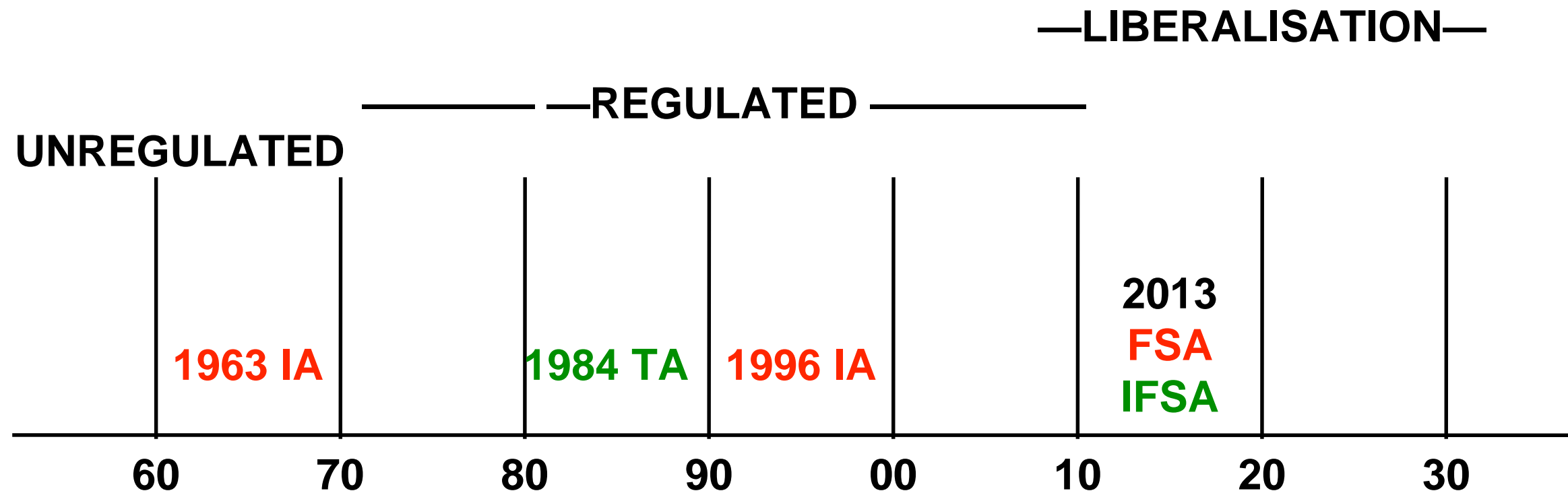


# DEVELOPMENTS IN TAKAFUL REGULATION - THE MALAYSIAN EXPERIENCE

AZMAN ISMAIL

# TAKAFUL REGULATION IN MALAYSIA



# THE LATEST (AND NOT SO LATEST) DEVELOPMENT

- ISLAMIC FINANCIAL SERVICES ACT 2013

- Issues

- Qard from shareholders' fund,
    - Nomination issues

- CENTRAL BANK GUIDELINES

- Shariah Government Framework

- ACTIONS BY CENTRAL BANK

- Allowing new experiment

- Run off

## Provisions Specific To Takaful

- Licencing
- Appointed actuaries (s 83 – s 89)
- Takaful and shareholders' fund (s 90 – s 96)
- Business Conduct for Takaful (s 140 – **s 142**)

## Deficiency of takaful funds

- Where the value of the assets of the takaful fund is less than the value specified under paragraph 92(1)(b), the licensed takaful operator shall provide *qard* or other forms of financial support to the takaful fund from the shareholders' fund for an amount and on such terms and conditions as may be specified by the Bank.
- With respect to qard, the TOF states that:
  - TO *to specify the time period over which the qard* shall be repaid.
  - Beyond this period, the qard shall be *deemed irrecoverable*.
  - Takaful operators may also specify other circumstances under which the qard is not repayable.
  - direct the takaful operator to convert the qard into an *outright transfer prior to the time*

## S 142 - Payment of takaful benefits under family takaful certificate and personal accident takaful certificate

- Schedule 10
  - 1. Application of this Schedule
  - 2. Power to make nomination
  - 3. Effect of nomination
  - 4. Revocation of nomination
  - 5. Payment of takaful benefits where there is nomination
  - 6. Nominee who receives takaful benefits
  - 7. Assigned or pledged takaful benefits
  - 8. Payment of takaful benefits where there is no nomination
  - 9. Payment to person incompetent to contract
  - 10. Distribution of takaful benefits in due course of administration
  - 11. Licensed takaful operator not bound to see application of takaful benefits
  - 12. Compensation on claim amount
  - 13. Schedule to prevail over takaful certificate and any other written law

# SHARIAH ISSUE?

(1) A nomination shall be revoked—

*(a) upon the death of the nominee, or where there is more than one nominee, upon the death of all the nominees, during the lifetime of the takaful participant;*

*(b) by a notice in writing given by the takaful participant to the licensed takaful operator; or*

*(c) by any subsequent nomination.*

(2) Subject to subparagraph (1), a nomination shall not be revoked by a will or by any other act, event or means.

(3) Where there is more than one nominee and any particular nominee who is nominated as a beneficiary under conditional *hibah* predeceases the takaful participant, the licensed takaful operator shall pay the share of the deceased nominee, upon the death of the takaful participant to the estate of the deceased takaful participant unless the takaful participant has made a subsequent nomination in place of the deceased nominee.

# Case Laws - Muslims & Non Muslim

Re Fleetwoods Policy,

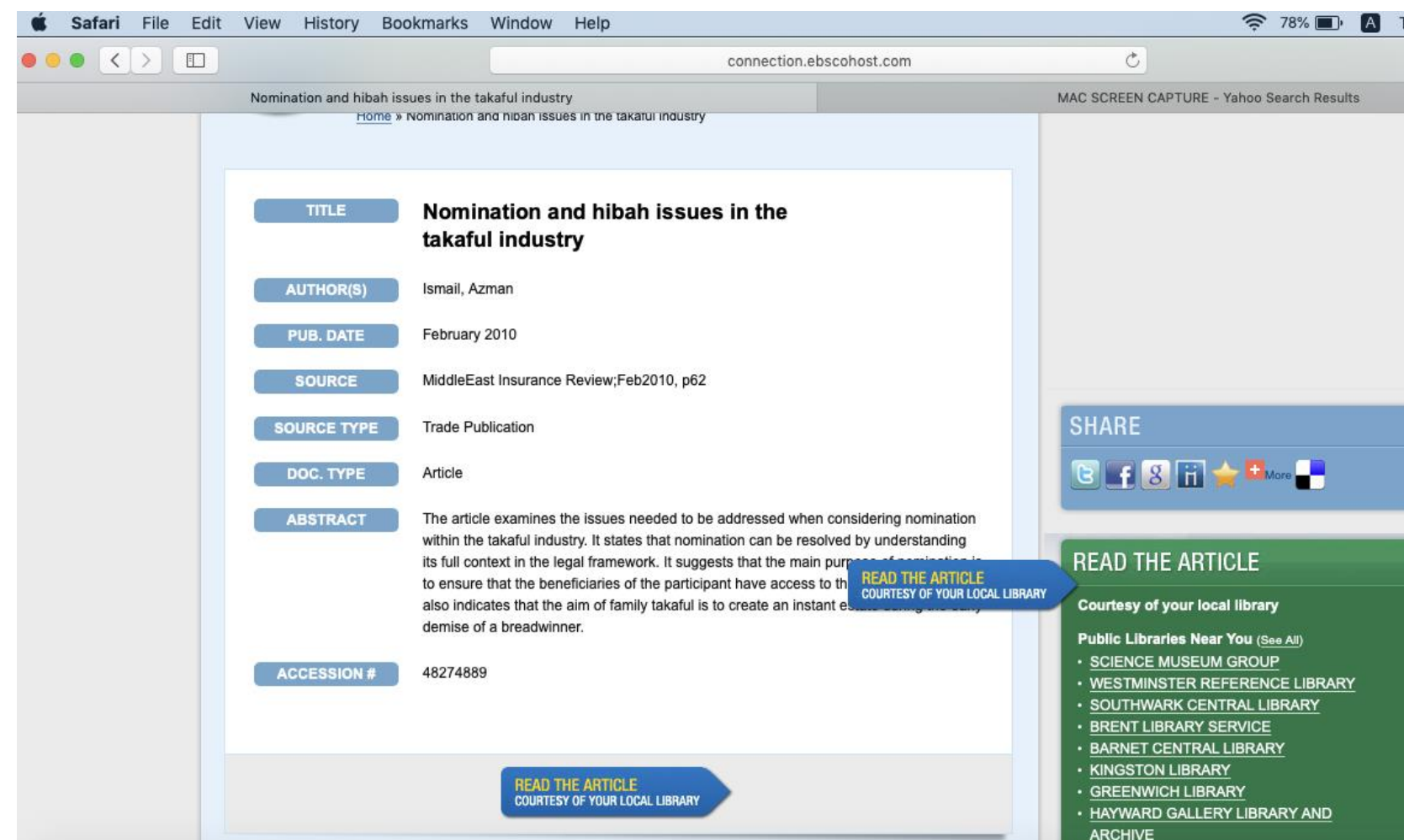
Sadiq Ali v Zahida Begam,

Controller of Estate Duty v. Kasturi Lal Jain.

Further Details...

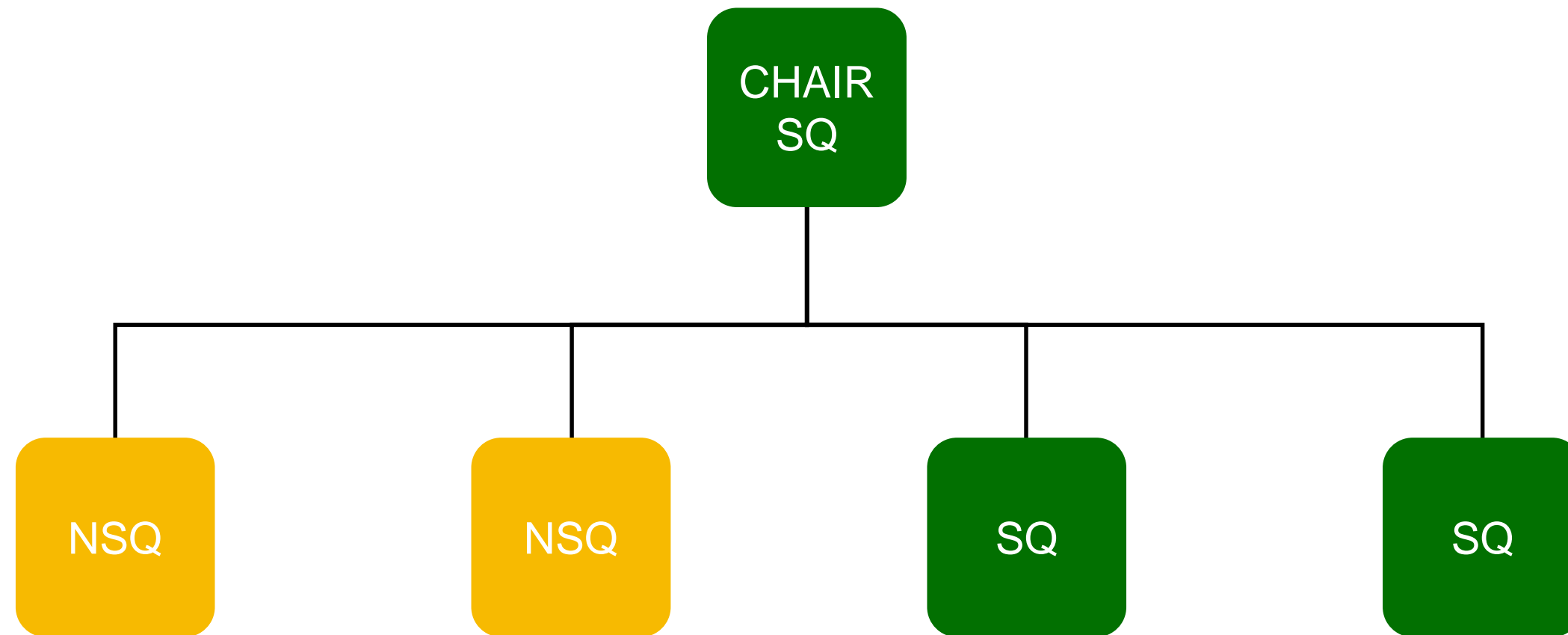
Re Man Bin Mihat

Re Bahadun Bin Haji Hasan





# Shariah Governance Framework



# CONTINUE...

- “NEW” SHARIAH GOVERNANCE FRAMEWORK PROVISION
  - Board may decide to follow BNM SAC Resolutions over decision by Shariah Committee if the latter is more strict
  - Effect - More leeway for Board, but may have other effects, e.g. development of retakaful under LIFSSA 2010 and IFSA 2013
  - Also, matter of interpretation

## ACTIONS BY CENTRAL BANK

- Allowing New Experiment
  - Retakaful Runoff
    - AXA Liability Management
    - Ambra Verisherung AG
- Investments into new instruments - e.g. GREEN SUKUK

GREEN SUKUK

