

## APPLICATION OF MUSLIM LAW AND THE SURVIVORSHIP OF JOINT TENANCIES IN SINGAPORE

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### INTRODUCTION

The enactment of the *Administration of Muslim Law Act* [AMLA]<sup>1</sup> barely a few months after Singapore's independence followed the need to "make provision for regulating Muslim religious affairs".<sup>2</sup> AMLA only covers Muslim personal law which "governs a person's family matters",<sup>3</sup> such as divorce and succession or inheritance. This article will discuss (1) the *faraid*, or the Islamic law of succession, in the context of AMLA; (2) the persuasiveness of *fatwa*, or religious rulings issued by the Islamic Religious Council of Singapore (MUIS); and (3) how *faraid* and *fatwa* come together where the right of survivorship arises in the succession of a deceased Muslim's joint tenancy. As the Syariah Court's jurisdiction is limited to adjudicating Muslim divorces, the courts referred to hereafter are the State Courts and the Supreme Court of Singapore.

### I. *Muslim Personal Law on Joint Tenancy*

MUIS is the statutory body created under AMLA to advise on and administer Muslim law in Singapore.<sup>4</sup> Under s 32 of AMLA, MUIS is empowered to form a Legal Committee and issue a *fatwa* either upon request (by private parties or the courts<sup>5</sup>) or whenever it wishes to.<sup>6</sup> These *fatwas*

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<sup>1</sup> (Cap 3, 2009 Rev Ed Sing).

<sup>2</sup> *Parliamentary Debates Singapore: Official Report*, vol 25 at col 245 (17 August 1966).

<sup>3</sup> *Black's Law Dictionary*, 10th ed, *sub verbo* "personal law".

<sup>4</sup> AMLA, s 3.

<sup>5</sup> AMLA, s 32(1).

<sup>6</sup> AMLA, s 32(6).

are written by MUIS scholars on behalf of the local Muslim community. However, since a *fatwa* is merely a non-binding opinion,<sup>7</sup> a court has the discretion to accept or reject the *fatwa* as it deems fit.

In Singapore, the *faraid* is governed by ss 111 and 112 of *AMLA*. They require the estate of “any Muslim person domiciled in Singapore dying intestate” to be subject to *faraid*, save for where “Malay custom” apply.<sup>8</sup> MUIS publicly issued a *fatwa* in 2008 about the *faraid* position on joint tenancies,<sup>9</sup> following the Supreme Court decision in *Shafeeg bin Salim Talib and Anor v Fatimah bte Abud bin Talib and Ors* [*Shafeeg*].<sup>10</sup> The *fatwa* opined that in the absence of express alternative arrangements or agreements such as gifts *inter vivos* or vows, the surviving joint tenant cannot have full ownership of the property and is only entitled to 50 percent or a “half-share” of its value. The remaining 50 percent belongs to the estate of the deceased and would be distributed according to *faraid*. This *fatwa* is supported by the *faraid* principle that a deceased person’s estate constitutes everything that could be considered as her assets at the time of death. These assets would be part of her estate as long as they belonged to her by personal effort, or by way of a gift or will, or by *faraid*.<sup>11</sup> Assets excluded from this rule are those that have been disposed of as gifts *inter vivos*, by vows, or by will.

This position in *faraid* runs contrary to that in general law, where the central feature of joint tenancy – the right of survivorship– assumes that there are no ‘shares’ in the property. The right of survivorship prescribes that the interest of a joint tenant is extinguished upon her death, enabling

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<sup>7</sup> *AMLA*, s 32(3).

<sup>8</sup> *AMLA*, s 112(1). See generally. MB Hooker, *Readings in Malay Adat Laws* (Singapore: Singapore University Press, 1970). See also Nellie SL Tan–Wong & Vipin Patel, *Adat Perpatih: a Matrilineal System in Negeri Sembilan, Malaysia and Other Matrilineal Kinship Systems Throughout the World* (Malaysia: Wintrac Sdn Bhd, Malaysian Affiliate, Women's World Banking, 1992).

<sup>9</sup> Majlis Ugama Islam Singapura, “Fatwa on the Joint Tenancy”, Office of the Mufti, online: <[http://www.officeofthemufti.sg/Fatwa/joint-tenancy\(2008\).html](http://www.officeofthemufti.sg/Fatwa/joint-tenancy(2008).html)>.

<sup>10</sup> [2010] SGCA 11, [2010] 2 SLR 1123 at [23].

<sup>11</sup> Wan Noraini Mohd Salim, *Islamic Law of Succession: A Practical Guide To The Laws of Faraid* (Selangor, Malaysia: CLJ Publication, 2012) at 7, 53-133.

her interest to be ‘survived’ by her other co-owners.<sup>12</sup> The death of a co-owner can be reflected in the Torrens system by an update of the Land Register. This will result in the surviving co-owner becoming the registered sole-proprietor of the property.<sup>13</sup>

## II. *Shafeeg on the Limits to the Application of Muslim Law to Joint Tenancy in Singapore*

The facts in *Shafeeg* involved a married Muslim couple who registered as joint tenants of a property under the *Land Titles Act* [LTA]<sup>14</sup> and *Land Titles (Strata) Act* [LTSA].<sup>15</sup> When her husband died intestate, the respondent widow gave the Land Registry a Notice of Death and subsequently assumed sole-proprietorship of the property. The appellants were the administrators of the late husband’s estate. Relying on a MUIS *fatwa* that had previously been issued to the parties, the appellants argued that the “half-share” belonging to the deceased by virtue of the joint tenancy could not be survived by the respondent and must be distributed as part of his estate.

Chan Sek Keong CJ (as he then was) presided over the case in the Court of Appeal. He recognised that while property law in Singapore is governed by common law and legislation such as the *LTA* and *LTSA*, land-owning Muslims are simultaneously subject to Muslim personal law in relation to their legal capacity as Muslims.<sup>16</sup> His Honour went further to clarify how Muslim personal law ought to be applied in Singapore by citing case law from Singapore, Malaysia, and India: (i) that Muslim personal law only applies if expressly stated by statute; and (ii) that *fatwas* are not binding on the courts.

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<sup>12</sup> Kevin Gray & Susan Francis Gray, eds, *Elements of Land Law*, 5th ed (Oxford: Oxford University Press, 2009) at 919.

<sup>13</sup> John Baalman, *The Singapore Torrens System (Being a Commentary of the Land Titles Ordinance, 1956 of the State of Singapore)* (The Government of the State of Singapore, 1961) at 191.

<sup>14</sup> (Cap 157, 2004 Rev Ed Sing).

<sup>15</sup> (Cap 158, 2009 Rev Ed Sing).

<sup>16</sup> *Supra* note 10 at [22].

i. *Muslim personal law only applies if expressly stated by statute*

With the existence of *AMLA*, statutes will contain express provisions exempting Muslims. Chan CJ held that in absence of such provisions in the *LTA* and *LTSA*, these statutes would apply to Muslims.<sup>17</sup> Therefore, all rules governing property ownership in general law, including the rights of survivorship in a joint tenancy, would prevail over *faraid* rules in Singapore.

ii. *Fatwas are not binding on the courts*

This is further supplemented by the assertion in *Shafeeg* that any *fatwa* issued by MUIS has no binding effect on courts. On this issue, Chan CJ followed the decision in an earlier High Court case, *Saniah bte Ali v Abdullah bin Ali* [*Saniah*],<sup>18</sup> where LP Thean J (as he then was) opined that “the *fatwa* is merely an opinion of the Majlis and is not binding on this court which has full jurisdiction to decide on the matter in issue. What is before me is not really a point of Muslim law on which the Majlis is empowered under s 32 to issue the *fatwa*.”<sup>19</sup> On this reasoning, Thean J rejected a prior MUIS *fatwa*<sup>20</sup> and held that a statutory trust created by the CPF Act prevailed over the application of Muslim law to the fund in question.

Chan CJ in *Shafeeg* also explained that the MUIS *fatwa cannot* be binding especially in *Saniah* and *Shafeeg* because they were not obtained by the court, but by request of the private parties themselves. As such, they “will not ordinarily have the same standing”.<sup>21</sup> It was acknowledged that there was a likelihood of these parties “framing a question based on assumed or hypothetical facts” in a way that misled MUIS, with the result that *fatwas* were irrelevant or inconsistent with existing

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<sup>17</sup> *Supra* note 10 at [44].

<sup>18</sup> [1990] SGHC 40, [1990] 1 SLR(R) 555.

<sup>19</sup> *Ibid* at [17].

<sup>20</sup> This fatwa was issued by MUIS in 1990 to clarify that under *faraid*, CPF moneys belong to the estate of the deceased CPF member.

<sup>21</sup> *Supra* note 10 at [65].

law.<sup>22</sup> All these re-emphasise the status of MUIS *fatwas* as nothing more than expert opinion which can be rejected if deemed irrelevant by the court.

## CONCLUSION

It is now clear that Muslim law in Singapore applies only insofar as statutes allow it and MUIS' *fatwas* are merely non-binding opinions. With regard to joint tenancy, the *LTA*, *LTSA* and other statutes concerning land law will continue to apply to Muslims and non-Muslims alike.

However, it is also important to recognise that the conflict between *faraid* and general law will arise only when succession is contested in the courts. Only then will the supremacy of general law be asserted, as in the decision in *Shafeeg*. When the beneficiaries and inheritors of an estate accept their standing and entitlements under *faraid* or the 'alternative arrangements or agreements' as specified by the MUIS *fatwa*, such a conflict will not arise at all. In *Shafeeg*, it was the estate of a Muslim joint tenant who brought the case to court.

In common inheritance disputes involving assets like CPF money and property, where statutes governing them do not make express exceptions for Muslims, the courts can now take *Shafeeg* as *locus classicus*. In fact, the holding in *Shafeeg* is a clear and helpful guide from the Court of Appeal for legal practitioners in advising their Muslim clients on Muslim personal law. It is also hoped that this would result in greater care and thought being put into estate planning as well as the purchase of matrimonial property as joint tenants.

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<sup>22</sup> *Supra* note 10 at [64]–[65].