- **16 May 2003:** Passed away.
- **18 May 2003:** Children entered into a Deed, agreeing to comply with the Letter of Wishes.
- **19 May 2003:** The will was subsequently discovered.
- **21 May 2003:** The five siblings received their share of the monies in joint accounts based on the Letter of Wishes.
- **7 Aug 2003:** One of the children issued a Statement – “*It is my right to inherit as per the lawful and correctly drawn up will of my father, Abidally Abdul Husain, in accordance with the Islamic Law and I now exercise that right*”

Letter of Wishes and Deed of Family Arrangement

Shiraz Abidally Husain [2007] SGCA 16

Issue: Was the agreement of 18 May 2003 among the six children enforceable or not?

- **Court of Appeal (Chan Sek Keong, Chief Justice) :**
- “there was an agreement among the six children on 18 May 2003 to distribute to themselves equally ... the bank accounts... Such an agreement was not inconsistent with Muslim law and was binding on them.”

*Haja Maideen v Roshan
Begum [2017] SGHC 164*

HIBAH (GIFT)

Hibah (Gift)

Haja Maideen v Roshan Begum [2017] SGHC 164

HDB flat was solely owned by the Mother

- June 2011: the Mother passed away in India and left behind two sons and one daughter.
- Elder son wanted to sell the flat and divide the proceeds according to Hukum Faraid.
- Daughter refused to move out as she had been living in the flat.
- Daughter relied on Hibah signed by the Mother in India, giving her the entire flat.
- Elder son argued that the Hibah was invalid.

Hibah (Gift)

Haja Maideen v Roshan Begum [2017] SGHC 164

Issue:

- Whether a Muslim has made a valid inter vivos gift or *hibah*
- Whether the property was properly disposed has to be answered with reference to general law such as legislation and the common law

Hibah (Gift)

Haja Maideen v Roshan Begum [2017] SGHC 164

Issue:

- Whether a Muslim has made a valid inter vivos gift or *hibah*
- Whether the property was properly disposed has to be answered with reference to general law such as legislation and the common law

Choo Han Teck J:

- Section 50 Housing and Development Act : no HDB flat shall be disposed of without the prior written consent of the HDB . Since HDB's consent was not sought, the transfer was therefore void .
- MUIS's opinion that the hibah was valid under Muslim Law was not binding on this court which had full jurisdiction to decide on the matter in issue.

Hibah Ruqba (Gift Conditional Upon Death)

It is effected when the giver says, “*This property is yours as ruqba, if you should die before me, the property becomes mine and if I die before you, the property becomes yours*”.

*Shafeeq Bin Salim Talib v
Fatimah Bte Abud Talib*
[2010] SGCA 11

JOINT PROPERTY

Joint Tenancy

Shafeeq Bin Salim Talib v Fatimah Bte Abud Talib [2010] SGCA 11

Timeline:

- 1998 - Husband (H) and Wife (W) purchased property as Joint Tenants (JT) .
- 2005 - Upon H's death, W became sole owner.
- W then transferred property to herself and the 2 children.
- H's brother sued W for half of the property.
 - Relied on s 112 of AMLA and old 2007 Fatwa – that joint tenancy is not recognised under Muslim Law (i.e. each co-owner of a joint property had a fixed share which should be distributed to his legal beneficiaries)

Issue: Whether the doctrine of the right of survivorship for properties held under a joint tenancy applied to Muslims

Joint Tenancy

At High Court:

- Land Titles Act applies to all properties in Singapore.
- Issue was not on a question of Muslim law, **but as to whether the property formed part of the deceased's estate.**
 - Muslim law not applicable – section 112 AMLA not applicable as said property was not within the deceased's estate to be distributed.
- Administrators appealed.
 - Argued that “*the concept of joint-tenancy and the operation of right-survivorship is repugnant to Muslim law as it increased her (deceased's wife) share in the estate*”.

Joint Tenancy

At Court of Appeal:

- “*We agree with the High Court’s view... but this does not mean that the Court does not have to take into account Muslim law...*”
- “The question as to what assets constitute the estate and effects of a deceased Muslim has first to be determined according to his personal law, and not according to the common law.”
- There is no ‘passing’ of the property. Instead, **property had ‘morphed’ into sole-ownership , hence nothing to distribute.**

Note : CA studied authorities on position of joint-tenancy in Muslim Law.

In 2019- the fatwa was reviewed and the new position taken was that the joint-tenancy contract is a ’religiously valid contract’. Position between civil and Muslim law is now harmonized.

Saniah Ali v Abdullah Ali
[1990] 1 SLR(R) 555

CPF MONIES

CPF Monies

Saniah Ali v Abdullah Ali [1990] 1 SLR(R) 555

The Deceased made a nomination under section 24(1) CPF Act (now section 25(1)) naming his stepsister, Saniah, to receive all his CPF monies on his death

- CPF monies duly paid to Saniah by CPF Board.
- However, the deceased's brother Abdullah obtained an inheritance certificate from SYC that he was entitled to the deceased's entire estate. He relied on s 112 AMLA – that the then prevailing fatwa held that a nominee holds the monies on trust of the Faraid beneficiaries.

Issue: Whether Saniah or Abdullah was entitled to retain the entire amount of deceased's CPF monies

CPF Monies

Saniah Ali v Abdullah Ali [1990] 1 SLR(R) 555

Justice Thean: CPF moneys do not form part of the estate of the deceased (under CPF Act) and s 112 of AMLA is not applicable

- No conflict between the CPF Act and the AMLA.
- A Fatwa is merely an opinion of the Fatwa Committee of the Majlis (MUIS) and not binding on the Court

Revised Fatwa on CPF Monies

Fatwa on CPF was updated on 3 August 2010 to permit nomination as a new form of hibah (gift), which is allowed under Muslim Law.

Under the new Fatwa , the **CPF member could choose to nominate or distribute according to Faraid, or exercise both options together**

- CPF nomination equals to hibah (gift)
- If no nomination, Faraid applies.
- Nomination can be changed (divorce, death of nominee).
- Position between civil law and Muslim Law now harmonised.

Maxims for Muslim Estate Planning

- Intention of the Deceased may not be carried out if the Will does not comply with Muslim Law (eg the 1/3 rule) .
- Even if the intentions comply with Muslim Law, they need to be consistent with other laws of the land(eg Hibah and HDB requirement) .

Thank You
