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وَتَشْرِيفَتِي إِسْلَامًا أَبْنَاءَ رَجَائِنَا مُلْكِيْنَا

ADMINISTRATION OF ESTATE IN MALAYSIA:
AN ANALYSIS ON THE LAW AND PROCEDURE
WITH SPECIAL REFERENCE TO THE
ADMINISTRATION OF REAL ESTATE

BY

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ABSTRACT

In West Malaysia, the jurisdiction to deal with the administration of estate lies with the High Court, the Small Estate Distribution Section and the Public Trust Corporation (Amanah Raya Berhad), depending on the types of estates left by the deceased. There are four main statutes that govern the law and procedure for the estate administration namely, the Rules of the High Court 1980, Probate and Administration Act 1959, Small Estate (Distribution) Act 1955 and Public Trust Corporation Act 1995. The various administrative bodies, estates and statutes have resulted in various laws and procedures applicable to the administration of estate. This research consists of an analysis of the available literatures on the administration of estate. The main objective of the research is to examine the law and procedure as provided by the applicable statutes. The research analyzes the jurisdiction of the administrative bodies and their scope. As the deceased's estate shall not include property that the deceased held or entitled to as a trustee, the position of trust property is examined. The research includes an analysis of the law on wills and *waṣīyyah* since the existence of such an instrument determines the process for the administration of the estate. The administration of real estate by the High Court and the Small Estate Distribution Section are discussed to ascertain the discrepancy in the procedure prior to the distribution of the estate. In this respect, interviews are conducted to look into the practical application of the law. The research proves that there exist *lacunae* and ambiguity in the statutory provisions that affect the process of estate administration. There is also an obvious discrepancy as regards to the administration of real estate by the High Court and the Small Estate Distribution Section, particularly in relation to the registration for the transfer of the estate to the beneficiary. Therefore, the study predicates that a single, competent body dealing specifically with the matter should be established towards a uniformity of the law and procedure for the administration of estate.

ملخص البحث

إن الحق في إدارة أموال التركة في غربي ماليزيا يوضع تحت ولاية الهيئة المختصة، وهو إما أن يكون تحت ولاية المحكمة العليا أو قسم توزيع أموال التركة القليلة، أو شركة الأمانة العامة، وذلك متوقف على نوع التركة التي تركها الميت. وبالإضافة إلى ذلك أنه توجد أربعة قوانين رئيسية موضوعية أو إجراءات مطبقة في إدارة أموال التركة وهي حكم المحكمة العليا ١٩٨٠، قانون إثبات الوصية وإدارة أموال التركة ١٩٥٩، قانون توزيع التركة القليلة ١٩٥٥ وقانون شركة الأمانة العامة ١٩٩٥. و بوجود الهيئات المختصة المتنوعة ومجموعة من القوانين المتعددة فهذه كلها تفضي إلى تعدد القواعد والجراءات فيما يتعلق بإدارة أموال التركة. هذا البحث من أساسه هو بحث في مناقشة التراث والكتب الموجودة التي تتعلق بإدارة أموال التركة. وقام البحث بأهم هدف، بتحليل أهم القوانين المطبقة و المتعلقة بالموضوع لكل الهيئات في ذلك المختصة، ومدى سلطتها. وناقش أيضا قضية أموال الأمانة التي تكون تحت يد الميت لأنها لا تعتبر من أموال التركة. وكذلك حلل البحث نصوص القانون المتعلقة بالوصية أو الايضاء، لأن وجود الوصية أو الايضاء من قبل الميت يساعد في عملية إدارة أموال التركة. وبالإضافة إلى ذلك ناقش البحث المسائل المتعلقة بالجراءات في إدارة أموال التركة من العقار من قبل المحكمة العليا، وقسم توزيع أموال التركة القليلة ليتحقق محل الاختلاف بينهما. وأهتم ذلك بمقابلة الأشخاص المعينة في هذا المجال. من أهم النتائج التي أبرزها البحث أن هناك فراغا متروكا في وثيقة القانون المتعلقة بإدارة أموال التركة وأن بعض نصوص القوانين الموجودة غامضة في موادها. ويبرز هذا البحث أيضا على أن هناك وجود تناقضات بين مجموعة تلك القوانين وخاصة فيما يتعلق بإدارة أموال التركة من العقار. ولذا أنه يرى من المناسب أن تصوغ وثيقة قانونية واحدة موضوعية أو اجرائية في التعامل بقضية إدارة أموال التركة، ويمنح الحق في الإدارة إلى هيئة واحدة فقط. ا

APPROVAL PAGE

The thesis of Akmal Hidayah Halim has been approved by the following:

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DECLARATION

I hereby declare that this thesis is the result of my own investigations, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for any other degrees at IIUM or other institutions.

Akmal Hidayah Halim

Signature.....

Date.....

INTERNATIONAL ISLAMIC UNIVERSITY MALAYSIA

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Dedicated to...

My beloved late father,
Hj. Halim Jaafar...
May Allah bless his soul and place him among the *Shuhadā'*...*Āmīn*

My beloved mother,
Hajjah Akhirah Abdullah

My beloved husband,
Wan Kamaruddin Wan Mustaffa

My lovely child,
Wan Annisa Sofia

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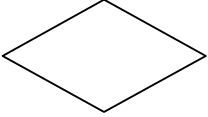

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Trustees Act 1949 (Act 208)
Wills Act 1959 (Act 346)
Wills Ordinance 1959

LIST OF ABBREVIATIONS

AC	Appeal Cases
All ER	All England Law Reports
AMR	All Malaysia Reports
Anor.	Another
Beav	Beavan's Rolls Court Reports
Bro CC	Brown's Chancery Cases
Cap.	Chapter
Ch	Chancery
CLJ	Current Law Journal
De G.F. & J.	De Gex, Fisher & Jones' Chancery Reports
Edn.	Edition
Ed./Eds.	Editor/Editors
ER	English Reports
etc	et cetera (and so forth)
F.M.S.	Federated Malay States
FMSLR	Federated Malay States Law Reports
Ibid	Ibidem (same as above)
IUUM	International Islamic University Malaysia
IKIM	Institute Kefahaman Islam Malaysia
JH	Jurnal Hukum
JMCL	Journal of Malaysian And Comparative Law
KB	Kings Bench
LJ	Lord Justice
LJ Ch	Law Journal Reports, Chancery New Series
LR	Law Reports
LR Eq	Law Reports, Equity Cases
Ltd.	Limited
MLJ/M.L.J.	Malayan Law Journal
Moo PCC	Moore's Privy Council Cases
NLC	National Land Code 1965 (Act 56)
No.	Number
Ors	Others
QBD	Queens Bench Division
p./pp.	page/pages
P.U. (A)	Pemberitahuan Umum (A)
PC	Privy Council
Ph.D	Doctor of Philosophy
r.	rule
RHC	Rules of the High Court 1980 [PU(A) 50/1980]
s.	section
S.A.W.	Ṣallā Allahu 'alayhi wa-Sallam (Blessings of Allah S.W.T. and peace be upon him)
S.W.T.	Subḥānahu wa-Ta'āla (Glory to Him Most High)
Sdn. Bhd.	Sendirian Berhad
Sim	Simons' Vice Chancellor's Reports

SSLR	Straits Settlements Law Reports
Supp	Supplementary
Sw. & Tr.	Swabey & Tristram's Probate & Divorce Reports
Trans/trans	Translator
UK	United Kingdom
v.	verses
Ves	Vesey Junior's Chancery Reports
vol.	volume
W.L.R	Weekly Law Reports

LIST OF FLOW CHART SYMBOLS

Symbol	Symbol Name	Description
	Terminal	The terminal symbol is used to mark the beginning and the end of every flow chart.
	Process	The process symbol is used to show an action involving the process.
	Decision	The decision symbol is used to change the flow of the process based upon different types of actions.
	Flow line	The flow line symbol is used to make the flow of connection.
Y		Yes
N		No

CHAPTER ONE

INTRODUCTION

1.1 BACKGROUND OF THE RESEARCH

An estate refers to all money and property that a person owns, especially everything that is left when he dies,¹ the distribution of which, as required by law, shall only be effected when the death is proven. Nonetheless, before such distribution can take place, the estate of the deceased person has to be administered for the purpose of paying funeral expenses, debts and liabilities.² The existence of a will determines the procedure to be followed and the type of grant of representation to be applied for. With the exception of the estate of a person who dies leaving a valid will, the application for the administration of the estate depends on the value of the estate left by the deceased that shall not include the property which the deceased held or entitled to as a trustee.

The value of the estate left by the deceased shall also determine the procedure for the administration of real estate,³ particularly in relation to the process of vesting the estate to the beneficiaries. While the ultimate aim is to have the name of the beneficiary registered in the registration of title, there exists an obvious discrepancy between the administration of a non-small estate and the estate of a small value as

¹ A. S. Hornby, *Oxford Advanced Learner's Dictionary*, Oxford University Press, 2005, at 519. The word 'estate' may also refer to a large area of land that is owned by one person or family. Normally it refers to an area of land with a lot of houses or factories of the same type on it, which is known as a housing estate or industrial estate respectively. However, the research deals solely with the estate that refers to the property left by the deceased person.

² See section 67, Probate and Administration Act 1959 and section 13(1), Small Estates (Distribution) Act 1955.

³ The word 'real estate' is also known as 'real property' or 'realty', which refers to property in the form of land or buildings. See A. S. Hornby, *Oxford Advanced Learner's Dictionary*, at 1256. According to section 5 of the National Land Code 1965, land includes, *inter alia*, all things attached to the earth or permanently fastened to any thing attached to the earth, whether on or below the surface.

regards to the procedures for such process. Although the discrepancy is to protect the former, the fact that the administration of such an estate must comply with intricate rules and procedures has caused delay and hardship to the beneficiary.

The area of administration of estate in West Malaysia is governed by various statutes of general application,⁴ namely, the Rules of the High Court 1980 [PU(A) 50/1980], Probate and Administration Act 1959 (Act 97), Small Estate (Distribution) Act 1955 (Act 98) and Public Trust Corporation Act 1995 (Act 532). The jurisdiction to deal with the administration of estate lies with the High Court, the Small Estate Distribution Section and the Public Trust Corporation (Amanah Raya Berhad), depending on the type of estate left by the deceased.

The various statutes, administrative bodies and estates have resulted in various laws and procedures applicable to the administration of estate. Hence, the present research suggests that there should be a single body dealing with the administration of estate for the uniformity of law and procedure.

1.2 OBJECTIVES OF THE RESEARCH

The central concern of the research is to examine the law and procedure relating to the administration of estate in West Malaysia with a view to highlight the *lacunae* or the ambiguity of the statutory provisions that may affect the process of administration. The examination includes an analysis on law relating to the execution of trust and wills which has the effect of determining the jurisdiction of the administrative bodies. The research aims to compare the procedure for the administration of a non-small estate by the High Court with the procedure for the administration of a small estate by the Small Estate Distribution Section in view of

⁴ General application means that the statutes are applicable to both Muslim and non-Muslim alike.