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THE ISLAMIC LEGAL SYSTEM IN SINGAPORE

Ahmad Nizam bin Abbas[†]

Abstract: In a country that is staunchly secular, it would appear to be an anomaly that the Muslim minority are free to practice their personal law when it comes to marriage, divorce, and to a certain extent inheritance. This article seeks to provide a general overview of the introduction and applicability of Muslim law in Singapore, from the colonial administration of the British to the contemporary period. The article also examines the infrastructure developed for implementing the Muslim law in Singapore and explores conflicts in jurisdiction between the country's Syariah Court and the civil courts. Written from the perspective of a lawyer practicing in both the civil and Syariah courts, this article presents the tensions and also the desire for harmonization between the two systems.^{††}

I. INTRODUCTION

Unlike its larger neighbors—Indonesia and Malaysia—Singapore has a non-Muslim majority.¹ The legal system nevertheless provides for a Muslim to be governed by Muslim law—at least in some areas of Islamic law.² Among Singaporeans today, a Muslim is in a unique legal position. Whereas Muslims stand together with other Singaporeans under article 12(1) of the Constitution of Singapore as being equal before the law,³ and thus come under the umbrella jurisdiction of the Supreme Court of Singapore, they also have the privilege of invoking Islamic law when it comes to some matters of personal law. Furthermore, for other matters of personal law, Islamic law may apply to them automatically even if they do not choose to invoke it.⁴

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^{††} In accordance with the policies of the *Pacific Rim Law & Policy Journal*, foreign words that have entered common English usage will not be italicized. Foreign words that are not in common usage will be italicized. Arabic words will not use diacritical marks such as macrons. However, apostrophes and reverse apostrophes will be employed to signal the letters *hamza* and *'ayn*, respectively.

¹ According to the 2010 Census of Population of the Singapore Department of Statistical Release, only 15% of Singaporeans are Muslims.

² Administration of Muslim Law Act, Act No. 27 of 1966, § 39, 145 (2010) (Sing.) [hereinafter AMLA]; Supreme Court of Judicature Act, Rules of Court 1999 ed.

³ CONST. OF SINGAPORE, art. 12.1.

⁴ Article 12(3) of the Constitution of Singapore provides that Article 12 does not invalidate or prohibit any provision regulating personal law. However, Article 15 does not authorize any act contrary to any general law relating to public order, public health or morality. Examples of general laws include the Penal Code, the Maintenance of Religious Harmony Act, the Societies Act, and the Undesirable Publications Act.

II. THE EVOLVING ROLE OF ISLAMIC LAW IN SINGAPORE

The roots of Singapore's plural legal system can be traced back to when Singapore was a British colony.⁵ Until 1880, the British embraced a policy of *laissez-faire* with respect to Muslim ritual and Muslim personal law in Singapore.⁶ This was encapsulated in a set of rules promulgated by Sir Stamford Raffles in 1823 before he left Singapore: "In all cases regarding the ceremonies of religion and marriages and the rules of inheritance, the laws and custom of the Malays will be respected, where they shall not be in contrary to reason, justice or humanity."⁷ In keeping with this general principle, the Second Charter of Justice of 1826 contained a caveat that, while English Law was to be applied in Singapore, it could be modified to suit the religious beliefs and customs of the local inhabitants.⁸

Over the nineteenth and twentieth centuries, laws governing Muslims in Singapore and the Straits Settlements more broadly developed out of a complex combination of judicial precedent and statutory intervention.⁹ *Hawah v. Daud* is the earliest reported judicial decision in which a court refused to apply British common law to Muslims in Singapore and instead applied what that court understood to be "Islamic law."¹⁰ In this case, the Court of Judicature of Prince of Wales Island, Singapore and Malacca modified the English common law rule under which a woman's property automatically became her husband's upon marriage, as she no longer possessed capacity to hold property, thus allowing Muslim women to retain the capacity of holding property in their own names upon marriage as well as entitling them to a share of property in the event of divorce.¹¹

The subsequent enactment of the 1880 Mahomedan Marriage Ordinance in Singapore was a landmark in that "for the first time, the British

⁵ The Second Charter of Justice was issued by the Crown on November 27, 1826 (extending the jurisdiction of the Court of Judicature of Prince of Wales' Island to the two other territories of the Straits Settlements, Singapore and Malacca). While English law was adopted as the basic law relating to marriages in Singapore, a caveat was included allowing for the development of personal law based on religious beliefs and customs of the local inhabitants—Hindus, Jews, and Muslims.

⁶ The Straits Settlements Mahomedan Marriage Ordinance, enacted in 1880, was the earliest statute in Muslim law in Singapore.

⁷ MOSHE YEGAR, *ISLAM AND ISLAMIC INSTITUTIONS IN BRITISH MALAYA: POLICIES AND IMPLEMENTATION* (1979).

⁸ HALSBURY'S LAWS OF SINGAPORE: FAMILY LAW 12 (2006).

⁹ For more on these historical developments, see M.B. HOOKER, *ISLAMIC LAW IN SOUTH-EAST ASIA* 84-122 (1984).

¹⁰ (1868) SLR Leic 253. In this case, which was heard in 1865, the husband had taken possession of the title deeds of the wife's property and then divorced her under Muslim law. *Id.* She sued him for the recovery of her property. Under the then prevailing common law, the husband became entitled to all his wife's property upon marriage. *Id.*

¹¹ HALSBURY'S LAWS OF SINGAPORE, *supra* note 8.

colonial authorities officially recognized, through legislation, the status of Muslim personal law within the colony.”¹² This Ordinance formally provided for the registration of Muslim marriages and divorces and explicitly empowered the Governor of Singapore to appoint *kathis* or *kadis* (*qadis* or Islamic judges) to facilitate the administration of Islam.¹³ Important amendments were made to the Ordinance in 1908, 1923, and 1957—the last of which provided for the establishment of a separate Syariah¹⁴ Court of Singapore.¹⁵

When Singapore became an independent nation in 1965, it thus inherited a particular mode of integrating Islamic law into the law of the state—and of applying it to its Muslim population.¹⁶ It had the opportunity, however, to further evolve its method of regulating Muslim affairs and family law in a manner that was appropriate to Singapore’s new situation. Article 153 of the Singapore Constitution provides that “the Legislature shall, by law, make provision for regulating Muslim religious affairs and for constituting a Council to advise the President [of Singapore] in matters relating to the Muslim religion.”¹⁷

III. THE ISLAMIC LEGAL SYSTEM IN CONTEMPORARY SINGAPORE

The 1966 Administration of Muslim Law Act (“AMLA”) is the primary statute that sets out the provisions for regulating Muslim religious affairs and the framework of how Islamic law in Singapore is applied. The AMLA was largely shaped by then-Attorney General of Singapore, the late professor Dr. Ahmad Ibrahim.¹⁸ Although Dr. Ibrahim had no formal training in Islamic law (he graduated with first class honors in economics and law from Cambridge University), he wrote extensively about the administration of Muslim law in the region and significantly influenced its development.

¹² TAUFIK ABDULLAH & SHARON SIDDIQUE, *ISLAM AND SOCIETY IN SOUTHEAST ASIA* (1986).

¹³ Mahomedan Marriage Ordinance V of 1880.

¹⁴ “Syariah” is the local spelling of “Shari’a”.

¹⁵ HOOKER, *supra* note 9, at 99-101.

¹⁶ As stated in the official website of the Syariah Court of Singapore, the Syariah Court was the fruition of a study by a select committee made up of lawyers, *kadis*, and local religious leaders. SYARIAH COURT SINGAPORE, http://app.syariahcourt.gov.sg/syariah/front-end/SYCHome_E.aspx (last visited Aug. 11, 2011). The president and staff of the Syariah Court do not come under the purview of the Singapore Legal Service but the Ministry of Community Development, Youth and Sports (which itself has evolved from the Ministry of Social Affairs). *Id.* After Singapore’s independence, the government’s power to create a Syariah Court was contained under Section 34 of the AMLA, whereby “the president of Singapore may by notification in the Gazette constitute a Syariah Court for Singapore.” AMLA, § 34.

¹⁷ Article 153 was inserted into the Constitution in 1955 and has been there ever since, in spite of Singapore becoming independent in 1965.

¹⁸ AHMAD IBRAHIM, *FAMILY LAW IN MALAYSIA* (3d ed. 1997).

On the question of what substantive interpretation of Islamic law the courts should follow, the statute is largely silent.¹⁹ In various clauses in the AMLA, particularly those relating to marriage and divorces, one finds time and again the statement that the courts should rule “in accordance with Muslim law.”²⁰ There is no definition of Muslim law.²¹ The ambiguity about where, precisely, “Muslim law” is to be found becomes more striking in those passages where AMLA’s requirement that judges resolve cases “in accordance with Muslim law” is followed by the qualifying phrase “and modified, where applicable, by Malay custom”.²² The majority of Muslims in Singapore are Sunni Muslims, who subscribe to the Shafi’i (Malay: Syafi’i) school of Islamic legal interpretation (*madhhab*).²³ There is every reason to believe that the drafters of the AMLA expected the Syariah courts in independent Singapore, for the most part, to follow Shafi’i interpretations.²⁴ However, it was probably intentional that this was not spelled out, so as to allow for the possibility that the Syariah courts might choose in certain circumstances to follow the lead of other schools of interpretation.²⁵

In some areas, the AMLA specifies the actual substantive interpretation of Islamic law that judges should follow.²⁶ In the section on judicial dissolution of marriage (*faskh*), for example, the AMLA specifies the acceptable grounds for dissolution.²⁷ Also, there is a section setting forth the books or sources of law upon which a judge can rely in determining disputes on inheritance and succession.²⁸

The AMLA sets out the powers and ambit of the key Muslim institutions in independent Singapore in outlining the structure and authority of three key Islamic institutions: the Islamic Religious Council (Majlis Ugama Islam Singapura or “MUIS”), the Registry of Muslim Marriages

¹⁹ *Id.* at 10.

²⁰ *See, e.g.*, AMLA, § 52(2) (payment of a consolatory gift or *mutaah* upon divorce).

²¹ *See generally* AMLA.

²² *See id.* § 112 (distribution of the Muslim’s estate).

²³ ISLAMIC FAMILY LAW IN A CHANGING WORLD: A GLOBAL RESOURCE BOOK 1, 5 (Abdullahi A An-Na’im ed. 2002).

²⁴ AMLA, § 33 (specifying that the authorities to be followed in issuing any ruling of the *fatwa* committee shall ordinarily follow the tenets of the Shafi’i school of law).

²⁵ *Id.* § 33(2) (providing that where the following of the tenets the Shafi’i school of law will be opposed to public interest, tenets of any other accepted schools of Muslim law may be followed).

²⁶ *Id.* § 49.

²⁷ *Id.*

²⁸ *Id.* § 114. Section 114 lists the texts 1) the English translation of the *Quran* by A. Yusuf Ali or Marmaduke Pickthall; 2) *Mohammedan Law* by Syed Ameer Ali; 3) *Minhaj et Talibin* by Nawawi, translated by E. C. Howard from the French translation of Van den Berg; 4) *Digest of Moohummudan Law* by Neil B. E. Baillie; 5) *Anglo-Muhammadan Law* by Sir Roland Knyvet Wilson, 6th Edition Revised by A. Yusuf Ali; 6) *Outlines of Muhammadan Law* by A. A. Fyzee; and 7) *Muhammadan Law* by F. B. Tyabji.

(“ROMM”), which administers marriages under Muslim law, and the Syariah court system.²⁹ Because the AMLA effectively establishes and defines the powers of the institutions involved in the administration of Islamic law in the country,³⁰ this article’s overview of the Islamic segments of Singapore’s contemporary legal system will be structured according to the major sections of this legislation: MUIS, the Syariah Court, and ROMM.

IV. MAJLIS UGAMA ISLAM SINGAPURA

The Majlis Ugama Islam Singapura (MUIS) was created to administer the general religious life of Muslims and plays a number of important roles in establishing and administering rules to regulate Muslim life in Singapore.³¹ The president of the MUIS is empowered to constitute the Appeals Board that hears appeals from decisions of the Syariah courts.³² The MUIS has the power to issue legal rulings on questions of Islamic law (*fatwas*) that arise in cases under the jurisdiction of the civil court.³³

The MUIS is comprised of a president, vice-president, *mufti* (Islamic legal scholar qualified to give legal opinions), and a prescribed number of others appointed on the recommendation of the minister and from a list of nominees by specific Muslim societies.³⁴ All Council members are appointed by the President of Singapore and are deemed public servants for the purposes of the Penal Code.³⁵ It is a statutory requirement that a copy of the minutes of all meetings of the MUIS be sent to the President of Singapore.³⁶

The AMLA lists the several roles and functions of the MUIS in the administration of matters relating to the Muslim religion and to the life of Muslims in Singapore, including the *hajj*, *halal* certification, identification of “false doctrine,”³⁷ Muslim endowments (Ar: *waqf*; Malay: *wakaf*), *zakat* (obligatory charitable giving), and other charitable contributions for the support and promotion of Islam and the Muslim community in Singapore.³⁸

²⁹ See AMLA, parts II-IV.

³⁰ *Id.*

³¹ See AMLA, part II.

³² *Id.* § 55(4).

³³ *Id.* § 32.

³⁴ *Id.* § 7.

³⁵ *Id.* §28.

³⁶ *Id.* § 21(4).

³⁷ Under the AMLA, where evidence is given by the president of the MUIS on any doctrine, ceremony, or act that is contrary to the Muslim law, the court shall presume that such doctrine, ceremony or act is contrary to the Muslim law. Although there is no reported decision on whether this statutory presumption has ever been invoked, the emphatic tone is striking. AMLA, § 139(2).

³⁸ AMLA, part IV.

The MUIS does not have the power to impose fines or commit anyone to prison for breaches under the AMLA.³⁹ It can, however, act with the authority of a public prosecutor and commence cases in the criminal courts. The MUIS has recently been given the power to initiate prosecution not only of business entities that violate its regulations but also of the officers of those companies.⁴⁰

A. *Regulation of Religious Foundations (Wakaf)*

The MUIS is charged with managing *wakaf* land: trust property that has been dedicated for pious, religious, and charitable purposes under Muslim law.⁴¹ All *wakaf* property located in Singapore automatically vests in the MUIS and may not be conveyed, assigned, or transferred.⁴² The 1999 amendments to the AMLA have increased the efficiency of *wakaf* administration as it became mandatory henceforth⁴³ for all *wakaf* land to be registered with the MUIS.⁴⁴ Failure to comply with the registration requirement constitutes an offence punishable with a fine or imprisonment or both.⁴⁵ This change was welcoming news for conveyancers who can now ascertain the status of a property by searching the registry of *wakafs*. It has also recently been made clear that the MUIS has significant power to appoint, supervise and, if necessary, remove the administrators of *wakafs*.⁴⁶

Although the MUIS regulates *wakafs* and occasionally intervenes in their administration to ensure compliance with the law, disputes over *wakaf* property must be adjudicated in the civil courts, which are thus placed in the

³⁹ See AMLA.

⁴⁰ AMLA, § 88D.

⁴¹ *Id.* § 59.

⁴² *Id.*

⁴³ This applies to every *wakaf* created retrospectively (i.e., even before the July 1, 1968 AMLA § 64(1)).

⁴⁴ AMLA, §64.

⁴⁵ *Id.* § 64(11).

⁴⁶ In *Syed Abbas bin Mohamed Alsagoff and Another v. Islamic Religious Council of Singapore*, [2009] SGHC 281, the high court clarified that Sections 58(4) and (5) of the AMLA confer power on the MUIS to appoint and remove those entrusted with administering a *wakaf* (“*mutawalli*”) and to remove existing trustees from a *wakaf*. Indeed, as long as it appears to the MUIS that any *wakaf* or endowment has been mismanaged, there are no trustees appointed to the management of the *wakaf* or endowment, or it would be otherwise to the advantage of the *wakaf* or endowment to appoint a *mutawalli*, MUIS does not require a court order to take such actions. The relevant provisions read “[t]he trustees of the *wakaf* or endowment appointed under the instrument creating, governing or affecting the same shall, subject to the provisions of this Act, manage the *wakaf* or endowment but the Majlis shall have power to appoint *mutawallis*, and for such purpose to remove any existing trustees The Majlis may at any time remove any *mutawalli* appointed by it and appoint another in his place.” AMLA, § 58.

position of having to interpret Muslim law.⁴⁷ As we shall discuss below, civil courts adjudicating these cases may request an opinion by the MUIS on questions of Muslim law, but the courts are not obliged to follow an opinion by the MUIS and indeed they sometimes choose not to in practice.

B. *The MUIS Fatwa Committee*

The MUIS has been entrusted with the responsibility to advise Singaporeans on questions of Muslim law.⁴⁸ Section 31 of the AMLA provides for the creation within the MUIS of a Fatwa Committee (or Legal Committee) consisting of an official Mufti, two fit and proper members of the MUIS Council, and not more than two other fit and proper Muslims who are not MUIS members.⁴⁹ The Mufti is appointed by the President of Singapore.⁵⁰ As the chairman of the Fatwa Committee and by his mandatory inclusion in the MUIS Council, the Mufti plays a highly influential role in providing guidance on matters touching on the religious life of Muslims in Singapore.⁵¹ The Mufti is supported by a staff located in the Office of the Mufti.⁵²

Ordinarily, the Fatwa Committee follows the tenets of the Shafi'i school of law in issuing any ruling,⁵³ but it can depart from this and follow the tenets of any of the accepted schools of Muslim law "if the Fatwa Committee considers that the following of the tenets of the Shafi'i School of Law will be opposed to the public interest."⁵⁴ This is a curious piece of legislation, and its existence is probably attributable to the period when the members of the old Mohameddan Advisory Board were from all four schools of thought. A comprehensive, though not exhaustive, list of *fatwas* can be found on the MUIS website.⁵⁵

⁴⁷ See, e.g., Abdul Rahman bin Mohamed Yunoos and Anor v. Majlis Ugama Islam Singapura [1995] 2 SLR 705.

⁴⁸ AMLA, § sec. 3.

⁴⁹ Prior to the 2009 amendments to the AMLA, it was required that the chairman of the Fatwa Committee be the Mufti himself. The law has now been amended so that the Mufti may recuse himself from the Fatwa Committee in situations where he has a conflict of interest. As succinctly explained by Dr. Yaacob Ibrahim, *fatwas* are made in the name of the MUIS, not the Mufti, and thus, where appropriate, it need not necessarily be the Mufti himself who appears in court when an opinion or evidence on Muslim law is required. See Hansard record of Parliament sitting on Nov. 17, 2008 on the AMLA (Amendment) Bill, Second Reading.

⁵⁰ AMLA, §30.

⁵¹ *Id.* § 31.

⁵² *Id.*

⁵³ *Id.* § 33(1).

⁵⁴ *Id.* § 33.

⁵⁵ MAJLIS UGAMA ISLAM SINGAPURA (ISLAMIC RELIGIOUS COUNCIL OF SINGAPORE), www.muis.gov.sg (last visited Sept. 11, 2011).

Upon request, the Fatwa Committee can issue a *fatwa* on any point of Muslim law.⁵⁶ Any member of the public can request an opinion from the Fatwa Committee, but the Committee is not bound to respond to every request and thus naturally gives priority to questions of public interest.⁵⁷ Lawyers frequently solicit opinions on behalf of their clients on issues of personal status, e.g., the validity of a marriage conducted outside Singapore, inheritance, legitimacy of children, and adoption issues. Any court is permitted to ask the MUIS for an opinion if a case before the court raises a question of Muslim law.⁵⁸ Upon receipt of such a request, the MUIS refers the question to the Fatwa Committee for an opinion.⁵⁹ Finally, the Fatwa Committee may issue a *fatwa* on its own volition if it identifies an issue that it feels needs to be addressed.⁶⁰

If a judge on the Syariah Court asks the MUIS for an opinion, one can reasonably expect the judge to follow the opinion—if only because, as we have noted, appeals from decisions in the Syariah Court go to an Appeals Board constituted by the MUIS president.⁶¹ A more interesting question involves the treatment of MUIS *fatwas* by the civil courts. Civil courts, when faced with a question of Muslim law, are not obliged to seek an opinion from the MUIS.⁶² They may do so, however, and litigants may also

⁵⁶ AMLA, § 32.

⁵⁷ *Id.* § 32(1).

⁵⁸ *Id.* § 32(7).

⁵⁹ *Id.*

⁶⁰ *Id.* § 32(6).

⁶¹ *Id.* § 55. Further, members of the Appeal Board are nominated by the MUIS, of which the Mufti is a member. Any Syariah court decision contrary to a *fatwa* is likely to be overruled on appeal. In *Zainudin Bin Mohamad v. the Registrar of Muslim Marriages* (Appeal Case No. 19/1997), the Appeal Board stated that since even the President of Singapore is statutorily required to seek the advice of the MUIS in respect to legal issues under Islamic law, the Registrar of Muslim Marriages has more reason to respect and take into consideration the *fatwas* from the Islamic point of view.

⁶² As Muslim law is part of the law of the land, civil courts have the power to interpret the law on their own. Alternatively they have, in at least one case, allowed parties to agree upon an interpretation of Islamic law that would resolve their dispute. In *Shiraz Abidally Husain and Another v. Husain Safdar Abidally*, the court assured itself that this agreed position represented one of the legitimate competing interpretations of Islamic law. It then applied that position, without asking the MUIS for an opinion that might lead to a contrary opinion. The Court of Appeal, the highest judicial authority in Singapore, was faced with a case involving the distribution of a deceased Muslim's monies amongst his children. One party wanted the Court to nullify an agreement by all the children for the monies to be divided equally, whether son or daughter. At the hearing below, High Court Judge Kan Ting Chiu had preceded the examination of the facts by inviting the parties to commit to an agreed position on the various aspects of Islamic law of inheritance. The Court of Appeal adopted a similarly cautious position: "we concluded that there was an agreement among the six children on [May 28, 2003] to distribute to themselves equally regardless of the quantum of moneys remaining in the bank accounts after meeting the payments of the pecuniary legacies under the Will. Such an agreement was not inconsistent with Muslim law and was binding on them." *Shiraz Abidally Husain and Another v. Husain Safdar Abidally*, [2007] SGCA 16.

inform the court about *fatwas* considered relevant to the dispute. The courts, however, are not bound to accept them.⁶³

While the high court has not followed the MUIS *fatwas* in all cases, it cannot be said that *fatwas* are neither useful nor effective in civil litigation. Civil courts do generally abide by the MUIS's rulings, although, as these cases have shown, courts may resist where they find that the ruling contradicts statute or an established principle of civil law, or rule in favor of another interpretation of Muslim law that is applicable to the case.⁶⁴ Interestingly, on at least one occasion, the MUIS modified its interpretation of Muslim law by aligning it more closely to civil law practice so as to reduce the difficulty faced by the Muslim public arising from conflict of law issues.⁶⁵

V. THE SYARIAH COURT

The AMLA also establishes and regulates Singapore's Syariah Court.⁶⁶ In *Norhamisah Haroon*, the then-Registrar summed up the ambit of the Syariah Court as follows: "[t]he Syariah Court is a creature of statute. It derives its jurisdiction and power under the AMLA. Any jurisdiction or power that it purports to possess must be expressly provided in [the] AMLA."⁶⁷ Appeals from the Syariah Court are taken to an Appeals Board supervised by the MUIS, which will be discussed below.

⁶³ For example, in *Saniah Binte Ali and Others v. Abdullah Bin Ali*, a case involving a dispute over the distribution of retirement funds held by the state, High Court Justice L.P. Thean declared that while the court respected the opinion of the Fatwa Committee bearing on the issue, it was not absolutely bound to it. [1990] 1 SLR(R) 555. In a 2004 case involving a dispute over the *nuzriah* (letter of wishes) of the deceased, the high court went even further and examined the manner in which the Fatwa Committee made its ruling. In *Mohamed Ismail bin Ibrahim and Another v. Mohammad Taha bin Ibrahim*, Justice Rubin stated that he had the "highest regard" for the Fatwa Committee, but did not consider the high court bound to follow its ruling. [2004] 4 SLR(R) 756.

⁶⁴ *Shafeeg Bin Salim Talib and Another v. Fatimah Bte Abud Bin Talib and Others* [2009] SGHC 100. The issue concerned the civil law doctrine of joint tenancy, a form of property ownership wherein the death of one of the joint tenants results in the share of the deceased tenant automatically passing to the surviving tenant. In this case, Justice Lee Sieu Kin declined to follow an older MUIS *fatwa* on the issue of joint tenancy, stating that "half of the [property] is considered as inheritance and should be distributed according to Islamic [i]nheritance law (*faraidh 'ilm al-faraid*)."⁶⁵ *Id.* Justice Lee held, instead, that the deceased's interest in the property had, upon his death, passed to the surviving joint tenant and was therefore not part of the estate. *Id.*

⁶⁵ The decision in *Shafeeg Bin Salim Talib*, [2009] SGHC 100, was followed by an announcement from MUIS that Muslims could bequeath their share of property owned under a joint tenancy, based on certain criteria. In doing this, the Fatwa Committee took great pains to explain the rationale behind their new *fatwa*, making it clear that it was prepared to review old rulings.

⁶⁶ See AMLA, part III.

⁶⁷ Decision of Registrar of Syariah Court in Syariah Summons No. 14585 of 1999.

A. *Jurisdiction of the Syariah Court*

The jurisdiction of the contemporary Syariah Court is specific.⁶⁸ It covers “actions and proceedings in which all the parties are Muslims or where the parties were married under the provisions of the Muslim law,”⁶⁹ involving issues of 1) marriage;⁷⁰ 2) divorces (*talak* or *talaq*), including *fasakh* (*faskh*), *talik* divorce (*taliq altalaq*), and *khulu* (*khul*);⁷¹ 3) betrothal, nullity of marriage or judicial separation; 4) the disposition or division of property on divorce;⁷² or 5) the payment of *maskahwin* (bride price), maintenance, and consolatory gifts.⁷³

With respect to marriage and divorce, the AMLA suggests that, in the event that one party has, during the course of the marriage, renounced Islam, the Syariah Court will nonetheless continue to have jurisdiction over the matter.⁷⁴ The Syariah Court also has jurisdiction in circumstances where the parties first married under the Women’s Charter because one of them was non-Muslim, and then later underwent another marriage registration under Muslim law at ROMM upon the party’s conversion to Islam.⁷⁵

To be clear, in establishing its jurisdiction the Syariah Court may sometimes have to determine whether a party is a Muslim. The Syariah Court does not have jurisdiction over parties simply because they *claim* to be Muslim; the court must determine that they are in fact Muslim.⁷⁶ This can be a complex question. In determining whether a marriage was entered into

⁶⁸ AMLA, § 35(2). Justice Lai Siu Chiu stated in the high court case of *Chaytor v. Zaleha A Rahman* [2001] 1 SLR(R) 504, [2001] SGHC 56, that the Syariah Court is a specialist court created by Parliament to administer Muslim law. In the course of such administration, the Syariah Court will have to apply Muslim law. *Id.* The presence of the Syraiah Court strengthens the application of Muslim law. *Id.*

⁶⁹ AMLA, § 35(2).

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.* § 35 (specifying that the Syariah Court shall have jurisdiction where the parties were married under the provisions of the Muslim law).

⁷⁵ This was made clear by the high court decision of *Noor Azizan bte Colony (alias Noor Azizan bte Mohamed Noor) v. Tan Lip Chin (alias Izak Tan)*. [2006] 3 SLR 707. In the MUIS Appeal Board case, *Yeo Pei Chern v. Isa Seow Zheng Xin alias Mohammed Isa Abdullah* (Appeal Case No. 23/2007), the Board considered several cases where parties had contracted both civil and Muslim marriages, and held that the “parties do not take themselves out of Muslim marriage laws by contracting a civil marriage in the first instance.” *Id.* On the contrary, the civil courts have taken the position that they do not have jurisdiction in divorce proceedings grounded on a civil marriage registered at the Registry of Marriages when the parties subsequently conduct a Muslim marriage.

⁷⁶ In *Zainudin Bin Mohamed v. Sharifah Alpha Binte Syed Ali* (Appeal Case No. 19/1997), the appellant argued against the refusal of the Registrar of Muslim Marriages to register his marriage. The Appeal Board emphatically held that because the Fatwa Committee was of the opinion that the followers of *Qaddiyani* (or *Ahmadiya*) were infidels or non-Muslims, the AMLA was not applicable to them, regardless of whether they themselves profess to be Muslims. *Id.*

“under the provisions of Islamic law,” the court may rely upon a *fatwa* of the Legal Committee. This is seldom done, however, because the Syariah Court (and the Appeal Board) ordinarily has the expertise to decide the issue on its own.

The Appeal Board has held that the location in which a marriage takes place does not by itself determine whether it was a Muslim marriage.⁷⁷ Furthermore, some marriages between Muslims and non-Muslims may appear, at first blush, to follow Islamic rites but may be found, as a legal matter, not to be marriages made “under the provisions of the Muslim law.”⁷⁸ When analyzing the legality of a marriage through the lens of Islamic law, it is imperative to look at the substance rather than the form of the marriage, and to critically consider whether the circumstances surrounding the marriage conformed to the norms of Islamic law. This fundamental precept was reiterated by the MUIS Appeal Board in *Yeo Pei Chern v. Isa Seow Zheng Xin alias Mohammed Isa Abdullah*.⁷⁹

Once it assumes jurisdiction over a divorce proceeding, the Syariah Court also acquires jurisdiction to make orders relating to matrimonial properties situated outside Singapore.⁸⁰ As observed by the Appeal Board, it would be anomalous if the Court had power to dissolve a marriage solemnized outside Singapore but could not adjudicate on a property located outside Singapore.⁸¹ Furthermore, the Syariah Court does not relinquish jurisdiction merely because a court in another country also has jurisdiction over the case.⁸²

⁷⁷ *Yeo Pei Chern v. Isa Seow Zheng Xin alias Mohammed Isa Abdullah* (Appeal Case No. 23/2007).

⁷⁸ In *Othman bin Abdul Rahman v. Norsiah bte Abdul Latip*, the Appeal Board stated that the marriage certificate of a couple who had purportedly entered into marriage in Golok, Thailand, could not be accepted as proof that all the conditions necessary for a valid Muslim marriage had been satisfied by the marriage ceremony which they had undergone there. [1990] SGMML 4.

⁷⁹ (Appeal Case No. 23/2007). The appellant, a non-Muslim, and the respondent, a Muslim, had undergone a civil marriage in 1997 in the U.S., where they had both been studying at the time. *Id.* The parties had then entered into what appeared, at first sight, to be a Muslim marriage in London sometime in 2000. *Id.* It was later disputed as to whether the appellant had converted to Islam at the time, which went to the fundamental issue of whether the marriage ceremony was valid under Muslim law. *Id.* The Appeal Board held that there was inconclusive evidence that the London marriage had been made “under the provisions of the Muslim law” and accordingly held that the Syariah Court of Singapore had no jurisdiction to hear the matter. *Id.*

⁸⁰ *Khadijah Omar v. Mohamed Yusoff B Seeni Rawther* (Appeal Case No. 02/2000).

⁸¹ *Id.*

⁸² In *Kenyo Timur Ery Respati v. Mohamed Jamalludin bin Mohamed Shariff* (Appeal Case No. 18/2005), the parties had contracted their marriage in Indonesia, and the husband objected to Singapore’s Syariah Court having jurisdiction on the basis that, under article 73(3) of the Republic of Indonesia Law (No. 7/1989), the Religious Court of Central Jakarta had exclusive jurisdiction to hear the divorce application. *Id.* The Appeal Board held that although both Singapore’s and Indonesia’s Syariah courts would be competent to adjudicate the matter, Singapore was the more appropriate forum because the parties and their children were living in Singapore. *Id.* It also held that Islamic law is universal and that even if there were any special customs applicable to any parties for which the Jakarta court would be more

In exercising its jurisdiction in marriage cases, the Syariah Court has powers that are similar to the Singapore Family Court in the civil context.⁸³ Amendments to the AMLA approved in 2008 eliminated obstacles previously faced by some litigants in enforcing Syariah Court orders.⁸⁴

In matters of practice and procedure, the Syariah Court or the Appeal Board may adopt the practice and procedure applicable to civil proceedings in any court.⁸⁵ For example, in *Hazlina Binti Osman v. Mohamad Fawzi Bin Sulaiman*,⁸⁶ the Appeal Board considered various cases from the court of appeal in determining an application to adduce further evidence on appeal. The Syariah Court and Appeal Board have, however, consistently stressed that they will apply legal principles from the civil system appropriately and only when the issue is not treated in Muslim law.⁸⁷ The Syariah Court has also demonstrated openness to considering the law and procedure used in religious courts from other countries, in particular Malaysia, on issues like alimony and custody.⁸⁸

competent to adjudicate, it is still open for the Syariah Court of Singapore to consider whether that special custom applies under applicable legal principles. *Id.*

⁸³ AMLA, § 52(8) (it is *in pari materia* with Section 112 of the Women's Charter on the list of factors that the court ought to take account in the division of the matrimonial assets).

⁸⁴ One problem solved by the amendments was that prior to 2008, Syariah Court orders had to be registered at the district court to be enforceable, but the district court lacked the power to make necessary changes to those orders. *See GM v. GN*, [2004] SGDC 284. In addition, a 2008 decision by the MUIS Appeal Board created problems for spouses seeking district court enforcement of Syariah Court orders for alimony. The Appeal Board held that *muta* as "maintenance of the divorced spouse commanded by an Islamic court applying Islamic law is distinct and separate from maintenance alimony for a divorced spouse commanded by the Family Court applying civil law." *Jamal Mahammath S/o T Musthafa v Zarina Bte Abdul Majid* (Appeal Board Case 17/2008). This made it impossible to use the Family Court enforcement mechanism for breach of maintenance orders issued by the Syariah Court. Demonstrating the practical and result-oriented approach of the Singapore system, the problem was quickly solved by amending the AMLA in 2008 to explicitly state that Syariah Court orders for *nafkah iddah* (*nafaqa idda*) and *mutaah* (*muta*) will be defined as maintenance orders solely for the purposes of enforcement.

⁸⁵ MUSLIM MARRIAGE AND DIVORCE RULES, Rule 44.

⁸⁶ (Appeal Case No. 12/2008).

⁸⁷ In *Jofri Bin Jaffar v. Norrashida Bte Jumad* (Appeal Case No. 16/2011), the issue was whether or not the Syariah Court could by itself make a finding that the litigant was of unsound mind without the need for an order as such by the family court. *Id.* The Appeal Board held that it would be better for the determination to be made by the Syariah Court, as it would have to ensure that whatever decision it made in accordance with Islamic Law. *Id.*

⁸⁸ In *Raja Jumira v. Azwar* (Appeal Case No. 21/2010), the Appeal Board cited a decision of a case found on the official website of the Syariah High Court of Malacca. LAMAN WEB RASMI, www.mahsyariahmelaka.gov.my/web. In *Raja Jumira*, the Malaccan Syariah High Court held that the court can go against the expressed wish of such a child if that is for his or her best interest and welfare.

B. Syariah Court Cases Related to Cases Being Litigated in the Civil Courts

While the Syariah Court has jurisdiction over marriages and divorces, it has no power to grant personal protection orders, and it does not have jurisdiction over applications for maintenance.⁸⁹ Furthermore the Syariah Court continues, in some ways, to have more limited enforcement mechanisms than the Family Court.⁹⁰ As a result, lawyers in Singapore often find themselves appearing in the Syariah Court in the handling of a client's divorce and matters ancillary to divorce while appearing in the Family Court for personal protection orders and maintenance applications for the same case.

Furthermore, sometimes cases that begin in the civil courts evolve into cases that fall within the jurisdiction of the Syariah Court. For example, prior to the commencement of a divorce case; Muslim spouses may litigate issues of property ownership.⁹¹ These issues are governed not by Muslim law but by the common law of property, subject to the equitable doctrines of trusts.⁹² However, when a divorce case is commenced, the Syariah Court acquires not only the power to issue a divorce decree, but also to make ancillary orders regarding that divorce, including orders about matrimonial assets.⁹³ In such cases, the courts must work out some method of avoiding conflicting rulings. Similarly, Muslims may litigate issues of child custody and access in civil courts, under the auspices of the Guardianship of Infants

⁸⁹ The power to grant a personal protection order is found only in the Women's Charter.

⁹⁰ On a related note, it would be useful to take note of the high court decision in *Chaytor v. Zaleha bte A Rahman*, where, in dismissing an appeal on a maintenance summons, Justice Lai Siu Chiu held that the civil courts shall treat a married woman against whom *talak (talaq)* has been pronounced as continuing in her status as a married woman for the purposes of Section 69(1) of the Women's Charter until the validity of such divorce has been confirmed by the Syariah Court. [2001] 2 SLR 236.

⁹¹ Parties would have to apply to the civil courts for determination under the relevant sections of the Supreme Court of Judicature Act (Chapter 322, 1999 Rev Ed) or the Subordinate Courts Act (Chapter 321, 1999 Rev Ed).

⁹² *Madiyah Bte Atan v. Samsudin Bin Budin*, [1998] 2 SLR 679.

⁹³ In practice, there is often little difference between the civil and Muslim law on matters of matrimonial assets and children. A comparison of Section 52 of the AMLA with Sections 112(2) and 114 of the Women's Charter reveals that the methodologies in computing the division of matrimonial assets are not inconsistent with one another. In fact, it would not be uncommon for practitioners appearing before the Syariah Court to cite family court cases alongside the MUIS Appeal Board decisions on division of matrimonial assets in support of their respective positions. This is also seen in custody, care and control cases. The court of appeal's decision in *CX v. CY*, [2005] 3 SLR 690, was heavily relied upon by the MUIS Appeal Board in *Zaini bin Ibrahim v. Rafidah binte Abdul Rahman* (Appeal Case No. 26/2006), which held that joint custody orders should be the norm in custody proceedings before the Syariah Court. A close reading of the Appeal Board's opinion reveals, however, the care it took in considering the Muslim Law position prior to coming to its own judgment.

Act (Cap 122, 1985 Rev Ed).⁹⁴ The issues in these suits will be intimately linked to divorces being litigated in the Syariah Court.

Singapore does allow for consolidation of related cases being litigated simultaneously in both the family court and Syariah Court.⁹⁵ At any point during the course of divorce proceedings in the Syariah Court, parties may agree to have questions of custody and access to or division of matrimonial assets on divorce moved from the Syariah Court to the civil courts.⁹⁶ In such cases, the parties must first undergo counseling in the Syariah Court.⁹⁷ The Syariah Court may, in appropriate cases, grant leave for a party to proceed in the civil courts even in the absence of agreement by both parties.⁹⁸ A commencement certificate will then be issued.⁹⁹ Where the parties proceed in the civil courts, whether by consent or with leave of the Syariah Court, the law applied by the civil courts to determine the questions of custody and access to or division of matrimonial assets is the civil law as provided for by Section 17A of the Supreme Court of Judicature Act.¹⁰⁰

⁹⁴ *Hafiani Binte Abdul Karim v. Mazlan Bin Redzuan*, [1996] 1 SLR 378.

⁹⁵ AMLA, § 35A; Supreme Court of Judicature Act, § 17.

⁹⁶ AMLA, § 35A.

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ Where there is a prior outstanding application for custody of and access to children in the civil courts, that outstanding application would be stayed automatically upon the commencement of proceedings for divorce or nullity of marriage in the Syariah court. AMLA, § 35A(1). Any party that wishes to proceed with the outstanding civil court application would be required to apply to the Syariah Court for leave to continue in the civil court. In the event that leave is granted, a continuation certificate will be issued, subject, of course, to any appeal that may be brought by the opposing party. *Id.* § 35A(2).

¹⁰⁰ The alternative jurisdiction provisions were precipitated by a landmark decision in the court of appeal, *Salijah bte Ab Latef v. Mohd Irwan bin Abdullah Teo*, [1996] 2 SLR 201. The parties had divorced in the Syariah court that ordered the husband to transfer his share and interest in their matrimonial home to the wife, upon payment of his Central Provident Fund (“CPF”) monies utilized in the purchase. *Id.* When the wife was unable to obtain such a transfer, she applied to the high court for a declaration that she was entitled to sole ownership of the property. *Id.* The trial judge dismissed her application on the ground that jurisdiction was excluded by Section 16(2) of the Supreme Court of Judicature Act, as the matter was covered by Section 35(2)(d) of the AMLA. *Id.* In dismissing the appeal, the Court of Appeal held that as the subject matter was the division of property on divorce, its jurisdiction was under Section 35 of the AMLA, and accordingly, the High Court had no jurisdiction to decide the issue. Such a lack of jurisdiction could not be cured by the parties’ consent. *Id.* In its judgment, the court of appeal presciently stated: “it was for the legislature to make the necessary amendments to the AMLA to enable the Syariah Court to either enforce its own orders, or to make them equivalent, for the purposes of the Supreme Court of Judicature Act, to orders of the High Court. Alternatively, the Syariah Court could be given equivalent powers of enforcement as the subordinate courts.” *Id.*

C. *Shared Responsibility Between Syariah and Civil Courts in Cases of Inheritance Regarding Muslim Estates*

Singapore law provides that Muslim estates are governed by Muslim laws of inheritance.¹⁰¹ Although standard Islamic doctrine permits a Muslim to dispose of some wealth via bequest, the bulk of the estate must be passed in fixed shares to the deceased's heirs.¹⁰² Many Muslims do not make bequests, in which case the entire estate is inherited by the heirs in fixed shares. In arranging for the disposition of a Muslim's estate, a legal representative often has to deal with both the Syariah Court and the civil courts, albeit for different purposes.¹⁰³

All grants for probate or letters of administration¹⁰⁴ are issued either by the civil high court or district court, depending on the value of the deceased's estate.¹⁰⁵ If the Muslim deceased made a will, the high court or district court, as the case may be, is to enforce it to the extent that it is consistent with Muslim law.¹⁰⁶ The court may request a *fatwa* ruling from the MUIS to determine whether it is valid under Muslim law.¹⁰⁷ It will be recalled that the Syariah Court does not have jurisdiction to determine validity or disputes pertaining to wills purportedly made under Muslim law, nor does it have any power to enforce them.¹⁰⁸

Regardless of whether the deceased left a will, some portion of every Muslim estate will be divided among the decedent's heirs based on Islamic rules of inheritance.¹⁰⁹ In determining the heirs' entitlements to the inheritance and the sizes of their shares, the civil court with jurisdiction over the estate is required to act in accordance with an inheritance certificate issued upon the authority of the Syariah Court President.¹¹⁰ The civil courts

¹⁰¹ AMLA, § 112.

¹⁰² Ahmad Ibrahim, *The Distribution of Estates According to Shafii Law*, 1976 MALAYSIAN L. J. 72.

¹⁰³ The legal representative has to apply to the Syariah Court for the inheritance certificate and then to the subordinates courts to obtain the grant of probate or administration.

¹⁰⁴ A grant of probate is the grant issued where the deceased had executed a will. If the deceased passed away without a will, his assets will be administered under the intestacy laws according to whether he is Muslim or non-Muslim. The grant issued in an intestacy situation is called a grant of letters of administration.

¹⁰⁵ Probate and Administration Act of Singapore.

¹⁰⁶ AMLA, § 110.

¹⁰⁷ *Id.* § 32(7).

¹⁰⁸ *Id.* Section 114 of the AMLA provides that in deciding questions of succession and inheritance, the civil court shall be at liberty to accept, as proof of the Muslim law, any definite statement on the Muslim law made in all or any of the books specified in the section (listed *supra* note 28).

¹⁰⁹ Standard Islamic inheritance doctrine limits the portion of the estate that may be disposed of by will to a maximum of one-third. Ibrahim, *supra* note 102. The balance of the estate is divided among the deceased's heirs based on a complex system of shares and priorities among heirs. *Id.*

¹¹⁰ AMLA, § 115.

are required to obtain such a certificate as a prerequisite to issuing the grant of probate or letters of administration for the estate of a deceased Muslim. There is no known decision of the civil courts questioning the distribution specified in the inheritance certificate. In the absence of allegations of fraud or mistake, it can be assumed that the civil courts will accept the distribution specified in the inheritance certificate.

VI. PERSONNEL OF THE SYARIAH COURT

A. *Syariah Court Presidents*

The judge who presides in the Syariah Court is the President of the Court.¹¹¹ The President of the Syariah Court is appointed by the President of Singapore.¹¹² The selection of the Syariah Court President is a sensitive issue because the community looks up to the appointee as someone who is well-versed in Muslim principles, of high moral standing, and familiar with national policy. By virtue of his office, he would be regarded as one of the most authoritative figures on Muslim law in Singapore. At present, there are two full-time presidents, with one holding the position of senior president.¹¹³ The need for additional judges is filled through the appointment of *ad hoc* presidents who have the same powers and exercise the same functions as President of the Syariah Court.¹¹⁴ The current judges who serve as *ad hoc* presidents consist of district judges from the civil courts and senior legal officers who are Muslims.

In the past, the presidents of the Syariah Court were always figures with religious training. In the mid-1990s, however, a civil-trained lawyer was seconded from the public sector to become one of the presidents of the Syariah Court. Since then, several civil-trained legal service officers have been appointed either as full-time or *ad hoc* presidents. The appointments thus far have tried to ensure that presidents have both a grasp of Islamic principles as well as a grasp of national policy, but identifying individuals who are comfortable and qualified in both the Islamic and secular laws has proved challenging.¹¹⁵

The Muslim community has gradually become used to the practice of having Syariah Court presidents who are not religiously trained. However,

¹¹¹ *Id.* § 34A(2).

¹¹² *Id.* § 34A(1).

¹¹³ *Id.* § 34A.

¹¹⁴ *Id.* §§ 34A(4)-(5).

¹¹⁵ In 2010, a president who held both religious qualification as well as a masters degree in law from Columbia University was appointed.

there has never been a situation where at least one Syariah Court president is not religiously trained. It remains to be seen, however, whether someone without religious training will be appointed to the position of senior president.

B. Registrar of Syariah Court

The senior president is the head of the Syariah Court and is empowered to issue directives relating to the administration of the Syariah Court as he thinks fit.¹¹⁶ In 1999, however, the office of Syariah Court Registrar was created as a part of a far-reaching reform of the court.¹¹⁷ The Registrar performs functions similar to those of registrars in the civil courts in managing administrative aspects of the judicial process. The powers and duties of the Registrar are set out in various parts of the Muslim Marriage and Divorce Rules, the subsidiary legislation to the AMLA. The Registrar conducts all pre-trial conferences and issues orders and directions for the smooth running of the proceedings.¹¹⁸ The Registrar directs the filing of affidavits, fixes the dates for hearings, and can even make a decree of divorce where parties consent to the divorce.¹¹⁹ Appeals from a decision of the Registrar are heard by the president of the Syariah Court.¹²⁰ This procedure obviates the need to convene an Appeal Board hearing, which in the past was required in appeals on all matters arising from the Syariah Court, both substantive and procedural.¹²¹

There have been three Registrars so far. The first was a district judge on secondment from the subordinate courts who was succeeded by a lawyer from private practice. The current Registrar is a woman who served for many years in the Singapore Legal Service.

C. Mediators and Hakams

Proceedings in the Syariah Court often involve the use of a mediator and *hakam* (arbitrator).¹²² The involvement of hakams has its roots in

¹¹⁶ AMLA, § 34(7).

¹¹⁷ Act No. 20/1999; *see* AMLA.

¹¹⁸ MUSLIM MARRIAGE AND DIVORCE RULES, Rule 22 (whereby the Registrar may issue any order or direction for the expiations disposal of the court proceedings).

¹¹⁹ Rule 26(2) of the Muslim Marriage and Divorce Rules, however, prohibits the Registrar from making a decree of divorce and any order pursuant to divorce where the divorce by three *talak* or the *third talak*.

¹²⁰ MUSLIM MARRIAGE AND DIVORCE RULES, Rule 38(1).

¹²¹ *Id.* 38(4) (stipulating that this appeal shall be heard by the president of Syariah Court).

¹²² AMLA, § 50.

Islamic law.¹²³ *Hakams* have certain powers that mediators do not.¹²⁴ While *ad hoc* mediators had been used earlier, it was only after the 1999 amendments that the mediator scheme was fully institutionalized.¹²⁵ Currently all parties to matrimonial actions are required to undergo mediation before the case proceeds to a hearing.¹²⁶

Based on the profile of all the mediators that have been appointed in the Syariah Court, it would appear that all mediators must possess, at a minimum, either a law degree or a degree from a recognized Islamic institution. At mediation, parties seek a resolution of the divorce itself as well as the ancillary issues of custody, care, control, and access to children and division of matrimonial assets.¹²⁷ The use of mediation has helped clear a significant number of cases in the Syariah Court and freed up valuable court resources.¹²⁸

If parties are unable during mediation to agree on a divorce, and if the wife has not adduced sufficient proof to entitle her to a divorce, the court can direct the parties to appoint a figure known locally as a *hakam*.¹²⁹ Alternatively, parties can consent to the appointment of *hakam* at an early stage, obviating the need to undergo a full-blown trial.¹³⁰ Although Section 50(2) of the AMLA stipulates that in appointing a *hakam* the court shall, where possible, give preference to close relatives of the parties who have knowledge of the circumstances of the case,¹³¹ in practice *hakam* are appointed from a list kept by the Syariah Court. Men are selected for the position because of their high standing in the Muslim community. The *hakam*'s role is to assess whether the marriage is capable of reconciliation.¹³² If the *hakam*, after meeting with the parties, find that a state of irreconcilable break-up (Malay: *syiqaq*) exists, they will recommend to the court that a

¹²³ VIRGINIA MACKEY, PUNISHMENT IN THE SCRIPTURE AND TRADITION OF JUDAISM, CHRISTIANITY, AND ISLAM 23, 60 (James M. Day & William S. Laufer eds., 1987).

¹²⁴ AHMAD IBRAHIM, FAMILY LAW IN MALAYSIA 241 (3d ed. 1997).

¹²⁵ AMLA, § 50.

¹²⁶ *Id.*

¹²⁷ SYARIAH COURT OF SINGAPORE, http://app.syariahcourt.gov.sg/syariah/front-end/SYCHome_E.aspx (last visited Sept. 11, 2011).

¹²⁸ Speech by Syariah Court President at the Syariah Court Eid celebrations on Sept. 17, 2011 at the Ministry of Community Development, Youth and Sports Building.

¹²⁹ AMLA, § 50.

¹³⁰ In *Rosiah Binte Mohd Noor v. Ng Phuay Chi Irwan Ng Bin Abdullah* (Appeal Board No. 47/1995), the Appeal Board stated that the *hakam*'s role is one of the middle man who is trusted and accepted by both the parties and is to mediate between two parties and attempt a reconciliation. If unsuccessful, he is then to assist the court by paving the way for the court to make such orders or decree as specified in Section 50 of the AMLA. *Id.*

¹³¹ AMLA, § 50(3).

¹³² *Id.* § 50(7).

divorce by *talak* be decreed.¹³³ The *hakam* is not vested with the power to determine ancillary issues,¹³⁴ which remains with the president in charge of the divorce hearing. The *hakam* process is thus extremely valuable for women who want to get out of the marriage but are not able to persuade their husbands to pronounce a divorce (Malay: *talak*), are not entitled to a judicial dissolution of the marriage (Malay: *taklik* or *fasakh*) and are not able to acquire a divorce by offering redemption (Malay: *tebus talak*).

D. *Lawyers Appearing at Syariah Court*

Parties to cases before the Syariah Court may appear on their own or through lawyers.¹³⁵ All lawyers who are advocates or solicitors of the Supreme Court of Singapore may practice before the Syariah Court.¹³⁶ Lawyers need not be Muslims or have training in Islamic law to appear before the Syariah Court.¹³⁷ In all the years the AMLA has been in existence, there has never been a specialized course on Muslim personal law at any Singaporean university. There are courses and modules on Islamic finance and banking, and in 2011, one local university will begin offering a Masters program in this subject.¹³⁸ Materials on the applicability of Muslim law in Singapore are included in practice materials for prospective lawyers, but the subject is not tested on the lawyers' qualifying exam.¹³⁹ So long as there is no requirement for Syariah Court practitioners to possess any special Islamic law qualifications, it is the responsibility of lawyers themselves to ensure that they are adequately equipped to handle cases involving Islamic law. The norm for most lawyers is to engage in self-study, attend a diploma course in Muslim laws of marriage and divorce,¹⁴⁰ or to seek guidance from more seasoned practitioners.¹⁴¹

¹³³ *Id.* § 50.

¹³⁴ *Rosiah Binte Mohd Noor* (Appeal Board No. 47/1995).

¹³⁵ AMLA, § 39.

¹³⁶ *Id.* (“[E]very party to any proceedings shall appear in person or by advocate and solicitor or by an agent, generally or specially authorized by the Court.”).

¹³⁷ *Jammal Mahammath v. Zarina Abdul Majid* (Appeal Board No. 17/2008) (rejecting the argument by the appellant counsel on the issue of competency in the principles of Islamic law on divorce of the non-Muslim counsel who had represented the appellant at the hearing below).

¹³⁸ It is the Singapore Management University, which offers a Masters of Law in Islamic Finance and Banking.

¹³⁹ The Board of Legal Education (“BLE”), the predecessor to the newly created Singapore Institute of Legal Education (“SILE”), did not offer any electives or modules on Islamic Law. The author was a tutor at the BLE and he is currently a teaching fellow of the SILE.

¹⁴⁰ There have been tie-ups between Muslim organizations like “*Darul Arqam*” (Muslim Converts’ Association of Singapore), Perdaus, and Jamiyah with Islamic universities overseas on the running of part-time courses on Islamic law. An example is the Diploma in Shariah Law & Practice offered by Centre for Islamic Management Studies (set up by “*Darul Arqam*”), in collaboration with International Islamic

Notwithstanding the diligence of most lawyers appearing before the Syariah Courts, one finds in some Appeal Board judgments the observation that some lawyers are raising arguments that have no basis in Islamic law or are not consistent with Islamic law principles.¹⁴² Lawyers also sometimes fail to raise issues that are relevant to the case.¹⁴³ It remains to be seen whether the Singapore Institute of Legal Education, which took over the training of lawyers in 2011, will require more formalized training in Islamic law.

Even if some lawyers have demonstrated less familiarity with Islamic law than might be desired they represent a minority, and the lawyers who practice in the Syariah Court have contributed to its development in various ways. Lawyers offered diverse recommendations at the Parliamentary Select Committee Hearing considering amendments to the AMLA in 1998.¹⁴⁴ Subsequently, members of the Muslim Law Practice Committee (“MLPC”) of the Law Society of Singapore helped draft practice forms used in implementing the 1999 amendments such as the case statement, Memorandum of Defense and Affidavits. At the reading of the 2008 AMLA (Amendments) Bill, the minister-in-charge of Muslim Affairs expressed

University Malaysia (“IIUM”). CENTRE FOR ISLAMIC MANAGEMENT STUDIES, www.cims.com.sg (last visited Sept. 11, 2011).

¹⁴¹ Since 2009, the Law Society of Singapore (“LSS”) and Singapore Academy of Law (“SAL”) have organized seminars and discussions on topics relating to Islamic law in Singapore. Examples include the “Evolution of Syariah Court Practice and Procedure on [September 29, 2009] and Development of Muslim Law in Singapore on November 14, 2011, by the LSS and Wills, Wealth Planning and Succession on November 21, 2011, at SAL.

¹⁴² In *Raja Jumira Binte Azwar v. Syed Iskandar Bin Hashim* (Appeal Board Case No. 21/2010), the Appeal Board was faced with an issue of custody over an illegitimate child. The Appeal Board voiced out its disapproval over the lower court’s approach in applying Section 114 of the Evidence Act (Chapter 97 revised edition 1997) which gave the father rights over the child on the grounds that if the child was born during the continuance of a valid marriage, then that child is deemed legitimate, as being against the principles of Islamic law. The Appeal Board made it clear that the Syariah Court must apply Islamic law and not the civil law, especially when it relates to a substantive matter and not simply one that concerns procedure.

¹⁴³ For example, the practice of calculating the wife’s *muta* (consolatory gift) based on a fixed amount per day of marriage and weighing it against the ability of the husband to pay, was introduced in Singapore several decades ago. Not many lawyers, however, know that this mode of calculation may be unique to Singapore and, based on the fact that the author was unable to find any reported decision on this mode of calculation in any other country, may not be practiced in any other country which applies Islamic law. Yet, there has not been any serious challenge to this method of calculation even though the Appeal Board has mentioned in one case that it was prepared to consider the wife’s claim for *muta* of more than SGD \$700,000.00 (well beyond the fixed amount per day of marriage guideline), which while it may seem preposterous at first sight, would not have been unfair if she had proven more of her allegations. See *Daud Salim v. Hayati Atnawi* (Appeal Case No. 15/2001).

¹⁴⁴ Report of the Select Committee on the Administration of Muslim Law Bill, presented to Parliament on 10 February 1999.

gratitude to the MLPC for its comprehensive field study and recommendations on the enforcement of Syariah Court orders.¹⁴⁵

VII. REGISTRY OF MUSLIM MARRIAGES

Alongside the MUIS, the AMLA established the Registry of Muslim Marriages (ROMM).¹⁴⁶ The ROMM is headed by the Registrar of Muslim Marriages, who is appointed by the President of Singapore.¹⁴⁷ Its work is largely administrative—designed to register marriages solemnized under Muslim law in Singapore.¹⁴⁸

Under the AMLA, as it was first drafted, all marriages solemnized under the Muslim law in Singapore were to be registered within seven days at the ROMM.¹⁴⁹ A 2008 amendment that went largely unnoticed removed the provision allowing the ROMM to register marriages between Muslims and so-called *Kitabiyya* or “People of the Book.” (i.e., non-Muslims with a scripture).¹⁵⁰ As a result, the ROMM today possesses only jurisdiction to register marriages where both parties are Muslims,¹⁵¹ whereas the secular-based Registry of Marriages possesses the jurisdiction to register all other marriages. When a Muslim chooses to marry a non-Muslim, this can only be done under the Women’s Charter and AMLA is not applicable.¹⁵²

¹⁴⁵ Dr. Yaacob Ibrahim, Speech in Parliament at Second Reading of AMLA (Amendment) Bill (Nov. 17, 2008).

¹⁴⁶ AMLA, part IV.

¹⁴⁷ *Id.* § 90(1) (stating that eligibility for appointment to the post of Registrar includes “any suitable male Muslim of good character and of suitable attainments;” the post has always been held by someone with strong religious qualifications).

¹⁴⁸ *Id.* part IV.

¹⁴⁹ It should be noted that non-registration did not, however, render a Muslim marriage invalid. So long as a marriage fulfilled the mandatory Islamic law conditions of marriage, it was considered a valid marriage, whether or not it was registered. AMLA, § 109.

¹⁵⁰ In Singapore the “People of the Book” are often identified specifically as persons whose ancestors belonged to a nation that followed either Christianity or Judaism at the time of the coming of the Prophet Muhammad.

¹⁵¹ AMLA, § 89. In *Zainudin Bin Mohamed v. Registrar of Muslim Marriages* (Appeal Case No. 19/1997), the appellants belonged to a sect known as the Ahmadiya and they sought to register their marriage at the ROMM. Their application was rejected as the Fatwa Committee of MUIS had issued a ruling dated June 23, 1969, that the followers of this sect were infidels and apostates. The Appeal Board held that the appellants cannot be defined as Muslims in light of this *fatwa* and upheld the decision of the ROMM. *Id.*

¹⁵² Apart from stating in Parliament that “this is because the Registrar of Muslim Marriages only registers marriages where both parties are Muslims,” no other reason was given for this. Dr. Yaacob Ibrahim, Minister-in-Charge of Muslim Affairs, Speech in Parliament at Second Reading of AMLA (Amendment) Bill (Nov. 17, 2008). Regardless of the motivation behind this amendment, there is administrative convenience in differentiating where parties should register their marriages, the Registry of Marriages or the Registry of Muslim Marriages. Furthermore, by not allowing a marriage between a Muslim and a *kitabiyyah* to be registered at the ROMM, the Syariah court is now freed of the obligation to

The decisions of the ROMM are generally non-controversial. Most of the appeals from decisions of the ROMM involve challenges to a decision by the ROMM refusing to allow a polygamous marriage. In the rest of the appeals, it would be mainly for parties to register a marriage or revocation of divorce outside the statutory timelines.¹⁵³

VIII. THE APPEAL BOARD

An appeal from a decision of the Syariah Court or ROMM must be taken to the Appeal Board except for interlocutory matters that deal mainly with procedure or a preliminary issue.¹⁵⁴ The Appeal Board is “established” and administered by the MUIS, and the Board is located at the premises of the MUIS¹⁵⁵ rather than in the building that houses the Syariah court.¹⁵⁶

The Appeal Board may confirm, reverse or vary the decision of the Syariah Court, exercise such powers or make such order as the Syariah Court could or ought to have made, order a retrial, or award costs as it thinks fit.¹⁵⁷ In contrast to the uncertain situation before the 1999 Amendment to the Act, it is now clear that all decisions of the Syariah Court or the Appeal Board are final and conclusive, and no decision or order of either body can be challenged, appealed against, reviewed, quashed or called into question in any court, and may not be subject to certiorari, prohibition, mandamus, or injunction in any court on any account.¹⁵⁸ This enactment effectively ends the practice, frequent during the 1990s, of submitting applications to the

take a stand on the controversial question of whether such marriages are permitted under Islamic law. The ROMM had been forced to address this question in 1965 in *Abdul Razak v. Maria Menado*, MLJ [1965] xvi.

¹⁵³ AMLA, § 103 (mandating that the marriage must be registered within seven days of its solemnization, but that the ROMM may grant an extension of up to three months). In *Mazmarina bte Yusoff* (Appeal Case No. 38A/96), the Appeal Board allowed for the registration of marriage that was out of time but only after ascertaining that the marriage conditions had been validly complied with.

¹⁵⁴ AMLA, §§ 55, 105. In *Jofri Bin Jaffar v. Norrashida Bte Jumadi* (Appeal Case No. 16/2011), the Appeal Board stated that while the circumstances where a party can appeal against a decision of the Syariah court are specifically provided for in Section 55(1) of the AMLA, there are no specific provisions for it to hear appeals arising out of interlocutory matters (in this instance, whether the legal representative was to be appointed on behalf of the litigant). The Appeal Board commented that unless the result is a substantial saving of time and expenditure, it is not desirable to allow an appeal on a matter that is interlocutory in nature.

¹⁵⁵ It is the author’s view is that while in the past it was useful for the MUIS Appeal Board, as an oversight institution, to be separate from the Syariah Court, it is arguable that the MUIS Appeal Board should be housed in the same building as the Syariah Court where both can share resources as is the case with the Supreme Court of Singapore housing both the high court and court of appeal.

¹⁵⁶ In December 2009, the Syariah Court moved from the Ministry of Community Development, Youth and Sports on Thomson Road to a building in Lengkok, Bahru, which it shares with, among others, the Maintenance of Parents Tribunal.

¹⁵⁷ AMLA, § 55(5).

¹⁵⁸ *Id.* § 56A.

high court for orders on custody and matrimonial property matters on which the Syariah Court had already ruled.¹⁵⁹

The appointment of members to the Appeal Board panel is made by the President of Singapore, upon the advice of the MUIS.¹⁶⁰ The panel is made up of legal service officers, district court judges, senior lawyers and prominent religious leaders.¹⁶¹ By convention, a lawyer who is on the Appeal Board panel does not appear in the Syariah Court. As a consequence, the pool of lawyers who can be considered for appointment to the Appeal Board is small, and the lawyers who serve on the Appeal Board are often experts in fields other than Islamic law such as construction law, criminal law, or personal injury. The onus is therefore on the members of the Appeal Board to raise their level of competency. In 2007, the Appeal Board for the first time included women when three women—a district judge, a lawyer on a statutory board and a religious teacher—were appointed to the Board.

The *coram* of the Appeal Board consists of any three members of the panel one of whom serves as Chair.¹⁶² New members of the Appeal Board are generally not assigned to serve as chair until they become familiar with the issues and procedures typically covered at Board hearings. Notably, to date none of the three women Board members have been nominated to chair an appeal hearing.¹⁶³ It will be interesting to see how the Muslim community reacts to a woman chairing an appeal if that were to happen.

IX. PUBLICATION OF DECISIONS

There have been suggestions made, including within the Parliament, for broader publication of decisions of the Syariah Court and Appeal Board.¹⁶⁴ There is merit in the concern that the lack of commentary and discussions of Syariah Court and Appeal Board decisions has an adverse

¹⁵⁹ *Salijah bte Ab Lateh v. Mohd Irwan Abdullah*, [1996] 1 SLR 63; *Muhd Munir v. Noor Hidah*, [1990] SLR 999.

¹⁶⁰ AMLA, § 55(3) (the minimum number of members of the panel is seven. For the period from January 1, 2010 to December 31, 2011, there were sixteen members, of whom four were women).

¹⁶¹ Of the current sixteen members, five are or were district judges, four lawyers, and seven religious teachers.

¹⁶² AMLA, § 55(3).

¹⁶³ At the session of the Committee on Elimination of Discrimination against Women in the U.N. General Assembly on July 22, 2011, a delegate from the MUIS highlighted that the enactment of a *fatwa* in 2006 allowing women to sit on the Appeal Board could be seen as “setting a tone” for the future. SINGAPORE SAYS GENDER EQUALITY CENTRAL TO COUNTRY’S PROMISING SOCIO-ECONOMIC GROWTH AS DELEGATION REPORTS ON IMPLEMENTATION OF WOMEN’S CONVENTION, <http://www.un.org/News/Press/docs/2011/wom1875.doc.htm> (last visited Nov. 21, 2011).

¹⁶⁴ Hawazi Daipi, Speech in Parliament at second reading of AMLA (Amendment) Bill (Nov. 17, 2008).

effect on awareness of Islamic law in Singapore. As public interest in the issue grows it is to be hoped that the present situation in which only a small number of cases are posted on the Lawnet website will change. In addition to promoting greater awareness of Islamic law, broader publication of judgments and decisions will enhance the standing of the Syariah Court and Appeal Board, and should alleviate any skepticism regarding the qualifications of the presidents or members of the Appeal Board.

A. *Other Issues*

While Singaporean Muslims are understandably proud of the country's Islamic institutions, they have also shown a desire to be included under some of the laws from which, as Muslims, they had previously been exempted. This can be seen in the call by Muslims for inclusion in the Human Organ Transplant Act ("HOTA"). With the amendment to HOTA in 2009, Muslims are treated like other adult Singaporeans in being covered unless they have chosen to opt out.¹⁶⁵

Another set of issues concerns Islamic finance. The current trend is to resolve disputes through arbitration, and as yet there is no reported court decision on Islamic finance. However, based on the approach in past cases involving questions of Islamic law, it seems certain that when confronted with the issue civil courts will consider very carefully and give due weight to Islamic law principles in the context of other laws of the land.¹⁶⁶

One complicated area for Singaporean Muslims is adoption. This is, however, an area where Singaporean Muslims have demonstrated a sense of pragmatism in harmonizing the civil laws with the Islamic laws. All applications for adoptions must be brought under the Adoption Act and fall within the jurisdiction of the civil courts (more precisely the family court).¹⁶⁷ Once the adoption is concluded, a new birth certificate without the names of

¹⁶⁵ In 2008, the *fatwa* of the MUIS held that organ transplant and donation by the deceased is permissible in Islam and therefore Muslims could be included in HOTA. The Fatwa Committee, in coming to its decision, reviewed its own past *fatwas* (1973, 1986, 1995, 2003, and 2004) and the position adopted by other *fiqh* council in other countries and the opinions of internationally accepted scholars. In its *fatwa*, it added the recommendations that the relevant authorities should ensure an extensive public education on organ donation and HOTA and that each individual Muslim should receive information on how HOTA will apply to them. See MAJLIS UGAMA ISLAM SINGAPURA, <http://www.muis.gov.sg/cms/index.aspx> (last visited Aug. 9, 2011).

¹⁶⁶ *Shafeeq bin Salim Talib v. Fatimah bte Abud bin Taib*, [2010] SGCA 11, the court of appeal stated obiter that if a Muslim married couple were to open a joint bank account, their relationship with the bank will be governed by the contractual documents applicable to the operation of that account, i.e., the general law and not Muslim law. But whether their legal relationship *inter se* is governed by Muslim law so as to affect the ownership of the account on the death of one of them for the purposes of the AMLA (inheritance) is a question that will have to be decided at another time in another case.

¹⁶⁷ Adoption of Children Act, Ord. No. 13 of 1939.

the natural parents is issued to the child.¹⁶⁸ Under generally recognized principles of Islamic law, however, the adopted child does not acquire the rights of a natural child of the adoptive parents and vice versa; for instance, the right to inherit and the ability to marry still remain with the person's natural parentage.¹⁶⁹ In keeping with Islamic law, the norm for Muslim parties in Singapore who adopt a child under the Adoption of Children Act is not to change the name the child to carry the name of the adoptive parents.¹⁷⁰ The Singapore Family Court has shown that it is cognizant of the Islamic law position while exercising its civil law role in adoption matters.¹⁷¹

X. CONCLUSION

Throughout the British period, and until today, Singapore has accepted that Muslims should be subject to Islamic law in at least some parts of their lives. The content of the laws being applied to Muslims has evolved, however. So too have the institutions that are entrusted with interpreting and applying Islamic law. Although legislation has been the primary vehicle for change, the judiciary and legal practitioners have also played a role. Ultimately, the continued evolution of Islamic law in a secular country like Singapore is very much dependent on the mutual respect the Muslims and the non-Muslim community have for each other. The rule of law cannot function in a vacuum—it is ultimately to ensure fairness and justice for all.

¹⁶⁸ *Id.* arts. 7, 12.

¹⁶⁹ HALSBURY'S LAWS OF MALAYSIA 9; MLJ at page 58, where it is stated that Islam does not recognize adoption, but registration of adoptions is recognized to legitimize a customary practice and safeguard the right to custody of adoptive parents. This statement was accepted by the court of appeal in Malaysia in *Sean O'Casey Patterson v. Chan Hoong Poh and Ors*, [2010] 3 MLJ 733. The author is of the view, based on his personal observation, that while not binding on the Singaporean courts, this duality between civil and Muslim law illustrated in the above case is analogous to the practice adopted by Muslims in Singapore.

¹⁷⁰ *In Re OK*, [2006] SGDC 52, the district judge in her decision stated that she had noted a letter from the MUIS tendered by one of the parties stating that it is permissible in Islam to adopt a child provided that there cannot be a change of the original father's name to that of the adoptive father.

¹⁷¹ *Id.* The prospective adoptive parents were the natural grandparents of the infant and this led the district judge to direct that the applicants obtain a *fatwa* from MUIS on this issue. *Id.* In her grounds of decision, she stated that whilst the law to be applied in the making of an adoption order is civil law and not Syariah law, the views of the governing body for Islamic religious affairs would be instructive and throw light on the attitude taken by the Muslim community towards such adoptions. *Id.*