ENTITLEMENT OF NEPHEWS AND NIECES IN PARENTS' SIBLING'S INTESTATE ESTATE – AN OVERVIEW

S. V. Namasoo[*]

ABSTRACT

There is a dearth of case law whether the nephews and nieces are lawful beneficiaries of their uncle's and aunt's intestate estate. Probably because more often than not such matters might have been resolved amicably within the family circle. That is, of course, until the reported decision of the Court of Appeal in the case of *Gan Cheng Khuan v. Gan Kah Yang & 2 Ors* not so long ago, which held that nephews and nieces are not entitled to the estate of their late uncle on the grounds that their father had passed away before the intestate uncle. However, in the case of *Pulogasingam a/l Veerasingam v. Paralogavathy & 8 Ors* which was heard a few days before the aforesaid case, the Court of Appeal, on similar facts had held otherwise but unfortunately no reasons were given and neither is the case reported. In the light of the aforesaid, this article intends to explore the state of law of intestate succession involving parents' sibling's intestate estate vis-a-vis the nephews and nieces based on the provisions in the Distribution Act 1958 [Act 300 as modified by Act 1004A], the legal position in other jurisdictions and whether there is a need for legislative reform. Henceforth, all references to the words 'section' and 'the Act' refer to the Distribution Act 1958 unless stated otherwise.

Keywords: Malaysia, India, nephews, nieces, parents' intestate, estate

[*] Advocate and Solicitor (Malaysia), practising at Messrs S V Namasoo & Co. B Econs (Hons) (University of Malaya), LLB (Hons) (University of London), CLP.

INTRODUCTION

The Distribution Act 1958 (Revised 1983) is the governing law on the distribution of the intestate estate in Malaysia, in particular section 6 and to a certain extent section 7.

However, before looking at the scope of section 6, the parameters of its applicability in our country must be understood. It is stated in section 2 that section 6 only applies to the intestate estate of a non – Muslim in West Malaysia from 1st May 1958 and the State of Sarawak (except for the natives of Sarawak) from 12th December 1986.[1] The Federal Territories are included under West Malaysia by virtue of the meaning assigned thereto under section 3 of the Interpretation Acts 1948 and 1967. In the case of Sabah, intestate succession is solely governed by the Intestate Succession Ordinance 1960, which differs in material particularly when it comes to the rights of nephews and nieces vis-à-vis their parents' sibling's intestate estate which will be explored later herein.

If a deceased intestate's estate falls within the ambit of section 2 then section 6 dictates the scheme of distribution as stated in the heading thereto provided the domicile requirement as set out in section 4 is satisfied. In section 4(1), the distribution of movable property will be regulated by the law of the country in which the deceased person was domiciled at the time of death whereas in respect of immovable property it is stated in section 4(2) that distribution of immovable property will be regulated by the Act irrespective of where the deceased person was domiciled.

---

1 [P.U. 446/1998]

Comparative Perspective

Before analysing sections 6 and 7 of the Act as regards the legal position of the nephews and nieces *vis - a - vis* their intestate uncle‘s estate in Malaysia (except Sabah), a comparative look at other jurisdictions as regards the law in this area may help to shed some light on the discussion in hand. A look at some of these jurisdictions, including that of Sabah and some of the Commonwealth countries reveal that they have expressly provided in their legislations that issues of brothers and sisters are lawful beneficiaries of the uncle’s and aunt’s intestate estate unlike under the Act. The relevant sections from the respective jurisdictions are set out below for ease of understanding.

Sabah

In the land below the wind, section 7 Rule 6 of the Intestate Succession Ordinance 1960 of the State of Sabah (ISO 1960) reads as follows:

> If there are neither surviving spouse, descendants, nor parents, the brothers and sisters, or **children of brothers and sisters of the intestate** shall share the estate in equal portions between the brothers and sisters and the children of any brother and sister shall take according to their stock the share which he or she would have taken.

In the case of an intestate domiciled in Sabah or not domiciled in Sabah but left behind immovable properties, it is crystal clear that not only brothers and sisters living at the time of the death of the intestate but also the children of predeceased brothers and sisters can inherit a share of their late uncle’s and aunt’s intestate estate. It is further provided that according to section 6(a) ISO 1960 those related to the deceased by half-blood shall rank immediately after those of full blood like in England and Wales and therefore brothers and sister of half-blood and their children can also inherit.

Singapore

In Singapore, sections 5 and 7 of the Intestate Succession Act 1967 reads as follows:

Section 5. If a person dies intestate after 2nd June 1967, he being at the time of his death –

> (a)domiciled in Singapore and possessed beneficially of property, whether movable or immovable, or both, situated in Singapore: or domiciled outside Singapore and possessed beneficially of immovable property situated in Singapore,that property or the proceeds thereof, after payments thereout of the expenses of due administration as prescribed by the Probate and Administration Act (Cap. 251), shall be distributed among the persons entitled to succeed beneficially to that property of the proceeds thereof.

Section 7. In effecting such distribution, the following rules shall be observed:

Rule 6

If there are no surviving spouse, descendants or parents, the brothers and sisters and **children of deceased brothers and sisters of the intestate** shall share the estate in equal shares portion between the brothers and sisters and the children of any deceased brother or sister shall take according to their stocks and share which the deceased brother or sister would have taken.

Therefore, in Singapore the nephews and nieces can inherit their late uncle's and aunt's intestate estate.

Victoria, Australia

Section 52 of the Administration and Probate Act 1958 states as follows:

(1)Where a person in respect of his or her residuary estate **dies intestate** then subject to the provisions of section 51 and 51A the following provisions shall have effect with respect to such estate:

(f) (iii) No representation shall be admitted among collaterals after **brothers' and sisters' children.**

(v) Brothers or sisters or when they take as representatives of **brothers' or sisters' children shall take in priority to grandparents**;

(vi) where brothers' or sisters' children are entitled and all the brothers or sisters of the intestate have died before him or her such children shall not take as representatives and all such children shall take in equal shares.

Again, in Victoria, Australia the nephews and nieces are lawful beneficiaries of their late uncle's and aunt's intestate estate and clearly stated in priority to grandparents.

India

In India, section 47 of the Indian Succession Act 1925 expressly provides as follows:

Where intestate has left neither lineal descendant, nor father, nor mother. –

Where the intestate has left neither lineal descendant, nor father, nor mother, the property shall be divided equally between his **brothers and sisters and the child or children of such of them as may have died before him**, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death.

Illustration

(iv) Ten children of one brother or sister of the intestate, and one child of another brother or sister of the intestate, constitute the class of relatives of the nearest degree of

> kindred to him. They will each take one-eleventh of the property.

In India, again it is expressly provided with an illustration that nephews and nieces are entitled an equal share of their parents' sibling's intestate's estate.

In the above Ordinance and Acts, there is evinced a clear and express intention that nephews and nieces are beneficiaries of their late uncle's and aunt's intestate estate as opposed to our Act where there is conspicuous silence. Further in section 6, the phrase "living at the death of the intestate" exists. This all leads to the irresistible conclusion that nephews and nieces are not lawful beneficiaries of the uncle's and aunt's intestate estate under the Act.

Sections 6 and 7 of the Act

Before analysis, for ease of reference the entire section 6(1) is set out below and the relevant parts are highlighted in bold and for emphasis underlined. Similarly, section 7 has been set out in full because reliance is placed on it when mounting an argument that nephews and nieces are rightful beneficiaries of their uncle's and aunt's intestate estate even though the heading merely reads "Trusts In Favour of Issue and Other Classes Of Relatives Of Intestate":

Section 6 reads as follows -

> 1) After the commencement of this Act, **if any person shall die intestate as to any property to which he is beneficially entitled** for an interest which does not cease on his death, such property or the proceeds thereof after payment thereout of the expenses of due administration shall, subject to the provisions of section 4, **be distributed in the manner or be held on the trusts mentioned in this section**, namely –

(a) if an intestate dies leaving a spouse and no issue and no parent or parents, the surviving spouse shall be entitled to the whole of the estate;

(b) if an intestate dies leaving no issue but a spouse and a parent or parents, the surviving spouse shall be entitled to one-half of the estate and the parent or parents shall be entitled to the remaining one-half;

(c) if an intestate dies leaving issue but no spouse and no parent or parents, the surviving issue shall be entitled to the whole of the estate;

(d) if an intestate dies leaving no spouse and no issue but a parent or parents, the surviving parent or parents shall be entitled to the whole of the estate;

(e) if an intestate dies leaving a spouse and issue but no parents or parents, the surviving spouse shall be entitled to one-third of the estate and the issues the remaining two-thirds;

(f) if an intestate dies leaving no spouse but issue and a parent or parents, the surviving issue shall be entitled to two-thirds of the estate and the parent or parents the remaining one-third;

(g) if an intestate dies leaving a spouse, issue and parent or parents, the surviving spouse shall be entitled to one-quarter of the estate, the issue shall be entitled to one-half of the estate and the parent or parents the remaining one-quarter.

(h) subject to the rights of a surviving spouse or a parent or parents, as the case may be, the estate of an intestate who leaves issue shall be held on the trust`s set out in section 7 for the issue;

(i) if an intestate dies leaving no spouse, issue, parents or parents, the whole of the estate of the intestate shall be held on trust for the following persons living at the

death of the intestate and in the following order and manner, namely:

Firstly, on the trust set out in section 7 **for the brothers and sisters** of the intestate in equal shares; but if no person takes an absolutely vested interest under such trusts, then

Secondly, for the grandparents of the intestate, and if more than one survive the intestate in equal shares absolutely; but if there are no grandparents surviving, then

Thirdly, on the trusts set out in section 7 for the uncles and aunts of the intestate in equal shares; but if no person takes an absolutely vested interest under such trusts, then

Fourthly, for the great grandparents of the intestate and if more than one survive the intestate in equal shares absolutely; but if there are no such great grandparents surviving, then

Fifthly, on the trust set out in section 7 for the great grand uncles and great grand aunts of the intestate in equal shares.

(j) In default of any person taking an absolute interest under the foregoing provisions the Government shall be entitled to the whole of the estate except insofar as the same consists of land.

Section 7 reads as follows –

(1) Where **under the provisions of section 6**, the estate of an intestate or any part thereof is directed **to be held on the trusts** set out in this section for the **issue of the intestate**, the same shall be held in trust in equal shares if more than one for all or any of the **children** or **child** of the intestate living at the death of the intestate, who

attain the age of majority or marry under that age, **and** for all or any of the **issue** living at the death of the intestate, who attain the age of majority or marry under that age, of any **child** of the intestate who predecease the intestate, such issue to take through all degrees according to their stocks, in equal shares if more than one, the share which their parent would have taken if living at the death of the intestate, and so that no issue shall take whose parent is still living at the death of the intestate and so capable of taking.

(2) Where **under the provisions of section 6** the estate of an intestate or any part thereof is directed to be held on the trusts set out in this section **for any class of relatives of the deceased other than issue** of the intestate, **the same shall be held on trusts corresponding to the trusts set out in subsection (1) of this section** for the issue of the intestate **as if such trusts were repeated with the substitution of references to the members or member of that class for references to the children or child of the intestate.**

From the above, the following are clear about section 6. Firstly, it sets out the order of the beneficiaries and the manner of the distribution of an intestate's estate. Secondly, it is also very clear that brothers and sisters (siblings) are only beneficiaries if the intestate sibling has not left behind wife, issue or parent or parents at the time of his/her demise. Thirdly, there is also no express mention anywhere of nephews and nieces being beneficiaries unlike that for children of predeceased children, that is grandchildren because in section 3 "issue" is defined to mean "children and descendants of deceased children".

Then how does this argument that nephews and nieces are lawful beneficiaries of their uncle's and aunt's intestate estate come about? As will be seen in the case of *Gan Cheng Khuan*

and also in the unreported case of *Pulogasingam a/l Veerasingam* the arguments were premised on the wordings found in section 7 solely rather than on section 6.

The Case of Gan Cheng Khuan

In this case, the Appellant / Applicant was the administrator of the estate of Gan Cheng Keong (deceased) pursuant to Letters of Administration dated 2.6.2016. The deceased had passed away on 27.3.2009. The Respondents are the children of the late Gan Cheng Yee who was the eldest brother of the deceased and he had predeceased the deceased on 27.1.1979. The Appellant as Administrator filed an application in the High Court for determination, *inter alia*, whether only the brothers and sisters of the deceased **who were living at the time of the death of the deceased** were entitled to the deceased's intestate estate. The learned Judicial Commissioner (JC) ruled that the children of the predeceased brother, in other words the nephews, are entitled to a share of their late uncle's estate. On appeal, the Court of Appeal surmised the reasoning of the learned JC as follows,

> ….. that the applicable provision is subsection 7(1) of the Act and the pertinent words in subsection 7(1) to his mind are *"the share which their parent would have taken if living at the death of the intestate. He said these wordings would entitle the three interveners to their late father's share in the estate of the deceased".*

According to the Court of Appeal, the learned JC found support for his decision in an article entitled "The Distribution (Amendment) Act 1997 – Amendments to section 6 of the

Distribution Act 1958[2] and also the case of *Lim Geik Hoon v. Yap Bon Keat*[3] which held that the interest of a child who predeceased the intestate and who leaves issues is not forfeited by virtue of subsection 7(1) of the Act. Basically, the learned JC by reading together subsections (1) and (2) of section 7 found that the rights of inheritance of nephews and nieces should be the same as that of the grandchildren of an intestate deceased.

However, the appeal against the decision of the learned JC was allowed by the Court of Appeal and the grounds can be found in the following paragraphs of the judgment which due to their significance, are reproduced in its entirety as follows,

> [21] Now coming to the provisions of the Act itself, under subsection 6(1)(i) of the Act, if an intestate dies leaving no spouse, issue parents or a parent, the whole of the estate of the intestate shall be held on trust for the following persons living at the death of the intestate and in the following order and manner, namely: firstly for the brothers and sisters of the intestate in equal shares, then for the grandparents and so on. The emphasis is on the words **"living at the death of the intestate"**. (emphasis is mine)
>
> [22] In this appeal, the father of the Respondents died on 27 January 1979 and was no longer living on 27 March 2009, at the death of the intestate. Their late father did not qualify under 'the brothers and sisters of the intestate who were living at the death of the intestate' pursuant to subsection 6(1)(i) of the Act. Therefore, the Respondents cannot take under their late

---

2 [2004] JMCL 6
3 [2012] MLRHU 297

> father's share in the estate of the intestate under subsection 6(1)(i).
>
> [23] The Respondents had tried to come under subsection 7(1). Subsection (1) deal with trusts to be held for the issue of the intestate whereas subsection 7(2) provides for trusts in favour of other classes of relatives of the intestate. Both subsections of section 7 specifically refer to section 6 of the Act which means that both sections 6 and 7 must be read together. It is not in dispute that the Respondents are not the issue of the intestate but are the nephews of the intestate which come within 'other classes of relatives' of the intestate. If they are taking a share under their late father's entitlement in the estate of the intestate under section 7 of the Act, they are caught by subsection 6(1)(i).

So, according to the Court of Appeal the paramount requirement for a sibling to inherit the whole or part of the estate of a deceased sibling is, the said sibling must be alive at the time of the death of the intestate sibling because it is clearly stated so in section 6 of the Act. Nephews and nieces cannot stake a claim by mere reliance on the wordings in section 7 as the said section is subject to section 6 of the Act. Therefore, if the sibling had predeceased the intestate sibling, then his or her children, that is, the nephews and nieces are not entitled to a share of their uncle's or aunt's estate.

The Court of Appeal decision in *Gan Cheng Khuan* has certainly not only brought about clarity in this area of the law but seems to be in accord when viewed from accepted canons of statutory interpretation and the legislation it was modelled from.

Canons of Statutory Interpretation

It is clearly stated in section 6(1)(i) that if there is no spouse, issue, parent or parents, the whole of the intestate's estate shall be held on trust under section 7 for the **following persons living at the death of the intestate** (the phrase) and the first in line after the phrase are brothers and sisters.

Can the phrase be ignored in arriving at a decision? His Lordship Abdoocader SCJ in *Foo Loke & Anor v Television Broadcast Ltd & Ors*[4], said and I quote,

> *"The court ……. is not at liberty to treat words in a statute as mere tautology or surplusage unless they are wholly meaningless. On the presumption that Parliament does nothing in vain, the court must endeavour to give significance to every word of an enactment, and it is presumed that if a word or phrase appears in a statute, it was put there for a purpose and must not be disregarded …"*

Since the phrase cannot be ignored because it must have been put there by Parliament for a purpose.

That being the case, it is also an established principle, that legislative intent must primarily be ascertained by reference to the words used in the Act. This was clearly stated by the Federal Court In the case of *Krishnadas Achutan Nair & Ors. V. Maniyam Samykano*[5] as follows,

> The function of a Court when construing an Act of Parliament is to interpret the statute in order to

---

4 [1985] 2 MLJ 35
5 [1997] 1 CLJ 636

> ascertain legislative intent *primarily by reference to the words appearing in the particular enactment.*

Also, if the words are plain and unambiguous the courts must give effect to its plain meaning as stated by His Lordship Vernon Ong Lam Kiat in *Jayakumar a/l Rajoo Mohamad v. CIMB Aviva Takaful Berhad*[6], as follows,

> Therefore in construing any statutes, the court will firstly, look at the words in the legislation and *apply the plain and ordinary meaning of the words in the statute*. If there is any ambiguity to the words used, the court is duly bound to accept it even it even if it may lead to mischief. But *where the language used is clear and unambiguous, it is not the function of the court to re-write the statute in a way it considers reasonable*.

If the words are precise and unambiguous, as the phrase under consideration is, the literal rule of interpretation is best suited to determine the meaning. This was also stated with clarity in the case of *Dato' Seri Anwar Ibrahim v. PP*[7] as follows,

> *Prima facie*, the meaning of any piece of legislation is to be given a literal or grammatical meaning where the meaning is plain and clear. And this can be arrived at without consideration of other interpretative criteria. Parliament must be taken to mean what it says. The courts in interpreting statutes must not be seen to be splitting hairs or producing any inconsistency or absurdity.

More importantly, if there is reference to another provision in the same statute or even if there is none,

---

[6] [2015] 4 AMR 329
[7] [2010] 4 CLJ 265

interpretation of any provision in a statute must be done in a harmonious fashion so that there is consistency relating to the subject matter as a whole as stated by Lord Devey in *Canada Sugar Refining Co. v The Queen*[8]:

> Every clause of a statute *should be construed with reference to the context and other clauses in the Act*, so far as, possible, to make a consistent enactment of the whole statute or series of statutes relating to the subject matter.

Therefore, if one views from the aforesaid canons of statutory interpretation the irrefutable conclusion is that the phrase cannot be ignored and it is susceptible to only one meaning as decided in *Gan Cheng Khuan* that brothers and sisters must be alive to claim their share of the deceased sibling's inheritance. That being the case how can their children acquire a right of inheritance.

Despite the clarity of the phrase in section 6, arguments in favour of nephews and nieces as lawful beneficiaries are usually mounted via section 7 *per se* and not section 6. The proponents argue, according to subsection 7(2), when a trust arises under section 6 for any class of relatives other than issues, such as brothers and sisters, then the estate of an intestate shall be held on trust **c**orresponding to that for issues as stated in subsection 7(1). This is done by substituting the words "children or child" that appears in subsection 7(1) with the words "members or member of a class of relatives of the deceased other than the issue", for instance brothers and sisters as stated in subsection 7(2). Let's see if this argument holds water when section 7 is read in the light of all the other relevant provisions in the Act, as stated in *Canada Sugar Refining Co. v The Queen.*

---

[8] [1898] AC 735

Let's start with the heading to section 7. The law permits looking at the heading to a section if it can aid in interpretation of provisions in an enactment. In *Public Prosecutor v Huntsman*[9], McIntyre referred to the judgment of Lord Goddard CJ in *Rex v Surrey (Northern Eastern Area) Assessment Committee*[10] and stated that the court is entitled to look at the headings in an Act of Parliament to resolve any doubt they may have to ambiguous words. The heading to section 7 merely reads, "Trusts In Favour of Issue and Other Classes Of Relatives Of Intestate". Therefore, one can safely conclude that it only deals with the situation of a trust arising as directed under section 6 and that there is no indication that new category of beneficiaries can be created other than as directed under section 6.

Furthermore, subsection 7(1) is closely intertwined with subsection 6(1)(h) as the latter clearly states that "the estate of an intestate who leaves issue shall be held on trusts set out in section 7 for the issue". The trust envisaged under subsection 7(1) is only for minors unless they get married before attaining the age of majority and only for 2 categories of beneficiaries, namely *children* and *grandchildren*, as follows –

> i) The *first part* that says, "the same shall be held in trust in equal shares if more than one for all or any of the *children or child* of the intestate living at the death of the intestate".
>
> This part refers to the intestate deceased's own children who are alive at the time of his death.
>
> ii) The *second part* that says, "… and for all or any of the *issue* living at the death of the intestate, ……., of any *child* of the intestate who predeceases

---

[9] [1966] 1 MLJ 93
[10] [1948] 1 KB

> the intestate, *such issue to take* through all degrees according to their stock, in equal shares if more than one, the share *which their parent would have taken if living at the death of the intestate*…".
>
> This part refers to the grandchildren (from the word issue) of the deceased intestate who are alive at the time of his death.

As explained earlier since the word "issue' is expressly defined in section 3 to include "children and the descendants of deceased children" there is clear provision entitling grandchildren to inherit their grandparent's intestate estate and the law is clear as to their rights. See the cases of *Lim Geik Hoon v Yap Boon Keat*[11] and *Kamalah Devi Mukan lwn Amakumar G Sumarian & Yang Lain*[12].

However, proponents of the view that nephews and nieces are lawful beneficiaries of their uncle's and aunt's intestate estate rest their argument **solely** by reference to the second part of subsection 7(1) by substituting the words "issue" and "child" with nephews/nieces and brothers/sisters respectively. In fact, the learned JC in arriving at the decision in *Gan Cheng Khuan*, as pointed out by the Court of Appeal, must have fallen into such an error when considering that the pertinent words to his mind was "the share which their parents would have taken if living at the death of the intestate."

However, the fallacy of the above proposition, lies in the fact that the word "issue" is already defined to mean "children and the descendants of deceased children" in section 3 and consequently there cannot be room for it to also mean "the descendants of the deceased brothers and sisters". Further, as quite rightly pointed out by the Court of Appeal in *Gan Cheng Khuan* any trust that arises under section 7 is as directed under section 6.

---

[11] [2012] MLHRU 297
[12] [2020] MLRHU 1197

Also, if nephews and nieces are allowed, as submitted by the Appellant's Solicitor in *Gan Cheng Khuan* then in the event all the brothers and sisters of the intestate had predeceased the intestate and only left behind their issues than they will take in priority over the grandparents and that could not have been the intention of Parliament in the absence of any express provision to that effect.

Historical Perspective

The section 6 and subsections 7(1) and (2) is modelled to a great extent on the laws of England and Wales as found in subsections 46(1)(v) and 47(1)(i) and (3) of the Administration of Estates Act 1925 (AEA 1925). Although the relevant sections in both the aforesaid Acts are not *in pari materia* but the similarities are striking (as embolden) and reproduced below:

> 46(1) The residuary estate of an intestate shall be distributed in the manner or be held in trusts mentioned in this section, namely:-
>
> (v) If the intestate leaves no issue or parent, then, subject to the interests of a surviving husband or wife, the residuary estate of the intestate shall **be held in trust for the following persons living at the death of the intestate, and in the following order and manner, namely:-**
>
> **First, on the statutory trusts for the brothers and sisters of the whole blood** of the intestate; but if no person takes an absolutely vested interest under such trusts; then
>
> **Secondly, on the statutory trusts for the brothers and sisters of the half blood** of the intestate; but if no person takes an absolutely vested interest under such trusts; then

Thirdly, for the grandparents of the intestate and, if more than one survives the intestate, in equal shares; but if there is no member of the class; then and so on.

47 (1) Where under this Part of this Act the **residuary estate of an intestate**, or any part thereof, **is directed to be held under statutory trusts for the issue of the estate of the intestate**, **the same shall be held upon the following trusts**, namely: -

(i) In trust, **in equal shares if more than one, for all or any of the children or child of the intestate, living at the death of the intestate, who attain the age of twenty-one years or marry under that age, and for all or any of the issue living at the death of the intestate who attain the age of twenty-one years or marry under that age of any child of the intestate who predeceases the intestates, such issue to take through all degrees, according to their stocks, in equal shares if more than one, the share which their parent would have taken if living at the death of the intestate, and so that no issue shall take whose parent is living at the death of the intestate and so capable of taking;**

(3) Where under this Part of this Act **the residuary estate of an intestate or any part thereof is directed to be held on statutory trusts for any class of relatives of the intestate, other than issue of the intestate, the same shall be held on trusts corresponding to the statutory trusts for the issue of the intestate** (other than the provision for bringing any money or property into account) **as if such trusts** (other than as aforesaid) **were repeated with the substitution of references to the member or member of that class for references to the children or child of the intestate.**

In England and Wales, the aforesaid sections are with reference to residuary estate of the deceased but our Act deals with the entire estate of the intestate deceased, except in the case of partial intestacy.

However, on **30th October 1952** the entire subsection 46(1)(i) was amended and replaced by the provisions in the First Schedule of the Intestates Estates' Act 1952 [IEA 1952] and a new subsection 47(4) was inserted. The relevant parts of the IEA 1952 are set out in full as an **ADDENDUM.**

It is interesting to note that, when amendments were done to subsections 46(1)(i) and 47 of the AEA 1925 by way of IEA 1952, the **issues of brothers and sisters of whole blood** were specifically inserted as beneficiaries into subsections 46 & 47 AEA 1925. By such insertions the inference is that before the amendments the children of brothers and sisters of whole blood were definitely not considered beneficiaries of their uncle's or aunt's intestate estate. Otherwise, why would such amendments be necessary?

Our Act was enacted in 1958 but quite strangely, our Parliament elected to choose the provisions from the AEA 1925 only without the amendments done by IEA 1952. From the aforesaid election, one may infer that our Parliament had no intention of including the issues of brothers and sisters as beneficiaries of their uncle's or aunt's intestate estate. Further, in our Act we do not have a section similar to the subsection 47(4) inserted into AEA 1925 via IEA 1952.

CONCLUSION

In Malaysia, it is obvious that the right of nephews and nieces to inherit their intestate uncle's and aunt's estate would be dependent on whether the provisions of the Act or ISO 1960 applies. If it is the former, the nephews and nieces are not entitled but if it is the latter, they would be entitled. Imagine a non – Muslim bachelor (parents have predeceased him) domiciled in Sabah and has left behind immovable properties in

Sarawak and Sabah. The nephews and nieces cannot inherit the properties in Sarawak but can inherit the properties in Sabah. This anomalous situation should not be allowed to exist and must be rectified forthwith by legislative intervention as it is tantamount to discrimination and runs afoul of the equality before the law provision in Article 8 of the Federal Constitution of Malaysia. This anomaly can be easily rectified by defining brothers and sisters in section 3 to include "descendants of deceased brothers and sister" or to insert where relevant the words "children or child of the brothers and sisters". A further amendment needed to standardise the law of succession on intestacy between Sabah and the rest of Malaysia would be to cater for the rights of brothers and sisters of half-blood and their issues because such rights are accorded under section 6 ISO 1960.

ADDENDUM

The relevant amendments to AEA 1925 by way of IEA 1952 are set out below -

(2) For **paragraph (i) of subsection (1) of the said section forty-six** (which relates to the disposition of the residuary estate of an intestate leaving a surviving spouse) **there shall be substituted the following paragraphs** –

"(i) If the intestate leaves a husband or wife, then in accordance with the following Table:

TABLE

If the intestate –

(1)leaves - the residuary estate shall be held in trust for

(a)no issue, and the surviving husband or wife absolutely.

(b)No parent, or brother or sister of the whole blood, or **issue of a brother or sister of the whole blood**

(2)– not relevant –

(3)Leaves one or more not relevant of the following,

that is say, a parent, a brother or sister of the whole blood, or **issue of a brother or sister the whole blood**, but leaves no issue

(a) -not relevant-

(b) as to the other half –

(i) where the intestate leaves one parent or both the parents (whether or not **brothers or sisters of the intestate or their issue** also survive in trust for the parents absolutely or, as the case may be for the two parents in equal shares

(3) In accordance with subsection (2) of this section -

(c) at the **end of section forty-seven** of the principal Act there shall be added the following subsections –

"(4) References in paragraph (i) of subsection (1) of the last foregoing section to the intestate leaving, or not leaving, a member of the class consisting of brothers or sisters of the whole blood of the intestate and the **issue of brothers or sisters of the whole blood of the intestate** shall be construed as references to the intestate leaving, or not leaving, a member of that class who attains an absolutely vested interest.