

APPENDIX 1

SELECTED CASES ON *HIBAH* DECIDED BY THE COURTS BETWEEN 1994 AND 2011

| No. | Name | Citation | Subject matter | Court | Judgment |
|-----|---|------------------------|---|---|--|
| 1 | <i>Eshah Abdullah & 5 Ors v. Che Aminah Abdul Razak & 2 Ors</i> | [2004] XVIII(I) JH 47 | Appeal/Validity of Hibah [Land] | Mahkamah Rayuan Terengganu | Claim of Hibah is valid and granted to the Respondent. |
| 2 | <i>Mek Som Ibrahim v. Awang Hamat Awang</i> | [2004] XVIII(I) JH 107 | Appeal/ Giving of Hibah [Land] | Mahkamah Rayuan Syariah Negeri Kelantan | Appeal allowed and judgment of Special Qadi nullified. Re-Trial Ordered. |
| 3 | <i>Permohonan Pengesahan Hibah Allahyarham Ismail Siak Kepada Wan Ismariza Bt. Wan Ismail</i> | [2004] XVIII(I) JH 163 | Case/ Validity of Hibah [Land] | Mahkamah Tinggi Syarian N.Sembilan | Hibah from the deceased Father to his Daughter is held to be valid. |
| 4 | <i>Ibrahim Yusoff v. Eshah Haji Ishak & 4 Ors</i> | [2006] XXI(II) JH 158 | Appeal/Hibah (Alang Hayat) [Land] | Mahkamah Rayuan Syariah Negeri Kelantan | Hibah is valid and in accordance to Shari'ah. There is no sufficient evidence for the revocation of the Hibah. |
| 5 | <i>Marina Binti Mohd Arif & Anor v. Mai Binti Jantan</i> | [2006] XXI(II) JH 178 | Application for validity of Hibah [Land] | Mahkamah Tinggi Syariah N.Sembilan | Court accepted the Plaintiffs' contentions and treated the Memorandum of Transfer in Land (Form 14A) as Hibah |
| 6 | <i>Mai Binti Jantan v. Marina Binti Mohd Arif & Anor</i> | [2006] XXI(II) JH 183 | Appeal against the validity of Hibah Application [Land] | Mahkamah Rayuan Syariah N.Sembilan | Hibah is valid and granted to the Respondents based on Memorandum of Transfer In Land (Form 14A) |
| 7 | <i>Mohd. Mokhtar Hj. Abdullah v. Fadshilah Hj. Abdullah & 4 Ors</i> | [2005] XX (I) JH 138 | Appeal on the application to annul Hibah [Land] | Mahkamah Rayuan Syariah Negeri Kelantan | Hibah is valid and in accordance to Shari'ah. There is no such requirement that Hibah must be made justly or in an equitable manner. Hibah remains valid even though the deceased mother excluded her son from the Hibah Gift. |

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| | | | | Persekutuan | (Plaintiff). In the event of acquisition of the said property, the compensation belongs exclusively to the Plaintiff. |
| 10 | <i>Ibrahim Bin Salleh v. Zainuddin Bin Idris & 5 Ors</i> | [2008] 25 (1) JH 113 | Appeal on the validity of Hibah [Land] | Mahkamah Rayuan Syariah Negeri Kelantan | Appeal is denied and Syariah High Court's Judgement affirmed. |
| 11 | <i>Pengesahan Hibah Siti Noor Aseera Binti Awang</i> | [2007] XXIII (I) JH 119 | Hibah [Land] | Mahkamah Tinggi Syariah Negeri Pahang | The Hibah of Land is valid and in accordance to Shari'ah. The rest of the deceased's property must be divided based on Fara'id. |
| 12 | <i>Abu Talib @ Musa Bin Muda v. Che Alias Bin Che Muda</i> | [2006] XXII (II) JH 161 | Application on the validity of Hibah [Land-House] | Mahkamah Tinggi Syariah Negeri Terengganu | Hibah is valid in accordance to Shari'ah. |
| 13 | <i>Che Alias Bin Che Muda v. Abdul Talib @ Musa Bin Muda</i> | [2008] 25 (2) JH 191 | Appeal on validity of Hibah [Land-House] | Mahkamah Rayuan Syariah Negeri Terengganu | Appeal allowed. |
| 14 | <i>Kamsiah Binti Yusof v. Latifah Binti Yusof & 3 Ors</i> | [2009] 27 (II) JH 225 | Application on the validity of Hibah [Land-House] | Mahkamah Tinggi Syariah N.Sembilan | The Hibah is valid for certain property, but not according to the Plaintiff's claim due to lack of sufficient evidential proof. |
| 15 | <i>Saharain Bin Nordin v. Noraidah Binti Nordin</i> | [2008] 26 (1) JH 73 | Appeal/ Claim of Hibah [Land-House] | Mahkamah Rayuan Syariah Negeri Selangor | Appeal is allowed and re-trial ordered. |
| 16 | <i>Jariah Binti Yahya & 3 Ors v. Nor Hasiah Binti Harun</i> | [2010] 31 (1) JH 81 | Validity of Hibah [Moveable & Immovable Property] | Mahkamah Rayuan Syariah N.Sembilan | Appeal denied and the Syariah High Court Judge's Order affirmed. |
| 17 | <i>Shabnam Bt Samsad v. Samsad B Mohd Islam & 7 Ors</i> | [2011] 33 (2) JH 249 | Validity of Hibah [House-Car] | Mahkamah Tinggi Syariah Negeri Kedah | Hibah is valid and in accordance to Islamic law. |
| 18 | <i>Teh Binti Ngah v. Limah Binti Ismail & 6 Ors</i> | [2011] 33 (2) JH 259 | Application On the validity of Hibah [Land] | Mahkamah Tinggi Syariah Negeri Terengganu | Hibah is valid. |
| 19 | <i>Tuan Bidah Binti Tuan Kundor v. Jusoh Bin Saman</i> | [2011] 33 (2) JH 277 | Dispute concerning gift of Alang Hayat [Movable & Immovable Property] | Mahkamah Tinggi Syariah Negeri Kelantan | Court allowed the division of property based on concept of Harta Sepencarian |
| 20 | <i>Zanani Binti Mohd Noor v. Awang Bin Merah & Anor</i> | [2008] 26 (2) JH 241 | Appeal on the validity of Hibah [Land] | Mahkamah Rayuan Syariah Negeri | Appeal allowed and Hibah declared valid according to Shari'ah. |

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| | | | | Kelantan | |
| 21 | <i>Raihanah Binti Mohd Ali v. Kamarudin Bin Mohd Nor & 3 Ors</i> | [2008] 26 (2) JH 253 | Appeal on the validity of Hibah [Land-Family Insurance] | Mahkamah Tinggi Syariah Negeri Terengganu | Ordered accordingly. |
| 22 | <i>Ibrahim Bin Haji Abu Bakar v. Mohd. She Bin Mohd Ali & Abdul Razak Bin Mohamad</i> | [2003] XVI (II) JH 189 | Appeal on the validity of wasiyyah and Hibah [Land] | Mahkamah Rayuan Syariah Pahang | Appeal denied and the Syariah High Court Judge's Order affirmed. |
| 23 | <i>Alias B. Ismail v. Fatimah Bt. Awang & Ors</i> | [1991] VII (II) JH 47 | Claim of Alang Hayat [Land] | Mahkamah Syariah Tumpat, Kelantan | Court has no jurisdiction on the subject matter of the claim since it involves debts and not Hibah |
| 24 | <i>Pengesahan Hibah Norizah Bt. Mansor</i> | [2004] XVII (I) JH 69 | Validity of Hibah Property [Land] | Mahkamah Tinggi Syariah N. Pulau Pinang | Price of sale of Land is Hibah and must be given to the Plaintiff. |
| 25 | <i>Pengesahan Hibah Fathilah Bt. Sidik</i> | [2004] XVII (I) JH 75 | Validity of Hibah Property [Shares] | Mahkamah Tinggi Syariah N. Pulau Pinang | The shares are Hibah and given to the Plaintiff |
| 26 | <i>Nik Salma Zaidah Binti Haji Wan Zaid v. Nik Hasnah Binti Nik Din & Anor</i> | [2002] XV (II) JH 143 | Claim of Hibah/ Alteration of wasiyyah [House-Land] | Mahkamah Rayuan Syariah Kota Bharu | Appeal allowed. |
| 27 | <i>Salmiah Binti Che Hat v. Zakaria Bin Hashim</i> | [2001] XIV (II) JH 79 | Validity of Hibah [Land] | Mahkamah Rendah Syariah Pulau Pinang | The Land is Hibah property which fulfills all the requirements of Hibah under the Shari'ah. |
| 28 | <i>Muhammad Bin Awang & Ors v. Awang Bin Deraman & Ors</i> | [2001] XIV (II) JH 165 | Appeal on the application for annulment of Hibah [Land] | Mahkamah Rayuan Syariah Kota Bharu | Appeal denied and the Judgment by Mahkamah Qadi Besar Kelantan affirmed. |
| 29 | <i>Harun Bin Muda & Ors v. Mandak Binti Mamat & Ors</i> | [1999] XIII (I) JH 63 | Claim of Hibah [Land] | Mahkamah Tinggi Syariah Terengganu | Hibah is Valid. Ordered Accordingly. |
| 30 | <i>Awang Bin Abdul Rahman v. Shamsuddin Bin Awang & Anor</i> | [1997] XI (II) JH 193 | Claim of Hibah [Land] | Mahkamah Tinggi Syariah Terengganu | There is no existence of Hibah. The Claim for Harta Sepencarian is rejected. |

Source: Author's research. Data mined from Jurnal Hukum (1994-2011)

APPENDIX 2

SELECTED CASES ON *WASIYYAH* DECIDED BY THE COURTS BETWEEN 1994 AND 2011

| No. | Name | Citation | Subject matter | Court | Judgment |
|-----|--|------------------------|--|---|--|
| 1 | <i>Wan Abdullah Wan Muda & Anor v. Wan Puziah Awang</i> | [2005] XIX (II) JH 295 | Appeal on the validity of wasiyyah | Mahkamah Rayuan Syariah Negeri Terengganu | The wasiyyah is valid and fulfilled all the requirements and pillars of wasiyyah. The plaintiff is ordered to take oath (<i>nafyu ilmi</i>) to uphold the judgment made by honorable judge on trial. |
| 2 | <i>Rosmah Binti Suly & Anor v. Ismail Bin Mohamad & Anor</i> | [2011] 32 (2) JH 249 | Application on the denial of existence of wasiyyah | Mahkamah Tinggi Syariah W.P. Kuala Lumpur | The property belongs to the 2 nd defendant which is held as amanah (trust) by the 1 st defendant. |
| 3 | <i>Rosmah Binti Suly & Anor v. Ismail Bin Mohamad & Anor</i> | [2011] 32 (2) JH 223 | Appeal on denial of existence of wasiyyah | Mahkamah Rayuan Syariah W.P. Kuala Lumpur | Appeal is denied and the Syariah High Court Judge's order is sustained. |
| 4 | <i>Wan Puziah Binti Wan Awang v. Wan Abdullah Bin Muda & Anor</i> | [2001] XIV (II) JH 235 | Claim of validity of wasiyyah | Mahkamah Tinggi Syariah Kuala Terengganu | Ordered accordingly. |
| 5 | <i>Ibrahim Bin Hj. Abu Bakar v. Mohd Sah Bin Mohd. Ali & Ors</i> | [2001] XIV (I) JH 279 | Application on validity of wasiyyah and hibah | Mahkamah Tinggi Syariah Pahang | Unsubstantiated evidence for the existence of wasiyyah. The land ordered to be divided based on Fara'id. |
| 6 | <i>Pengarah Jabatan Hal Ehwal Agama Islam Negeri Sembilan v. Faridah Chin & Anor</i> | [1996] X (II) JH 195 | Application to cancel a wasiyyah | Mahkamah Tinggi Syariah Negeri Sembilan | The deceased person made a wasiyyah for his body to be cremated. The wasiyyah is invalid and he was ordered to be buried as a Muslim. |

Source: Author's research. Data mined from Jurnal Hukum (1994-2011)