



ADMINISTRATION OF NON-CONTENTIOUS ESTATES
IN WEST MALAYSIA: LEGAL AND
ADMINISTRATIVE REFORMS

BY

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ABSTRACT

In West Malaysia, the structure and procedures for estates administration were originally initiated during the colonial period. At present, the jurisdiction to administer the deceased's estates lies with the High Court, the Small Estates Distribution Section and the Public Trust Corporation (Amanah Raya Berhad) depending on the types of estates left by the deceased and governed by various statutes of general application, namely, the Rules of Court 2012, the Probate and Administration Act 1959, the Small Estates (Distribution) Act 1955 and the Public Trust Corporation Act 1995. These various administrative bodies, estates and statutes have resulted in the non-uniformity, uncertainty and inconsistency of the laws and procedures applicable to the administration of estates. Hence, reforming the existing legal framework for the administration of the deceased's estates has become highly necessary. In pursuant thereto, this research analyses the emerging legal and administrative issues in the administration of the deceased's estates in West Malaysia based on the analysis of the governing statutes, reported cases, interviews conducted with various individuals and groups, and data obtained from the respective administrative bodies. This research finds that reform should be made to the existing law and administrative institution in order to regulate the law and procedure on the administration of estates in West Malaysia. The research also finds that there should only be a single administrative body to deal with estate administration particularly for the non-contentious estate proceeding. To demonstrate the legal reform, the research has come out with a sample of a proposed Estates (Distribution) Act and Estates (Distribution) Regulations. As for the administrative reform, the research has laid out the designed organisational and work procedure manual or flow for the establishment of this single administrative body.

خلاصة البحث

بدأ الهيكل والإجراءات لإدارة العقارات في ماليزيا الغربية أصلا في خلال الفترة الاستعمارية. وفي الوقت الحاضر يكون الاختصاص لإدارة عقارات المتوفى واقعا على عاتق المحكمة العليا، وقسم توزيع العقارات الصغيرة، ومؤسسة الأمانة العامة (أمانه رابا المحدودة) تبعا لأنواع العقارات التي تركها المتوفى وتحكمها القوانين المختلفة ذات التطبيق العام، وهي لائحة المحكمة عام 2012م، وقانون إدارة الوصية عام 1959م، وقانون العقارات الصغيرة (توزيع) عام 1955م، وقانون شركة الأمانة العامة عام 1995م. فهذه الهيئات الإدارية والعقارات والقوانين المتنوعة تفضي إلى عدم الانتظام، واللبس، وعدم الاتساق في القوانين والإجراءات المطبقة لإدارة العقارات. وبالتالي، أصبح إصلاح الإطار القانوني القائم لإدارة عقارات المتوفى ضروريا للغاية. ومن أجل ذلك، يحلل هذا البحث المسائل القانونية والإدارية الناشئة عن إدارة عقارات المتوفى في ماليزيا الغربية بناء على تحليل القوانين التي تحكمها، والقضايا المنشورة، والمقابلات التي أجريت مع مختلف الأفراد والجماعات، والبيانات التي تم الحصول عليها من الهيئات الإدارية المعنية. ويخلص هذا البحث أنه لا بد من إصلاح القانون الحالي والمؤسسة الإدارية من أجل تنظيم القانون والإجراء على إدارة العقارات في ماليزيا الغربية. ووجد البحث أيضا أنه ينبغي أن يكون هناك هيئة إدارية واحدة فقط للتعامل مع إدارة العقارات لا سيما في الدعوى العقارية الخالي من النزاع. وللتدليل على الإصلاح القانوني، أتى البحث بمثال من قانون العقارات (توزيع) ولائحة العقارات (توزيع) المقترحة. أما بالنسبة للإصلاح الإداري، فقد وضع هذا البحث تصميمًا للدليل التنظيمي وإجراءات العمل أو سبيلا لإنشاء الهيئة الإدارية الواحدة.

APPROVAL PAGE

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DECLARATION

I hereby declare that this dissertation 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.

Azhani Binti Arshad

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WEST MALAYSIA: LEGAL AND ADMINISTRATIVE REFORMS**

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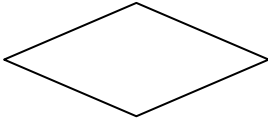

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Wills Ordinance 1959

LIST OF ABBREVIATIONS

Ag	Acting
AMR	All Malaysian Report
CLJ (Sya)	Current Law Journal (Syariah)
CLJ	Current Law Journal
EPF	Employees Provident Fund
FMS	Federated Malay States
FMSLR	Federated Malay States Law Report
IDT	Issue Document of Title
INSAF	The Journal of the Malaysian Bar
JH	Jurnal Hukum
JKPTG	Department of Director General of Lands and Mines
JKSM	Department of Syariah Judiciary Malaysia
JMCL	Journal of Malaysian and Comparative Law
JPJ	Road Transport Department
JPN	National Registration Department
Ky	Kyse's Report
LHDDN	Inland Revenue Board of Malaysia
LR	The Law Review
MAIS	Selangor State Religion Council
MLJ	Malayan Law Journal
MLJU	Malayan Law Journal Unreported
MLRC	Malaysian Law Reform Committee
MOT	Memorandum of Transfer
MP	Members of Parliament
NRIC	National Registration of Identity Card
Reg	Regulation
ShLR	Shariah Law Report
SLJ	Straits Law Journal
SSLR	Straits Settlement Law Report
UFMS	Unfederated Malay States

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.
 Y N	Flow line	The flow line symbol is used to make the flow of connection. Yes No

CHAPTER ONE

INTRODUCTION

1.1 BACKGROUND OF THE STUDY

Generally, most people no matter how little they possess, will leave behind an estate when they die. Upon their death, the deceased's estates needs to be administered for the purpose of paying funeral expenses, debts and liabilities, and thereafter the remnants is to be distributed to the entitled beneficiaries,¹ through a legal process known as the administration of estates.

An estate² refers to all money and property that a person owns, especially everything that is left when he dies.³ However, Kamalanathan Ratnam J, in *HSBC (M) Trustee Bhd v Kong Kim Hoh & Ors*,⁴ states that the word 'estate' does not refer to all the properties possessed by the deceased at the time of his death, rather, the property of the deceased left after due administration thereof.

Under the law of succession, estates are classified into two types i.e., testate and intestate. The former is an estate of a deceased person who dies leaving a will, whilst the latter is the estate of a deceased person who dies without leaving a will. A person will also be considered to have died intestate even when he left behind a will,

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

² There seems to be a distinguishable application or interpretation of the word 'estate' and 'property' within the Probate and Administration Act 1959. Section 2 of the Probate and Administration Act 1959 defined 'estate' as all properties which if a person died intestate would vest in the Chief Justice under section 39 therein whilst 'property' as including a thing in action and any interest in movable or immovable property.

³ Jonathan Crowther (ed), *Oxford: Advanced Learner's Dictionary*, 5th Edition, Oxford University Press, 1995 at 392.

⁴ [1999] 3 MLJ 383 at 392. The learned judge in making such decision relied on the judgment of Thomson J, in *Soundara Achi v Kalyani Achi & Ors* [1953] 1 MLJ 147

if he failed to name his executor or trustee, or where the executors named in the will had all predeceased him.⁵

Tan Yock Lin,⁶ is of the view that the term “administration”⁷ includes the management and distribution by an executor or administrator of the estate of the deceased. It also extends to judicial management of the executor or administrator in the performance of his duties by way of superintending his management, taking the account and making proper distribution among the person entitled.

From the above, it can be deduced that the administration of estates comprise of three stages. They are: obtaining of letters of representation (grant of Probate or Letters of Administration), management of the estate by the executor or administrator by selling off the property or other manner of disposing the estate of the deceased and distribution of the property or the proceeds of sale to the heirs or beneficiaries.

In West Malaysia, the jurisdiction over administration of estates resides several judicial and administrative bodies which include: the High Court, the Small Estates Distribution Section⁸ of the Director General Land & Mines Department, and the Public Trust Corporation (Amanah Raya Berhad). Specific role of the above mentioned bodies depend on some requirements which include the types of estate and the total value of the estate of the deceased. Meanwhile, the Syariah Court shall only

⁵ Ibid. See also section 16, Probate and Administration Act 1959.

⁶ See Tan, Yock Yin, *Conflicts Issues in Family and Succession Law*, Butterworths Asia, 1993, at 557.

⁷ Section 2 of the Probate and Administration Act 1959 means, with reference to the estate of a deceased person, letters of administration issued by the Court whether general or limited or with the will annexed or otherwise authorizing the person or persons therein named to administer the deceased person’s estate in accordance with law.

⁸ Small Estate Distribution Section refers to the head office at Putrajaya or one of the twelve sections under the Director General Land & Mines Department. Whereas Small Estates Distribution Unit refers to the unit established or located at the State or District level, as the case may be.