

**JOINT CONFERENCE ON
LAW AND SOCIETY, COMMERCIAL
LAWS AND ISLAMIC FINANCE
2013**

Rights of Muslim Women in Business Assets as Inheritance; A case Law Analysis.

Dr Wan Noraini Mohd Salim

Assoc. Prof. Dr Zuhairah Ariff Abd
Ghadas

- Assets are anything owned by the deceased up to the time of his death and will be subject to distribution according to the law of faraid upon death including business assets.
- However, assets that have been given away as gift or held on trust are not subject to the law of faraid.

Inheritance right of women in Islam

- Allah says:
 - “From what is left by parents and those nearest related, there is a share for men and a share for women, whether the property be small or large, a determinate share.” – al-nisa’(4):7

- The verse clearly acknowledges the right of men and women in any estate of a deceased parent or parents or other relatives.
- An estate means anything that is left by the deceased at the time of his death and owned by him. It includes any valuable item, money, land, as well as family business assets.

- The estate extends also to shares in a company or partnership, unit trust such as under the Amanah Saham Nasional (ASN) and Amanah Saham Bumiputera (ASB) and financial institutions.
- In case of dispute whether a property constitutes an estate or not – refer to the shariah court.

- The method of distribution will be based on the law of *faraid* which is founded on the verses of inheritance in *surah al-nisa'* (chapter 4) of the Holy Quran and the prophetic traditions.
- Verses 11, 12 and 176

Persons entitled under faraid

- Quranic heirs;
 - consist of twelve individuals; nine females and three males who are related to the deceased by blood, except for the spouse.
 - They will not inherit at the same time
 - five of them will always get a share as long as they remain Muslims or have not caused the death of the deceased
 - wife, husband, daughter, mother and father

- The rest of the Quranic heirs are agnatic granddaughter, agnatic (paternal) grandfather, grandmother, germane sister, consanguine sister, uterine sister and uterine brother. Being agnatic means the granddaughter and grandfather must be related to the deceased through the male link of the deceased.

- The germane, consanguine and uterine sisters are the female siblings of the deceased but the degree and strength of blood ties differ.
- The germane and consanguine sisters share the same father but different mother. Germane sister is stronger in blood ties to the deceased as compared to the consanguine sister because she shares the same father and mother with the deceased.
- Consanguine sister only shares the same father with the deceased.
- Uterine sister and brother, on the other hand only share the same mother with the deceased.

- Residuary heirs

- They are mainly males and except for the son and father, must be related through the male link (or must be agnatic)
- They are residuary heirs in their own right (*asabat nasabiyah binnafsi*) and will take either whole or balance of estate depending on the order of priority.

- They consist of son, agnatic grandson, father, agnatic grandfather (paternal), germane brother (male sibling of the deceased who shares the same father and mother), consanguine brother (same father), son of germane brother (nephew), son of consanguine brother (nephew), germane brother of father (paternal uncle), consanguine brother of father (paternal uncle), son of germane brother of father (male cousin) and son of consanguine brother of father (male cousin).

- Secondly, residuary heirs through another (*asabat nasabiyah bilghayr*) consisting four female Quranic heirs who will take either the whole or the balance of the estate in the presence of their male counterparts of the same class and degree. They are the daughter, the agnatic granddaughter, the germane sister and the consanguine sister. They will share the whole estate in the absence of other Quranic heirs or the balance in their presence, on the ratio of two portions for the male and one portion for the female.

- The daughter of the deceased will become residuary heir through the son of the deceased (from any valid marriage of the deceased and whether the marriage is still subsisting or not); the agnatic granddaughter through the agnatic grandson,
- the germane sister through germane brother and the consanguine sister through consanguine brother.

- Thirdly, residuary heirs in the company of another (*asabat nasabiyah ma 'alghayr*) consisting of two female Quranic heirs namely the germane and consanguine sisters. They will become the residuary heirs in the company of female descendant of the deceased but must be in the absence of son or agnatic grandson or father or germane brother of the deceased.

Pre-distribution process

- Settlement of funeral expenses
- Payment of debts or financial liabilities. It then becomes the responsibility of the heirs to settle all the liabilities before any distribution according to *faraid* is made. It is, however, not a duty of the heirs to pay the debts and other liabilities from their own pocket. The amount of the liabilities must be deducted from the deceased's estate. Only then the balance will be distributed in accordance with the law of *faraid*.

- There are also situations where the spouse of the deceased claimed to be entitled in a property of a deceased as part of jointly acquired property or *harta sepencarian*.
- Jointly acquired property means property acquired during the subsistence of the marriage between husband and wife. By custom, on demise of either spouse, the survivor has the right to claim parts of the property or its value. The claim of the jointly acquired property, however, does not hinder the distribution of the rest of the estate to proceed.

- Apart from the debts and claim for jointly acquired property, the estate of the deceased may also be subjected to deduction for any amount of *wasiyyah* or wills executed by the deceased during his lifetime. A will can be made to anybody except for the next of kin and spouse and not exceeding 1/3 of the estate. The rationale for this rule is that the next of kin such as children and parents as well as the surviving spouse already have their allocated portions that are prescribed in the Quran.

- However, the rules that the quantum of the will cannot exceed $\frac{1}{3}$ and cannot benefit a legal heir are not rigidly imposed. A will exceeding $\frac{1}{3}$ and to the next of kin and spouse will be valid and enforceable with the consent of all the affected heirs after the decedent's death.

- The consent of all heirs plays an important role to enable a Muslim to effectively bequeath certain property or specific portion of his estate to anybody he likes especially in cases where he has only daughters and he wants the daughters to get more than what is prescribed for them in the Quran. Alternatively, he can give more to the daughter/s and wife or wives through *hibah* or gift which takes effect during his life time.

- As far as family businesses are concerned, any will or gift made to anybody must not infringe the rights of other family members. In other words, the will or gift must relate only to what rightly belonged to the person making it. It must be from his property or his parts of the businesses.

Methods of distribution

- After all debts and other financial liabilities are settled, the balance of the estate will be divided according to mutual agreements if all heirs agree to that
- Otherwise the estate will be distributed in accordance with the law of faraid as prescribed in the Quran

Examples

- A person dies leaving one or more wives and no other heirs, the wife or wives will take $\frac{1}{4}$ and the balance $\frac{3}{4}$ will go to baitulmal. If there are two or more wives, they will share $\frac{1}{4}$ equally
- In contrast, if a wife dies leaving husband only, the husband will take $\frac{1}{2}$ and the balance goes to baitulmal.

- In case of death of a person leaving a wife, a son, a daughter, a mother and a father:

		24
WIFE	1/8	3
MOTHER	1/6	4
FATHER	1/6	4
SON	SHARE RESIDUE WITH D ON RATIO 2:1	13
DAUGHTER	1S = 2 PORTIONS 1D = 1 PORTION TOTAL PORTIONS 3	1S $\frac{2}{3} \times \frac{13}{24} = \frac{13}{36}$ FROM NET 1D $\frac{1}{3} \times \frac{13}{24} = \frac{13}{72}$ FROM NET

- A person dies leaving:

		4
A WIFE	1/4	1
ONE GERMANE BROTHER	SHARE RESIDUE WITH GS ON RATIO 2:1	3
ONE GERMANE SISTER	1GB 2 PORTIONS 1GS 1 PORTION TOTAL 3 PORTIONS	1GB $\frac{2}{3} \times \frac{3}{4}$ = $\frac{6}{12}$ ($\frac{1}{2}$) FROM NET 1GS $\frac{1}{3} \times \frac{3}{4}$ = $\frac{3}{12}$ ($\frac{1}{4}$) FROM NET

People's perception

- Reluctance to let their estate goes to siblings or parents
- Concerns over the fate of their wives and daughters especially when they have daughters only
 - Alternative
 - By way of hibah