

**Office of Deputy Dean (Research and Postgraduate)
Kulliyah of Economics and Management Sciences
International Islamic University Malaysia**

MEMORANDUM

To : All KENMS Academic Staff and Postgraduate Students

From : Dr. Hafiz Majdi Ab. Rashid
Deputy Dean (Research and Postgraduate)

Date : 6th December 2005

Subject : **PRESENTATION OF MASTERS DISSERTATION / RESEARCH PAPER**

Dear Prof. / Assoc. Prof. / Dr. / Br. / Sr.

السلام عليكم ورحمة الله وبركاته

The presentation of the following student has been scheduled as follows:

Date / Day/ Time / Venue	Presenter / Students no / Programme	Supervisor(s)	Title
16 th December 2005 (Friday) 03:30 pm Seminar Room 3, Level 1, KENMS	Hisham Hj Yaacob G0323385 MSC ACC	Dr. Shahul Hameed Hj Ibrahim	WAQF ACCOUNTING IN MALAYSIAN STATE ISLAMIC RELIGIOUS INSTITUTIONS: THE CASE OF FEDERAL TERRITORY SIRC

All are invited to attend the presentation. Thank you. والسلام

WAQF ACCOUNTING IN MALAYSIAN STATE
ISLAMIC RELIGIOUS INSTITUTIONS: THE CASE OF
FEDERAL TERRITORY SIRC

BY

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CHAPTER 1

INTRODUCTION

1.1 Background of the study

The revivification of Islam in the late twentieth century, especially in Malaysia (Yousif, 2004), has created great demands for the Muslim Ummah to align in every aspect of their life with Islam, as promulgated by Islamic teaching. This is the practicalization of the concept of *Tawhid*,¹ an Arabic term which literally means, “making one” or “unifying”, which refers to the ‘oneness of God’. This implies a total submission to the will of God (Baydoun and Willet, 1997). In this worldview, Allah (*s.w.t.*) created human beings as the *Khalifah* (vicegerence), to act as God’s trustee in this world. Therefore, human beings’ conduct should be guided by the aim of attaining the pleasure of Allah (*s.w.t.*) to achieve *falah* (success) in this world and in the hereafter (see Abdalati, 1988; Chapra, 1992; Bilal Philips, 1994).

Based on the concept of *Tawhid*, Islam views wealth (*Maal*) differently compared to the conventional Western views on property. There are at least two elements to determine wealth from the Islamic worldview²; (1) something that may be kept, accumulated and owned, and (2) something that is useful and beneficial (Nik Mohd Zain and Azimuddin,

¹ *Tawhid* is the proclamation of Allah (*s.w.t.*) as the only God and it is the essence of the Islamic faith (Prayitno, 2003). Indeed, there is no mention of the term in the *Qur’an*.

² Western worldview is a separation of the sacred and worldly matters, whereas an Islamic worldview encompasses both *al-dunya* (worldly) and *al-akhirah* (the hereafter) in which the *dunya* is profoundly inseparable from the *akhirah* (Al Attas, 2001; see also Shahul, 2000).

1999). Islam upholds justice and fairness in the distribution of wealth. It is one of the obligations of the human beings, as the *Khalifah*, to manage wealth responsibly (waqf, for instance) as trustee³. The proper management of wealth is essential because man will be held accountable in the hereafter for his duties in this world⁴. Since wealth in Islam is considered as the factor of production from the economic point of view, the hoarding of wealth is strongly prohibited (Syafei et al., 2004). Thus, to encourage circulation of wealth, all wealth that is not utilized for a period of one year with certain *nisab* (value) will be liable for *zakat* at a prescribed rate by the *shari'ah*⁵ (Syed Othman, 1986). Circulation of wealth (through waqf) contributes to the socio-economic strength and stability of the *Ummah*. Therefore, waqf (endowment) is encouraged in Islam.

Waqf is derived from the root word "*waqafa*" which literally means "confinement and prohibition" or causing a thing to stop or stand still (Hassan, 1984). There are many definitions of waqf; however, we are going to look at only a few of them. The first is by Sheikh Abu Zahra who defines waqf as "the non-negotiability of property ownership which is of employable value, and the directions of its benefits to a certain charitable purpose, once and for all" (Hassan, 1984). Another classical definition by *Qadi* Abu Yusuf, which has been adopted by a vast majority of Hanafi *fuqaha* (scholars), regards waqf as "taking the corpus of any property, out of the ownership of oneself, transferring it

³ In Islam, Allah (*s.w.t.*) is the ultimate owner of all wealth; ownership by individuals is an *amanah* for people as God's trustees (Mirza and Baydoun, 2000). The same concept applies in waqf as the *mutawalli* is a trustee in managing the waqf property (*maal*), therefore, the *mutawalli* is accountable for discharging the *amanah* given to him by the *waqif*.

⁴ Further elaboration on the concept of accountability is presented in Chapter Four.

⁵ Chapra and Khan (2000) define the *shari'ah* as the divine guidance, which is given by the *Qur'an* and the *Sunnah* and embodies all aspects of the Islamic faith, including beliefs and practices.

permanently to the ownership of Allah (*s.w.t.*), and dedicating its usufruct to others” (Hashmi, 1984).

Meanwhile, according to Kahf (1998), Waqf may be generally defined as the holding of an asset (*Maal*) and preventing its consumption for the purpose of repeatedly extracting its usufructs for certain righteous benefit as predetermined by the waqf founder (*waqif*). Qasmi (1999) gives a much simpler meaning, waqf means tying up the *asl* (subject matter of the waqf property) and utilization of usufruct for the purposes recognized by the Islamic *shari'ah* as pious and sacred. Hence, it can be generalized from the waqf definitions that once a property becomes a waqf, its ownership is transferred to Allah (*s.w.t.*) and the usufruct is allocated for pious purposes in accordance with the Islamic *shari'ah*.

In this study, only the waqf⁶, which is a pious foundation, is taken into consideration as it could provide the solution to many of the social and economic problems of the Muslims. Examples of the social and economic problems include poverty alleviation (Sadeq, 2002; Hoexter, 1998) and capital financing (Cizakca, 1998). However, the Muslims of today are ignorant and have not paid much attention to waqf. Undoubtedly, waqf has a huge potential to develop the Muslims' economy (Nik Mustapha, 1999). However, the lack of research on contemporary issues surrounding the waqf hinders the effort to develop and sustain the waqf in the most effective and efficient way. It is, indeed, very stimulating to discover that the waqf has played such an important rôle in the Muslim community in the

⁶ Waqf is also known as *bonyad* or *habs* or *habous* in Iran and North Africa (Cizakca, 1998).

past and it is self-sustainable. That means the government need not find the funds to finance public goods that have been provided by the waqf institution, for example, hospitals⁷, education (a good example is the Ayyubid and the Mamluk⁸ Waqf Institution for schools in Palestine, as quoted in Kahf, 1994), the construction and maintenance of public goods apart from other common utilities such as *Masjid* and roads (Cizakca, 1998; Nasution, 2002).

In fact, long before the establishment of Western education, Islamic education was provided free to those who wanted to seek knowledge and even the teachers were also paid from the waqf fund. In the early Madinah state, the institution of waqf (non-profit trust) was also established to provide free drinking water to the poor and the inhabitants of the state (Kahf, 1994; Sadeq, 2002; Razali, 2004). The waqf fund has also been used to provide interest-free financial aid to the poor and destitute.

Even though there has been many studies in waqf i.e. Razali (2004); Khalid (2002); Haque (2002); Nasution (2002); Nik Mustapha (1999); Mahmood (1999), research on the financial management and accounting of waqf has failed to be the subject of contemporary studies except for a few (Hoexter, 1998; Abdul Rahim et al., 1999; Siti Rokyah, 2004). Recent developments in Islamic economics, accounting and finance have seen that waqf has been reemphasized. To date, in Peninsular Malaysia, the SIRC's are

⁷ Yedyildiz (1996) provides an example that Ahmed Shah and Turan Melek founded a waqf complex consisting of a hospital (*darussifa*) and a *Masjid* during the Mengujeks' time between 1228 and 1231.

⁸ An example of a school founded by a scholar in Mamluk times is the Madrasa al Jawhariyya, founded by Qadi Abu al Tahir Abbas al-Tamimi al Jawhari. The document in which the foundation is recorded comprises seven waqf deeds (*Kitab al-waqf*), dating from 1277 until 1310. The *waqfiyyas* show a combination of an endowment for the benefit of the family and descendants of the founder and the upkeep of an institution serving public interests (Van Leeuwun, 1999, p.79).

maintaining the waqf accounts by incorporating them into their financial statements. There is no proper recording of waqf assets and liabilities, revenues and expenses. The worst-case scenario is that SIRC's do not even keep up-to-date waqf accounts (Abdul Rahim et al., 1999).

It is a fact that accounting is one of the tools to properly manage wealth, but it must be done in accordance to the *shari'ah*. Akram Khan (1994a) asserts that the accounting needs, in an Islamic society, should be based on the concept of *Tawhid*, where the concept of *Khalifah* is derived. Men as the *Khalifah* (vicegerent or trustee) of Allah (*s.w.t.*) have been granted a certain amount of freedom⁹ to conduct their affairs with justice and benevolence to fulfill the stewardship role towards the Creator and fellow mankind.

It can be inferred here that even in accounting for waqf¹⁰, the *shari'ah* must be fully abided by. Though it is understood that the complete structure of "Islamic accounting" is not in place yet, this is not an excuse as to why the waqf accounts should not follow the existing guidelines on Islamic accounting i.e. AAOIFI. Hence, the adoption of conventional accounting in the whole aspect of the waqf accounts is seen as inappropriate as there are a lot of differences between an Islamic entity and the non-Islamic entity especially in terms of their objectives. The basic difference, according to Akram Khan (1994a), is that the implicit assumptions of conventional accounting are to enhance the

⁹ Freedom in this context does not mean absolute freedom, that is, man can do whatever they want. All the Islamic jurists and scholars attested that the *shari'ah* is the rule of law for man (see Naqvi, 1981).

¹⁰ Since the word waqf has become part of the English language, it will not be italicized in this study (source: Cizakca, 1998) except for a special noun i.e. *waqf al awlad*.

framework and spirit of capitalism¹¹ which are: property is privately owned, and business is to maximize profit. Hence, according to conventional economics, human beings are assumed to be selfish and, therefore, will maximize their own satisfaction and interest rather than the interest of society (Shahul, 2000).

Baydoun and Willet (2000) further assert that there is a clear separation between the economic activities with religion in the West. The West accepted the 'survival of the fittest' as the best rule for long-term strategy. All the above ideologies influence the concepts of conventional accounting. On the other hand, Islam suggests that cooperation i.e. in economics, for existence should be the way of life in line with the concept of *Tawhid* (Nik Mustapha, 1999).

It has been understood from the *Qur'an* that *riba'* (usury) is prohibited in any transaction¹² (Mirza and Baydoun, 2000). However, business or trade is permitted, and that trade is not the same as *riba'* is emphasized very clearly in the *Qur'an* (*Surah Al Baqarah*, 274-275). Therefore, accounting which serves as a tool to record and report transactions, particularly waqf transactions, must adhere to the *shari'ah* guidelines and the engagement of *riba'* based activities is prohibited in waqf. As waqf is involved with social and economic agenda for the *maslahah*, there are two general objectives of social accountability and full disclosure that should underlie the preparation of any Islamic corporate report (Baydoun and Willet, 1997), especially the waqf report. The objectives of Islamic accounting will be discussed further in the fourth chapter.

¹¹ Also known as 'Market economy'.

¹² See also Shahul (2000), Chapter 4.

To summarize, this study argues that waqf administration and management, which include waqf accounting, are under the purview of the concepts of *Tawhid* and *Khalifah*, where Allah (*s.w.t.*) creates human beings as His trustee in this world. Therefore, the *shari'ah* that the *Qur'an* and the *Sunnah* provide should be the ultimate law in managing wealth, especially in the form of waqf, which aims at the social and economic duties towards the *maslahah*. Any breach of the *shari'ah* should not be tolerated. It is the responsibility of the Muslim *ummah* to resolve the problems faced by waqf and to find the best solutions to achieve the waqf objectives and subsequently to achieve *falah*. This research is a humble attempt in this direction.

1.2 Objectives of the study

This study has three main objectives. The first one is to review, understand and document the current waqf administrative and management practices with special focus on the accounting practices¹³ as practiced by the Federal Territory SIRC. The legislative and policy sources are reviewed to obtain an understanding of its mechanism. The second objective is to identify problem areas and also to compare the Statement of Recommended Practice (SORP 2005) from the Charity Commission in the United Kingdom with the existing Federal Territory SIRC waqf financial and accounting policies, procedures and practices. The third objective is to come up with a policy

¹³ The rationale why the SIRC in Malaysia adopts different practices is that in the Malaysian Constitution, the state has the ultimate authority to determine regulations on Islamic matters. Different states may adopt different approaches that contain some differences in the provisions of certain religious matters (Ahmad Ibrahim, 1999).

recommendation on best management and accounting practices to increase public accountability with reference to the policies and procedures of the SORP 2005 with modification required under the Islamic *shari'ah*.

1.3 Motivation of the study

As a result of the increase in the understanding of Islam, currently, many Islamic organizations are going through reforms and reconstruction to ensure that the correct practices are in place. Islamic scholars in various fields such as *fiqh* are trying to resolve many of the problems that arose during the non-development of Islam i.e. law since the collapse of the *Uthmaniah Khilafah*¹⁴. This research is carried out to enable a better understanding of waqf and, at the same time, provide some suggestions for its improvement.

1.4 Contribution of the study

This study is intended to contribute to the present waqf literature. It is a first attempt to fill in the void in the literature on the accounting aspects of waqf. It is hoped that further understanding will greatly enhance and improve the state of waqf in the near future in terms of its administration and management. Hopefully, this study will provide something of economic value and be referred to by other SIRC in terms of waqf

¹⁴ Many Islamic historical records are archived by the West especially by the British Museum, in France and also in the Netherlands, but they are hardly available for the Muslims to conduct research in those areas.

administration and management. This study emphasizes the financial and accounting aspects to enable a more appropriate and proper discharge of SIRC's (as trustee) accountability towards the *waqif* who has endowed their property for the benefit of the Muslim *Ummah*. Undeniably, more research is needed in the financial area and this study will contribute towards the achievement of the desirable state of waqf administration and management to attain the *maqasid al shari'ah*¹⁵.

1.5 Scope of the study

The scope of this research is on the administrative, managerial and accounting aspects of waqf. However, it will also touch on the legislative aspects where relevant, especially in the Malaysian (Islamic religious institutions) environment. As this is a case study of an exploratory and descriptive nature, the research method is more qualitative and less quantitative statistics are used.

1.6 Organization of the thesis

The research report is organized into eight chapters. The Introduction is the first chapter. This chapter begins with the background of the study. This is followed by the objectives,

¹⁵ According to Al Ghazali, there are five *maqasid* (objectives of the *shari'ah*) namely the protection of the religion or faith, life, intellect (*aql*), posterity (*nasl*) and wealth (*maal*). The jurists of the Maliki and Hanbali schools contended that the *maqasid* could be divided into three categories of *Daruriyah* (essential or absolute necessity), *Hajiyah* (complementaries or good to have) and *Tahsinayah* (embellishment or non-essential). The five described by Al Ghazali fall under the *Daruriyah* category (see Ahmad Ibrahim, 2000, p156)

motivation and contribution of the study. Next, the scope of the study that outlines the focus of this research is mentioned. The rest of the thesis is organized as follows:

Chapter Two is on the contemporary history of waqf management. It discusses the introduction to the waqf regulatory and legislative framework followed by a brief review of the types of waqf available. Subsequently, the discussion delves into the history and background of waqf in Malaysia with a review of the historical and legal framework. Some legal issues in the Malaysian context are also presented to provide a clear understanding of the differences between the civil law and the *shari'ah* in the country. A summary and conclusion will then end the chapter.

Chapter Three presents a review of the extant literature on waqf, which includes theoretical and empirical studies. This chapter is divided into two sections of waqf literature; the first section reviews the literature on other countries outside Malaysia and the second section concentrates on waqf literature within the Malaysian environment especially studies on financial aspects and management of waqf. A summary of the waqf literature and conclusion ends this chapter.

Chapter Four is presented in two sections; the basic discussion of the background and issues in Islamic accounting theoretical frameworks¹⁶. The first section ends with the argument of fundamentals of Islamic accounting and the unsuitability of conventional accounting. The second section presents a review of SORP 2005. Although not much of

¹⁶ It highlights a few accounting issues such as the issues of recognition, measurement and valuation, and disclosures. It also incorporates the ongoing controversial issues of Historical cost versus Current cost.

the literature is directly related to the aspects of accounting for waqf, the study hopes that the SORP 2005, which is based on the conventional accounting, may later be incorporated into the discussion of accounting in the Islamic setting.

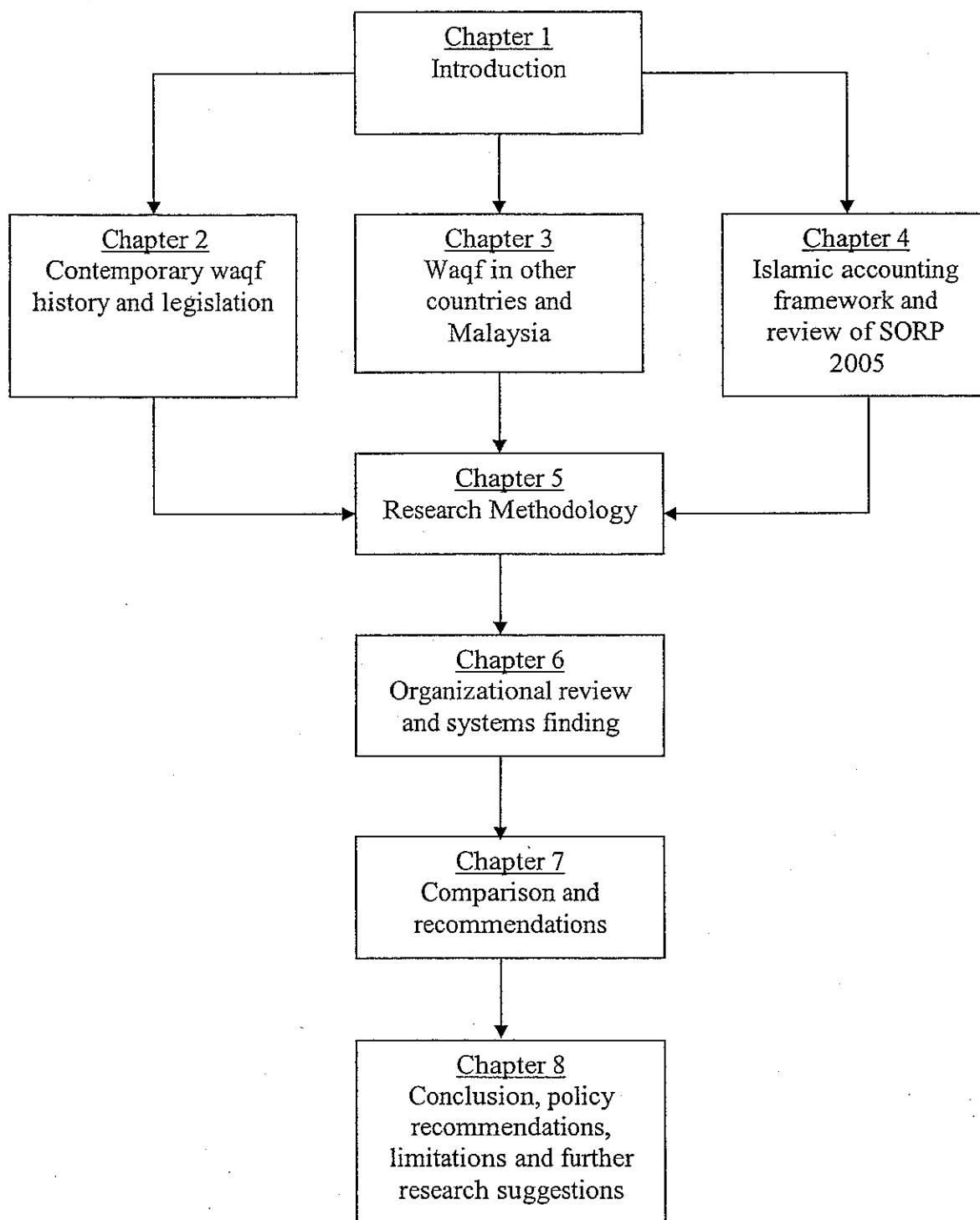
In Chapter Five, the research methods used for the research are presented. The discussion of the research methods includes the research questions, data collection techniques and sample selection. This chapter also discusses validity issues. Then, the statistical analysis (simple statistical tests) is presented before the chapter ends with a summary and conclusion.

Meanwhile, Chapter Six presents the Federal Territory SIRC organizational review with findings on the management and accounting procedures and systems in the SIRC's together with the main references of their operation, some of which has been found by Siti Rokyah (2004). However, there is some disagreement from the findings of this study. A synopsis is given on the enactments discussed. This chapter becomes the main source of some policy recommendations provided in Chapter Seven.

In Chapter Seven, the syntheses of the study are offered. Results are analyzed here where the findings are compared with SORP 2005 to garner the essence of the study. Most importantly, the policy recommendations for the relevant authorities on waqf management and accounting best practices are also included here.

Chapter Eight is the final chapter. A summary of the research is presented and the conclusions drawn from the results of the study are discussed in this chapter. Next, some policy recommendations are presented. In addition, Chapter Eight also discusses the limitations of the study and makes suggestions for further research. Figure 1.1 on the next page gives a brief explanation of the relationship of the chapters in this study.

Figure 1.1: Relationship of the chapters



CHAPTER 2

CONTEMPORARY WAQF HISTORY AND LEGISLATION

2.1 Introduction

It is very important for any Islamic study that the source or authority be discussed and reiterated to ensure the body of knowledge is within the *shari'ah* framework, otherwise the objective of such studies would not be considered legitimate in Islamic scholarship. Having said that, the sources of the waqf are derived from the *Qur'an* and the *Sunnah*¹⁷ (*ahadith*) of the Prophet (*s.a.w.*), which is presented in the next section. After that, the types of waqf will be discussed and then the history and waqf background within the legal scope in Malaysia are presented. This chapter ends with a summary and conclusion.

2.2 Waqf Legal Framework – An Islamic perspective

Although charitable endowments have been practiced by earlier civilizations i.e. Mesopotamia, Greece and Rome, there was no comprehensive legislation governing charitable endowments unlike the Islamic jurisdiction on waqf (Zain, 1982). Even though there is not a single verse in the *Qur'an* that deals specifically with waqf, Islamic scholars and jurists (the four prominent schools of thought, Shafie, Hanbali, Maliki and Hanafi)

¹⁷ *Al Qur'an* and *Sunnah* of the Prophet (*s.a.w.*) is the primary source of the *shari'ah* while the secondary source is derived from human reasoning and interpretation (*Ijtihad*) by Islamic jurists that is *Ijma'* (consensus among the *ulama'*) and *Qiyas* (views of individual jurists) (Ahmad Ibrahim, 2000).

have agreed that a few of the following verses are to be referred to as the source of the subject matter (Hassan, 1984). In *Surah Al Imran, ayat 92*, Allah (s.w.t.) says, “*By no means shall ye attain righteousness unless ye give (freely) of that which ye love; and whatever ye give, of a truth God knoweth it well*”. The verse states that Muslims will not be rewarded with goodness unless they are willing to give their best to others. The gift must be of value and which is dear to the giver. The perfect example of the value of a gift may be learnt from the history of the sons of Prophet Adam (a.s.), Qabil and Habil who prepared sacrifices or *qurban* in the name of Allah (s.w.t.). One gave some defective items and was rejected, whereas the other gave the most healthy and beloved animals and was accepted by Allah (s.w.t.). A good Muslim should give anything that is good, useful and valuable to achieve the pleasure of Allah (s.w.t.) (Imtiaz, 1988).

In another *ayat* of *Surah Al Hajj (77)*, “*O ye who believe! bow down, prostrate yourselves, and adore your Lord; and do good; that ye may prosper*”. Allah (s.w.t.) commanded human beings to do good things (waqf will provide benefits for the *maslahah*, thus it is considered a righteous deed) only then will mankind live in prosperity. So, doing good things is also considered as an act of worship or *ibadah* towards Allah (s.w.t.). Allah (s.w.t.) further says in *Surah Al Nahl, ayat 97*, “*Whoever works righteousness, man or woman, and has Faith, verily, to him will We give a new Life, a life that is good and pure and We will bestow on such their reward according to the best of their actions*”. Allah (s.w.t.) will reward all believers, irrespective of man or woman handsomely for all their good deeds. It can be inferred here that the act of waqf is

not constrained to Muslim men but is also open to women and verily Allah (*s.w.t.*) is the Most Gracious and the Most Merciful.

Another motivation is a *hadith* related by Abu Da'ud, where the Prophet (*s.a.w.*) says, "Paradise is the home of the generous". Muslims are encouraged to give a portion of their wealth to the poor and needy not just in terms of zakat but for other good causes such as the building of *Masjid* (Mosque), hospitals and schools. Consequently, such Muslims will be rewarded with *Jannah* (paradise) as their home in the hereafter (Ghazi and Ghazi, 1991).

However, giving *sadaqah* and being generous should not be done beyond one's means, as clearly seen by the following *hadith*. Jabir reported: a person from the *Banu Indhra* set a slave free after his death (it is common practice to say to the slave that he could be free after the owner's death). This news reached the Messenger of Allah (*s.a.w.*) and upon this he said: Have you any property beside it? He said no. The Holy Prophet (*s.a.w.*) saw that the charity that this man was showing in setting the slave free was beyond his capacity. If the slave was set free in this manner, there would be nothing left for the family to fall back upon in times of adversities. Upon this he said, who would buy this slave from me? Nuai'm bin Abdullah bought him for eight hundred *dirhams* and (this amount) was brought to the Messenger of Allah (*s.a.w.*) who returned it to him (the owner) and then said: Start with your own self and spend it on yourself (This does not mean that the major part should be spent on oneself).

What it implies is that one should not neglect oneself in meeting one's genuine need. And if anything is left it should be spent on one's family, if anything is left (after meeting the needs of the family) it should be spent more on distant relatives than friends. Therefore, the order in which we should spend our wealth has been elucidated. First, on one's own self, then one's wife and children then on relatives and friends and then for other good deeds. This *hadith* also makes it clear that spending should not be confined to one sector only but to all sectors so that no sector will be deprived of its due share.

There is also the *hadith* of Umar who acquires a piece of land in Khaibar and then goes to see the Prophet (*s.a.w.*) about his new asset. He tells the Prophet (*s.a.w.*) that he has acquired a good piece of land in Khaibar and he asks what he should do with it. The Prophet (*s.a.w.*) tells him to keep the land if he likes it. However, if he held the land for charity (to *sadaqah* the usufruct) it is much better for him and Allah (*s.w.t.*) Knows best. So, Umar declared the piece of land as a waqf and denoted part of the usufruct for his descendants and another part for charities¹⁸. The practice was then followed by other *sahabah* like Abu Thalhah as narrated by Anas ibn Malik, 'Abu Thalhah was one of the richest *sahabah* who owned an exquisite date garden called *Birhaa*. The Holy Prophet (*s.a.w.*) used to go there for a drink from its cool and clean water. Then, came the revelation of the *ayat* "you will not attain complete righteousness, before you give some of your beloved belonging". Abu Thalhah went to see the Prophet (*s.a.w.*) and declared the *Birhaa* garden as a *sadaqah*. The Holy Prophet (*s.a.w.*) was really happy on hearing

¹⁸ Hadith narrated by Al Bukhari, Kitab 55 Chapter 28 in Sahih Al Bukhari; see also Zain (1982); Baharuddin (1998); and Mahmood (1999).

him and asked him to *sadaqah* the garden to his children and relatives' (Imam Malik, hadith no. 1828; Hassan, 1984).

Therefore, as mentioned above, one's wealth can be rightfully spent on one's children and relatives; and considered a good deed, through the establishment of waqf. Abu Bakr, Muaz ibn Jabal and Saad ibn Waqas were among the *sahabah* who had also established earlier waqf (Hashmi, 1984). Hasanuddin (1998) in his study argues that the institution of waqf developed in the first *hijri* year and gained its legal form in the second *hijri* year. There are several types of waqf. Two of the types will be discussed in the following paragraphs. One is in relation to spending towards one's family, and other is regarding one of the earliest kinds of waqf.

The following *ahadith* are related to the *waqf fi ahli* (family waqf) or the *waqf al awlad* (waqf for children). This type of waqf is neither practiced nor legal in Malaysia. It has also been abolished in India, Algeria and many other Muslim countries due to foreign occupation. Islam regards highly those who are excellent in spending on their own family and servants, and considers it a sin if one neglects or withholds their subsistence. Abu Huraira reported that Allah's Messenger (*s.a.w.*) said: of a *dinar* you spend as a contribution in Allah's path, or to set free a slave, or as a *sadaqah* given to a needy person, or to support your family, the one yielding the greatest reward is that which you spend on your family¹⁹. It is also reported that Allah's Messenger (*s.a.w.*) said: The most excellent *dinar* is one that a person spends on his family, and the *dinar* which he spends

¹⁹ Sahih Muslim, *hadith* no. 2181.

on his animal in Allah's path, and the *dinar* which he spends on his companions in Allah's path²⁰. Thus, the practice of waqf is considered a *sadaqah*, which is highly valued by Allah (*s.w.t.*) and is confirmed to receive the greatest reward as mentioned by the Prophet Muhammad (*s.a.w.*).

Hence, the first waqf in the Islamic jurisprudence was set by the Prophet Muhammad (*s.a.w.*) himself who built the Masjid Quba' in the hijrah to Madinah. The Masjid Nabawi followed this, which is also in Madinah (Hasanuddin, 1998). Meanwhile, the first *waqf khayri* is the waqf of seven gardens by a *sahabah*, a Jew named Mukhayriq who was killed in the battle of Uhud. He made a will that in the event of his death; all his property would go to Prophet Muhammad (*s.a.w.*). The Holy Prophet (*s.a.w.*) accepted the waqf and named Mukhayriq as the best of Jews²¹ (Mohd Daud, 1999).

After introducing the most beneficial and the earliest types of waqf, the elements of waqf are discussed. Four conditions or elements must be fulfilled (1) *Waqif* – the person who will be the endower or the founder: *Waqif* must have attained the age of *baligh* and be of sound mind, the act of doing waqf must also be done voluntarily; (2) *Mauquf* - the property or capital – existing property or capital must be completely owned by the *waqif* and be free from any encumbrances²²; (3) *Mauquf 'alaih* - beneficiaries – whether family members, descendants, or the poor and the public (*ummah*), the recipients must not be of,

²⁰ Sahih Muslim, *hadith* no. 2180.

²¹ Moshe (1998) provides a comprehensive review of the history of the earlier waqf, tracing the sources and events, which led to most waqf by the earlier Muslims in the Holy Prophet's (*s.a.w.*) era. Moshe (1998) also argues that Abu Bakr pioneered the *waqf fi ahli* by declaring his house as a waqf for his descendants.

²² Yedyildiz (1996) asserts that in order to dedicate a property for a waqf, it must be under the absolute ownership of the *waqif*, in Islam, earning and owning a property relates to the human effort and work.

say, the enemy of Islam; and (4) *Sighah - ijab* and *qabul* of waqf (offer and acceptance)²³. The waqf will be administered and managed by the *mutawalli*²⁴ (deemed as the manager of the waqf) appointed by the *waqif*. The Indian Waqf Act, 1995 defines *mutawalli* as “any persons appointed either verbally or under any deed or instrument by which a waqf has been created or any custom or who is a *naib-mutawalli*...or any other persons appointed by the *mutawalli* to perform duties of a *mutawalli*...” (Hasanuddin, 1998). The act (section 44) required every *mutawalli* to prepare an annual budget for the next financial year showing the estimated receipts and expenditures during that financial year and submit it to the Waqf Board for approval. Imtiaz (1988) asserts that it is the moral and religious duties of the *mutawalli* to manage, maintain and improve the waqf honestly and efficiently; otherwise they are liable for any misconduct in a court of law.

At the early stage of the developments of waqf regulations, the founder is allowed to designate himself and/or his family and descendants as the trustee and/or beneficiaries of his waqf. Only after the extinction of his line would the revenues be allocated to certain pious purposes (Hoexter, 1998; Cizakca, 1998; Kahf, 1999; Van Leeuwen, 1999). In Malaysia, the manager of the waqf is only rendered valid by the law²⁵ to be the SIRC of each state. The waqf property is not to be sold, transferred nor inherited because the *waqif* has relinquished his claim on the said waqf property²⁶.

²³ See Zain, 1982; Syed Othman, 1986; Alabij, 1989; Nik Mohd Zain and Azimuddin, 1999.

²⁴ *Mutawalli* must have the following conditions (1) sound mind; (2) *baligh*; (3) *amanah*; and (4) has the ability to administer and manage the waqf property. All of these conditions must be fulfilled otherwise a new *mutawalli* has to be appointed to have a better supervision of the waqf property (Syed Othman, 1986).

²⁵ For example, the Federal Territories State Islamic Enactments, 1993.

²⁶ Once the property is surrendered to waqf, it will become perpetual, it remains so until the Day of Judgment, and no one can change it later on. The principle of perpetuity is protected in the *shari'ah* by a

2.3 Types of waqf²⁷

According to Kahf (1998), there are three types of waqf. One is the pure religious waqf, for example, the property used for worship such as *Masjid* or *musalla*. Second is the philanthropic waqf i.e. a school or a hospital, and third, the family (*waqf fi ahli*) or posterity waqf (*waqf al awlad*). The third is argued as a pure Islamic invention, which started from the companions of the Prophet Muhammad (*s.a.w.*) and prospered during the reign of the second caliph, Umar Al Khattab (Kahf, 1999).

Syed Othman (1986) also divided the waqf into three categories. The first category is *waqf khayri* or general waqf (for public purposes). This waqf is dedicated to supporting the general good and welfare of the poor, the needy, public utilities such as schools, colleges for education, scientific research, shelter houses for orphans and wayfarers and hospitals which provide free services for the sick and poor. In other words, if the recipients of the benefits are the public, it will be classified as *waqf khayri* (general waqf) (Hassan, 1984; Baharuddin, 1998). The waqf deed does not specify specific recipients of the benefit of waqf and it would depend on the administrator of the waqf to distribute the usufructs. It serves the interest of the whole of society or the major part of it (Kahf, 1999).

This waqf is said to be in line with the spirit of *ibadah* where the *waqif* will receive the rewards for the good deeds even after he dies as Abu Huraira reported that the Holy

series of rulings such as the prohibition of disposition of the waqf assets through sale and other contracts. Please refer to Kahf (1999) for further elaboration on the principle of perpetuity of waqf properties.

²⁷ Zain (1982) argues that Islamic law only recognizes two classes of waqf: public and private.

Prophet (*s.a.w.*) said “when a man dies, all his acts come to an end, but three; recurring charity (*sadaqah jarriyah*), or knowledge (by which people benefit), or a pious offspring who prays for him”. It is argued that the combination of recurring charity and *sadaqah jarriyah* constitute the essence of the Islamic waqf (Cizakca, 1998). Cizakca (1998) further says:

“Muslims needed an institution that would enable them to perform all three of these good deeds. The institution was the waqf which can, indeed, assure ongoing, recurring charity for many years, even centuries, after the death of the founder; it can finance scholars whose lasting word would benefit mankind for a long period and the *sawabs* (good deeds) that would accrue to them would be shared by the waqf’s founder who had provided for their sustenance in the first place; finally the management of the waqf can be entrusted to the offspring of the founder so that while, on the one hand careful and loyal management is assured, on the other, the offspring would pray for the deceased for, thanks to his waqf, he or she is not in destitute”(Cizakca, 1998 p.9)

This waqf may also be enjoyed by the majority of the public and also provides a strong basis for the socio economic condition of the *ummah* (Syed Othman, 1986). Yedyildiz (1996), as quoted from ancient words of wisdom, encourages the practice of waqf by Muslims:

“The good deeds (*sevab*) of a person who does the following do not stop and continue until his death: teaching knowledge, bringing water to settlements, digging a well, planting fruit trees, building a *Masjid*, leaving behind a copy of the *Qur’an*, and bringing up a child who prays to God for the forgiveness of his mother and father”

The second category is the *waqf fi ahli* (family waqf) or *waqf zurri* (*dhuriyyah*-offspring). Kahf (1999) terms it as private waqf. In India it is known as *waqf al awlad* (waqf for children; singular-*walad* or child). In other words, the beneficiaries are either a specific person or persons characterized by the founder or any other specific persons. This type of waqf is endowed initially upon oneself, one's children and one's relatives (Hassan, undated). It is legal in the *shari'ah* as its origin is from the Holy Prophet (*s.a.w.*) and his companions²⁸. It means that majority of the usufruct (*manfaa'*) of the waqf assets is allocated to the owner, family or/and descendents (Hasanuddin, 1998). However, a certain amount is specifically dedicated from the usufruct for the public or for general use (Hassan, 1984). When the descendants of the *waqif* no longer exist, the waqf usufructs will be given to the distant relatives or will be converted to be *waqf khayri* by the authorities (Kahf, 1999).

Kahf (1999) further argues that this type of waqf serves an important social objective as the property left to posterity helps keep them off the social welfare and zakat recipient lists, while the property develops and grows through capital accumulation. He emphasized that in the West, especially in the United States, it is known as a family trust and these trusts receive several tax privileges. On the contrary, this type of waqf is banned in most Islamic countries like Egypt and Syria. Meanwhile, in Lebanon it is limited to two generations only and after that it will be liquidated (Kahf, 1999).

²⁸ Please refer to the *ahadith* on page 19.

The third category is *Waqf Mushtarak* (Combination), which is actually a combination of *waqf khayri* (general waqf) and *waqf zurri* (*waqf fi ahli/waqf al awlad*). Usually, under this type of waqf, the endower (*waqif*) will specify the target beneficiary (usually the descendants) and later assign the benefit for broader welfare purposes (Hassan, 1984). In this case, *waqf mushtarak* will take the legal conditions from the *waqf khayri* (general waqf) and *waqf zurri*. In Malaysia, only the *waqf khayri*, pure religious waqf (termed as *waqf khas*) and cash/share waqf is available. The existence of *waqf zurri* (*waqf fi ahli, waqf al awlad*) and *waqf mushtarak* is hardly traceable in Malaysia (Abdul Rahim et al., 1999).

The waqf discussed above are the more traditional types of waqf. However, they are two more types of waqf which are relatively new. They are *waqf istibdal* and cash waqf²⁹. *Waqf istibdal* happens when there is an exchange of existing waqf assets with other assets (may be in another place) or due to certain reasons such as the waqf assets becoming unproductive or unprofitable. The property would be sold and the proceeds would be used to buy more profitable assets for the waqf. Though warranted, *istibdal* is sometimes misused in some cases (Deguilhem, 2003). *Istibdal* was commonly practiced by the waqf of *haramayn* in Algiers during the years 1700 until 1830 (Hoexter, 1998). It has the sanction from the Hanafi jurists; however, strict regulations are attached to it to avoid

²⁹ Cash waqf is a special type of endowment and it differs from the ordinary real estate waqf in that its original capital, *asl- al- mal* or *corpus* consisted, purely or partially, of cash. The earliest origins of the cash waqfs may be traced back to the eighth century. Cash waqfs are also known in Europe where real estate foundation is originally in the form of endowment, but, eventually, it became possible to make endowment with movables. Unfortunately, there is a huge gap of knowledge concerning the history of cash waqf from the eighth century until the fifteenth (Cizakca, 1998). Also see Razali (2004).

misuse or embezzlement. However, the Shafie school of thought does not encourage *waqf istibdal*.

Meanwhile, cash waqf is usually formed as a financing method to develop waqf property or to support and build an educational institution (schools or universities) or orphanage houses. The waqf will receive cash instead of property or land and will use it for the financing instead of relying on banks or financial institutions (Sadeq, 2002). In Malaysia, the cash waqf is also known as share waqf (*waqf saham*). The cash endowments are pooled and the money is used for pious purposes such as helping the poor and needy and as educational aids. Two states' SIRC's (i.e. Pahang and Selangor) have this type of waqf. It was found that the financial reporting for cash waqf is better because it has a complete financial statement with a note on the amount spent for the various activities (source: the Pahang SIRC).

2.4 History and background of Waqf in Malaysia

The institution of waqf in Malaysia is believed to have been in existence for more than eight hundred years (Syed Othman, 1986). It is believed to have started when the Arab Muslim traders brought Islam to the land in the tenth century. The earliest record available is a stone tablet found in Terengganu dated from the early thirteenth century, which records the Islamic *shari'ah* presence in previously Tanah Melayu (Ahmad

Ibrahim, 2000; Mahmood, 2000³⁰). Religious education is the main factor of waqf being developed in Tanah Melayu, especially in Terengganu. This is evidenced by one of the early nineteenth century waqf deeds by *Sultan Umar*; the ruler of the state, stating the object of his waqf is to promote education and the dissemination of knowledge to the public (Mahmood, 2000).

During the earlier period, Muslims who wished to waqf their property would go to see the village head or *Penghulu* and they would be the trustee of the waqf. Therefore, no records are made as it is only based on verbal transactions. Problems occurred when the *Penghulu* passed away and another person became the *Penghulu*; the descendants of the deceased sometimes did not declare the waqf property and used them as their private property (Baharuddin, 1998). However, there are no written documents regarding the first establishment of the waqf institution in Malaysia before the nineteenth century as stated above, except for the establishment of the waqf of *Masjid Capitan Kling* in Penang in 1801, followed by the waqf by a member of the Aceh royalty, also in Penang (Nasution, 2002).

As Malaysia is a federation, in the federal structure, matters of Islamic law are (except Federal Territories) placed in the State List. The Federal Constitution of Malaysia puts Islam as the religion of the federation (Item 3). The Ninth Schedule List II (State List) of the Federal Constitution states the powers of the State (Ahmad Ibrahim, 2000) except for the Federal Territories. In a state that has a Ruler (King), the Ruler is the head of the

³⁰ As quoted from Muhammad Salleh (1983), "*Terengganu dari bentuk sejarah hingga tahun 1918*" (Terengganu in historical perspective until 1918).

religion (Islam), while in the case of a state without a Ruler, the *Yang Di Pertuan Agong* is the head of the religion (Islam). In each state, an SIRC is formed to advise the Rulers on all Islamic matters and each state has enacted its own Islamic legislation. The state Islamic department will enforce all the legislation accordingly. Basically, different states will have a different set of legislations (Mustafa and Mat Saad, 1986; Ridzuan, 1994; and Ahmad Ibrahim, 2000).

As stipulated in the Malaysian Constitution [section 74 (2) and (3)], the religion of Islam has been identified as within the jurisdiction of the state (Abdul Rahim and Goddard, 1998). As mentioned above, in every state, the SIRC was established to administer all the Islamic religious matters. This includes *zakat* collection and disbursement, and waqf. However, the waqf institution has long been neglected and nearly forgotten by the Islamic community in Malaysia as compared to the other Islamic institutions (Baharuddin, 1998; Mahmood, 1998; Abdul Rahim et al., 1999).

In the case of waqf, the SIRC in each state is the sole trustee to manage all the waqf assets. However, under the law, the *waqif* or founder may specify in the foundation deed, the beneficiaries or the purpose of use, or the purpose for which the waqf is created. The SIRC is given the authority and accountability to manage the waqf properties in the interest of *waqif* as specified in the foundation deed.

Earlier on, the practice of waqf by Muslims in Tanah Melayu was not properly documented. Community leaders who were directly involved with the Islamic affairs

such as *Qadis*, *Imams* even the head of the village or area or a certain community's committee i.e. the *Masjid* Committee, are appointed to administer and manage waqf (Kamarudin, 1992). They acted as the trustee or the *mutawalli* until the enforcement of the Islamic enactment by the states. However, many problems arose because of the lack of documentation and lack of accountability of the people responsible (Baharuddin, 1998).

The earlier documents about the waqf practices could only be seen in "Waqf Prohibition Enactment 1911" where the state of Johor introduced written laws regarding this issue. This was followed by the State of Perak which introduced the "Control of Waqf Enactment, 1951". Other states started much later with their own waqf enactments (Baharuddin, 1998).

2.5 Legal issues pertaining to waqf

Originally, old provisions in the Malay legislations were influenced by the principles of Islamic *shari'ah* especially on the land law, and this is evident from the Malacca Sultanate in the fourteenth century. The Portuguese who conquered Malacca in 1511 did not touch the existing Islamic law of the Malays. The same went for the Dutch who colonized Malacca in 1641 and the British from 1795 until 1824 (Ridzuan, 1994).

Although the waqf is under the state jurisdiction, many of the waqf cases are in fact heard by the civil court, and tried based on civil law (common law in the United Kingdom).

The judicial structure in the Federal Constitution of Malaysia states that the civil court has higher authority than the *shari'ah* court. This creates many differences between the Islamic matters that should only be dealt with by the *shari'ah* court, being brought to the civil court and having judges incompetent in Islamic *shari'ah* because they are trained in common law (mostly in the United Kingdom) (Ahmad Ibrahim, 2000; Abdul Hamid, 2003). However, we cannot say much in this instance because the Federal Constitution is a secular constitution and though Article 3 (1) provides a clause saying that Islam is the religion of the Federation, it has mentioned nothing on the need to follow the Islamic *shari'ah* and principles in the motherland.

Even the first Prime Minister of Malaysia, Tunku Abdul Rahman had insisted that Malaysia was a secular state and his view has been accepted by many of its leaders (Ahmad Ibrahim, 2000). However, the Current Prime Minister Abdullah Badawi provided a rebuttal to Tunku Abdul Rahman's view by alleging that Malaysia is an Islamic state (Yousif, 2004). He further asserted in May 2005 that Malaysia is a moderate Islamic state, not an extremist or fundamentalist Islamic state. This basically resulted from the preparers of the constitution the majority of whom were non-Muslim (Ahmad Ibrahim, 2000). Furthermore, the current Malaysian land law is based on the English Torrens System in South Africa and Australia. Although not all provisions are adopted, many are in contravention of the Islamic principles of land law according to the Islamic *shari'ah* especially with regards to waqf land (Ridzuan, 1994). The above facts are taken into consideration as the third objective of this study is to put forward some recommendations for waqf accounting best practices and it may have some legal

implications such as the recognition of waqf lands as the waqf assets though the title of the land might not have been transferred yet to the SIRC.

The following three cases clearly demonstrate the superiority of the civil court over the *shari'ah* court. In *Penang SIRC v Isa Abdul Rahman and anor.*³¹, the matter concerns a *Masjid*, which was built in 1889. The land on which it was built was made a waqf by the owner. The *Masjid* was later vested in the Penang SIRC as the trustee of all *Masjids* in the state. The SIRC proposes to demolish the *Masjid* and in its place erect a building to be used partly for commercial purposes. The respondents claim to have inherited the land from the original landowner and he brought an action for a declaration that the proposal of the SIRC to demolish the *Masjid* was contrary to the law and the *Hukum Syarak*; and an injunction was issued to prevent the SIRC from demolishing the *Masjid*.

The SIRC applied to set aside the writ of summons and the respondent's claim. The senior assistant registrar of the high court dismissed the application and an appeal to judge was also dismissed. The SIRC appealed to the Supreme Court. The Supreme Court dismissed the appeal and held that the *shari'ah* court had no jurisdiction to issue the injunction as applied by the respondents and it was clear, therefore, that the claim of the injunction could only be heard by the Civil High Court.

³¹ (1992) 2 MLJ 244 (Ahmad Ibrahim, 2000). Also see Abdul Hamid (2003).

In *G. Rethinasamy v Penang SIRC and another*,³² the plaintiff bought a piece of land next to a Masjid. A portion of the land had been occupied and used for the purposes of the Masjid and a burial ground for a long time. The plaintiff claimed the right of ownership over the whole land, and the defendant claimed that the portion of the land used for the purposes of the Masjid and for the burial ground had become a waqf. The High Court held that it has the jurisdiction to hear the case as one of the parties to the action was a non-Muslim and the question of the title of the land and the issue of estoppels came within the jurisdiction of the civil court. Although the matter concerns a waqf, which was within the jurisdiction of the *shari'ah* court, this did not preclude the civil court from deciding whether there was a valid waqf as Article 121 (1A) has no provision to state that the civil court cannot make a decision affecting the *Hukum Syarak*.

In *Commissioner of Religious Affairs v. Tengku Mariam*³³, the Federal Court held that the civil courts were not bound by the gazetted '*fatwa*' of the Mufti of Terengganu and followed Privy Council Judgments to hold that the waqf in question was void. Dissatisfaction with decisions of the civil courts arose similar to what happened much earlier in Penang.

It can be seen that the provision of the law in Malaysia did not truly separate the civil and the *shari'ah* jurisdiction. Thus, the civil courts using unIslamic principles differ from the *shari'ah* and are seen to be superior to the *shari'ah* courts. This is in contrast with countries such as Pakistan, where there is a clear juristic division resulting from a series

³² (1993) 2 CLJ 605 (Ahmad Ibrahim, 2000). Also see Abdul Hamid (2003).

³³ (1970) 1 MLJ 220(1) (see Abdul Hamid, 2003)