

PROBLEMS IN THE IMPLEMENTATION OF ISLAMIC LAW OF
INHERITANCE IN NEGERI SEMBILAN.

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I hereby that the work in this academic project is my own except for quotations and summaries which have been duly acknowledged.

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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

In the name of Allah, Most Graceful, Most Merciful

Alhamdulillah, praised is to the Mightiest Ruler, the Cherisher and Sustainer of the universe, Allah Subhanahu Wa Ta'ala that blessed me with physical and spiritual strength, which without His guidance this paper would not be accomplished. Above and beyond, a thousand of thanks and gratitude I dedicate to the Faculty of Syari'ah and Law, Islamic University College of Malaysia (KUIM) for their assistance and advice. Without their encouragement, I would not be able to complete this research.

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May Allah always help and guide us in all of our works and efforts for His sake. WallahuA'lam.

ABSTRAK

Penulisan ilmiah ini adalah merupakan satu usaha untuk menjelaskan dan memberi gambaran sebenar tentang masalah yang timbul dalam pelaksanaan harta pusaka mengikut Islam khususnya di Negeri Sembilan. Kajian ini adalah berbeza dengan kebanyakan penulisan terhadap isu yang sebelum ini kerana pengkaji memfokuskan kepada perbincangan isu tersebut dari perspektif adat negeri sahaja dan kemudian dibandingkan dengan undang-undang Islam. Matlamat untuk penulisan ini adalah bersumberkan dua kaedah iaitu pertama kaedah rujukan perpustakaan di mana semua data yang terkumpul berdasarkan kaedah penulisan akademik, jurnal, majalah dan juga artikel-artikel dari internet. Kaedah kedua pula adalah dengan sesi temuramah dengan pihak-pihak yang berwajib juga dilakukan bagi memastikan adakah undang-undang yang sedia ada masih lagi relevan atau tidak dengan keadaan masyarakat yang kuat berpegang kepada adat di Negeri Sembilan. Di dalam kajian ini, penulis telah mencungkil masalah-masalah yang timbul dalam pelaksanaan harta pusaka mengikut undang-undang Islam. Ini menunjukkan bahawa undang-undang di Malaysia masih tidak dapat menyelesaikan permasalahan semasa yang timbul dalam isu ini. Di harap kajian ini dapat memberikan gambaran sebenar terhadap pelaksanaan harta pusaka di Negeri Sembilan dan dapat membantu usaha-usaha dalam menangani masalah yang timbul berkaitan dengan harta pusaka terutama dari sudut undang-undang.

ABSTRACT

This academic writing is an effort to introduce to every individual the reality of problems in the implementation of Islamic Law of inheritance in negeri Sembilan. The differences in this research is more focus on the issue from the perspectives of state custom, then compare with Islamic Law. The purpose of this writing is based on two major methodologies, the first one refers to the library method, means all the data were gathered from academic books, journal, and articles from magazines and internet. The second is from interview sessions with the representatives or several responsible bodies in handling this issue in Negeri Sembilan. This is to analyze whether the laws that had been applied are still relevant with the reality of Malaysia's situation. In this study it was found out that there are problems in implementation of Islamic Law of Inheritance in Negeri Sembilan. This problem indicates that Malaysian laws still insufficient and no longer relevant in handling some problem related to the issue. Therefore, it is hoped for this research to give the exact information about the implementation of inheritance in Negeri Sembilan, and help to settle the problems relating to inheritance especially from the legal perspectives.

ملخص البحث

يهدف هذا البحث إلى بيان مسألة المورث القانون الإسلامي ، في نكري سميلان ، بماليزيا . وقد امتاز هذا البحث عن غيره بتركيز الباحثة في القضايا بمقتضى العادة والعرف ايضا برجوع الى الشرع والقانون الماليزي . ولحصول على المعلومات لهذا البحث تم من منهجين مهيمن : أولهما دراسة مكتبية ، وذلك بمراجعة المصادر والمراجع من الكتب والبحث والمقالات العلمية ذات العلاقة بالموضوع . وثانيهما: مناقشة العلماء والحكام والباحثين في القانون الماليزي خصوصا مجتمع نكري سميلان . في هذا البحث ، يريد كاتب أن يمد ويبحث المسألة في المورث بالقانون الإسلامي . وقد تبين أن القانون الماليزي لم يعد يكفي وغير قادر حلّ المشاكل والمسائل المستجدة والمتوقعة مستقبلا. نأمل الباحث أن يكون سبيلا لتصور الحالة في هذه المجموعة في ماليزيا ،وقد خلص الباحث، وطرح بعض الاقتراحات والتوصيات لمعالجة القضية.

TABLES OF CONTENTS

CONTENTS	PAGE
AUTHOR DECLARATION	i
ACKNOWLEDGEMENT	ii
ABSTRAK	iii
ABSTRACT	iv
MULAKHKHAS AL-BATH	v
TABLE OF CONTENTS	vi
LIST OF STATUTES	viii
LIST OF APPENDICES	ix
GLOSARY	x
TRANSLITERATION	xi
ABBREVIATIONS	xiv
CHAPTER ONE: RESEARCH BACKGROUND	
INTRODUCTION	1
PROBLEM STATEMENT	3
SCOPE OF RESEARCH	3
AIM OF RESEARCH	4
OBJECTIVES OF RESEARCH	4
LITERATURE RIVIEW	4
METHODOLOGY OF RESEARCH	5
CHAPTER TWO: IMPLEMENTATION OF INHERITANCE	
2.0 INTERPRETATION	7
2.1 IMPLEMENTATION OF ISLAMIC LAW OF INHERITANCE.	
2.1.1 ISLAMIC LAW OF INHERITANCE	9
2.1.2 PROCESSING LIABILITIES OF DECEASES ESTATE.	9
2.1.3 CAUSES OF INHERITANCE	9
2.1.4 BLOOD RELATION IN INHERITANCE	10
2.1.4.1 Zav-ul-Furuz, the Shares	10
2.1.4.2 Asabah, the residential	10
2.1.4.3 Zav-ul-Arham, the Distant Kindred	10
2.1.5 THE NUMBER OF SHARES.	19
2.2 IMPLEMENTATION OF INHERITANCE ACCORDING TO ADAT PEPATIH IN NEGERI SEMBILAN.	20

2.3	DIFFERENCES BEWEEN ADAT PEPATIH AND ISLAMIC LAW IN INHERITANCE	21
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CHAPTER THREE: LAW AND ENACTMENT APPLICABLE IN NEGERI SEMBILAN

3.1	SOURCES OF LAW APPLICABLE IN NEGERI SEMBILAN.	24
3.2	LEGISLATIVE CHANGES AND THE EFFECTS OF LEGISLATION IN MULTIPLITY OF PROCEEDINGS	26
3.3	THE PRACTICE AS TO INHERITANCE IN THE NON-TRIBAL DISTRICTS OF NEGERI SEMBILAN.	28
3.4	DIFFERENCES BETWEEN THE THREE TRIBAL DISTRICTS. (KUALA PILAH, JELEBU, AND TAMPIN)	31
3.5	ENACTMENTS APPLICABLE TO INHERITANCE.	35
	3.5.1 Administration of habitual Inheritance. (Big patrimony)	35
	3.5.2 Estate of Summary Administration.	36
	3.5.3 Administration Small Inheritance.	36
3.6	CUSTOMARY LAW FROM ISLAMIC PERSPECTIVE.	39
	3.6.1 Different between Hukum Adat and Islamic.	41

CHAPTER FOUR: PROBLEMS, SUGGESTION, AND CONCLUSION/

4.1	PROBLEMS IN IMPLEMENTATION OF INHERITANCE.	43
	4.1.1 Problem in trial management	44
	4.1.2 Problem among Officer of Inheritance management.	48
4.2	SUGGESTIONS.	51
4.3	CONCLUSION.	53

BIBLIOGRAPHY	56
---------------------	-----------

APPENDICES	59
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LIST OF STATUTES

Estate of Summary (Administration) Act 1955

Probate and Administration Act, 1959

LIST OF APPENDICES

Appendix A: Approval Letter from KUIM

Appendix B: Related Articles of the Issue

GLOSSARY

Adat Papatih	the democratic matrimonial <i>adat</i> law brought to Negeri Sembilan (one of the states in Peninsular Malaysia) by settlers from Minangkabau, Sumatera in Indonesia.
Akhwatun	two or more brothers or sisters of any kind
Al-Hadith	Saying, deeds, and approvals of the Prophet saw, al-Sunnah.
Al-Quran	The Holy Books; guidance for the Muslims from Allah SWT.
Asabah	the residential
Fiqh	Jurisprudence
Hukm	Islamic Ruling
Kalala	one who leaves neither parent nor child
Nasab	The series of families.
Qiyas	Law of retaliation or retribution
Shari'ah	Islamic Law, the two major sources are the Al-Qur'an and the Al-Sunnah. Also another part of laws in Malaysia besides civil laws.
Syara'	Legally recognized by the Shari'ah.
Walad	son, children and offspring by translators
Zav-ul-Arham	the Distant Kindred
Zav-ul-Furuz	the Shares

TRANSLITERATION
ARABIC WORDS TRANSLITERATION SYSTEM
TRANSLITERATION TABLE

1. ALPHABET

<u>Arabic</u>	<u>Latin</u>	<u>Example</u>	<u>Transliteration</u>
ء	,	فأر	fa'r
ب	b	برد	burd
ت	t	تل	tall
ث	th	ثوب	thawb
ج	j	جدار	jidar
ح	h	حليب	halib
خ	kh	خادم	Khādim
د	d	ديك	dik
ذ	dhz	ذهب	dhzahab
ر	r	رفيق	rafīq
ز	z	زميل	zamil
س	s	سلام	salām
ش	sh	شعب	sha'b

ص	s	صخر	sakhr
ض	d	ضيق	dayq
ط	t	طالب	tālib
ظ	z	ظالم	zālim
ع	c	عقل	°aql
غ	gh	غلام	ghulām
ف	f	فيل	fil
ق	q	قلب	qalb
ك	k	كلام	kalām
ل	l	لب	lubb
م	m	مال	māl
ن	n	نجم	najm
ه	h	هول	hawl
و	w	ورق	waraq
ي	y	يم	yam

2. Short Vowel

<u>Arabic</u>	<u>Latin</u>	<u>Example</u>	<u>Transliteration</u>
_____	a	كتب	kataba
_____	i	علم	°alima
_____	u	غلب	ghuliba

3. Long Vowel

<u>Arabic</u>	<u>Latin</u>	<u>Example</u>	<u>Transliteration</u>
ى، ا	a	عالم، فتى	°alim, fatā
ي	i	علیم، داعي	°alim, dāi
و	u	علوم، أدعو	°ulūm, Ad°u

4. Diphthong

<u>Arabic</u>	<u>Latin</u>	<u>Example</u>	<u>Transliteration</u>
و	aw	نوم	nawm
ي	ay	ليل	layl
يَّ	iyy	شافعي	Shāfi°iyy(ending)
وَّ	uww	علو	°uluww(ending)

ABBREVIATIONS

H	Hijrah
M	Masihi
n.a	no author.
n.d.	no date.
n.p.b.	no publisher
n.pl.	no place
Narr.	Narrated by
p.	page
pp.	pages
RA	radiallahu ‘ anhu
SAW	salla Allah alayh was sallam
SWT	subhanahu wa taala
Vol	Volume
Writ.	Written by

CHAPTER ONE

PROBLEMS IN THE IMPLEMENTATION OF ISLAMIC LAW OF INHERITANCE IN NEGERI SEMBILAN.

1.1 Introduction: Background of Research.

The Muslim Law of Inheritance, *Ilm- ul- Faraiz*, is a great achievement of the Muslim jurists. In its minutest details it is a system rendered to perfection, and thus deserves our admiration. Inheritance is the entire movable and (or) immovable property (may be a penny or an amount of any magnitude)¹ which a dying Muslim leaves behind (whether it has been inherited by him from somebody else or personally earned by him) is called, in the terminology of Islam, as the inheritance or, for simplicity, as property.

ALLAH says in the Holy Qur'an that;

﴿يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ لِلذَّكَرِ مِثْلُ خِطِّ الْأُنثِيَيْنِ ، فَإِنْ كُنَّ نِسَاءً فَوْقَ اثْنَتَيْنِ فَلَهُنَّ ثُلُثَا مَا تَرَكَ ، وَإِنْ كَانَتْ وَاحِدَةً فَلَهَا النِّصْفُ ، وَلِأَبَوَيْهِ لِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ مِمَّا تَرَكَ إِنْ كَانَ لَهُ وَلَدٌ ، فَإِنْ لَمْ يَكُنْ لَهُ وَلَدٌ وَوَرِثَهُ أَبَوَاهُ فَلِأُمِّهِ الثُّلُثُ ، فَإِنْ كَانَ لَهُ إِخْوَةٌ فَلِأُمِّهِ السُّدُسُ ، مِنْ بَعْضِ وَصِيَّةٍ يُوَصِّى بِهَا أَوْ دِينَ ، آبَاؤُكُمْ وَأَبْنَاؤُكُمْ لَا تَدْرُونَ أَيُّهُمْ أَقْرَبُ لَكُمْ نَفْعًا ، فَرِيضَةٌ مِنَ اللَّهِ ، إِنْ اللَّهُ كَانَ عَلِيمًا حَكِيمًا ﴾

(Al-Nisa': verse 11)

¹ n.a. 1988. *A learner's guide to the Division of Inheritance*. Perpustakaan Awam Islam. p. 19

Meaning of this verse:

“ Allah commands you as regards children’s (Inheritance) to the male a portion equal to that of two females, if there are only daughters, two or more, their share is two thirds of the inheritance, if only one, her share is a half. For parents, a sixth share of inheritance to each if the deceased left children, if no children, and the parent are the only heirs, the mother has a third, if the deceased left brothers or sisters, the mother has a sixth. The distribution in all cases is after the payment of legacies he may have bequeathed or debts. You know not which of them, whether your parent or your children are nearest to you in benefit. (These fixed shares) are ordained by Allah. And Allah is Ever All-Knower, All –Wise” ²

Administration of inheritance in our country is one of the parts in judgment which stated as a duty of Federal according to List I of ninth schedule of Federal Territories. An implementation of Islamic law of inheritance is based on Qur’an. However, in Negeri Sembilan, its implementation is different because it is partly based on customary Law. Majority of the people of Negeri Sembilan still practice their customary law or *Adat Papatih*.

It is very different and it contradicts the inheritance of Islamic law based on Al-Qur’an and As-Sunnah. It is clear about *Adat Papatih* that they are more considering the right of their daughters than their sons. As we know, ALLAH mentioned in Al-Qur’an that the man will get double share than a woman. Therefore, the problems in the implementation of the Islamic Law of Inheritance exist when we compare of it with *Adat Papatih* in Negeri Sembilan.

² Al-Qur’an. An-Nisa’. 4:11. The Holy of Al-Quran. *Interpretation of the Meaning of the Glorious Qur’an*. Syed Vickar Ahamed, Prof., (Dr). (trans.). New Jersey: Holmdel

1.2 Problem Statement

Nowadays, Islamic societies are not considering their customary law except on the certain states who are still practicing their custom daily. Negeri Sembilan is one of the states that still practice their customary law until today. Especially in matter of Islamic Law of inheritance. But here, the researcher wants to study the implementation of inheritance in Negeri Sembilan which contradicts with the inheritance of Islamic Law and the existence problems. The problems to be discussed are as follows-

1. What are the conditions of Islamic Law in Negeri Sembilan.
2. The enforcement of Inheritance according to Islamic Law.
3. The enforcement of Inheritance according to customary law (*Adat Papatih*) in Negeri Sembilan.
4. What are the differences between Islamic law and customary law (*Adat Papatih*) with regards to the distribution of the declared's property
5. Is *Adat Papatih* contradicting the Islamic law.
6. Are there rules which provide for customary law (*adat papatih*) included in Islamic law.
7. What are the problems in the implementation Islamic law of Inheritance in Negeri Sembilan.

1.3 Scope of Research

This research focuses on the implementation of Islamic Law of Inheritance and *adat papatih* as practiced in Negeri Sembilan. Researcher wants to find out the relating problems in the implementation of Islamic law of Inheritance based on Al-Qur'an and As-Sunnah. The researcher will try to limit the scope of research on the application of *adat papatih*.

1.4 Aim of Research

The main aim for this research is to achieve details about the problems in Islamic society and government in the implementation of inheritance in the state of Negeri Sembilan, especially for those who still practice *adat pepatih*.

1.5 Objectives of Research

There are several objectives in conducting this research, in order to fulfill the final aim of this research topic. The objectives are as follows:-

1. To analyze the process of inheritance according to *Adat Pepatih* in Negeri Sembilan.
2. To compare the enforcement of the Islamic^{LAW}/of Inheritance and the Customary Law (*adat pepatih*).
3. To identify the problems in the implementation of inheritance in Negeri Sembilan
4. To come up with solutions, as well as constructive suggestions which are significant to face the problem.

1.6 Literature Review

Some of the books which are related to this research are “Reading in Malays Adat Law” by M.B. Hooker published in Singapore University Press 1970. Researcher focus on topic “Inheritance in Negeri Sembilan” This book discussed about the customary law, the general principles of law, background of comparative law, history of the Malay States and of Negeri Sembilan, and others. The application of inheritance law in Negeri Sembilan is somewhat different. There, it was recognized from the earliest days that the Law of Inheritance was *Adat*.

The researcher also referred to the book of “Undang-undang Dan Pentadbiran Harta Pusaka Orang Islam di Malaysia” by Mohd. Ridzuan Awang. This book provides

the laws and types of inheritance. There are two types of laws stated on the procedure in the administration of inheritance, first is Probate and Administration Act, No. 97 of 1959 and second is Small Estates Distribution Act, 98 of 1955. According to both of this Act, administrations of inheritance are separated into three types. This book also mention about nomination, *Hibah in Maradul Al-Maut*, a debts, relation (Nasab), and others. This book is very limited and with general explanation.

Besides that, the other book referred to is “The Muslim Law of Inheritance” by Al-Haj Mohamed Ullah *ibn* S.Jung. In this book it explained about the right of Inheritance, causes of Inheritance, conception of property, doctrine of representation , primogeniture exclusion of sons and daughter, the heirs in general and others. This book also mentions the chart that illustrates the near relation of the deceased. There are table of near relation, table of half-hood relation, table of Fixed Portion, table of shares, and others. In this entire table it provides the right to inheritance for all the parties. The part of Fixed Portion is $\frac{1}{2}$, $\frac{1}{4}$, $\frac{1}{8}$, $\frac{2}{3}$, $\frac{1}{3}$, and $\frac{1}{6}$. The major topic discussed in this book is about the right of all parties by giving also the sample of problems and their solutions.

The researcher then looks into the academic project done by University Pertanian Malaysia in Seminar Kebangsaan entitled “Adat Papatih & Wilayah Budaya Negeri Sembilan. The project describes about Negeri Sembilan, but it focuses on matter related to Inheritance based on *Adat Papatih* in Negeri Sembilan. *Adat papatih* decided that “Anak Buah” is Buapak mines; “Datuk Lembaga” is the holder of property to heir and land of patrimony. Therefore the entire decision take by society of *adat papatih* should follow the rules provided.

1.7 Methodology of Research

This research combines between library research and field study. The collected data will be gathered to be analyzed through several methods in analyzing of data. In addition, the researcher makes an interview with one of the head of community of Negeri

Sembilan, known as, Buapak. There are number of libraries and institutions that have been used to find the required data.

1. Library of Islamic University College of Malaysia.
2. Islamic Centre, Library Kuala Lumpur.
3. National Library, Kuala Lumpur.
4. State Museum of Negeri Sembilan.
5. Syariah Court of Negeri Sembilan (Seremban)
6. Mufti Department of Negeri Sembilan.
7. Library of Tun Seri Lanang, UKM Bangi.
8. Law library, UKM Bangi.
9. Seremban library, Negeri Sembilan.

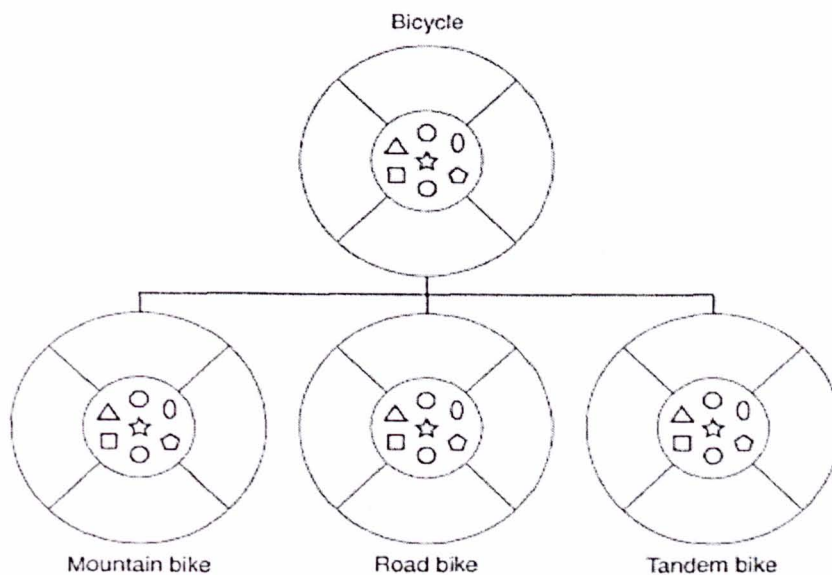
CHAPTER TWO

CHAPTER TWO: IMPLEMENTATION OF THE LAW OF INHERITANCE.

2.0 Interpretation of inheritance

Generally speaking, objects are defined in terms of classes. You know a lot about an object by knowing its class. Even if you don't know what a penny-farthing is, if I told you it was a bicycle, you would know that it had two wheels, handle bars, and pedals.

Object-oriented systems take this a step further and allow classes to be defined in terms of other classes. For example, mountain bikes, road bikes, and tandems are all kinds of bicycles. In object-oriented terminology, mountain bikes, road bikes, and tandems are all *subclasses* of the bicycle class. Similarly, the bicycle class is the *super class* of mountain bikes, road bikes, and tandems. This relationship is shown in the following figure.³



³ n.a. 16 August 2005. *A modern interpretation of shariah law. Malayan Adat ruling on the law of inheritance of women.* <http://mandela.inwent.org>. p.2

Each subclass *inherits* state (in the form of variable declarations) from the super class. Mountain bikes, road bikes, and tandems share some states: cadence, speed, and the like. Also, each subclass inherits methods from the super class. Mountain bikes, road bikes, and tandems share some behaviors: braking and changing pedaling speed, for example. However, subclasses are not limited to the state and behaviors provided to them by their super class. Subclasses can add variables and methods to the ones they inherit from the super class. Tandem bicycles have two seats and two sets of handle bars; some mountain bikes have an additional chain ring, giving them a lower gear ratio.

Subclasses can also *override* inherited methods and provide specialized implementations for those methods. For example, if you had a mountain bike with an additional chain ring, you would override the "change gears" method so that the rider could shift into those lower gears. The inheritance tree, or class *hierarchy*, can be as deep as needed. Methods and variables are inherited down through the levels. In general, the farther down in the hierarchy a class appears, the more specialize its behavior.

Inheritance offers the following benefits:

- Subclasses provide specialized behaviors from the basis of common elements provided by the super class. Through the use of inheritance, programmers can reuse the code in the super class many times.
- Programmers can implement super classes called *abstract classes* that define common behaviors. The abstract super class defines and may partially implement the behavior, but much of the class is undefined and unimplemented. Other programmers fill in the details with specialized Super class.⁴

⁴ Ibid. p. 5

2.1 Application of Inheritance according to Islamic Law

2.1.1 Islamic Law of Inheritance

This is an overview of the Islamic laws of inheritance with the aim of increasing the awareness of the Muslim community living in the Negeri Sembilan regarding on important aspect of Islamic law. The scope of this article is confined to traditional Sunni Islamic law.

2.1.2 Processing liabilities of Deceased's Estate.

When a Muslim dies there are four duties which need to be performed. These are:

1. payment of funeral expenses
2. payment of his/ her debts
3. execution his/ her will
4. Distribution of remaining estate amongst the heirs according to Syari'ah.

It is assumed that the preliminary issues have been resolved and we shall confine ourselves principally in discussing the fourth, with the distribution of remaining estate amongst the heirs according to Syari'ah. The task is firstly, determine which of the relatives of the deceased are entitled to inherit and secondly, to determine the quantum share entitlement of each of the heirs concerned.⁵

2.1.3 Three causes of Inheritance are:

1. *Valid marriages, sabab*, by reason of marriage, of these there are only two share namely husband and wife.
2. *Nasab*, consanguinity, shares by relationship, and of these there are ten shares.

⁵ Dr. Abid Hussain. 18 August 2005. *Overview of the Islamic laws of inheritance with the aim of increasing the awareness of the Muslim community*. abidhussain@hotmail.com. p.1.

3. *Wala*, fictitious relationship, special causes of Inheritance of these there are several.⁶

A number of blood relations of the deceased are entitled to participate in the inheritance simultaneously. They are divided into three distinct groups the *Zav-ul-Furuz*, the *Asabah*, the *Zav-ul-Arham*, and the other kinds of heirs follow next in order.

2.1.4 Blood Relation in Inheritance.

2.1.4.1 *Zav-ul-Furuz*, the Shares:

- ❖ The shares are entitled to receive a fixed share allotted to them in a certain order of preference, and mode of succession.

2.1.4.2 *Asabah*, the residuary:

- ❖ The residuary are those persons who inherit of what remains of the estate after the shares have been satisfied, and if there should be no shares, and then they take the whole of the inheritance. And in the absence of the residuary, the residue of the estate, after first distribution amongst the sharers, once more devolves upon them (shares) in the fixed ratio of their specific shares.

2.1.4.3 *Zav-ul-Arham*, the Distant Kindred:

- ❖ The distant kindred are those relations of the deceased who are neither sharers nor residuary. They are entitled to the residue in all cases where the shares are not entitled to it.⁷

The importance of the Islamic laws of inheritance is obvious from the following verses with specific details on inheritance shares:⁸

⁶ Al-Haj Mohammed Ullah ibn S. Jung. 2003. *The Muslim Law of Inheritance*. Perpustakaan Awam Malaysia. p. 5

⁷ Ibid. p.3

"These are limits (set by) Allah (or ordainments as regards laws of inheritance), and whosoever obeys Allah and His Messenger will be admitted to Gardens under which rivers flow (in Paradise), to abide therein, and that will be the great success. And whosoever disobeys Allah and His Messenger, and transgresses His limits, He will cast him into the Fire, to abide therein; and he shall have a disgraceful torment." [Quran 4:13-14]⁹

The laws of inheritance take on an even greater prominence in Islam because of the restriction placed by *Syari'ah* on the testamentary power of the testator as we shall see later in this article.

The divine justness and equitability of the Islamic laws of inheritance have been correctly appreciated by many non-Muslim scholars such as Professor Almaric Rumsey (1825-1899) of King's College, London, the author of many works on the subject of the Muslim law of inheritance and a barrister-at-law, who stated that the Muslim law of inheritance, "comprises beyond question the most refined and elaborate system of rules for the devolution of property that is known to the civilized world."

To understand the Islamic laws of inheritance as a whole it is necessary to consider the system of inheritance that operated within the Arabian Peninsula prior to the revelation of the Quranic injunctions on inheritance. Although we do not have the exact details of the system that operated prior to the Quranic revelations we do know that the system of inheritance was confined to the male agnate relatives ("*asaba*") of the deceased. In this old customary system only the male agnates (*asaba*) were entitled to inherit. Amongst the male agnates there were rules of priority, which determined which of the surviving male agnates were entitled to inherit. It is likely that the rules of priority that operate amongst the *asaba* in *Syari'ah* are a carry-over of the old customary agnatic

⁸ Dr. Abid Hussain. 18 August 2005. Overview of the Islamic laws of inheritance with the aim of increasing the awareness of the Muslim community abidhussain@hotmail.com. p.1

⁹ Al-Qur'an. An-Nisa' 4:13-14.

system. In Islamic law the son takes priority over the father who in turn takes priority over the brothers who in turn take priority over the paternal uncles.¹⁰

As we shall see the Qur'an does not expressly state the share of the male agnate relatives as such, although it does enact that the share of the male is twice that of a female. The Sunni jurists take the view that the intention of the Quranic injunctions was not to completely replace the old customary agnatic system entirely but merely to modify it with the objective of improving the position of female relatives. The Sunni Islamic law of inheritance is therefore, an amalgamation of the Quranic law superimposed upon the old customary law to form a complete and cohesive system. The rights of the asaba were recognized by the Prophet Muhammad (SAWS) himself. Abdullah ibn Abbas (RA) reported that the Prophet Muhammad (SAWS) said, "Give the Faraid (the shares of the inheritance that are prescribed in the Al-Qur'an) to those who are entitled to receive it. Then whatever remains, should be given to the closest male relative of the deceased." (Sahih al-Bukhari)

The Qur'an says:

"Allah commands you regarding your children. For the male a share equivalent to that of two females. "[Quran 4:11]

This first principle which the Quran lays down refers to males and females of equal degree and class. This means that a son inherits a share equivalent to that of two daughters, a full (germane) brother inherits twice as much as a full sister, and a son's son inherits twice as much as a son's daughter and so on. This principle is however, not universally applicable as we shall see later in verse 4:12; the descendants of the mother notably the uterine brother and uterine sister inherit equally as do their descendants.¹¹ The Qur'an says to the effect:

¹⁰ Dr. Abid Hussain. 18 August 2005. *Overview of the Islamic laws of inheritance with the aim of increasing the awareness of the Muslim community*. <http://www.Islamonline.com>. (in English) p. 2.

¹¹ Ibid. p.3

"If (there are) women (daughters) more than two, then for them two thirds of the inheritance; and if there is only one then it is half." [Qur'an 4:11]¹²

A woman in this context refers to daughters. The Quran gives the daughter a specific share. In legal terminology the daughter is referred to as a Quranic heir or sharer (*ashab al-faraid*). The Quran mentions nine such obligatory sharers as we shall see later. Muslims jurists have added a further three by the juristic method of *qiyas* (analogy). So in Islamic jurisprudence there are a total of twelve relations who inherit as sharers.

If there are any sons the share of the daughter(s) is no longer fixed because the share of the daughter is determined by the principle that a son inherits twice as much as a daughter. In the absence of any daughters this rule is applicable to agnatic granddaughters (son's daughters). The agnatic granddaughter has been made a Quranic heir (sharer) by Muslim jurists by analogy.

If there is only a single daughter or agnatic granddaughter her share is a fixed one-half, if there are two or more daughters or agnatic granddaughters then their share is two-thirds. Two or more daughters will totally exclude any granddaughters. If there is one daughter and agnatic granddaughters, the daughter inherits one-half share and the agnatic granddaughters inherit the remaining one-sixth, making a total of two-thirds. If there are agnatic grandsons amongst the heirs then the principle that the male inherits a portion equivalent to that of two females applies.¹³ The Qur'an states to the effect:

"And for his parents for each of them there is one-sixth of the inheritance if he has a child, but if he does not have a child and the parents are the heirs then for the mother one-third." [Quran 4:11].

The Arabic word "*walad*" has been variously translated as child, son, children and offspring by translators. However, there is universal agreement amongst the Sunni

¹² Al-Qur'an. An-Nisa' 4:11

¹³ Dr. Abid Hussain. *Overview of the Islamic laws of inheritance with the aim of increasing the awareness of the Muslim community* p.3.

Muslim jurists that “walad” here refer to any child or agnatic grandchild (grandchild through son).¹⁴ If there is a child or agnatic grandchild amongst the heirs then each of the parents inherits one-sixth. In the absence of a child or agnatic grandchild the mother inherits one-third, the share of the father is not mentioned under these circumstances. The father in fact inherits as a residuary (a residuary heir gets whatever remains of the inheritance after the Quranic sharers have been allocated their shares, residuary heirs are generally male agnates) under these circumstances.

To these two Quranic heirs, the mother and the father, the maternal grandmother and paternal grandfather have been added by analogy. The maternal grandmother substitutes the mother in the latter's absence. The Qur'an states

“... but if he has brothers (or sisters) then for the mother one-sixth”
[Quran 4:11]¹⁵

The consensus of opinion is that the word “*akhwatun*” used in the Quranic text means two or more brothers or sisters of any kind. So that any combination of full, consanguine or uterine brothers and sisters, if two or more will mean that the mother inherits a one-sixth share. The Qur'an says:

“And for you there is one-half of what your wives leave behind if there is no child, but if they leave a child then for you there is one-fourth of what they leave behind; ... ” [Quran 4:12]¹⁶

Again according to Islamic law the word “*walad*” here is interpreted as child or agnatic grandchild. The husband, another Quranic heir, inherits one-half in the absence of a child or agnatic grandchild and one-quarter in the presence of a child or agnatic grandchild. The Qur'an states:

¹⁴ Ibid. p.4

¹⁵ Al-Qur'an. An-Nisa' 4:11.

¹⁶ Al-Qur'an. An-Nisa' 4:12.

"And for them one-fourth of what you leave behind if you did not have a child, but if you have a child then for them one-eighth of what you leave behind; ..." [Quran 4:12]

This statement gives us the ruling on the share of the wife (widow). The share of the wife is one-quarter in the absence of a child or agnatic grandchild and one-eighth in the presence of a child or agnatic grandchild. Two or more wives share equally in this prescribed share. Before continuing with the translation of verse 4:12 let us consider a situation where a woman dies leaving behind a husband and both parents as the only heirs. The husband inherits one-half of the estate; there is no argument on this point. However, if we give the mother a one-third share then the father is left with only one-sixth. Should the male (father) not get twice the share of the female (mother) of equal degree and class?

This problem arose during the caliphate of Umar ibn Khattab (RA). After consultation with the learned companions the majority opinion was that the father should get twice the share of the mother, that is to say, the principle that the male inherits the share of two females is upheld. The father therefore, inherits one-third and the mother one-sixth. In light of this ruling the sentence of verse 4:11 on this matter which reads, "...but if he does not have a child and the parents are the heirs then for the mother one-third." is interpreted to mean, "...but if he does not have a child and the parents are the (only) heirs then for the mother one-third."¹⁷ The Qur'an reads as follows:

"And if a kalala man or woman (one who has neither ascendants nor descendants) is inherited from, and he (or she) has a (uterine) brother or (uterine) sister then for each of them (there is) one-sixth. But if they (uterine brothers and sisters) are more than that then they are sharers in one-third (equally)." [Quran 4:12]¹⁸

¹⁷ Dr. Abid Hussain. *Overview of the Islamic laws of inheritance with the aim of increasing the awareness of the Muslim community* P.5

¹⁸ Al-Qur'an. An-Nisa' 4:12.

The interpretation of the second half of verse 4:12 has been a source of controversy, one reason being the meaning of the word "kalala". This word "kalala" occurs only in two places in the Quran [4:12 and 4:176] and on both occasions regarding inheritance. "*Kalala*" may mean "one who leaves neither parent nor child" or "all those except the parent and child". It is generally taken to mean the former. It is universally agreed that the siblings referred to in this verse are uterine siblings (those with the same mother but different fathers).

The uterine siblings only inherit in the absence of any descendants or ascendants. However, uterine siblings are not excluded by the mother. If there is only one uterine sibling he or she inherits a one-sixth share. If there are two or more uterine siblings they together inherit a one-third share equally. The heirs mentioned in the Quran (mother, father, husband, widow, daughter, uterine brother, full sister, uterine sister, consanguine sister) together with the three heirs added by juristic method of analogy (paternal grandfather, maternal grandmother and agnatic granddaughter) form a group of heirs called Quranic heirs or sharers (*ashab al-furud*). These heirs when entitled to inherit are given their fixed shares and the remaining estate is inherited by the residuary (*asaba*).

Under Islamic law some of the Quranic heirs, namely the father, paternal grandfather, daughter, agnatic granddaughter, full sister, consanguine sister and the mother, can also inherit as residuary under certain circumstances. Certain heirs referred to as primary heirs are always entitled to a share of the inheritance, they are never totally excluded. These primary heirs consist of the spouse relict, parents, the son and the daughter. All remaining heirs can be totally excluded by the presence of other heirs. There are several rules of exclusion which determine the exclusion of some heirs by the presence of others, such:

- a person (e.g. brother) who is related to the deceased through another (i.e. father) is excluded by the presence of the latter,
- an individual nearer in degree (proximity) to the deceased excludes the one who is remoter within the same class of heirs (son excludes all grandsons),

- full blood excludes half-blood through father (so a full brother will exclude a consanguine brother but not a uterine brother)¹⁹

The majority view is that the full and consanguine brother is not excluded by the paternal grandfather. However, the Hanafi fiqh allows the paternal grandfather to totally exclude the agnatic siblings. Heirs may also be prevented from inheriting by disqualification. The only two practical situations which are causes of disqualification are difference of religion and homicide

*The Prophet (SAWS) said, "A Muslim cannot be the heir of a disbeliever, nor can a disbeliever be the heir of a Muslim." (Sahih al-Bukhari)*²⁰

Generally speaking, and this is also the majority view, a Muslim cannot inherit from a non-Muslim. Although the Hanafi fiqh does allow a Muslim to inherit from an apostate.

*Allah's Messenger (SAWS) said, "One who kills a man cannot inherit from him." (Tirmidhi and Ibn Majah)*²¹

All the jurists agree that intentional or unjustifiable killing according to Sharia is a bar to inheritance because if such people are allowed to kill and then benefit from the estate of the victim, it will encourage incidents of homicide. It should be noted that only relatives with a legitimate blood relationship to the deceased are entitled to inherit from the deceased under Islamic law. Thus, illegitimate children according to Islamic law and

¹⁹ Dr. Abid Hussain. *Overview of the Islamic laws of inheritance with the aim of increasing the awareness of the Muslim community* P.6

²⁰ Muhammad bin Ismail Abu Abdullah Al-Bukhari Al-Ja'fi. M. I. n.d. *Sahih al-Bukhariyy*. Bayrut: Darul Ibnu Kasir, Al-Yamamah. Kitab Al-faraid. Bab Maula Al-Kaum Min Anfusihim Minhum. Juz' 6:p. 2484.# 6382.

²²Ibid. p.2484 # 6384

adopted children have no part in inheritance. Incidentally legal adoption as practiced in the west is forbidden in Islam.²²

Under certain circumstances after allocation of the estate amongst all the heirs with fixed shares there is a residue left over but there are no residuary. This residue called al-radd is returned to those sharers who are entitled to it, in proportion to their original shares. Conversely a situation may arise when the total sum of the assigned shares of the heirs with fixed shares is greater than unity. In this situation all the shares are abated proportionately by the doctrine of al-awl which involves decreasing the fractional shares to a common denominator, and increasing the denominator in order to make it equal to the sum of the numerators.

Syari'ah has placed two restrictions on the testator. Firstly, to whom he can bequeath his estate and secondly, the amount that he can bequeath. The majority view is that a bequest in excess of one-third of the net estate is invalid unless consented by the legal heirs as is a bequest in favors of a legal heir.²³

²² Dr. Abid Hussain, *Overview of the Islamic laws of inheritance with the aim of increasing the awareness of the Muslim community*. p.6

²³ *Ibid.* p.8

2.1.5 THE NUMBER OF SHARES.

Causes of Inheritance	Male Shares	Female Shares
<i>Sabab</i> of marriage, <i>Nasab</i> , consanguinity.	1. Husband 2. Father 3. True grandfather. 4. Half-brother by mother (uterine brother).	5. Wife 6. Mother 7. True grandmother. 8. Daughter 9. Son's daughter 10. Full sister 11. Half-sister by father (consanguine sister) 12. Half-sister by mother (uterine sister)

TABLE OF FIXED PORTION.

Fixed portion	Of the shares under certain circumstances
$\frac{1}{2}$	Husband, daughter, son's daughter, full sister, consanguine sister.
$\frac{1}{4}$	Husband, wife
$\frac{1}{8}$	Wife or wives
$\frac{2}{3}$	Daughter, son's daughter, full or consanguine sister
$\frac{1}{3}$	Mother, uterine brother or sisters
$\frac{1}{6}$	Father, true grandfather, mother, grand mother, one or more son's daughters, one or more consanguine sisters, uterine or sister. ²⁴

²⁴ Al-Haj Monamed Ullah ibn S. Jung. 2003. *The Muslim Law of Inheritance*. n.pl: n.pb. p. 5

2.2 Implementation of Inheritance according to *Adat Papatih* in Negeri Sembilan

Adat Papatih was the democratic matrimonial *adat* law brought to Negeri Sembilan (one of the states in Peninsular Malaysia) by settlers from Minangkabau, Sumatera in Indonesia. This is different with *Adat Papatih* (which has only been practiced in Negeri Sembilan). With an inheritance law that favors the matrilineal lineage, *adat papatih* preceded all religious influences, persisting in the face of waves of patriarchal influences, interventions and even colonization by the proselytizing Dutch.²⁵

Adat Papatih was decided that son, daughter, or nephew is *Buapak* mines. *Datuk Lembaga* is the holder of the trust to heir and heritage of land. Relationship between the nephews (*anak buah*) with *Buapak* is very well. That why any conclusion taken among *Adat Papatih* society should follow the rules decided in *adat*:

*“Bulat air kerana pemetung, Bulat kata Kerana Muafakat”*²⁶

Heritage of land is the heir mines. For the children who stay at that land will be the owner of all the benefits from that land. This land cannot be selling or lease except after get the permission of their *Datuk Lembaga*. Rarely happen, this land sold to the other person. If it been sold, maybe to the near heir. It cannot be selling to other clan because the heir has responsible to throw the abashed in their inheritance as what decided in *adat*:

“Waris dekim harta nan bertuan

Penyapu arang di muka

Kalau tak sama berkoyak kulit

*Berkoyak baju pun padalah”*²⁷

²⁵ Ruzana Udin. n.d. *An Enlightened Interpretation of Shari'a Law by Referring to Local Customs Using the Example of the Malay Adat on the Law of Inheritance for Women*. <http://www.inwent.org>. (in English) p.2

²⁶ YB Tan Sri Dato' Abdul Samad bi Idris. 1984. *Adat papatih dan wilayah Negeri Sembilan*. UPM. p. 22

CHAPTER THREE

LAW AND ENACTMENT APPLICABLE IN NEGERI SEMBILAN

3.1 SOURCES OF LAW APPLICABLE IN NEGERI SEMBILAN

In Malaya, before the British period, the law of the Malays relating to property was, in Negeri Sembilan, *adat pepatih* and the other States, *adat pepatih* in decay, under monarchical influence. The monarchs were Mohammedans but their influence on the law in the main political rather than religious. It is doubtful whether they introduced any more Mohammedan law into the northern states than was introduced in Negeri Sembilan. The main difference between Negeri Sembilan and other States was that the Negeri Sembilan still retained their tribal political organization and, with it the tribal restriction on disposal of land. The other states had lost their tribal organization but the matriarchal law of succession to land survived.¹

This is because the law relating to property is more conservative than the law relating to person. The law property was wholly *adat* but it was not uniform over all the states. According to Mohammedan law as varied by local custom, this at least recognized the existence of the difficulty but it put the cart before the horse. It suggests that the Malays began as Mohammedans and later adopted variations to suit their local circumstances, whereas the historical fact is that in their pagan era they developed a body of customary law suitable to a community of agricultural peasants and later, following religious conversion, they adopted some of the Mohammedan law while retaining important parts of their customary law.

The *adat* may have developed and decayed and Mohammedan law may have been more extensively adopted and changes may also have been made by statute.²

¹ M. B. Hooker. 1970. *Reading in Malay Adat Law*: Singapore University Press. p. 163

² Ibid. p.165

According to *Adat Papatih*, heritage of land will be on name of woman heir such as daughter. It will be not named on the son. The men only have the rights in beneficial life occupancy. The sons will have the special right from maternal male relatives.

2.3 Differences between Islamic law and *Adat Papatih* on inheritance.

Conflict between Islamic law as the constitutional legal system of Malays on the one hand and traditional Adat law has emerged particularly in the field of inheritance law for women. The pre-Islamic matrilineal rural society, later in history overlaid by patriarchal Hindu and Islamic elements, had an exogamous marriage system. It was of utmost importance that land should be entailed on the women of the tribe since they constitute the permanent members of the customary society. Under customary Papatih law, this led to a pattern of land inheritance through the female line. The male members are excluded from inheritance. They marry into another tribe and here their wives will already have a piece of land. Unmarried males have the right to life occupancy over the property of their mothers.²⁸

This system is an expression of women's predominant social obligation to supply livelihood to their dependants. Contrary, under the imposed Islamic law female heirs only inherit half of the share of male heirs. This reflects the situation in the traditional Arab society, where it is the obligation of the husbands, fathers and sons to supply livelihood to the female members of their family. The patriarchal Islamic concept is alien to the matrilineal tradition of the Malay society. "Sisters in Islam" keep pushing for a more enlightened interpretation of Islamic rules in line with the social reality. The practice of customary *adat law* regarding the distribution of the inheritance should be reinforced. Being a Muslim should not mean to put aside custom and local culture.²⁹

²⁷ Ibid. p. 22

²⁸ Ruzana Udin. n.d. An Enlightened Interpretation of Shari'a Law by Referring to Local Customs Using the Example of the Malay Adat on the Law of Inheritance for Women. <http://www.inwent.org>. (in English) p.4

²⁹ Mohd Ridzuan Awang. 1984. undang-undang dan Pentadbiran Harta Pusaka Orang Islam di Mlaysia. A-Rahmaniah. p. 149

The male members of the tribe are by custom excluded altogether from the customary inheritance. But they are not otherwise dissatisfied with the state of affairs, as they are compensated through the system of the tribal exogamous marriage. When a man marries into another tribe, his wife will already have had a piece of *sawah* (paddy-field) as her share of the customary holding. He thus "need only hang up his hat", as the English expression goes. Unmarried males have the right of life occupancy over the property of their mothers. In this sense, the female proprietary rights are but a system of trusteeship of land in favors of the female as well as the male members of the tribe.

First, this is not a general rule. There are any number of possible scenarios in which a female heir receives more than any male heir, or even than all male heirs combined. This one-half rule only applies when male and female heirs are of the same class (e.g., they are both children of the deceased or something similar). Moreover, the rule does not apply to every case when there are male and female heirs of the same class. For example, if the two heirs are the parents of the deceased, they receive the same share.³⁰

Whether in Islamic Law of Inheritance stated that males and females of equal degree and class. This means that a son inherits a share equivalent to that of two daughters, a full (germane) brother inherits twice as much as a full sister, and a son's son inherits twice as much as a son's daughter and so on. This principle is however, not universally applicable as we shall see later in verse of Al Qur'an³¹ the descendants of the mother notably the uterine brother and uterine sister inherit equally as do their descendants.

Second, male heirs have a financial obligation that female heirs do not, namely, the male heirs are required to support the female heirs while female heirs are never required to support anybody. In other words, because the male heirs have extra financial needs, they get extra money to fulfill those needs. In practice, the male heir may have less money left after spending it on his dependents than the female heir has. In that case, it's

³⁰ Ibid. p.151

³¹ Al-Qur'an verse 4:12

the female heir who comes out ahead in the end, if the object is to have the largest amount of discretionary money through inheritance.³²

³² Ruzana Udin. n.d. *An Enlightened Interpretation of Shari'a Law by Referring to Local Customs Using the Example of the Malay Adat on the Law of Inheritance for Women*. <http://www.inwent.org>. (in English) p.5

On the death of the first Malay owner of registered land therefore leaving a widow, a son, a daughter, a father, and a sister, they had to settle the succession among themselves (with or without the aid of some local elder) or else litigate the matter under the Land Enactments. Collector knew that the parties were Mohammedans but he also knew that the Mohammedan law was treated as capable of variation by local custom. Dispute were rare and where a difficulty arose it was in practiced often Bridged by the local *Kathi* declaring a rule of adat to be a rule of Mohammedan law.³⁵

The relevant Enactments of Negeri Sembilan were then exactly the same as those of the other states. They provided a procedure by which the collectors transmitted the land of the deceased holder to his or her heirs but there was no statute which decided, or even assisted in deciding, what the substantive law of Inheritance was. In fact adat was applied because, whether the collectors relied it or not, it was the personal law of the family. It is different with the other states. However this important difference between the personal law of Negeri Sembilan and that of the other States, A tribal holder could not sell her land to any person, of any race without first offering it to her own family and tribe, whereas a Malay who was not a member of a tribe could sell at will.³⁶

In some circumstances, the Customary Tenure Enactment of 1999 was passed. Its express object, as appears from the preamble, was to prevent registration of title from impeding due observance of the custom. The motive of legislature, however, was to make use of the custom as a means of carrying out the policy which was, three years later, embodied in the federal *Malay Reservations Enactment*.³⁷

³⁵ Ibid. p.165

³⁶ Ibid. p.167

³⁷ Ibid. p.168