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Empowering Personal Representatives' Statutory Duties in Administration of Deceased's Estates

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Abstract

In Malaysia, law requires for the appointment of personal representatives before the deceased estates can be distributed. There are numbers of statutory duties and power of personal representatives related to deceased estates. However, anecdotal evidence showed personal representative are not in the know on what should be done once appointed. This article aims to analyze the role and duties of personal representatives. The discussion adopts the doctrinal content analysis method. This paper concludes that the express provision pertaining to the roles and duties of personal representatives in Malaysia is not clear which can contribute to problems in managing deceased estates.

Keywords: deceased estates, personal representatives, powers, Malaysia

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1.0 Introduction

In Malaysia, the law requires for the appointment of personal representatives before the deceased estate can be distributed according to rule of testacy or intestacy. Upon the appointment, the property to which a deceased person was entitled for during his or her lifetime, shall on his or her death devolve and vest in his or her personal representatives (Nor Azlina Mohd Noor & Ahmad Shamsul Abd Aziz, 2019). This is so as when a person dies, all properties under his name will be frozen and cannot be transacted. The consequences are that, from the legal perspective, the deceased properties can only be transacted when his personal representatives applied for letter of representations from the Civil High Court (Nor Azlina Mohd Noor & Ahmad Shamsul Abd Aziz, 2018). Once the letter of representation is granted to the personal representative either in common forms or solemn forms, he accordingly takes over the deceased's right as the owner of the property and may proceed with the duties for the administration of the deceased estate (Akmal Hidayah Halim & Nor Azlina Mohd Noor, 2016).

The fundamental idea of the appointment of personal representatives is not only to protect the estate of the deceased person but also to ensure that the rights and interests of the beneficiaries are also safeguarded. There are considerable numbers of statutory duties and power of personal representatives listed in the main legislation relation to probate and law of succession in Malaysia namely Probate and Administration Act 1959 and Trustees Act 1949 (Siti Asishah Hassan, Rusnadewi Abdul Rashid & Akmal Hidayah Halim, 2020). However, from anecdotal evidence gathered informally, it is showed that, those individuals appointed as the personal representative are not in the know on what should be done once appointed by the administrative bodies. Hence, this article aims to critically analyze the role and duties

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of personal representatives of deceased estates in Malaysia. The objective of this article is to examine the law governing the role and duties of personal representatives in Malaysia and what should be done to improve the law.

2.0 Literature Reviews

The concept of the administration of estates is not just to collect, manage, develop or protect the deceased estates but also to ensure that the estates should be passed to the estates beneficiaries without causing inconveniences and hardship to them (Nasrul Hisyam Nor Muhammad, 2017). In doing so, Malaysia's estate administration law required the appointment of personal representatives before the deceased's estates could be handled with. Failure to appoint a personal representative according to the procedure accorded by law, for example, due to a lack of knowledge of the law, may result in civil or criminal charges being brought against the individual who intermeddles with the deceased's property (Akmal Hidayah Halim & Nor Azlina Mohd Noor, 2015).

Previous research that undertook the challenges to investigate the problems in estate administration had identified two category of problems namely legal factor and social factor (Nor Azlina Mohd Noor, 2017). The legal factors include an ineffective system of administration of estates and complexity of the law (Muhamad Helmi Md Said, Muhammad Amrullah Drs Nasrul, Nora Abdul Hak & Wan Noraini Mohd Salim, 2021; Azi Haslin Abdul Rahman & Rusni Hassan, 2019; Azhani Arshad & Akmal Hidayah Halim, 2015; Mohd Fitri Abdul Rahman, Kamaruddin Ngah, Jamaluddin Mustaffa, Rozita Abdul Mutalib & Mohd Hilmi Hamzah, 2016), absence of practical settlement mechanism in legal system (Noraini Noordin, Adibah Shuib, Mohammad Said Zainol, & Mohamed Azam Mohamed Adil, 2013), conflict of jurisdiction between the administrative bodies (Rusnadewi Abdul Rashid & Noor Inayah Yaakub, 2011), and absence of specific department for estate administration (Akmal Hidayah Halim, 2012).

Among the recognised social factors include the lack of knowledge on law of inheritance especially Muslim (Rusnadewi Abdul Rashid, Siti Asishah Hassan & Noor Inayah Yaakub, 2013), public confusion over the different role and functions of available bodies or agencies (Azhani Arshad & Akmal Hidayah Halim, 2015), lackadaisical attitude of estate beneficiaries (Fatin Afiqah Md Azmi, 2014), dishonest personal representatives and misconduct of personal representatives (Akmal Hidayah Halim & Nor Azlina Mohd Noor, 2015), failure of personal representatives to incorporate legal heir in the list of beneficiaries (Wan Abdul Halim Wan Harun, 2009), uncooperative estate beneficiaries and incapability of keeping proper evidence and documents and the incidence of fraud and disputes among heirs (Norhafizah Arifin & Khadijah Hussin, 2015). It is clear from most of the existing literature that the discussion on the role and duties of personal representatives in the administration of estates in Malaysia attracts only a few researchers. Even though some authors tend to deliberate the issue, the discussion is so brief and limited. No comprehensive discussion has been made regarding this issue. On those facts, the absence of the basic statutory legal duties of personal representative may exacerbate the problem.

When dealing with the deceased's property, there are a number of steps that must be followed. As a result, the personal representatives in charge of the deceased's assets should be well-versed in estate administration legislation. He must not only be able to discern where to go and what to do with the deceased's death, but he must also be equipped with such information and capable of completing his obligations and legal duties (Muhammad Amrullah Drs Nasrul & Wan Noraini Mohd Salim, 2018). The technical definition given by Muhammad Amrullah Drs Nasrul, Wan Noraini Mohd Salim, Muhamad Helmi Md Said & Siti Nuramani Abdul Manap (2017), points out three main criteria in the administration of estate which include, (a) collection of the deceased's assets, (b) payment of debts and liabilities, and (c) distribution of the remainder of assets to those entitled. Mohamad Ali Roshidi Ahmad (2021) of the opinion that legal heirs should also play their role in gaining basic knowledge about the estate administration. He asserted that the majority of legal heirs are unaware of how to file a claim for the estate. They have no idea which government agencies they need to see or what paperwork they need to prepare for the administration process.

3.0 Methodology

The article employed qualitative doctrinal legal research as the article intends to discuss in-depth and detailed on the particular matters. By using qualitative methods many new aspects of problem can be identified and thus once they are identified, suggestion would follows resulting in the research result and findings being more beneficial and practical (Yin, 2015). For this purpose, the discussion adopts the doctrinal content analysis method by examining the existing primary and secondary data gathered from multiple sources including statutory provisions as provided by Probate and Administration Act 1959 and the Trustees Act 1949, case law and other legal and non-legal literatures relating to the duties of the personal representative. The analysis of data is made manually according to the type of the data collected and gathered from documentary data, statutory provisions, case laws and other legal and non-legal literature using thematic analysis.

4.0 Findings and Discussion

The precise nature and details of the role and task constitute the bulk discussion in the appointment of personal representative in estate administration. Personal representative who is appointed through testamentary document derive their authority from the will, and the deceased usually wish to confer on them a wide range of powers, which would facilitate an efficient estate administration after the testator died. Basically, the role and task will be determined based on the types of grants of representation granted by the Civil High Court or Land Administrator and shall be subject to such limitations specify in the grant. Personal representatives must discharge their duties and functions conscientiously in good faith and expeditiously and efficiently as is consistent with the best interests of the estate starting from

the collection of the deceased asset, realizing the property and lastly managing the property. Their duty was not only to act capriciously but in good faith always.

Principally, in performing the duties, the personal representative needs a wide-ranging of powers. This power frequently derived from three sources. Firstly, from a testamentary document, secondly from the principle of Common Law and Equity and thirdly from written law. If the deceased died with a will, it is a principal duty of the executor to carry out the wishes of the testator. If there is no will, the administrator must distribute the decedent's estate in accordance with the applicable law. Although most of personal representatives' powers have been codified by written statute, their powers are not actually confined to those appearing in the statute only as most rights of estate beneficiaries can be found in the principle of Common Law and Equity.

4.1 Duties of Personal Representatives Under Common Law

At common law, personal representatives are charged with gathering and taking possession and control of the assets of the estate, protecting and prudently investing those assets during administration, identifying and paying enforceable and outstanding debts or liabilities and obligations of the deceased's estate. Furthermore, they are charged with determining and paying taxes related to the decedent and the estate assets, properly distributing the remaining assets of the estate to the proper heirs or beneficiaries of the decedent. Lastly, they must provide for accounting to the court regarding the handling and distribution of the estate assets. As the administrative duties, the personal representatives are obligated to pay all such funeral, testamentary and administration expenses, debts and other liabilities as are properly payable by the deceased's estate. If the asset left by a deceased person is not sufficient to cover his funeral and testamentary expenses and to discharge his debts and other liabilities, there will be nothing for the beneficiaries under his will or intestacy, but the personal representative should proceed with extreme caution.

Sidhu (2005) in summarizing the common law duties of personal representatives observed that the duties may include to collect all debts due to the estate, to pay all the debts and satisfy all the liabilities of the estate, to convert unauthorized investments into authorized ones and to distribute the remainder of the estate according to deceased will or rules of intestacy. This is intertwined with the basic nature of the procedures of administration of estates explained by Allison (1990). She explained that administration of administration is designed to accomplish three main goals. Firstly, the granting of authority to the personal representatives are to gather all the deceased's property. Secondly, providing a fund to the administration of estates which is to provide the fund against where the creditor of the deceased may satisfy their claims. Thirdly, distributing the deceased to the proper recipient of the estates of the deceased person after all valid claims have been satisfied.

Other common law duty as applicable in Malaysia can be digested from case law. For example, a personal representative is duty bound to keep an inventory of the deceased asset. It is the basic duties of all personal representatives to render a clear and accurate account. It is so as only through a proper and accurate account that the estate beneficiaries have the means of knowing whether the estate is being properly administered or otherwise. In *Damayanti Kantilal Doshi & Ors v. Jigarlal Kantilal Doshi & Ors* [1998] 4 CLJ 81, the Court of Appeal had held that the duty to render account is one of the basic duties off all executors or trustees. By the terms of the deceased Will, the issue of accounts was all important since the residue for distribution could be derived at only after deductions of debts and expenses had been made. Without the accounts being rendered the beneficiaries would not have any means of knowing whether the estate was being the administered properly. The above decision has been upheld by *Fong Ah Tai & Ors v. Fong Yoon Heng & Anor* [2004] 7 MLJ 128 and in *Gan Chiew Heang & Ors v. Universal Trustee (M) Bhd & Anor* [2011] 10 CLJ 213.

4.2 Duties of Personal Representatives Under Malaysian Law

In Malaysia, there is no express provision governing the basic duties of a personal representative. Therefore, the court still referring to duties laid down in the Common Law and Equity in deciding any dispute brought before them. For instance, the High Court in case of *Ligar Fernandez v. Eric Claude Cooke* [2002] 6 CLJ 152 held that the principal duties of an executor (who is the personal representative in the event the deceased died living a will) are to get in the assets of the deceased to pay his debts, to pay the legacies given in the will and to distribute the assets.

Nevertheless, the basic statutory duties of a personal representative in estate administration that is resemble with Common Law duties can be inferred from several legal provisions in Probate and Administration Act 1959 and Trustee Act 1949. The duties are summarized as follows:

Table 1. Inference to the Basic Statutory Duties of Personal Representatives

Common Law Duties	Statutory Duties	
	Probate and Administration 1959	Trustee Act 1949
<ul style="list-style-type: none"> to collect all debts due to the estate, to pay all the debts and satisfy all the liabilities of the estate 	<ul style="list-style-type: none"> Duty of personal representative as to inventory - s.62 Duties of representatives- s.68 	<ul style="list-style-type: none"> Duty to Provide Account and Information - s.27(4)
<ul style="list-style-type: none"> to convert unauthorized investments into authorized ones 		<ul style="list-style-type: none"> Duty to invest - s.5, s.6, s.7
<ul style="list-style-type: none"> distribute the remainder of the estate according to deceased will or rules of intestacy 	<ul style="list-style-type: none"> Transfer of assets to personal representative in country of domicile of deceased for distribution - s.63 	<ul style="list-style-type: none"> Duty to Distribute -s.31(1)(A)

(Source: *Probate and Administration 1959 and Trustee Act 1949*)

Furthermore, the basic duties of a personal representative in estate administration can also be inferred from section 69 of Probate and Administration Act 1959. The provision of the section is as follow.

- (1) Where the estate of a deceased person is insolvent his estate shall be administered in accordance with the rules set out in Part I of the First Schedule.....
- (3) Where the estate of a deceased person is solvent, his estate shall, subject to rules of court and the provisions hereinafter contained as to charges on property of the deceased, and to the provisions, if any, contained in his will, be applicable towards the discharge of the funeral, testamentary and administration expenses, debts and liabilities payable thereout in the order mentioned in Part II of the First Schedule.

This section is in pari materia with section 23 and section 34 (3) of Administration of Estates Act 1925 in England. The section differentiates the methods of administration between solvent and insolvent estate. In pursuant to section 69 of Probate and Administration Act 1959, the estate of an insolvent deceased person shall be administered as the following rules as provided under Part I and Part II of the First Schedule.

Table 2. Methods of Administration between Solvent and Insolvent Estate

PART I: Estate of An Insolvent Deceased Person	PART II: Estate of A Solvent Deceased Person
<ul style="list-style-type: none"> The funeral, testamentary, and administration expenses have priority. Subject as aforesaid, the same rules shall prevail and be observed as to the respective rights of secured and unsecured creditors and as to debts and liabilities provable and as to the valuation of annuities and future and contingent liabilities respectively, and as to the priorities of debts and liabilities, as may be in force for the time being under the law of bankruptcy with respect to the assets of persons adjudged bankrupt. 	<ul style="list-style-type: none"> Property of the deceased undisposed of by will, subject to the retention thereof of a fund sufficient to meet any pecuniary legacies. Property of the deceased not specifically devised or bequeathed but included (either by a specific or general description) in a residuary gift, subject to the retention out of the property of a fund sufficient to meet any pecuniary legacies, so far as not provided for as aforesaid. Property of the deceased specifically appropriated or devised or bequeathed (either by specific or general description) for the payment of debts. Property of the deceased charged with or devised or bequeathed (either by a specific or general description) subject to a charge for the payment of debts. The fund, if any, retained to meet pecuniary legacies. Property specifically devised or bequeathed, rateably according to value. Property appointed by will under a general power, rateably according to value. The following provisions shall also apply: (a) the order of application may be varied by the will of the deceased; (b) this part of this Schedule does not affect the liability of land to answer the death duty imposed thereon in exoneration of other assets .

(Source: Probate and Administration 1959)

The schedule only gives the rules on the method of priority distribution in both type of estate but do not discuss the basic duty to administer the deceased's estate as conferring by the Common Law and Equity. As the schedule give priority to the payment of the funeral, testamentary, and administration expenses have priority in insolvent estate, it shows that it is one important role for the personal representative to discharge of. The provision can be found in section 44 of Probate and Administration Act 1959. The section provides that the personal representative can be allowed by the Court to utilize the estate deceased to pay for the deceased testamentary expenses other reasonable expenses incurred by them and it includes the proper funeral expenses and all reasonable expenses of subsequent religious ceremonies suitable to the station in life of the deceased.

The absence of express general common duties of personal representatives in the legislation governing the appointment of personal representatives may cause hardship to the parties involved in such situation. In protecting the interests of the estate's beneficiaries, it is important to ensure that the personal representatives who are usually a layman are well-informed with regards to their duties and roles in administration of estates.

4.3 Duties of Personal Representatives under Other Commonwealth Countries: Lesson to be Learned

The circumstances are different in other Commonwealth countries such as England, Australia and Canada as their administration of estates law have expressly inserted common law principle relating to the personal representative into their written statute. This situation would offer a complete assistance to the personal representative who is ordinarily a layman and has lack of knowledge on the principle laid down under common law system (Nor Azlina Mohd Noor,2017).

In Canada for instance, Estate Administration Act Statutes of Alberta, 2014 expressly stated the role and duties of the personal representative. Among the core tasks of personal representative which the common law duty expected to any personal representative as expressly stated in statute includes identifying the estate assets and liabilities, administering and managing the estate, satisfying the debts

and obligations of the estate, and distributing and accounting for the administration of the estate. Section 5 of the statute provide the provision on the general duties of a personal representative where a personal representative must (a) perform the role of personal representative (i) honestly and in good faith, (ii) in accordance with the testator's intentions and with the will, if a valid will exists, and (iii) with the care, diligence and skill that a person of ordinary prudence would exercise in comparable circumstances where a fiduciary relationship exists, and (b) distribute the estate as soon as practicable.

The legal provision is a good plain explanation on how a personal representative should observe his conduct after been awarded the grant of representation by the Court. It lists out the basic duty of a personal representative is to act honestly and in good faith and certainly for the best interest of testator/deceased and estate beneficiaries. Then they must adhere to the instruction directed by the testator in the will and some scholar usually used the terms of 'dead hand control'.

Likewise, in England, Administration of Estates Act 1925 provides that the personal representative of a deceased person shall be under a duty to collect and get in the real and personal estate of the deceased and administer it according to law; exhibit on oath in the court a full inventory of the estate and when so required render an account of the administration of the estate to the court and deliver up the grant of probate or administration to that court. In similar vein in Australia, Succession Act 1981 of Queensland provides for the duties of personal representatives expressly in their statute to include collecting and getting in the real and personal estate of the deceased and administer it according to law, exhibiting on oath in the court a full inventory of the estate and when so required render an account of the administration of the estate to the court, delivering up the grant of probate or letters of administration to the court; and last but not least distributing the estate of the deceased, subject to the administration thereof, as soon as may be.

Hence, the legislature in Malaysia should take judicial notice on the legislation passed by these commonwealth countries in ensuring that the administration of deceased estates is well managed by the appointed personal representatives. The express statutory provisions would render appropriate assistances to the personal representatives in exercising their roles and duties in administrating the estates of a deceased person.

5.0 Conclusion and Recommendations

This paper concludes that there is no express statutory provision in Malaysia pertaining to the basic roles, duties, and tasks of personal representatives, which may contribute to management issues in estate administration if the personal representative appointed is a layperson with no prior knowledge of his legal responsibilities and duties. The lack of understanding on the part of the personal representatives may compromise the interests of estate beneficiaries. As a result, it is enlightening to agree that no party should be held accountable for ignorance or error if there are no basic rules to aid them in carrying out their legal duties and obligations.

It is critical to ensure that the personal representatives, who are typically laypeople without any basic legal knowledge, are well-informed about their obligations and functions in estate administration in order to preserve the interests of the estate's beneficiaries. As a result, this article recommends that the existing law be amended to include a clear explanation of the core tasks of a personal representative when administering a deceased person's estate, which include identifying the estate assets and liabilities, administering and managing the estate, satisfying the estate's debts and obligations, and distributing and accounting for the estate administration. Furthermore, a personal representative must be constantly reminded of his duty of care to carry out the role of personal representative honestly and in good faith, in accordance with the testator's intentions, and with the care, diligence, and skill that a person of ordinary prudence would exercise in similar circumstances where a fiduciary relationship exists, and to distribute the estate as soon as practicable.

It is suggested that Malaysian legislation should take into account the development of the law relating to the duties and roles of personal representatives in another jurisdiction such as Canada, Australian and England. Many of the rights of beneficiaries of estates of the deceased person are no more than the mirror image of the duties of personal representatives. To ensure the right of beneficiaries are well protected, the law must expressly state on how a personal representative should observe his conduct after been awarded the grant of representation by the High Court.

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Paper Contribution to Related Field of Study

This paper contributes to the enrichment of literatures discussing on the duties and roles of personal representatives in law of succession managing the deceased estates.

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