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Submitted in partial fulfilment of
the requirement for the Diploma-in-Law
at the Institut Teknologi Mara

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ABSTRACT

The Islamic Law; on wills is an important area of law which has often been the subject of misinterpretation. This is so because Muslims themselves tend to take things for granted and when making bequests, no advice is sought and even where advice is given, it may happen that the will still does not comply with the requirements of Islamic Law. As such I feel that before dicussing the application of tne Islamic Law of wills in Malaysia, it Is important to lay down the main principles and requirements of the law. In the first chapter of this paper I have discussed the principles by sub-dividing the various requirements as seen from the general point of view.

Uith regard to the Islamic Law of wills as applied in Malaysia, it must be remembered that the law varies from one state to another. 3y this I mean that one must take into consideration the influence of English Law and also the impact of Customs or Adat which have been deeply entrenched in the minds of the people for generations. The Lav; as it stands today is by no means satisfactory and I have observed the views of our own local experts on the subject. *Tine* position in Penang ought to be given special attention because there a will made by a Muslim Is valid notwithstanding the fact that it contravenes Islamic principles. Adat also plays a very important role in the lives of Malaysians and in relation to •Jills, the lav; as enunciated by Adat often conflicts with Islamic Lav;.

It must also be bourne in mind that the Mills Ordinance 1959 has no application to Muslims in Malaysia.

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BISMILLAH AL-RAHHAU AL-RAHIM

GENERAL PRINCIPLES PERTAINING TO THE ISLAMIC LAW OF WILLS

Introduction.

A will is defined by Osborn as a disposition or declaration by which the person making it (the testator) provides for the distribution or administration of property after his death. It is always revocable by him.¹

Under Islamic Law, a will or wasiyya is defined as a transfer to come into operation after the testator's death. The testor is called Muss^and the legatee is called Kusalahu, and the executor is called Wasj. It is a spiritual testament of a man enabling him to make up his shortcomings in the worldly life and securing rewards in the Hereafter².

"A will from the Kussulman's point of view is a divine institution, since its exercise is regulated by the Quran. It offers to the testator the means of correcting to a certain extent the law of succession, and of enabling some of those relatives who are excluded from inheritance to obtain a share in his goods, and of recognizing the services rendered to him by a stranger, or the devotion to him in his last moments. At the same time the Prophet has declared that the power should not be exercised to the injury of the lawful heirs".

Before the coming of Islam, a man had almost unlimited power of disposing of his property. The Quran has laid down clear and

specific rules for the distribution of property and thus, it was thought undesirable for man to interfere with Allah's ordinances. However, Bukhari reports a hadith laying down that a Muslim who possesses property should not sleep even for two nights unless he has made a written will.³

The sources of the law of bequests⁴ under Islamic Law is the Quran. In the verse known as the "verse of bequests" which represent historically the first Islamic regulation on the subject is as follows:

"It is prescribed when death approaches any of you, if he leave any goods, that he make a bequest to parent and next of kin, according to reasonable usage this is due from the God-fearing". Quran 2 : 180

It is also commended by the Sunnah that every Muslim should make a will and appoint testamentary executors to see to the payment of the testator's debts, the payment of legacies and the guardianship of his infant children.

Form of Will.

No particular form for the making of wills is prescribed in Islamic Law. Writing is not necessary and an oral will is legally valid. Any words or indeed signs may be used provided they clearly indicate the testator's intention that the property should pass to