

Chapter 2

Testacy and Intestacy

Chapter Objectives

On completion of this chapter you should have a basic knowledge on:

- Wills, formalities and the legal principles of a valid Will
- Principles and basic procedures in testacy and intestacy
- Various practical challenges in the administrative process of estates
- The importance of Wills in the estate planning process.

Chapter 2

Testacy and Intestacy

Introduction

We have learned from the first chapter that testacy refers to a situation when a person passes away leaving behind a Will. A Will is one of the main tools in estate planning and is a subject that almost everyone has some basic knowledge as to its purpose. In this chapter we will be able to see all the important concepts and legal principles that are relevant to a Will and how it plays a very significant role in the estate planning process. To make our understanding as simple as possible, we shall discuss this subject as applicable to non-muslims and in Chapter 3, we will deal with the estates of muslims and the relevance of Wills to them.

In Malaysia, the legislation that governs Wills is the **Wills Act 1959** and applies to non-muslims only. The Act defines a Will as “*a declaration intended to have legal effect of the intentions of a testator with respect to his property or other matters which he desires to be carried into effect after his death and includes a testament, a codicil and an appointment by Will or by writing in the nature of a Will in exercise of a power and also a disposition by Will or testament of the guardianship, custody and tuition of any child*”.

As can be seen from the above definition, the main purpose of a Will is that it expresses the testator's (the person who writes a Will) declaration as to the disposition of his property (or assets). In practice, a Will may also be used to for many other purposes such as the following:

- **appointment of an executor / executrix to administer the estate**
- **appointment of trustee(s) to manage all or part of the estate**
- **appointment of guardian(s) for minor or disabled children or dependents**
- **to give instructions on burial, cremation or any other personal or peculiar wishes of the testator.**

Formalities and Legal Requirements of Wills

A Will is said to “speak from the death of the testator” and therefore has no legal effect until the death of the testator. As such, it is a document that cannot be enforceable until the death of the testator and as a consequence can be revoked, cancelled or varied to suit the circumstances of the testator from time to time. Thus a Will effectively “comes to effect” only after the testator's death

and so the natural question to ask is “Is it a valid Will”? For a Will to be recognised as declaring the true intentions of the testator and to avoid uncertainty, ambiguity and disputes, the Wills Act 1959 specifies the formalities and requirements for a Will to be valid. We shall now see some of these.

i) Writing

The Will must be in writing (unless it is a privileged Will – see notes later). It can be handwritten, typewritten or printed.

ii) Language

The wordings of the Will need not be in legal or formal language so long as it is capable of comprehension.

iii) Testator's Signature

The Testator must sign or affix his mark (for example thumbprint or signature) at the end of the Will.

iv) Witnesses Signature

The Testator must sign or acknowledge his signature in the presence of at least two witnesses and the two witnesses must sign in the presence of the Testator and each other. It is important to note that the witnesses cannot be beneficiaries or spouse(s) of the beneficiary(ies) to the Will. If such a circumstance arises, it does not necessarily invalidate the Will. That which is invalidated, is the gift to that witness, i.e. the witness would not receive his gift under the Will.

v) Testator's/Testatrix's Age

In West Malaysia and Sarawak, a person must be at least 18 years of age before he can be a Testator and in Sabah the person must be at least 21 years.

vi) Testamentary capacity

a) Sound Mind

A person must be of sound mind and understanding when making the Will. He must know that he is making a Will and understand the nature of the Will and the transaction therein and not be under any “influence” (e.g. drugs or intoxication).

If a Testator is very ill at the time of execution of the Will, it is advisable to have a doctor as one of the witnesses and if possible request the doctor attending to the Testator to make a record of the Testator's mental state at that time and the record to be kept together with the Will. It is important for the Testator to give a reason in his Will if he is excluding the spouse or a particular child entirely from his estate so as to avoid the Will being contested on the grounds that the Testator was not of sound mind when executing the Will.

b) Independent Choice

The Testator must not be unduly influenced or coerced into making his Will as this would invalidate the Will. It must be noted that the Testator can be led to making a Will but not driven into so doing. Any fraud, deception or false representation would also invalidate the Will.

vii) Revocation**a) Express Revocation**

When a Testator makes a written statement about his intention to revoke his Will and that written statement is signed by the Testator in the presence of two (2) witnesses similar to that of executing a Will, then it is deemed to be revoked.

b) A Later Will

A later Will always revokes an earlier Will. It can be expressly revoked by an earlier Will by having a revocation clause, e.g., 'I hereby revoke all my earlier Wills', or by implication, i.e., if there is no revocation clause, a later Will always revokes an earlier Will where there is inconsistency between the two Wills. However, by practice, a revocation clause is always added in a Will regardless of whether the Testator has written an earlier Will or not.

c) Marriage

A Marriage automatically revokes a Will made prior to the marriage unless the Will was made in contemplation of marrying a particular person and the Testator actually marries that person.

If a person is going to get married at the time of making his Will, a clause in his Will stating that the Will shall not be revoked by his intended marriage to a particular person can be included in the Will to preclude the Will from being revoked upon the marriage taking place. It is important that the name of the fiancée be mentioned in the Will.

A divorce does not revoke a Will. Therefore it is prudent practice for a person to rewrite the Will or review the Will upon divorce. Remarriage will have the same effect as marriage.

d) Destruction

Destruction of a Will is regarded to be effective revocation. When the Testator destroys his Will, he must have the intention to revoke/destroy it and not be under the influence

of drugs or intoxicated or under duress. Therefore, the physical act of destroying a Will is insufficient without the intention of revoking it. Accidental or malicious destruction by a third party does not constitute revocation.

e) Conversion to Islam

Muslims are governed by the Shariah Law. Therefore, a Will is automatically revoked when conversion takes place. *The Wills Act does not apply to person of the Muslim faith. The distribution of the estate of a Muslim is be governed by Islamic law principles.*

Contents of a Will

Generally a Will will have the following clauses:

i) Opening Clause

The Opening clause is to capture the testator/testatrix's personal identity and the date of the Will. If the testator/testatrix has an alias or is commonly known by another name other than those stated in the identity card, it is advisable to include those names in the Will.

ii) Revocation Clause

This is to revoke all earlier Wills and to ensure that the current Will subsists over all earlier Wills. (There are also other ways in which a Will can be revoked which we have seen earlier).

iii) Appointment of Executor/Trustee Clause

An Executor/Trustee is an individual or institution appointed by the Will or codicil of a deceased person to administer the estate and to carry out the instructions of the Will and charge them with the responsibility of holding trust property, for the benefit of the beneficiary(ies).

iv) Appointment of Guardian Clause

The guardian will have custody of the children below the age of 21 and will be responsible for their support, health and education.

v) Assets Distribution Clause

This is the asset listing clause where the Testator specifies all the assets that he wishes to distribute according to his wishes in the Will e.g. to distribute cash, money in bank accounts, insurance policy proceeds, properties etc. to specific individuals or organisations. If the Testator wishes to give away all his assets to one person only, he is not required to specify any of his assets. Any assets, which are not specified in the Will, will come under the residue clause.

vi) *Residuary Clause*

A residuary clause will normally be included to dispose off any assets that are not specifically stated in the Will. Without such a clause, anything not disposed off in the Will, will fall under intestacy and be distributed according to the relevant laws. eg. Distribution Act 1958 (amended in 1997).

vii) *Funeral Clause*

A clause stating the funeral wishes of a Testator could also be included in the Will at the option of a Testator.

viii) *Attestation Clause*

An attestation clause states that the proper formalities have been complied with. The value of such a clause is that it raises the presumption that the Will has been properly executed. Special forms of attestation clauses are provided to cater for the different needs of the Testator.

What happens in circumstances of a testacy?

When a person passes away in circumstances of a testacy, the executor's first responsibility is to get a confirmation that the Will is valid and enforceable in law. This is a legal process which is regulated by the **Probate and Administration Act 1959** and the detailed procedure is found in the Rules of the High Court 1980. The Act provides the High Court, the jurisdiction and power to issue a Grant of Probate to the executor of the deceased. It also governs the powers, rights, duties and obligations of the executor. The Grant of Probate is a very important document because it authorises the executor to deal with the estate and all the legal and financial affairs of the deceased. It also enables the executor to institute legal action on behalf of the estate, for example, to recover debts due to the estate. Thus, until the Grant of Probate is obtained, the executors rights are very limited.

Types of Wills**a) *Individual Will***

This is the most common and is the accepted practice where the Will is individually written.

b) *Privileged Wills*

Section 26 of the Wills Act governs Privileged Wills. Privileged Wills are those which are made by a member of the armed forces of Malaysia being in actual military service, and or mariners or seamen (including a member of the naval forces of Malaysia) being at sea to dispose off his property or of the guardianship, custody and tuition of a child or may exercise a power of appointment exercisable by Will either in writing or by word of mouth. It **need not comply with the formalities** of making a Will so long as it shows the **intention of the testator** that the instructions are to be acted upon.

c) Mutual Wills

Mutual Wills are Wills made by two or more persons **following an agreement** between the parties to make such Wills and **not to revoke them without the consent of the other**. Usually the terms of mutual Wills are the same and have conferring reciprocal benefits.

The principle of law relating to Wills is that a person can revoke his Will any time before death. As such, a party to a Mutual Will can revoke the Mutual Will after the death of the other party but he may be liable for a breach of contract or a breach of trust. Mutual Wills are in fact two separate wills but with similar clauses. i.e. a Mirror Will.

d) Joint Wills

A Joint Will is when two or more persons state their last wishes in one document and it is executed in accordance with the formalities laid down by the law.

A joint Will **does not take effect as one Will**, but as separate Wills of the parties who have made it e.g. if a husband and wife make a joint Will and the husband dies first, the document can be admitted to Probate first as the Will of the husband upon his death, and secondly as the Will of the wife upon her death.

A joint Will is not recommended, as confidentiality is lost when the Will of the first person who died is lodged in the courts when applying for Grant of Probate.

Inheritance (Family Provision) Act 1971

This Act allows for certain categories of people who are **dependents** of the deceased to apply to court to “vary” the Will to make provisions for their maintenance, as the Testator has not provided sufficiently for these persons. Whether this application is successful or not would be at the court’s discretion, depending on the circumstances of the applicant.

The persons entitled to make such applications are as follows:

- i) Spouse of the deceased;
- ii) The daughter who has not been married or who is, by reason of some mental or physical disability, incapable of maintaining herself;
- iii) An infant son; and
- iv) A son who is, by reason of some mental or physical disability incapable of maintaining himself.

Intestacy

When a person dies without a Will or a valid Will, he is said to have died intestate. The question that must be asked is “How do we deal with or administer the estate in these circumstances?” In the absence of a Will, of course, there is no instruction left behind by the deceased. As it is only natural that family members and dependants will be desirous of benefiting from the estate, one or more persons will therefore have to administer the estate. An application has to be made pursuant to the requirements of the **Probate and Administration Act 1959** for the right to administer the estate. This is an application for **Letters of Administration** (or commonly referred to as L.A.). Such an application to the High Court is similar to that of the Grant of Probate, but there are nevertheless, some significant differences in the procedural aspects. Before the Letters of Administration is granted, the High Court will require two sureties as security for the due administration of the estate.

The security shall be in the form of a bond in the amount equivalent to the gross value of estate. There is no need for an administration bond (surety), if:

- the deceased’s estate does not exceed RM50,000;
- a trust corporation is being appointed as the administrator;
- the administrator is the sole beneficiary;
- the court grants a full or partial waiver to dispense with the requirement of a surety.

Upon receiving the Letters of Administration, the administrator holds the relevant assets of the deceased on trust. An administrator may not, without the prior consent of the court, sell, transfer, convey, gift, mortgage, charge or otherwise any immovable property for the time being vested in him.

In circumstances of intestacy, the assets of the deceased are distributed in accordance with the rules that are found in the Distribution Act 1958 (as amended by the 1997 Act) for West Malaysia and Sarawak and the Intestate Succession Ordinance 1960 which is applicable in Sabah.

DISTRIBUTION 1958 (as amended by the 1997 Act)

INTESTATE LEAVING SURVIVING	DISTRIBUTION
Spouse only (no parent(s)/issue)	Spouse – whole estate
Spouse & Parent(s) (no issue)	Spouse – 1/2 Parent(s) – 1/2
Issue only (no spouse/parent(s))	Issue – whole estate
Parent(s) only (no spouse/issue)	Parent(s) – whole estate
Spouse & Issue (no parent(s))	Spouse – 1/3 Issue – 2/3
Issue & Parent(s) (no spouse)	Issue – 2/3 Parent(s) – 1/3
Spouse Issue Parent(s)	Spouse – 1/4 Issue – 1/2 Parent(s) – 1/4

The following person(s) are entitled in accordance to priority when an intestate dies **without leaving a surviving spouse, child or parent** :-

1. brothers and sisters
2. grandparents
3. uncles and aunts
4. great grandparents
5. great uncles and aunts
6. government

Issue : Includes children and the descendants of the children (which would take in place of their parents).

Parent : Natural father or mother of a child or the lawful father or mother of a child under the Adoption Act 1952.

The Intestate Succession Ordinance (1960) applicable to Sabah only

Intestate Succession Ordinance 1960 governs the distribution of the intestate estate for Sabah.

INTESTATE LEAVING SURVIVING	DISTRIBUTION
Spouse only (no issue/parent)	Spouse – whole estate
Spouse & Issue	Spouse – 1/3 Issue – 2/3 (Subject to the rights of the surviving spouse)
Spouse & Parent(s) (no issue)	Spouse – Personal Chattels 1/2 Parent(s) - 1/2 (Subject to the rights of the spouse)

The following person(s) are entitled in accordance to priority when an intestate dies without **leaving a surviving spouse, child or parent :-**

- 1) brothers and sisters
- 2) grandparents
- 3) uncles and aunts
- 4) next-of-kin equally
- 5) government

Intestacy and Related Matters

- i) A **partial intestacy** arises when a testator has not made provision for the distribution of part of his assets in the Will. A second situation when partial intestacy occurs is when subsequent assets have been acquired or inherited by the testator and a residuary clause has not been included in the Will. A third example of partial intestacy occurs when a gift to a beneficiary fails, for example, when a beneficiary predeceases the testator and no other options are specified or when the beneficiary was mistakenly chosen to be the witness to the Will. In all

these circumstances, that part of the estate which is deemed to be “partial intestacy” will be distributed according to the Distribution Act 1958 (amended 1997) or the Intestates Succession Ordinance 1960.

- ii) An **application for letters of administration with the Will annexed** arises when there is a Will but “no executor” to apply for a Grant of Probate. A situation of “no executor” may occur in one of the following circumstances:
 - a) all the named executors have predeceased the testator
 - b) the executor named is unwilling to act.
 - c) The executor named is unable to act because of some legal incapacity such as being declared a bankrupt or of unsound mind.

In such circumstances, whoever is willing to be the administrator must apply to the court for an LA, and attach or annex the Will with the application. Upon receiving the LA, the administrator must eventually distribute the assets in accordance with the terms of the Will.

a) Small Estates

The Small Estate (Distribution) Act 1955 deals with distribution of estates worth not exceeding the total value of RM600,000 (wholly or partly immovable). A personal representative may make an application to the District Land Office and upon receipt of such application, the Land Administrator may appoint the applicant or a suitable person to be the representative of the deceased person in respect of the property held by the deceased. All necessary parties to the deceased's estate will attend a hearing before the Collector. At the conclusion of the hearing, the Land Administrator makes his order according to the Distribution Act 1958 (amended 1997) or other relevant laws applicable.

b) Amanah Raya Berhad

According to **Section 17 of the Public Trust Corporation Act 1995**, Amanah Raya Berhad (ARB) has been given the authority to summarily dispose of any estate which is below RM600,000 and consisting of only movable assets. As such, if the estate only has cash, some shares and saving accounts, then the personal representative may approach ARB to deal with the estate.

TESTACY	INTESTACY
WILL	NO WILL
EXECUTOR	ADMINISTRATOR
GRANT OF PROBATE	LETTERS OF ADMINISTRATION (.....sureties may be required)
....pay creditorspay creditors
....and then distribute according to instructionsand then distribute according to
	1) Distribution Act 1958 (1997) 2) Intestate Succession Ordinance (1960) Sabah or 3) Islamic Law principles

Conclusion

In this chapter we have seen the importance of leaving behind a Will. The distribution of one's assets and the appointment of executors being the two dominant purposes of a Will, goes towards a long way to make the process of estate administration much easier for the deceased's family. It saves them legal costs and time, as well as avoids family disputes and differences among dependents. On the other hand, an application for an LA is a cumbersome, lengthy and expensive process causing great difficulties to families. The need for sureties, the lack of information about the assets of the estate and the suspicion of family members amongst themselves are some of the common occurrences that are seen in the absence of a Will upon the death of an individual. It always seems ironic, that although the person who has passed away has left behind considerable assets for the benefit and enjoyments of family and dependents, yet in the absence of proper planning, or even the simple process of writing a Will, leads to unpleasant disputes among the beneficiaries of the estate.

EXPLANATION of COMMON TERMS

- 1) **Personal Representative** - executor or administrator
- 2) **Grant of Representation** - Probate or Letter of Administration.
- 3) **Executor de son tort** - executor in his own wrong - one who interferes with the estate matters, he will incur liabilities but does not have privileges of the executor.
- 4) **Administrator de bonis non** - one who is appointed when the sole surviving administrator dies without completing the administration of the estate.
- 5) **Application for L. A with Will annexed** - such an application is made where there is a Will but no executor present - as a result of death, disability or the executor unwilling to act.
- 6) **Life Interest** - an interest in a particular asset which a beneficiary has, including income that is derived until his death - after which these rights pass on to the 'Remainderman'.
- 7) **Demonstrative Legacy** - a gift in its nature general - directed to be paid out of a specified fund or a specific part of the testator's assets.
- 8) **Abatement** - Abatement of a gift in a will refers to receipt by a beneficiary of only a fraction or none of the gift because part of the gift is required to settle creditors of the estate.
- 9) **Ademption** - Where a gift is made in a will but is sold or transferred during the testator's lifetime – effectively revoking the gift to the beneficiary
- 10) **Donatio Mortis Causa** - This a conditional gift of movables made by a person in contemplation of impending death. The condition, which may be either express or implied, is that the gift is only to take effect if the donor dies. The gift must have been delivered to the donee, either actually, or constructively.

APPENDIX I

Terminology

Administrator	An individual designated by the court to administer the deceased's estate where the deceased has died without a will, or where the deceased has left a will but has not appointed an executor.
Affidavit	Written declaration confirmed by oath, to be used as evidence in court.
Attestation Clause	Statement in a will that it has been duly executed in the presence of witnesses.
Annuity	A periodic stream of payments for life or for a certain fixed term.
Beneficiary	A person who is nominated to receive benefits from the deceased estate owner's will or trust.
Bequest	Gift or item of movable property made to the beneficiary by will.
Chattels	Tangible assets other than immovable property.
Codicil	A supplementary document annexed to a will which extends, modifies or explains its contents.
Devise	Gift of immovables such as land or other realty assets.
Executor	Person named in the will to obtain the grant of probate and administer the deceased's estate.
Guardian	Person having the right and duty to protect the person, property or rights of a minor.
Immovable property	Tangible assets which cannot be physically moved – for example, land and buildings.
Intestacy	Situation in which a person dies without making a will.
Intestate	An individual who dies without leaving behind a valid will.
Issue	A person's issue refers to his children, grandchildren and all other lineal descendants.
Letters of Administration	Authority given under the seal of the court for the administration of the estate of a person who has died without leaving a will.

Letters of Administration with Will Annexed	Court grant appointing an administrator to administer the estate of a testator who, though having made a will, has not appointed an executor, or the appointed executor is unable or unwilling to act or is dead.
Grant of Probate	Court grant confirming the appointment of the executor named in the will and the fact that the will has been proven and registered in the court.
Personal Representative	The term refers to executors and administrators collectively.
Public Trust Corporation	<i>Amanah Raya Berhad</i> , the trust corporation incorporated under the Section 3 of the Companies Act, 1965 as prescribed in the Public Trust Corporation Act, 1995.
Revocation of Will	Cancellation of a will by the testator.
Residuary estate	Part of the deceased's estate which remains after payment of debts, liabilities and expenses, and after the legacies or devises specified in the will have been paid off.
Testacy	Situation in which a person dies leaving behind a valid will.
Testator	The will-maker or the person who writes a will.
Trustee	Person who holds property in trust for another.

APPENDIX II

DISTRIBUTION ACT 1958

An Act relating to the law of distribution of intestate estates.

*[Peninsular Malaysia—1 May 1958;
Sarawak—12 December 1986,
P.U. (A) 446/1986 1986]*

Short title and Application

1. (1) This Act may be cited as the Distribution Act 1958.
*(2) This Act shall apply to Peninsular Malaysia only.

Application

2. Nothing in this Act shall apply to the estate of any person professing the Muslim religion or shall affect any rules of Muslim law as varied by local custom in respect of the distribution of the estate of any such person nor shall this Act apply to any estate, the distribution of which is governed by the Parsee Intestate Succession Ordinance of the Straits Settlements [S.S. *Cap.* 54].

Interpretation

3. In this Act, unless the context otherwise requires—

“child” means a legitimate child and where the deceased is permitted by his personal law a plurality of wives includes a child by any of such wives, but does not include an adopted child other than a child adopted under the provisions of the Adoption Act 1952 [*Act* 257];

“intestate” includes any person who leaves a will but dies intestate as to some beneficial interest in his property;

“issue” includes children and the descendants of deceased children;

“parent” means the natural mother or father of a child, or the lawful mother or father of a child under the Adoption Act 1952;

“Peninsular Malaysia” has the meaning assigned thereto in section 3 of the Interpretation Acts 1948 and 1967 [Act 388], and includes], the Federal Territory.

Law Regulating Distribution

4. (1) The distribution of the movable property of a person deceased shall be regulated by the law of the country in which he was domiciled at the time of his death.
- (2) The distribution of the immovable property of a person deceased intestate shall be regulated by this Act wherever he may have been domiciled at the time of his death.

Persons Held to be Similarly Related to Deceased

5. For the purpose of distribution under this Act, there shall be no distinction between those who are related to the deceased person through his father and those who are related to him through his mother, nor between those who are related to him by the full blood and those who are related by the half blood, nor between those who were actually born in his lifetime and those who at the date of his death were only conceived in the womb but who have subsequently been born alive.

Succession to Intestate Estates

6. (1) After the commencement of this Act, if any person shall die intestate as to any property to which he is beneficially entitled for an interest which does not cease on his death, such property or the proceeds thereof after payment thereout of the expenses of due administration shall, subject to the provisions of section 4, be distributed in the manner or be held on the trusts mentioned in this section, namely
 - (a) if an intestate dies leaving a spouse and no issue and no parent or parents, the surviving spouse shall be entitled to the whole of the estate;
 - (b) if an intestate dies leaving no issue but a spouse and a parent or parents, the surviving spouse shall be entitled to one-half of the estate and the parent or parents shall be entitled to the remaining one-half;
 - (c) if an intestate dies leaving issue but no spouse and no parent or parents, the surviving issue shall be entitled to the whole of the estate;
 - (d) if an intestate dies leaving no spouse and no issue but a parent or parents, the surviving parent or parents shall be entitled to the whole of the estate;
 - (e) if an intestate dies leaving a spouse and issue but no parent or parents, the surviving spouse shall be entitled to one-third of the estate and the issue the remaining two-thirds;

- (f) if an intestate dies leaving no spouse but issue and a parent or parents, the surviving issue shall be entitled to two-thirds of the estate and the parent or parents the remaining one-third;
 - (g) if an intestate dies leaving a spouse, issue and parent or parents, the surviving spouse shall be entitled to one-quarter of the estate, the issue shall be entitled to one-half of the estate and the parent or parents the remaining half one-quarter;
 - (h) subject to the rights of a surviving spouse or a parent or parents, as the case may be, the estate of an intestate who leaves issue shall be held on the trusts set out in section 7 for the issue;
 - (i) if an intestate dies leaving no spouse, issue, parent or parents, the whole of the estate of the intestate shall be held on trusts for the following persons living at the death of the intestate and in the following order and manner, namely:
 - Firstly, on the trusts set out in section 7 for the brothers and sisters of the intestate in equal shares; but if no person takes an absolutely vested interest under such trusts, then
 - Secondly, for the grandparents of the intestate, and if more than one survive the intestate in equal shares absolutely; but if there are no grandparents surviving, then
 - Thirdly, on the trusts set out in section 7 for the uncles and aunts of the intestate in equal shares; but if no person takes an absolutely vested interest under such trusts, then
 - Fourthly, for the great grandparents of the intestate and if more than one survive the intestate in equal shares absolutely; but if there are no such great grandparents surviving, then
 - Fifthly, on the trusts set out in section 7 for the great grand uncles and great grand aunts of the intestate in equal shares.
 - (j) In default of any person taking an absolute interest under the foregoing provisions the Government shall be entitled to the whole of the estate except insofar as the same consists of land.
- (2) If any person so dying intestate be permitted by his personal law a plurality of wives and shall leave surviving him more wives than one, such wives shall share among them equally the share which the wife of the intestate would have been entitled to, had such intestate left one wife only surviving him.
- (3) When the intestate and the intestate's husband or wife have died in circumstances rendering it uncertain which of them survived the other, this section shall, notwithstanding any rule of law to the contrary, have effect as regards the intestate as if the husband or wife had not survived the intestate.

Trusts in favour of issue and other classes of relatives of intestate

7. (1) Where under the provisions of section 6, the estate of an intestate or any part thereof is directed to be held on the trusts set out in this section for the issue of the intestate, the same shall be held in trust in equal shares if more than one for all or any of the children or child of the intestate living at the death of the intestate, who attain the age of majority or marry under that age, and for all or any of the issue living at the death of the intestate, who attain the age of majority or marry under that age, of any child of the intestate who predeceases the intestate, such issue to take through all degrees according to their stocks, in equal shares if more than one, the share which their parent would have taken if living at the death of the intestate, and so that no issue shall take whose parent is still living at the death of the intestate and so capable of taking.
- (2) Where under section 6 the estate of an intestate or any part thereof is directed to be held on the trusts set out in this section for any class of relatives of the deceased other than issue of the intestate, the same shall be held on trusts corresponding to the trusts set out in subsection (1) of this section for the issue of the intestate as if such trusts were repeated with the substitution of references to the members or member of that class for references to the children or child of the intestate.
- (3) If the trusts in favour of the issue of the intestate fail by reason of no child or other issue attaining an absolutely vested interest, the estate of the intestate and the income thereof and all accumulations, if any, of the income thereof or so much thereof as may not have been paid or applied under any power affecting the same, shall go, devolve and be held under the provisions of this Act as if the intestate had died without leaving issue living at the death of the intestate, and accordingly references in section 6 to the intestate "leaving issue" and "leaving no issue" shall be construed respectively as referring to the intestate leaving issue or leaving no issue who attain an absolutely vested interest.

Application to cases of partial intestacy

8. Where any person dies leaving a will beneficially disposing of part of his property, the provisions of this Act shall have effect as respects the part of his property not so disposed of, subject to the provisions contained in the will:

Provided that the personal representative shall, subject to his rights and powers for the purposes of administration, be a trustee for the persons entitled under this Act in respect of the part of the estate not expressly disposed of unless it appears by the will that the personal representative is entitled to take such part beneficially.

Children's Advancements not to be taken into Account

9. Where a distributive share of the property of a person dying intestate is claimed by a child or any descendant of a child of such person, no money or other property which the intestate may during his life have paid, given or settled to or for the advancement of the child by whom or by whose descendant the claim is made shall be taken into account in estimating such distributive share.

Repeal

10. The Enactments set out in the Schedule to this Act are repealed.

SCHEDULE**Section 10**

F.M.S. Cap. 71	The Distribution Enactment
Johore Enactment No. 13 of 1935	The Distribution Enactment 1935
Kelantan Enactment No. 15 of 1930	The Distribution Enactment 1930
Kedah Enactment No. 22 of 1354	The Distribution Enactment

APPENDIX III

Intestacy Law as Applied in Sabah

Interstate Succession Ordinance, 1960

Rules	State of Affairs	Distribution Ruling
Rule (1)	Dies leaving a surviving spouse, no issues or parent	Whole estate goes to surviving spouse
Rule (2)	Dies leaving a surviving spouse and issues	1/3 share of estate goes to spouse
Rule (3)	Subject to rights of surviving spouse	2/3 share of estate goes to issue
Rule (4)	Dies leaving a spouse, no issues but parents	Personal chattels and 1/2 of the estate goes to surviving spouse
Rule (5)	Subject to rights of surviving spouse and no descendants	1/2 share of estate goes to parents
Rule (6)	Dies leaving no surviving spouse, no issue or parents, but with brother(s) and/or sister(s)	Surviving brothers and sisters to share in the whole of estate equally
Rule (7)	Dies leaving no surviving spouse, no issue, parents or brother and sister, but with grand parents	Surviving grand parents to share the whole of the estate equally
Rule (8)	Dies leaving no surviving spouse, no issue or parents or brother and sister, or grand parents, but with uncles and/or aunts	Uncles and aunts share the whole of estate equally
Rule (9)	If none of the above survived, but with other next-of-kin	All next-of-kin scheduled in the Sabah's Table of Consanguinity, to share equally
Rule (10)	In default of distribution Under the rules	The government of Borneo is entitled to the whole estate

APPENDIX IV

WILLS ACT 1959

Preamble

An Act relating to the law on wills.

[1 April 1960]

[Enacted in 1959 as Ord. No. 38 of 1959. Revised in 1988 and published as Laws of Malaysia Act 346. The revised Act came into force on 6 October 1988.]

1. Short Title and Application.

- (1) This Act may be cited as the **Wills Act 1959**.
- (2) This Act shall apply to the States of West Malaysia only.

2. Interpretation and application.

- (1) In this Act, unless there is something repugnant in the subject or context-

“property” includes lands, leases, rents and hereditaments corporeal, incorporeal or personal and any individual shares thereof and any estate, right or interest therein or in relation thereto, moneys, shares of Government and other funds, securities for money, charges, debts, choses in action, rights, credits, goods and all other property whatsoever which devolves upon the executor or administrator and any share or interest therein and any contingent, executory or other future interest;

“West Malaysia” has the meaning assigned thereto in section 3 of the Interpretation Act 1967, and includes the Federal Territory of Kuala Lumpur;

- \ “will” means a declaration intended to have legal effect of the intentions of a testator with respect to his property or other matters which he desires to be carried into effect after his death and includes a testament, a codicil and an appointment by will or by writing in the nature of a will in exercise of a power and also a disposition by will or testament of the guardianship, custody and tuition of any child.
- (2) This Act shall not apply to the wills of persons professing the religion of Islam whose testamentary powers shall remain unaffected by anything in this Act contained.

3. Property Disposable by Will.

Except as hereinafter provided, every person of sound mind may devise, bequeath or dispose of by his will, executed in manner hereinafter required, all property which he owns or to which he is entitled either at law or in equity at the time of his death notwithstanding that he may have become entitled to the same subsequently to the execution of the will.

4. Will of Infant Invalid.

No will made by any person under the age of majority shall be valid.

5. Mode of Execution.

- (1) No will shall be valid unless it is in writing and executed in manner hereinafter mentioned.
- (2) Every will shall be signed at the foot or end thereof by the testator or by some other person in his presence and by his direction; such signature shall be made or acknowledged by the testator as the signature to his will in the presence of two or more witnesses present at the same time, and such witnesses shall subscribe the will in the presence of the testator, but no form of attestation shall be necessary:

Provided that every will shall, as far only as regards the position of the signature of the testator, or of the person signing for him as aforesaid, be deemed to be valid under this section if the signature shall be so placed at or after, or following, or under, or beside, or opposite to the end of the will, that it shall be apparent on the face of the will that the testator intended to give effect by such his signature to the writing signed as his will; and no such will shall be affected by the circumstance-

- (a) that the signature shall not follow or be immediately after the foot or end of the will; or
- (b) that a blank space shall intervene between the concluding word of the will and the signature; or
- (c) that the signature shall be placed among the words of the testimonium clause or of the clause of attestation, or shall follow or be after or under the clause of attestation, either with or without a blank space intervening, or shall follow or be after, or under, or beside the names or one of the names of the subscribing witnesses; or
- (d) that the signature shall be on a side or page or other portion of the paper or papers containing the will whereon no clause or paragraph or disposing part of the will shall be written above the signature; or

- (e) that there shall appear to be sufficient space on or at the bottom of the preceding side or page or other portion of the same paper on which the will is written to contain the signature,

and the enumeration of the above circumstances shall not restrict the generality of this proviso; but no signature shall be operative to give effect to any disposition or direction which is underneath or which follows it, nor shall it give effect to any disposition or direction inserted after the signature shall be made.

6. Execution of Appointment by Will.

- (1) No appointment made by will, in exercise of any power, shall be valid, unless the same is executed in manner hereinbefore required.
- (2) Every will executed in manner hereinbefore required shall, so far as respects the execution and attestation thereof, be a valid execution of a power of appointment by will, notwithstanding that it shall have been expressly required that a will made in exercise of such power should be executed with some additional or other form of execution or solemnity.

7. Publication of will Not Necessary.

Every will executed in manner hereinbefore required shall be valid without any other publication thereof.

8. Will not to be Invalidated by Reason of Incompetency of Attesting Witness.

If any person who attests the execution of a will shall at the time of the execution thereof or at any time afterwards be incompetent to be admitted a witness to prove the execution thereof, such will shall not on that account be invalid.

9. Gifts to an Attesting Witness or to Wife or Husband of Attesting Witness to be Void.

If any person attests the execution of any will to whom or to whose wife or husband any beneficial devise, legacy, estate, interest, gift or appointment of or affecting any property, other than and except charges and directions for the payment of any debt or debts, shall be thereby given or made, such devise, legacy, estate, interest, gift or appointment shall, so far only as concerns such person attesting the execution of such will, or the wife or husband of such person, or any person claiming under such person or wife or husband, be utterly null and void, and such person so attesting shall be admitted as a witness to prove the execution or to prove the validity or invalidity thereof, notwithstanding such devise, legacy, interest, gift of appointment mentioned in such will.

10. Creditor Attesting a will Charging Estate with Debts shall be Admitted a Witness.

In case by any will any property shall be charged with any debt or debts, and any creditor, or the wife or husband of any creditor, whose debt is so charged, shall attest the execution of such will, such creditor notwithstanding such charge shall be admitted a witness to prove the execution of such will, or to prove the validity or invalidity thereof.

11. Executor not Incompetent to be a Witness.

No person shall, on account of his being an executor of a will, be incompetent to be admitted a witness to prove the execution of such will or a witness to prove the validity or invalidity thereof.

12. Will to be Revoked by Marriage except in Certain Cases.

Every will made by a man or woman shall be revoked by his or her marriage, except a will made in exercise of a power of appointment, when the property thereby appointed would not in default of such appointment pass to his or her heir, executor or administrator or the person entitled in case of his or her intestacy:

Provided that a will expressed to be made in contemplation of a marriage shall not be revoked by the solemnization of the marriage contemplated; and this proviso shall apply notwithstanding that the marriage contemplated may be the first, second or subsequent marriage of a person lawfully practising polygamy.

13. No will to be Revoked by Presumption from Altered Circumstances.

No will shall be revoked by any presumption of an intention on the ground of an alteration in circumstances.

14. Revocation of Will.

No will or any part thereof shall be revoked otherwise than as aforesaid, or by another will executed in manner hereinbefore required, or by some writing declaring an intention to revoke the same, and executed in the manner in which a will is hereinbefore required to be executed, or by the burning, tearing or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same.

15. Effect of Obliteration, Interlineation or Alteration.

No obliteration, interlineation or other alteration made in any will after the execution thereof shall be valid or have any effect except so far as the words or effect of the will before such alteration shall not be apparent, unless such alteration shall be executed in like manner as hereinbefore is required for the execution of the will; but the will, with such alteration as part

thereof, shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses be made in the margin or on some other part of the will opposite or near to such alteration or at the foot or end of or opposite to a memorandum referring to such alteration and written at the end or some other part of the will.

16. Revival of Revoked Will.

- (1) No will or any part thereof which has been revoked in any manner shall be revived otherwise than by the re-execution thereof, or by a codicil executed in manner hereinbefore required, and showing an intention to revive the same.
- (2) When any will which has been partly revoked, and afterwards wholly revoked, is revived, such revival shall not extend to so much thereof as has been revoked before the revocation of the whole thereof, unless an intention to the contrary be shown.

17. Subsequent Conveyance or other Acts not to Prevent Operation of Will.

No transfer, conveyance, assignment or other act made or done subsequently to the execution of a will or codicil of or relating to any property therein comprised, except an act by which such will or codicil shall be revoked as aforesaid, shall prevent the operation of the will or codicil with respect to such estate, right, share or interest in such property as the testator shall have power to dispose of by will at the time of his death.

18. Wills shall be Construed to Speak from the Death of the Testator.

Every will shall be construed, with reference to the property comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention shall appear by the will.

19. Residuary Devises or Bequests shall Include Estates Comprised in Lapsed and Void Devises or Bequests.

Unless a contrary intention appears by the will, such property as is comprised or intended to be comprised in any devise or bequest in such will contained, which fails or is void by reason of the death of the devisee or legatee in the lifetime of the testator or by reason of such devise or bequest being contrary to law or otherwise incapable of taking effect, shall be included in the residuary devise or bequest respectively, if any, contained in the will.

20. General Devise or Bequest of Property shall Include Property over which the Testator has General Power of Appointment.

A general devise or bequest of the estate or property of the testator described in a general manner shall be construed to include any property to which such description shall extend

which he may have power to appoint in any manner he may think proper and shall operate as an execution of such power unless a contrary intention shall appear in the will.

21. Devise or Bequest without Words of Limitation.

Where property is devised or bequeathed to any person without any words of limitation, such devise or bequest shall be construed to pass the fee simple or other the right to the whole estate or interest in such property which the testator had power to dispose of by will unless it appears by the will that only a restricted interest was intended for such devisee or legatee.

22. Construction of Words Importing want or Failure of Issue.

In any devise or bequest of property the words “die without issue” or “die without leaving issue”, or any other words which may import either a want or failure of issue of any person in his lifetime or at the time of his death, or an indefinite failure of his issue, shall be construed to mean a want or failure of issue in the lifetime or at the time of the death of such person, and not an indefinite failure of his issue, unless a contrary intention shall appear by the will:

Provided that this section shall not extend to cases where such words as aforesaid import if no issue described in a preceding gift shall be born, or if there shall be no issue who shall live to attain the age or otherwise answer the description required for obtaining a vested estate by a preceding gift to such issue.

23. Devise or Bequest of Property to Trustee or Executor.

Where any property shall be devised or bequeathed to any trustee or executor, such devise or bequest shall be construed to pass the fee simple or other the right to the whole estate or interest in such property which the testator had power to dispose of by will unless a lesser interest in such property shall thereby be given to him expressly or by implication.

24. Devise or Bequest of Property to Trustee without Limitation.

Where any property shall be devised or bequeathed to a trustee, without any express limitation of the estate to be taken by such trustee, and the beneficial interest in such property, or in the surplus rents and profits thereof, shall not be given to any person for life, or such beneficial interest shall be given to any person for life, but the purposes of the trust may continue beyond the life of such person, such devise or bequest shall be construed to vest in or pass to such trustee the fee simple, or other the right to the whole legal estate or interest in such property which the testator had power to dispose of by will, and not an estate determinable when the purposes of the trust shall be satisfied.

25. Devises or Bequests to Children or other Issue who Leave Issue Living at the Testator's Death shall not Lapse.

Where any person, being a child or other issue of the testator, to whom any property shall be devised or bequeathed for any estate or interest not determinable at or before the death of such person shall die in the lifetime of the testator leaving issue, and any such issue of such person shall be living at the time of the death of the testator, such devise or bequest shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention shall appear by the will.

26. Privileged Wills of Soldiers, Airmen and Sailors.

- (1) A member of the armed forces of Malaysia being in actual military service, and a mariner or seaman (including a member of the naval forces of Malaysia) being at sea may dispose of his property or of the guardianship, custody and tuition of a child or may exercise a power of appointment exercisable by will by a privileged will.
- (2) For the purposes of this section a privileged will means any declaration or disposition, oral or in writing, made by or at the directions of the testator which manifests the intentions of the testator which he desires to be carried out to the guardianship, custody and tuition of a child or to the exercise of a power of appointment.
- (3) A declaration may be a valid privileged will notwithstanding that it was not executed in the manner appearing to have been intended by the testator or that it was intended by the testator subsequently to execute a formal will to give effect to his testamentary dispositions, unless it appears that the failure to execute such declaration in such manner or such formal will was due to the abandonment by the testator of the testamentary intentions expressed by such declaration.
- (4) Sections 4, 5 and 6 shall not apply to privileged wills, nor is it necessary for a written privileged will to be signed by the testator.
- (5) A privileged will other than a will which apart from the provisions of this section would have been valid under this Act shall be null at the expiration of one month after the testator being still alive has ceased to be entitled to make a privileged will.

27. Wills Executed Abroad.

A will executed outside Malaysia in the manner required by-

- (a) this Act, or
- (b) the law of the place where it was executed, or
- (c) the law of the testator's domicile at the time of its execution, or

- (d) the law of the testator's domicile at the time of his death, shall be deemed to be will executed for the purpose of being admitted to probate in Malaysia, provided that such will is in writing or is a privileged will made under section 26.

28. Wills by Citizens Executed in Malaysia.

A will executed within Malaysia by a citizen (whatever may be the domicile of such person at the time of making the same or at the time of his death) shall as regards movable property and immovable property situate in Malaysia be deemed to be a will executed for the purpose of being admitted to probate in Malaysia if it is executed in the manner required by this Act.

29. Change of Domicile not to Invalidate Will.

No will shall be held to be revoked or to have become invalid in point of form nor shall the construction thereof be altered by reason only of any subsequent change of domicile of the person making the same.

30. Construction of Wills.

- (1) A will made in any of the States of Selangor, Perak, Negeri Sembilan or Pahang before the coming into force of this Act and a will made in either of the States of Penang and Malacca shall, if such will would immediately before the commencement of this Act have been construed in accordance with the Wills Enactment, 1938, of the Federated Malay States or the Wills Ordinance of the Straits Settlements respectively, continue to be construed in accordance with such provisions, notwithstanding any repeal of that Enactment or Ordinance.
- (2) For the purposes of subsection (1) a will re-executed, republished or revived by a codicil shall be deemed to have been made at the time when it was so re-executed, re-published or revived.
- (3) Save as provided by subsection (1) and subject to this Act, section 100 of the Evidence Act 1950 shall apply to the construction of all wills required to be construed in accordance with the law of Malaysia as if the words "in the Settlements or either of them" appearing in such section had been omitted.

APPENDIX V

LAST WILL and TESTAMENT

Illustration of a Simple Will of non-Muslim

I, Full Name (NRIC), of (Address) hereby revoke all former Wills and Codicils wills made by me and declare this to be my last Will and Testament:

Fiduciary Provisions

- I. Executor: I appoint my wife, (Name) (NRIC), and (Name of Corporate Trustee) executrix and executor respectively of my will. I direct that
 - A. Resignation: Any executor may resign at any time without court approval.
 - B. Bond: No executor shall be required to give bond;
 - C. Singular / Plural: The expression "Executor, executrix and Trustee" shall refer to those from time to time acting as such; and
 - D. Compensation: My corporate executor and custodian shall receive compensation in accordance with its standard schedule of fees in effect while its services are performed.
- II. Guardian of the Person and Estate: I direct that
 - A. Guardians of the person: If my wife does not survive me, I appoint (guardian's name) guardian of the persons of my children during their minorities; and
 - B. Guardians of the Estate: I appoint my wife and (Name of Trust Corporation) guardians of the estates of my minor children over any property that may pass to them other than under this will or trust of mine. I direct that
 1. The guardians shall manage the funds for each child as the guardians prudently and in accordance with prevailing laws may apply. However, each child shall have the unrestricted right to withdraw his or her share upon reaching the age of majority of 18 years; and
 2. No guardian shall be required to give bond

Property Disposition

III. Personal and Household effects: I hereby bequest all my articles of personal or household use, including cars, and all insurance on that property:-

- A. Wife: To my wife, _____, if she survives me by 30 days. If she does not so survive me, I bequest all such property and insurance.
- B. Children: To those of my children who so survive me, to be divided among them equally or as they may among themselves agree.

In the absence of agreement or if any child of mine is a minor, the division shall be made as my corporate executor may think appropriate. However, articles that my executor considers unsuitable for my children may be sold and the proceeds added to my residuary estate. My executor may, without further responsibility, distribute property passing to a minor under this article to the minor or to any person to hold for the minor.

IV. Residuary Estate: I hereby bequest the residue of my estate, real and personal,

- A. Wife: To my wife, Full Name (NRIC), if she survives me by 30 days. If she does not so survive me, I bequest all such residue to my children in accordance with the following Part B of this Article.
- B. Children: In equal shares to such of my children, (Name) (NRIC) and (Name) (NRIC) who so survive me. This provision will apply provided that if a child does not survive me but leaves issues who so survive me, such issues shall receive, per stripes, the share such child would have received had he or she so survived me. _

V. Powers of Appointment: No provision of this will shall use any power of appointment I may have.

VI. Beneficiaries under 18: Any property passing under this will to a person under 18 years of age shall be paid to _____ custodian for that beneficiary. If (Name) (NRIC) for any reason fails to qualify or cease to act as custodian, I appoint (Name) (NRIC) in his or her place.

VII. Protective Provision: to the greatest extent permitted by law, before actual payment to a beneficiary no interest in income or principal shall be (a) assignable to a beneficiary or (b) available to anyone having a claim against a beneficiary.

VIII. Estate Duties and Taxes: All estate duties and other taxes payable on the property forming my gross estate for that purpose, whether or not it passes under this will, shall be paid out of the principal of my probate estate just as if they were my debts, and none of those taxes shall be charged against any beneficiary.

IX. Tax Provisions: I authorise my executor

- A. Estate Duties: To exercise any options available in determining and paying death taxes in my estate and to allocate my generation skipping tax exemption; and
- B. Income Taxes: To join with my wife in filling a joint income tax return;

In my executor's sole discretion, no compensation adjustments shall be required between income and principal, or between my trusts, or between my estate and my wife. All decisions under this article shall be made in my executor's sole discretion and shall be conclusive upon all persons concerned.

X. Management Provisions: I authorise my executor

- A. Retain / Invest: To retain and to invest in all forms of real and personal property, including common trust funds, mutual funds, and bank deposit accounts operated or offered by my corporate executor or any affiliate of it, regardless of any limitations imposed by law on investments by executors, or any principle of law concerning investment diversification;
- B. Compromise: To compromise claims and to abandon any property which, in my executor's opinion, is of little or no value;
- C. Borrow: To borrow from and to sell property to my wife or others, and to pledge property as security for repayment of any funds borrowed;
- D. Sell/Lease: To sell at public or private sale, to exchange, or to lease for any period of time, any real or personal property, and to give options for sales or lease;
- E. Capital Changes: To join in any merger, reorganisation, voting-trust plan, or other concerted action of security holders, and to delegate discretionary duties with respect thereto;
- F. Distribute: To distribute in kind and to allocate specific assets among the beneficiaries (including any custodianship hereunder) in such proportions as my trustee may think best, so long as the total market value of any beneficiary's share is not affected by such allocation.

These authorities shall extend to all property at any time held by my executors or my trustee and shall continue in full force until the actual distribution of all such property. All powers, authorities, and discretion granted by this will shall be in addition to those granted by law and shall be exercisable without court authorisation.

IN WITNESS WHEREOF I, the said (Testator Name) have hereunto set my hand this _____
____ day of _____ Two Thousand and One (2001).

SIGNED and DECLARED by the
above named (Testator's Name) as
his last Will in the presence of us
being present at the same time (Signature of Testator)
who at his request and in the
presence of each other have
hereunto subscribed our names
as witness:-

(Witness Signature)

Name :
NRIC :
Address :

(Witness Signature)

Name :
NRIC :
Address :

Case Study

Mr K T Gan who was an executive working in a private company in Shah Alam, Selangor died following a short illness at the age of 46. His nephew is helping the widow and their 3 children in the administration of the estate and looks for advice from you. From a preliminary discussion with him you have obtained the following information of Mr Gan's assets and related matters. He had passed away without leaving a Will. His father had passed away earlier but his mother is still living. The assets of the estate are as follows:

Assets	Remarks
1. Residential home worth RM 250 000	He had been paying installments and had a mortgage insurance for settling the outstanding loan upon death.
2. Car worth RM 40 000	He had a Hire Purchase agreement with a bank and there are about 30 months installments yet to be paid.
3. Moneys in savings and fixed deposit in the bank amounting to about RM 65 000	The account being in his personal name, the bank has 'frozen' it and the widow is not allowed to deal with the moneys.
4. A Life Insurance policy of Basic Sum Assured of RM 120 000	His wife had been named as a nominee and she is doing the needful to make the claim.
5. Moneys in EPF amounting to RM 180 000	He had named his mother as a nominee.
6. Employee benefit scheme benefits payable by his employer.	This is equivalent to 24 months of his last drawn salary and the employer has agreed to pay the death benefits directly to the widow.

Recommendation and Advice

1. The **Life Insurance** moneys will be paid to the wife as nominee. These moneys are a subject matter of a trust and is payable to her beneficially. She does not need to give any portion of it to other beneficiaries, neither is she compelled to use these moneys to settle the creditors of the estate.
2. The **EPF** moneys will be paid to the mother. As Mr Gan was a Non-Muslim, the mother is entitled to keep all the moneys to herself and does not need to distribute any portion to the others. However, if the estate does not have adequate assets to satisfy the creditors, there is always a possibility of them making a claim for all or part of these moneys to satisfy their debts.

3. The moneys paid by the **employers**, although given to the wife, is deemed to be part of the estate. She may use these moneys to pay the creditors and the balance to be distributed among the beneficiaries of the estate.
4. The outstanding loan on the **residential home** may be settled by virtue of the mortgage, if the insurance coverage has been adequate. If it is not, then funds from the estate may be used to settling any shortfall. The home is nevertheless considered part of the estate and is subject to be distributed amongst the beneficiaries.
5. The residential home, car and moneys in the bank account form the major part of the estate that needs to be administered. As the gross value of these assets are below RM 600 000, the wife should be advised to go to the Land Office in Shah Alam where the house is situated and make an application for summary administration under the Small Estates (Distribution) Act 1955. The beneficiaries of the estate are the wife, mother and children who will share the balance of the estate in the ratio of 25 : 25 : 50 respectively. If the children are minors, then their interest in the estate will be held on trust, most likely by their mother. If Mr Gan's mother, voluntarily relinquishes part of her beneficial interest in the estate in favour of the other beneficiaries she must declare her intentions to do so.