



MahWengKwai & Associates

ADVOCATES AND SOLICITORS

Syariah Estate Planning : Introduction to the Law of Inheritance for Muslims Faraid and

BY SARAH KAMBALI & ANIS MOHD SOHAIMI

24 April 2020



DATO' MAH WENG KWAI
CONSULTANT



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About Us

- Welcome to MahWengKwai & Associates!
- Trusted by small medium enterprises (SMEs), family businesses and individuals.
- Established in 1985 by Dato' Mah Weng Kwai, now a consultant with the firm.
- Medium-sized law firm with 22 lawyers and 19 staff.

Our Services

- Full-service law firm with 4 Departments:
 - Corporate
 - Dispute Resolution
 - Employment
 - Individuals & Families

Our Practice Groups

- 5 Practice Groups:
 - ASEAN-China Desk
 - Construction
 - Foreign Direct Investment
 - Real Estate
 - Sports & eSports

MWKA Online Talks

- To share knowledge, raise awareness, encourage networking
- For clients, potential clients, in-house counsel
- Recent MWKA Online Talk:
 - 22.4.2020: Introduction to Construction Adjudication in Malaysia (in Mandarin)
- Upcoming MWKA Online Talk:
 - 27.4.2020: How to deal with the Impact of the MCO on Commercial Contracts?

Anis Mohd Sohaimi



- Associate in our Dispute Resolution, Employment/ Industrial Relations and Individuals & Families departments.
- Bachelor of Laws (Honours) from International Islamic University Malaysia.
- Admitted to the Malaysian Bar in 2018.
- Involved in advising on Syariah Estate Planning matters such as drafting Wasiat and understanding Faraid.
- Areas of practice include general litigation, debt recovery, Joint Management Body disputes, employment matters, land matters, banking litigation and intellectual property.

Sarah Kambali



- Partner in our Real Estate Practice Group and Syariah Estate Planning.
- Bachelor of Laws LLB (Hons) from the International Islamic University of Malaysia and Postgraduate Diploma in Syariah Law and Practice from the Universiti Teknologi MARA (UiTM).
- Admitted to the Malaysian Bar in 2007.
- Involved in Real Estate transactions and Syariah Estate Planning advice.
- Real Estate transactions include: drafting Sale and Purchase Agreement, transfer of property during lifetime and death, drafting tenancy agreement, reassignment or discharge of property.
- Syariah Estate Planning advice includes: advising on and drafting of Wasiat, preparation and execution of Hibah, understanding of Faraid.
- Member of the Selangor Bar Conveyancing Practice Committee and the Kuala Lumpur Bar Corporate and Conveyancing Committee.

Ask Questions on Slido



Please scan this QR Code to access Q&A and polling platform for this talk.

Post the questions that you would like to ask.

Upvote/Like the questions you like. Most liked / popular questions will be discussed and answered by the speaker(s) during the Q&A session.

Or visit <https://www.sli.do>
and enter [#76494](#)

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Talk Points

- What is Faraid?
- Who are Quranic Heirs?
- What are the basic portions of Quranic Heirs?
- Why are there Quranic Heirs that do not inherit?

Covid-19 Movement Control Order (“MCO”)

- Pursuant to section 11(2) of the Prevention and Control of Infectious Diseases Act 1988 (“PCID”)
- PCID (Measures within the Infected Local Areas) Regulations 2020 was gazetted on 18.3.2020
- Effective 18.3.2020 to 28.3.2020 and further extended to 12.5.2020
- Effect - restrictions on movements except for essential services

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What is Faraid?

BY ANIS MOHD SOHAIMI
Legal Associate

24 April 2020

What is Faraid?

- Succession is known as *faraid*.
- *Faraid* denotes the fixed shares of inheritance allocated to various relatives (legal heirs) in the Surah An-Nisa' (4:11,12,176) of the Quran, *Sunnah* and *Ijma'*.
- *Faraid* provides a systematic distribution of property upon the death of a muslim and ensures that the surviving dependents and relatives of a deceased person will benefit from his estate.



Death

Burial expenses

**Settlement of
Debts & Wills
(*Wasiat*)**

**Distribution
according to
*faraid***

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Historical Background

Pre-Islamic Period

- System was designed to keep property within a tribe to maintain its strength as a fighting force.
- Patriarchal.
- Grounds for inheritance: participation in war, oath and adoption.

Introduction of Law of Succession during Islamic Period

- Based on blood relationship and marriage.
- Both men and women could inherit.
- Parents and children will surely get their share.
- Abolished all previous grounds of inheritance.
- Grounds of inheritance: blood ties, marriage, patronage (emancipation of slave by slave master), escheat (reverts to the State/*baitulmal* in default of heirs)

Steps in Faraid



**Identify family members →
Legal Heir?**

Impediments

Division

**Calculation
and
determination**

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Who are Quranic Heirs?

BY ANIS MOHD SOHAIMI
Legal Associate

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Who are Quranic Heirs?

The portions of legal heirs are mentioned either in:

- the Quran in Surah An-Nisa' (4:11,12,176);
- Sunnah; or
- Ijma'

Quranic Heirs refers to heirs whose entitlement to portion of the deceased's property is expressly stated in the Quran.

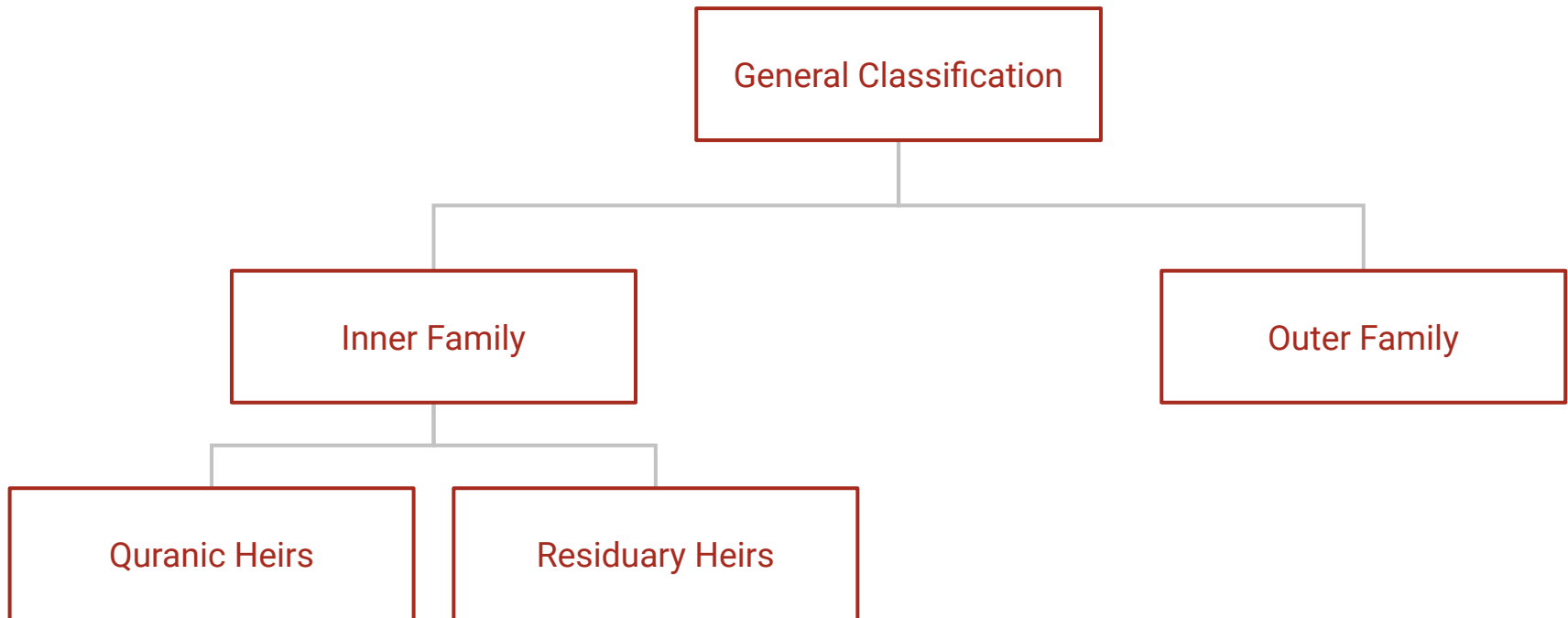
Surah An-Nisa' (4:11,12,176)

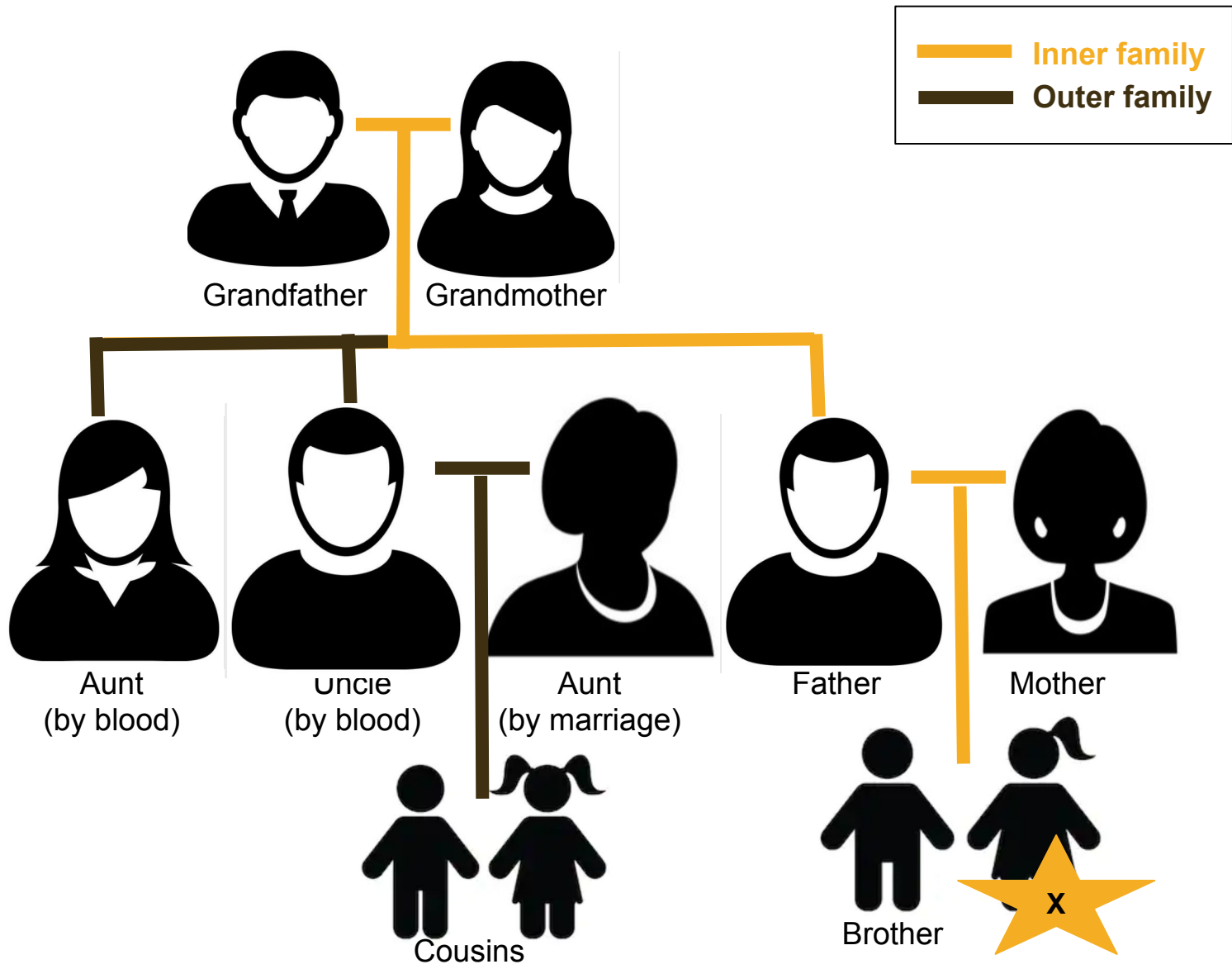
- Allah instructs you concerning your children: for the male, what is equal to the share of two females. But if there are [only] **daughters**, two or more, for them is two thirds of one's estate. And if there is only one, for her is half. And for one's **parents**, to each one of them is a sixth of his estate if he left **children**. But if he had no children and the parents [alone] inherit from him, then for his **mother** is one third. And if he had **brothers [or sisters]**, for his mother is a sixth, after any bequest he [may have] made or debt. Your parents or your children - you know not which of them are nearest to you in benefit. **[These shares are] an obligation [imposed] by Allah**. Indeed, Allah is ever Knowing and Wise.
- And for you is half of what your **wives** leave if they have no child. But if they have a child, for you is one fourth of what they leave, after any bequest they [may have] made or debt. And for the **wives** is one fourth if you leave no child. But if you leave a child, then for them is an eighth of what you leave, after any bequest you [may have] made or debt. And if a man or woman leaves neither **ascendants nor descendants** but has a **brother or a sister**, then for each one of them is a sixth. But if they are more than two, they share a third, after any bequest which was made or debt, as long as there is no detriment [caused]. [This is] an ordinance from Allah, and Allah is Knowing and Forbearing.

Surah An-Nisa' (4:11,12,176)

- They request from you a [legal] ruling. Say, " Allah gives you a ruling concerning one having neither descendants nor ascendants [as heirs]." If a man dies, leaving no child but [only] a sister, she will have half of what he left. And he inherits from her if she [dies and] has no child. But if there are **two sisters** [or more], they will have two-thirds of what he left. If there are both **brothers and sisters**, the male will have the share of two females. Allah makes clear to you [His law], lest you go astray. And Allah is Knowing of all things.

Classification of Legal Heirs

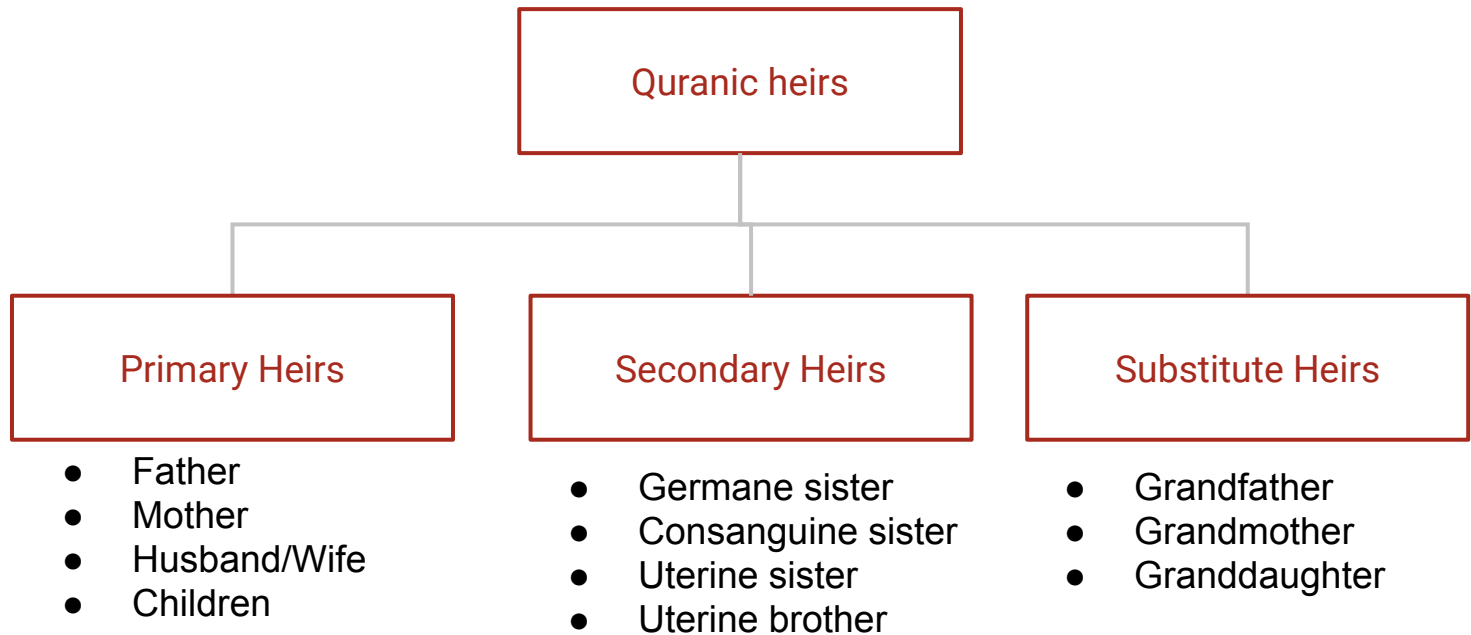


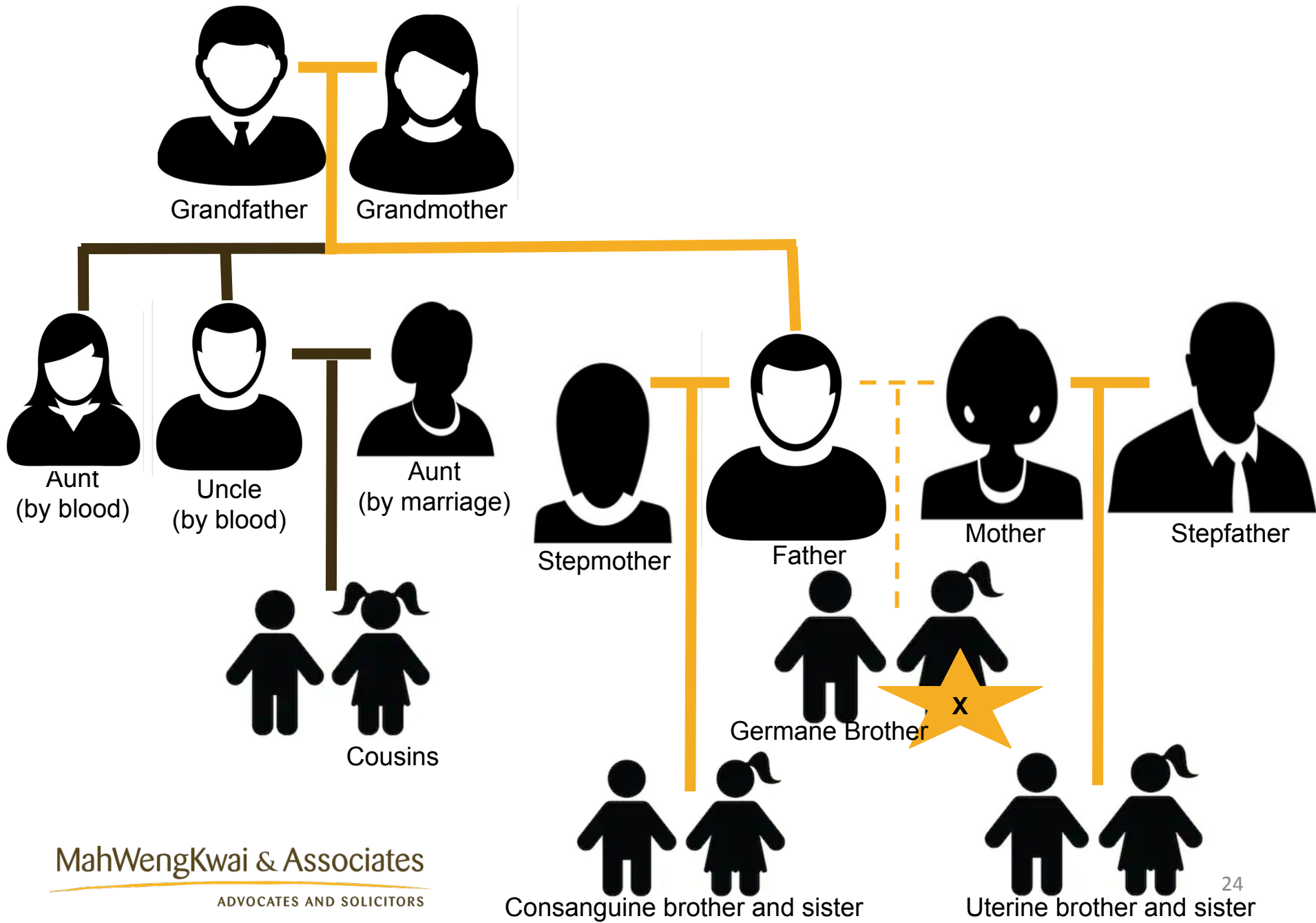


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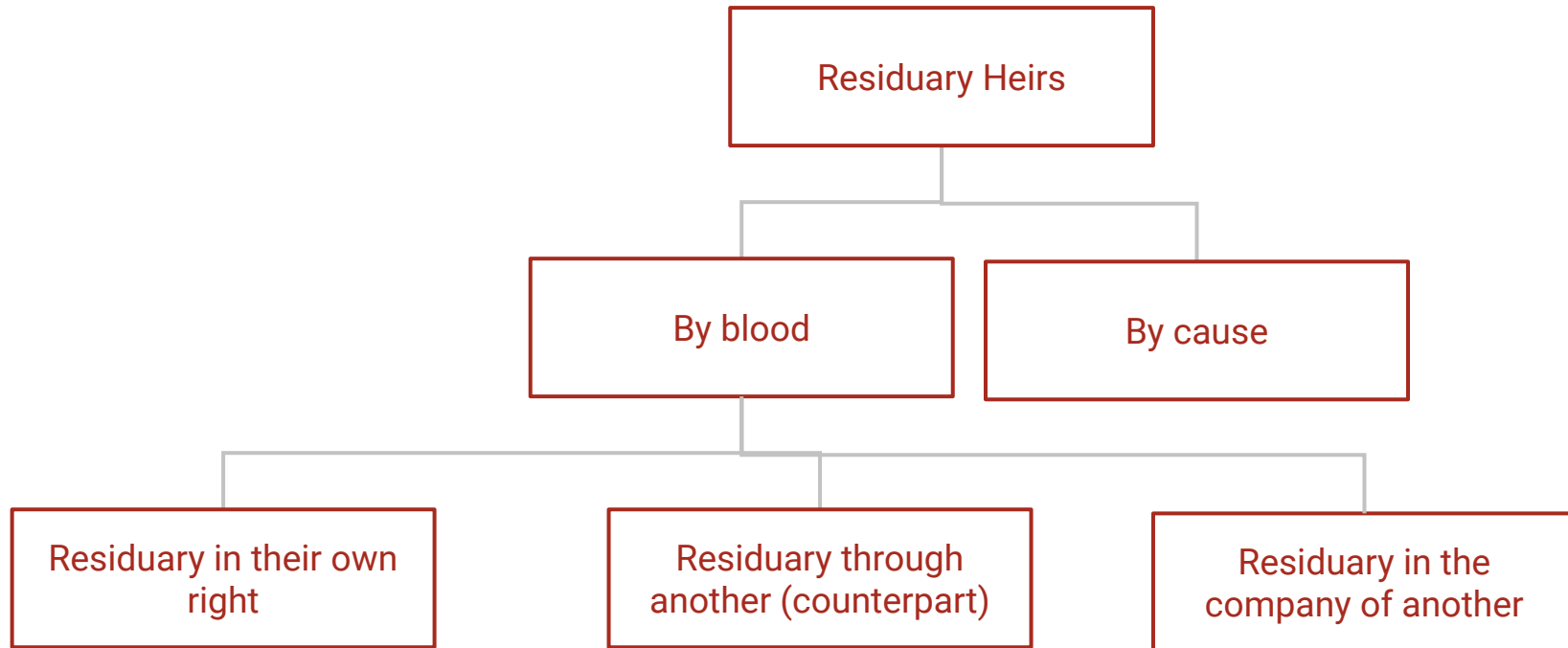
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Classification of Legal Heirs





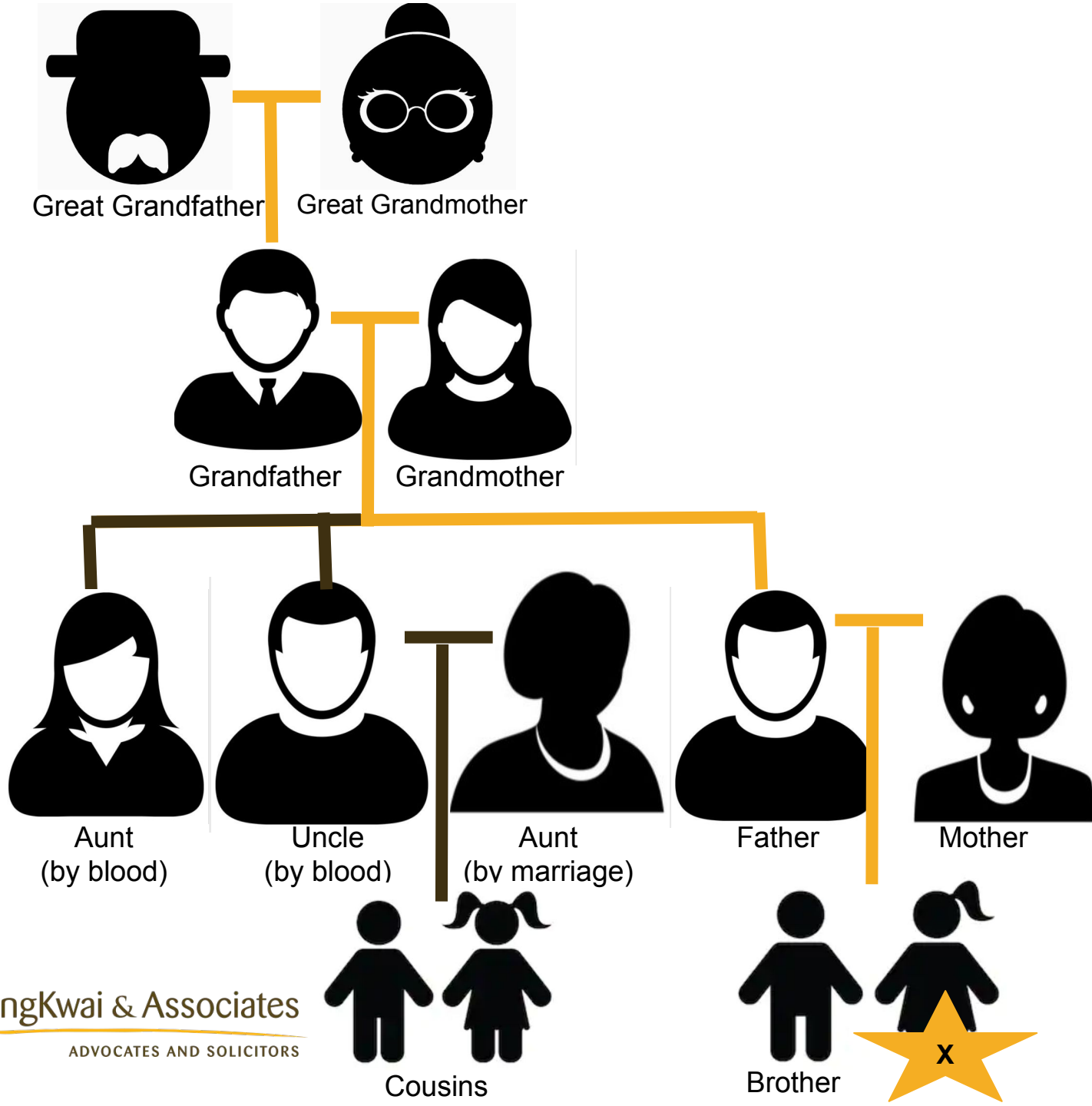
Classification of Legal Heirs



1. Son
2. Grandson (h.l.s.e.)
3. Father
4. Paternal grandfather (h.h.s.e.)
5. Germane brother (GB)
6. Consanguine brother (CB)
7. Son of GB (nephew) (h.l.s.e.)
8. Son of CB (nephew) (h.l.s.e.)
9. GB of Father
10. CB of Father
11. Son of GB of Father (cousin) (h.l.s.e.)
12. Son of CB of Father (cousin) (h.l.s.e.)

1. Daughter
2. Son's daughter
3. Germane sister
4. Consanguine sister

1. Germane sister
2. Consanguine sister



Steps in Faraid



Grounds of Inheritance: Blood ties

- Illegitimate child
 - Cannot inherit from father
 - Can inherit from mother - illegitimacy not an impediment for inheritance
- Adopted child
 - Cannot inherit unless they are related
- Suckling - Cannot inherit.

Grounds of Inheritance: Marriage

- Subsisting regardless of whether the marriage is consummated or the first/subsequent marriage/marriages.
- Marriage is considered subsisting if it is revocable divorce and spouse dies within the period of *iddah*.
 - However if the wife is divorced shortly before husband's death and without consummation, she is not entitled to inherit from him as she is not required to observe her *iddah* period.

Steps in Faraid



What property may be distributed according to *faraid*?

- Property acquired by the deceased during his lifetime.
- Debts due to the deceased.
- Subject to conditions: EPF, Tabung Haji, Takaful

What cannot be included in the distribution?

- Property held on trust.
- Khairat kematian.
- Pension (after death).
- Derivative gratuity upon death.
- Jointly acquired property.

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What are the basic portions of Quranic Heirs?

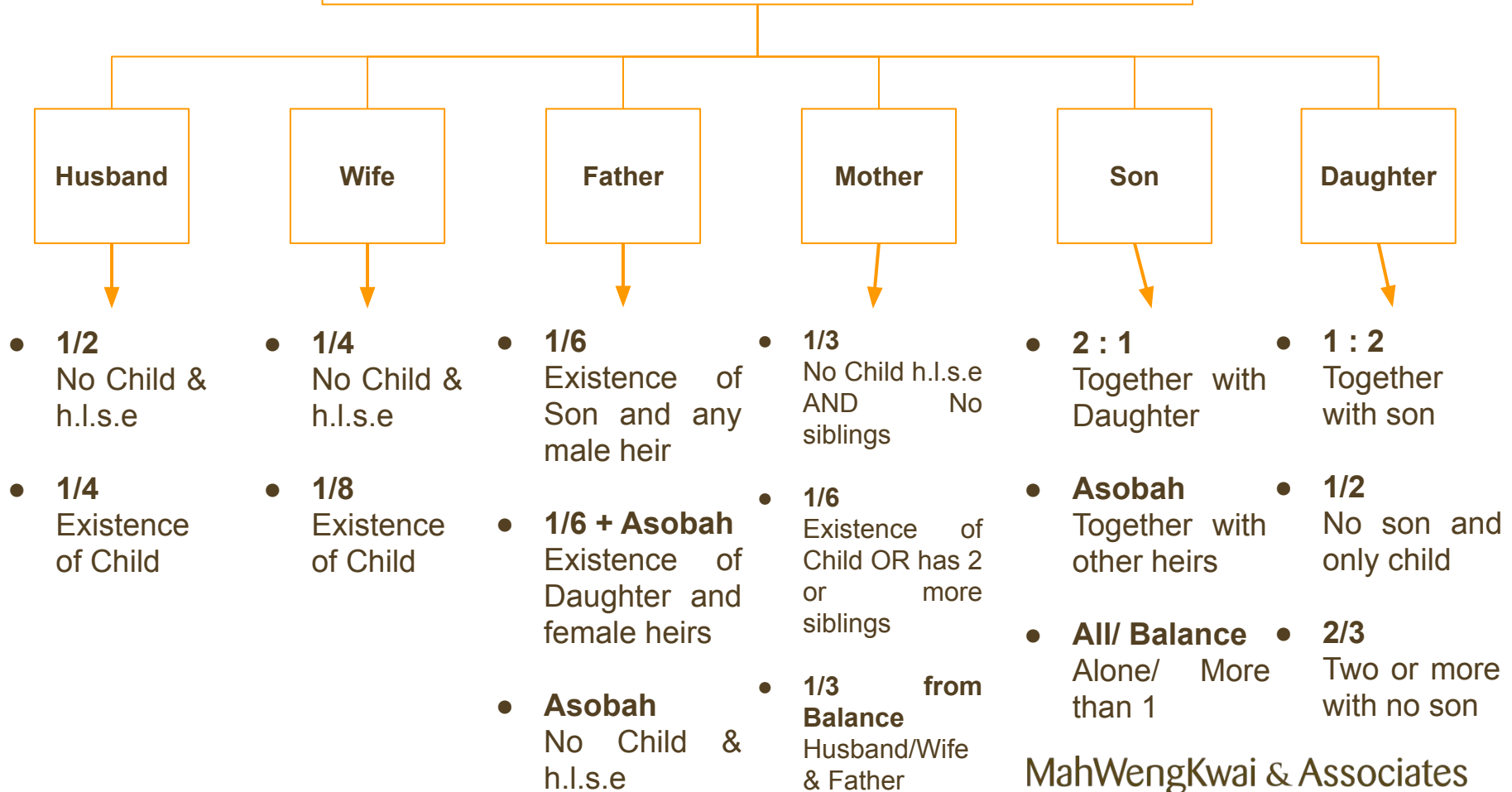
BY SARAH KAMBALI

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Basic Portions in Faraid.

Portions in Quran



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Why are there Quranic Heirs that do not inherit?

BY SARAH KAMBALI

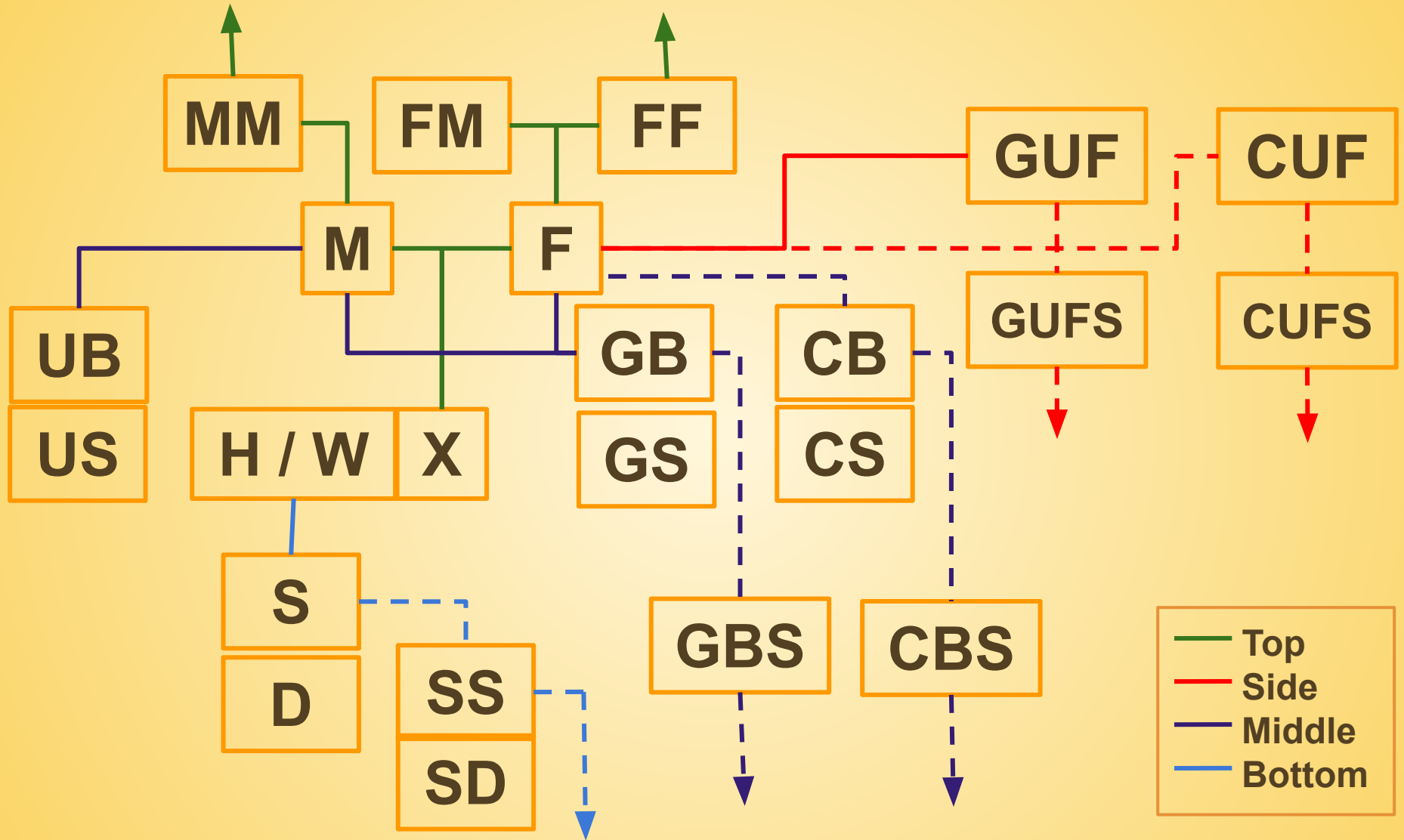
Partner, Real Estate Practice Group & Syariah Estate Planning

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Inability of inheritance...

- Stopped by other stronger blood ties
- Deliberate/Intentional murder.
- Difference of religion at the time of testator's death (conversion/apostasy).
 - In *Re Timah bte Abdullah* [1941] MLJ 52, the Court held that where a convert dies and her only next of kin are non-muslims, the estate will go to the *baitulmal*.
 - *Majlis Agama Islam Wilayah Persekutuan lwn Lim Ee Seng dan Satu Lagi* [2000] 2 CLJ 597 - the Court finds that the defendants were non-Muslims and the prayers jeopardize the rights of Muslim heirs.
- Slavery.
 - A slave cannot inherit any property as he has no right, everything belongs to the master.

Heirs according to Faraid



Heirs According to Faraid

Keys:-

1. X - Deceased
2. H / W - Husband / Wife
3. F - Father
4. M - Mother
5. FF - Father's Father (Grandfather)
6. FM - Father's Mother (Grandmother)
7. Mother's Mother (Grandmother)
8. S- Son
9. D - Daughter
10. SS - Son's Son (Grandson)
11. SD - Son's Daughter (Granddaughter)
12. GB - Germaine Brother
13. GS - Germaine Sister
14. CB - Consanguine Brother
15. CS - Consanguine Sister
16. GBS - Germaine Brother's Son (Nephew)
17. CBS - Consanguine Brother's Son (Nephew)
18. UB - Uterine Brother
19. US - Uterine Sister
20. GUF - Germaine Uncle, Father's Side
21. CUF - Consanguine Uncle, Father's Side
22. GUFs - Germaine Uncle, Father's Side's Son (Male Cousin)
23. CUFs - Consanguine Uncle, Father's Side's Son (Male Cousin)

Heirs not included in Faraid

1. Grand-daughter from Daughter's Side
2. Great Grand-daughter
3. Niece from GB or UB or CB
4. Niece or Nephew from GS or US or CS
5. All Aunts
6. All Uncles from Mother's Side
7. All Female Cousins

Mr/Mrs/Ms X Dies, leaves

Heirs	Yes / No	Reason	Portion
Father	Yes		$\frac{1}{6}$
Mother	Yes		$\frac{1}{6}$
Grandfather (Father)	No	Father	0
Grandmother (Mother)	No	Mother	0
Daughter	Yes		1 portion
Son	Yes		2 portion
Grandson (Son)	No	Son	0
Granddaughter (Son)	No	Son	0

Mr/Mrs/Ms X Dies, leaves

Heirs	Yes / No	Reason	Portion
Mother	Yes		$\frac{1}{6}$
Grandmother (Father)	No	Mother	0
Grandmother (Mother)	No	Mother	0
Daughter	Yes		$\frac{1}{2}$
Germaine Brother	Yes		2 portion
Germaine Sister	Yes		1 portion
Consanguine Uncle (Father)	No	Germaine Brother	0
Germaine Uncle's (Father) Son	No	Germaine Brother	0

Questions?

Upcoming Talks

Date	Topic	Speakers
27 April 2020 (Monday)	Impact on Commercial Contracts during Covid19	Cassandra Nicole Thomazios & Tommy Wong
29 April 2020 (Wednesday)	Resolving Construction Disputes Via CIPAA 2012	Hannah Patrick & Christine Toh
4 May 2020 (Monday)	Unfair & Constructive Dismissal Claims Due To Pay Cuts and Retrenchment	John Chan



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Thank you!

Notice: This presentation does not constitute legal advice and its contents should not be relied upon as such. The facts and circumstances of each and every case will differ and therefore will require specific legal advice. Feel free to contact us for complimentary legal consultation.

Complimentary Consultation



Schedule a complimentary 30 minute video-consultation with our lawyers by filling up the form at

<https://mahwengkwai.com/schedule-a-meeting/>

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