

NAVIGATING FIDUCIARY RESPONSIBILITIES IN INHERITANCE MANAGEMENT: A STUDY ON THE ROLES OF PERSONAL REPRESENTATIVE

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Abstract. Personal representative is the authorised person who manages the estates of the deceased person. The estate management by the personal representatives involves a technical process and requires strict compliance to the law. Since the tasks involved deals with the ownership of the deceased and the rights and entitlement of the beneficiaries, a personal representative is expected to carry out the task fiduciarily, emphasising aspects such as honesty, trust and fairness. The problem addressed in this study is the potential for conflict in the execution of fiduciary duties by the personal representative. Failure to adhere to these duties can result in disputes, financial mismanagement, and inequitable distribution of assets. This study examines the fiduciary duties of personal representatives in inheritance management, highlighting their crucial role in estate administration in accordance with the law. The primary objective of this paper is to outline the scope of fiduciary duties incumbent upon the personal representative by exploring the legal frameworks that govern these responsibilities. This paper adopts library-based research, involving a comprehensive review of legal texts, case law, academic journals, and statutory regulations pertaining to fiduciary duties in inheritance management. The findings reveal that while fiduciary duties are well-defined in legal theory, their practical application often encounters obstacles due to ambiguities in the law and varying levels of personal representative expertise and knowledge in inheritance management.

Keywords: *personal representative, fiduciary duty, estate administration, beneficiaries, conflict of interest*

Introduction

Inheritance management or also known as estate administration, is a complex area of law that involves management and distribution of the deceased person's estate. The administration process ensures that the deceased's assets are distributed according to the law and the wishes of the deceased, as expressed in a will, subject to the availability of such will. This process is overseen by personal representatives, who are individuals or corporate entities appointed to administer the estate of the deceased. The role of personal representatives is crucial as they are responsible for ensuring that the estate is managed and distributed fairly and in accordance with legal requirements.

Inheritance laws governing muslims and non-muslims

In Malaysia, inheritance laws are divided based on the religious affiliation of the deceased. For Muslims, inheritance matters are governed by Syariah law, which is applied through the Syariah Courts. The principles of farā'id for example, dictate the distribution of a Muslim's estate, ensuring that specific shares are allocated to the heirs based on their relationship to the deceased where the process of determining the distribution of estate to the legal heirs falls under the jurisdiction of the Syariah Court.

The state Syariah Enactments and the Administration of Islamic Law Enactments provide the legal framework for these distributions. This however does not negate the authority governed by the civil law over Muslim subjects as the syariah law does not cover the whole matters pertaining to inheritance, particularly on the part of granting the letters of representation.

For non-Muslims, inheritance laws are governed solely by civil law statutes such as the Probate and Administration Act 1959, the Distribution Act 1958, and the Small Estates (Distribution) Act 1955. The civil courts, particularly the High Court have jurisdiction over this matter by issuing the letters of representation which act as an imbue of authority to a specific appointed person or body, to administer the deceased's estate (Ibrahim et al., 2024). The distribution of the estate itself should be in accordance with the will of the deceased or, in the absence of a will, according to the intestacy rules outlined in the Distribution Act 1958. These laws ensure that the estate is distributed among the surviving spouse, children, and other relatives in specified proportions. It should however be noted that the civil court is one of the several available administrative bodies that functions in granting the letters of representation. It can be observed here that the duality of laws being practiced in Malaysia gives rise to a different part of inheritance management via the governing of syariah and civil law respectively. Still, the technical part such as the process after the granting of letters of representation are similar, with the exception of the distribution part which is to take place in accordance with the rule of farā'id for Muslims for the most part or based on the will provision in testate cases or Distribution Act for intestate cases.

Differences on inheritance laws between peninsular Malaysia, Sabah and Sarawak

While the general framework for inheritance law is consistent across Malaysia, there are notable differences in the application of these laws between Peninsular Malaysia and the states of Sabah and Sarawak. These differences arise from the historical context and legal autonomy granted to these regions. For instance, in Peninsular Malaysia, the administration of estates is largely guided by federal laws such as the Probate and Administration Act 1959 and the Distribution Act 1958. These laws provide a uniform approach to estate administration and distribution. In contrast, the state of Sabah and Sarawak have retained certain legal peculiarities due to their historical agreements during the formation of Malaysia. These states have their own local ordinances that complement the federal laws, such as the Sabah Wills Ordinance and the Sarawak Wills Ordinance. These ordinances may contain provisions that are unique to the local context and may affect the administration and distribution of estates differently than in Peninsular Malaysia. As such, this will also affect the management of the deceased's estate by the personal representative as there are differences as to the scope of authorities vested to the person under the law in Sabah and Sarawak.

Development of inheritance management in Malaysia

The evolution of estate administration in Malaysia has been influenced by both indigenous practices and colonial legacies. Historically, the administration of estates was governed by customary practices and syariah law, which varied significantly among different ethnic communities. For example, the Malay communities at that time are greatly influenced by the Malay customary practice with the inclusion of the syariah law which sees the presence of estate management and distribution being made in

accordance with the rule of farā'id and certain adat practices. With the advent of British colonial rule, a more formalised and structured system of estate administration was introduced, incorporating elements of English common law. According to Nasrul et al. (2018), this period saw the establishment of legal institutions and frameworks that continue to influence Malaysian inheritance law today through the presence of the court system and specific statutes governing inheritance. After independence, Malaysia has made efforts to harmonise and modernise its estate administration laws to reflect contemporary needs and societal changes. Significant legislative reforms have been undertaken to streamline the processes and reduce conflicts and ambiguities. These reforms include the introduction of the Rules of Court 2012 to streamline the procedural part in the civil courts, and also the introduction of other administrative bodies which provide different procedures for probate and administration matters, such as the Amanah Raya Berhad (ARB) through its Public Trust Corporation Act 1995, which laws is to establish a public trustee to manage estates where no suitable personal representative is available.

Personal representative and its roles

Personal representatives play a crucial role in inheritance management. In its technicality, the personal representative is divided between executors who are appointed by the will of the deceased or administrators appointed by the court in cases of intestacy. The primary duties of personal representatives between these two types however are the same for the most part which include gathering and managing the deceased's assets, paying any debts and taxes owed by the estate, and distributing the remaining assets to the beneficiaries (Noor and Abd Aziz, 2022). Since the task of managing the estate involves having possession over the deceased's asset, the role of personal representatives is governed by fiduciary duties, which require them to act in the best interests of the beneficiaries and to manage the estate with honesty, integrity, and fairness. This fiduciary responsibility is crucial to preventing conflicts of interest and ensuring that the estate is administered impartially. For instance, a personal representative is expected to meticulously document all transactions and decisions, providing transparency to beneficiaries. This transparency helps build trust and mitigates potential disputes that could arise from the administration process. However, problems can arise when personal representatives fail to adhere to their fiduciary duties. Lack of fiduciary elements in estate management can lead to significant issues such as misappropriation of assets, conflicts of interest, and unfair distribution of the estate. These breaches can cause financial loss to the beneficiaries and damage relationships among the heirs. Furthermore, inadequate fiduciary management can result in legal disputes, prolonging the administration process and increasing costs for the estate. Ensuring that personal representatives fully understand and comply with their fiduciary responsibilities is essential to maintaining the integrity of the inheritance process and protecting the interests of all parties involved.

Materials and Methods

This study employs a library-based approach, involving an extensive review of legal texts, case law, academic journals, and statutory regulations. Key statutes are being examined mainly the Probate and Administration Act 1959, Distribution Act 1958, Small Estates (Distribution) Act 1955 and Trustee Act 1949. Reference through these

statutes provides for the legal framework for the roles and duties of personal representatives. Also, through the selected statutes, comparative analysis is being made to see which part of the provisions within referred statutes that are cited on the list and the types of fiduciary duties of a personal representative. The study also reviews significant case law from both local and English courts, offering insights into judicial interpretation and enforcement of fiduciary duties. Additionally, academic journals and articles related to fiduciary duties, estate administration, and inheritance laws are reviewed to gather scholarly perspectives and identify common challenges and best practices. Furthermore, a thematic analysis categorises and examines recurring themes and issues identified in the literature and case law, exploring themes such as conflict of interest, transparency, accountability, and best practices in fiduciary management under the estate administration in Malaysia.

Results and Discussion

Laws and practices under inheritance management in Malaysia

Relevant administrative authorities

Inheritance management in Malaysia involves multiple administrative bodies, each with specific jurisdictional powers in awarding letters of representation. These bodies include the Civil High Court, Amanah Raya Berhad (ARB), and the Estate Distribution Division. Additionally, the Shariah Court plays a unique role in issuing farā'id certificates for Muslim estates. Understanding the jurisdiction and functions of each body is crucial, not only to ensure efficient estate administration but also to avoid confusion as to which administrative entity needs to be approached based on the status of the estate.

Civil high court

The Civil High Court possesses a broad jurisdiction over inheritance matters, encompassing a wide range of powers and governs both Muslim and Non-Muslim subjects. This can be seen via cross-referencing Article 74 and the Ninth Schedule under the Federal Constitution that states that matters involving succession, testate and intestate, probate and letter of administration fall under the exclusive power of the civil courts (Yusof and Saiman, 2024). One of its primary functions is to grant letters of representation, a document essential for administering the estate of a deceased person. Two main types of letters of representation can be issued by the High Court by virtue of Section 24(f) of the Court of Judicature Act 1964, namely the Grant of Probate and Letters of Administration (Abdullah et al., 2022). The Grant of Probate is issued when the deceased has left a valid will, authorising the executor named in the will to administer the estate according to the deceased's wishes (Roslan and Ahmad, 2022). The grant of probate provides access to the deceased's assets, allowing the executor to manage and distribute them. The process of obtaining a grant of probate is generally straightforward and non-contentious since the executor's role is already defined in the will, minimising disputes over estate management. The executor is responsible for collecting the deceased's assets, paying any debts and taxes, and distributing the remaining assets to the beneficiaries as specified in the will, ensuring that the deceased's wishes are honored.

In contrast, letters of administration are issued in cases where the deceased did not leave a will (intestate) or when the will does not name an executor. These letters authorise an appointed administrator to manage and distribute the estate according to the law. Applying for letters of administration can be more complex than obtaining a grant of probate, as the beneficiaries must agree on an administrator, and the applicant must provide two sureties, which can be challenging for high-value estates. The sureties must possess assets of similar or higher value than the deceased's estate. The administrator's role is similar to that of an executor but follows the rules of intestacy, dictating how the estate should be distributed among the beneficiaries. This process can be more time-consuming and complex, requiring the agreement of all beneficiaries and compliance with legal requirements. The Civil High Court's jurisdiction is comprehensive, covering all types of assets regardless of their value. In practice, cases involving assets valued at more than two million ringgit are typically heard by the High Court. The introduction of court-annexed systems and e-filing has streamlined the application process for letters of representation, reducing the time required from application to the issuance of the sealed grant to two or three months in non-contentious probate proceedings. These technological advancements have made the process more efficient and accessible, reducing delays and improving overall estate administration (Nordin and Ahmad, 2023).

The High Court also has the authority to hear disputes related to inheritance matters, including conflicts over the validity of a will, the interpretation of its terms, and the distribution of assets. The court's decisions in these matters are crucial for ensuring fair and lawful estate administration. The High Court's role in resolving disputes helps maintain the integrity of the inheritance process and ensures that the rights of all parties involved are protected. In addition to granting the letters of representation, the High Court supervises the administration of estates, overseeing the actions of executors and administrators to ensure they fulfill their duties properly and in accordance with the law. The court can intervene in cases of misconduct or mismanagement, ensuring that the estate is managed in the best interests of the beneficiaries. This supervisory role is essential for maintaining transparency and accountability in estate administration.

Amanah Raya Berhad (ARB)

Amanah Raya Berhad operates under more limited jurisdiction compared to the Civil High Court and the Estate Distribution Division. ARB is authorised to grant letters of representation for estates consisting only of movable property valued at less than RM 600,000. Under Section 17 the Public Trust Corporation Act 1995, ARB can issue declarations or direction orders to the beneficiaries for estate distribution, subject to the value of the estate involved. ARB's role is crucial for smaller estates where the value of the assets may not justify High Court involvement (Roslan and Ahmad, 2022). Despite its limited jurisdictional capacity, ARB plays a vital role in estate administration for smaller estates. However, the restriction on the value of estates it can handle often leads to delays in administering estates valued between RM 600,000 and RM 2,000,000. There have been calls to increase ARB's jurisdictional limit to RM 2,000,000, aligning it with the monetary jurisdiction of the Estate Distribution Division. Expanding ARB's jurisdiction would address this legal gap and ensure more efficient administration of estates within this value range, reducing the High Court's burden and allowing more streamlined processing of smaller estates. In addition to granting letters of representation, ARB can act as a personal representative on behalf of the deceased's beneficiaries, appointed by the testator, the court, or upon request by all beneficiaries.

ARB's expertise ensures efficient and legally compliant estate management, providing peace of mind to beneficiaries. ARB's involvement also includes advisory services, guiding beneficiaries through the legal and procedural aspects of estate administration. By offering expert advice and support, ARB helps ensure effective estate management in accordance with the deceased's wishes. As a professional body with vast experience in managing the deceased's estate, it is expected that ARB is to administer the case fiduciarily and without bias to any parties. As part of its Corporate Social Responsibility (CSR), ARB also educates the public about estate planning and administration through seminars, workshops, and other educational programs. By promoting awareness and understanding of estate administration, ARB helps individuals and families prepare for the future and ensure their estates are managed to their completion and success.

Estate distribution division

The Estate Distribution Division, part of the Department of Director General of Lands and Mines under the Ministry of Natural Resources and Environment, focuses on intestate cases involving small estates. Defined by the Small Estate (Distribution) Act 1955, small estates include those valued at not more than RM 5,000,000, comprising either immovable property or a combination of immovable and movable assets (Shazali et al, 2024). The division's role is crucial in managing the distribution of small estates, ensuring fair and lawful asset distribution. Section 8 of the said Act stipulates the jurisdiction of the land administrator in managing the small estates. The Estate Distribution Division's role has been enhanced through amendments to the Act, increasing the value threshold for estates it can handle from RM 600,000 to RM 2,000,000 and recently in 2022, to RM5,000,000 (Tan, 2022). The division is statutorily empowered to issue letters of administration, authorising the appointed administrator to collect the deceased's assets, pay debts, and distribute the remaining estate to the entitled heirs. This expanded jurisdiction ensures that more estates can be managed efficiently and in compliance with legal requirements. In typical cases, the land administrator may grant a distribution order (Form E) instead of letters of administration. This order immediately affects both immovable and movable assets, registering beneficiaries' portions in the land title for immovable assets and allowing beneficiaries to obtain their entitled shares for movable assets by presenting Form E to the relevant institution. This streamlined process ensures quick and efficient administration of small estates, reducing delays and providing timely resolutions for beneficiaries.

The Estate Distribution Division's streamlined processes and increased jurisdictional capacity have significantly improved the efficiency of estate administration for small estates. By ensuring that all necessary documentation is attached and using the correct forms, the division can expedite the administration process, providing timely resolutions for beneficiaries. The division's focus on efficient and fair distribution of small estates is essential for maintaining public confidence in the inheritance system and protecting beneficiaries' rights. The division also resolves disputes related to the distribution of small estates, mediating conflicts between beneficiaries and ensuring fair and lawful distribution. This role helps maintain harmony among beneficiaries and ensures proper estate administration. In addition to administering small estates, the Estate Distribution Division provides guidance and support to beneficiaries, assisting with the application process, advising on legal requirements, and supporting navigation through estate administration complexities. By offering expert advice and support, the division ensures

efficient and compliant management of small estates. The division collaborates with other administrative bodies and institutions, including the Civil High Court, ARB, and the Shariah Court, to ensure coordinated and efficient estate administration. By fostering collaboration and coordination, the division helps ensure fair and efficient estate administration.

Key statutes under inheritance management

Probate and Administration Act 1959 (Revised 1972) (PAA)

The Probate and Administration Act 1959 (Revised 1972) of Malaysia is a key legislative framework that governs the management and administration of a deceased person's estate, ensuring that the deceased's assets are properly distributed to the rightful beneficiaries. It outlines the processes for obtaining probate (if there is a will/testacy) or letters of administration (if there is no will/intestacy), and sets out the responsibilities of executors and administrators. In practice, the Act ensures that the executors and administrators have clear guidelines on their responsibilities, along with the right of beneficiaries, creditors, and other interested parties to have legal recourse to protect their interests. Under this Act, the roles of executors and administrators are crucial in the management of a deceased person's estate and while both have the responsibility of managing and distributing the estate, there are key distinctions between the two roles based on whether the deceased left a will. An executor is a person named in the deceased's will to carry out the directions of the will. On the other hand, an administrator is appointed by the court to manage and distribute the deceased's estate when there is no will (intestate) or when the named executors are unable or unwilling to act.

General duty of personal representative

Section 68 of the PAA outlines the general duties of representatives responsible for managing the estate of a deceased person (Noor and Abd Aziz, 2022). Here is a detailed breakdown of the duties provided under this section; First, this provision requires the representatives to collect and take possession of all the deceased person's assets and this includes movable and immovable properties, debts owed to the estate, and any other financial interests. Second, the representatives must ensure that all debts and liabilities of the deceased are paid. This includes any funeral, testamentary and administration expenses, outstanding loans, bills, taxes, and other financial obligations that need to be settled before distributing the remaining estate to the beneficiaries. Third, they owe a duty to invest residual money of the estate on behalf of minors beneficiary or beneficiary of life interest in authorised investments and they are allowed to change these investments as needed (discretionary power) until the estate is fully distributed and the residuary estate hereinafter referred as the leftover money and investments, along with any unsold property not needed for administration. Next, the representatives shall handle the income obtained whereby the income from unsold property (after expenses) is treated as income from the deceased's death and can be used as such, with necessary adjustments between life tenants and remaindermen. Lastly, whenever there is an existence of will by the testator, this provision shall apply subject to the terms of the will.

Power of personal representative to dispose of property

Section 60 of this Act requires the personal representatives to comply with this provision when dealing with the deceased's property. Under this section, the representatives are obliged to get agreement from all personal representatives before selling, transferring, or dealing with immovable property unless the Court directs otherwise and if there are multiple representatives, any one of them can act unless the will or administration grant says otherwise. In disposing of the property of the deceased, they can opt to charge, mortgage, or dispose of the property as they see fit, unless restricted by the will or this section, nevertheless, they can bypass restrictions if a Court order is obtained. With regard to the administrator restrictions, the administrator will need the Court permission to either mortgage, charge, or transfer immovable property or to lease such property for more than five years. In the event there is non-compliance of this provision by the representatives, the disposal can be voided by any interested party.

Effect on purchase by personal representative of deceased's property

Section 61 stipulates that in cases where a personal representative buys any part of the deceased's property, directly or indirectly, the sale can be cancelled by any other person interested in the property.

Duty of personal representative as to inventory

With regard to the duties and powers of executors and administrators under this Act, the Act stressed that, among others, the executors and administrators are mandated to collect and inventory the deceased's assets, in which they must identify and collect all assets, including bank accounts, properties, investments, and personal belongings, in which Section 62 of the Act provides as such:

“The personal representative of a deceased person shall, when lawfully required so to do, exhibit, by affidavit filed in the Court, a true and perfect inventory and account of the movable and immovable property of the deceased, and the Court shall have power as heretofore to require personal representatives to bring in inventories.”

Notably, the Act ensures that both executors and administrators act in the best interest of the beneficiaries, managing the estate prudently and transparently and to avoid conflicts of interest and manage the estate without personal gain.

Trustee Act 1949 (Revised 1978)

The Trustee Act 1949 (Revised 1978) is a legislation that governs the roles and responsibilities of trustees in managing trusts (Hng, 2024), including those established for inheritance purposes and it applies to all types of trusts, including those created by wills for the purpose of inheritance management. The Act also outlines the powers, fiduciary duties, obligations of trustees in managing trust property and legal standards they must adhere to in ensuring that they manage the trust property in the best interests of the beneficiaries. Specifically, trustees appointed under a will must manage the trust property according to the terms of the will and the provisions of the Trustee Act and to make sure that the assets are preserved and distributed according to the deceased's wishes.

The fiduciary duties of trustees that they must adhere to in order to manage trust property in the best interests of the beneficiaries are emphasised in a number of

provisions under this Act. These fiduciary duties are central to the role of a trustee and ensure that the trust is administered with care, loyalty, and integrity. Firstly, section 21 emphasised on the “duty of loyalty”, where the trustees must act in the best interests of the beneficiaries, avoiding conflicts of interest, to not deriving any personal gain from the trust unless expressly allowed by the trust instrument and that they are also prohibited from entering into transactions that could benefit them personally at the expense of the trust. This provision also stressed on the trustees’ duty to “act impartially”, whereas they must treat all beneficiaries fairly and impartially, balancing their interests without favouritism, unless the trust instrument directs otherwise. Meanwhile, section 22 provides the trustees of a “duty of care” in which they must administer the trust with the same level of care, skill, and diligence that a prudent person would exercise in managing their own affairs and that they are expected to act reasonably and make informed decisions based on careful consideration of relevant information. Section 23, on the other hand, prescribes the trustees a “duty to preserve trust property” where the trustees are obligated to take all necessary steps to preserve and protect the trust property and this includes making sure that the trust assets are safeguarded against loss, damage, or depreciation. Next, the trustees have a duty to invest prudently (sections 7 & 8) whereby they must invest trust property in a manner that reflects prudence and the specific objectives of the trust and diversify investments to minimise risk and ensure a reasonable return, consistent with the trust’s objectives. These provisions also allow trustees to vary investments, so long they are done prudently and in the best interests of the beneficiaries. Lastly, sections 42 and 43 stipulate a duty to provide information and accounts, in which the trustees must keep track of accounts and records and that the beneficiaries have the right to inspect these records and request information about the trust administration. In summary, these duties ensure trustees manage the trust with care, loyalty, and impartiality, safeguarding the interests of the beneficiaries and maintaining the integrity of the trust administration.

Small Estate (Distribution) Act 1955

The Small Estates (Distribution) Act 1955 provides a structured process for the administration and distribution of small estates, which are estates with a relatively low total value. This Act is particularly significant for managing the estates of deceased persons who did not leave a will (intestate), ensuring that the deceased’s assets are distributed efficiently and fairly to the rightful beneficiaries. It applies to both movable and immovable property and is administered through the Land Offices rather than the High Court, which is typical for larger estates. Under this Act, the District Land Administrator plays a central role in managing small estates. They act as the administrator and are responsible for overseeing the entire process, from inventorying assets to distributing them. In regard to the roles of an administrator under this Act, among others, section 10 provides the appointment of representatives of minors or persons of unsound mind where the Collector (the Land Administrator for Peninsular Malaysia, the District Officer in Sarawak, and the Collector of Land Revenue in Sabah) may appoint some suitable and proper person to be the guardian of the minor or person of unsound mind for the purposes of all proceedings for the distribution of the estate. Meanwhile, Section 15 specifies the powers of the Collector in distributing the estate in accordance with the distribution order, in which he may distribute the estate in the manner provided for by the agreement unless it is unjust or inequitable for the Collector to do so. In brief, the Small Estates (Distribution) Act 1955 establishes a practical and

efficient framework for the administration and distribution of small estates in Malaysia. It empowers the District Land Administrators to oversee these estates, ensuring that assets are distributed fairly and efficiently to the rightful beneficiaries.

Rules of Court 2012

Under the Rules of Court 2012, the key provision pertaining to a personal representative's role in the administration of estate is Order 80. This provision may be treated as a lifeline to address questions that arose during the administration of the deceased's estate, be it conflicting demands by the beneficiaries or the personal representative's own need for clarification on certain issues (Raman, 2012).

Summary process of inheritance management

Management of the inheritance involves a process that needs to be complied with in terms of laws and technicalities. The key phases under inheritance management can be divided into three namely; pre-application of the letter of representation, during the actual application and post-application of the letter of representation. The process of inheritance management starts with identifying and valuing the deceased's assets, which is crucial for determining the appropriate administrative body and the necessary authorisation. These assets can include movable properties like bank accounts, Employees Provident Fund (EPF) and investments, as well as immovable properties such as land and buildings. Accurate valuation is essential for effective and legally compliant estate management and the said valuation needs to be included in the application for letters of representation. Identifying the deceased's liabilities is equally important, as settling these debts takes precedence over distributing the remaining estate to the beneficiaries. Upon the completion of the estate identification, the next step is applying for the respective letters of representation. Since the document is granted by the administrative bodies, choosing the relevant administrative body depends on several factors. For instance, in cases where a will has been left by the deceased (testate cases), the process involves applying for a Grant Of Probate from the civil High Court. In cases without a will (intestate cases), it involves applying for letters of administration either from the High Court or the Estate Distribution Division. Both executors and administrators in this context share the responsibility of administering the estate to completion, highlighting the existence of multiple administrative bodies to ensure that estate administration is managed by the relevant authorities with the necessary expertise, although having several administrative entities does create confusion among the public in some cases (Ibrahim et al., 2024). This division of responsibilities held by the personal representative helps streamline the process, respect the deceased's wishes, and ensure that beneficiaries receive their rightful shares, while at the same time requires careful navigation of the legal landscape to ensure compliance with all relevant laws and regulations. In short, a competent personal representative is the key requirement in ensuring the success or completion of estate administration.

As for the third phase, once the letters of representation are issued, the personal representative will then be able to proceed with the collection and management of the assets. Assuming the liabilities have been settled, the remaining assets will be subjected to processes such as transmission, transfer, or distribution. Transmission, which changes the ownership from the deceased to the personal representative and finally to the beneficiary, is relevant in cases involving motor vehicles and real estate, indicating the

authority held by the personal representative (Nasrul et al., 2018). Completion of inheritance management is often marked by settlement of liabilities and distribution of estates to the entitled beneficiaries.

Roles and duties of personal representative

Concept of fiduciary duties

Previous literature and case law have already drawn links between the position of a trustee and personal representative. Section 3 of the Trustee Act 1949 includes the office of a personal representative in defining a trustee, thereby extending the meaning of a trustee to a personal representative. Furthermore, in *Tay Choo Foo @ Tay Chiew Foo v. Tengku Mohd Saad @ Tengku Arifaad bin Tengku Mansur & Ors* [2009] 1 MLJ 289, the court established that an administrator is a constructive trustee, implying that a personal representative has a trusteeship role. The terms ‘administrator’ and ‘trustee’ were used interchangeably in *Yvonne Wong Yee Woon v Wong Yee Mei @ Cynthia (as administrator for the estate of Wong Poi Fong @ Wong Swee Fong, deceased) & Anor* [2022] 12 MLJ 309. In the English case of *Brewer and another (as joint liquidators of ARY Digital UK Ltd) v Iqbal* [2019] 1 BCLC 487, the court established that equitable duties may overlap with statutory duties. This extension of this principle implies that the equitable nature of fiduciary duties may be applied to the already existing statutory duties under the PAA. A fiduciary is famously discussed by Millet LJ in the English locus classicus *Bristol and West Building Society v Mothew* [1998] Ch 1. The learned judge described a fiduciary as “someone who has undertaken to act for or on behalf of another in a particular matter in circumstances which give rise to a relationship of trust and confidence” who has the unique obligation of single-minded loyalty that sets their position apart. The learned judge went on to list down several duties of a fiduciary, including the duty to act in good faith, duty to not make a secret profit out of the trust, duty to not place themselves in a position where their duty and personal interest may conflict and last but not least, a duty to not act on their personal benefit or that of a third party’s except with the informed consent of the beneficiary. In *Tun Dr Mahathir bin Mohamad & Ors v Datuk Seri Mohd Najib bin Tun Hj Abdul Razak* [2018] 3 MLJ 466, the Court of Appeal discussed the concept of fiduciary. A fiduciary relationship may arise only when there is mutual trust and confidence, and it is out of this relationship that the fiduciary is obligated to act solely for the other party’s benefit, above and over their own interests.

Fiduciary duties of personal representative

From the laws pertaining to inheritance discussed earlier, it can be seen that several fiduciary duties are already enshrined within the provisions of the Probate and Administration Act 1959, namely a personal representative’s duty to avoid obtaining secret profits, duty to avoid conflict of interest, duty to avoid self-dealing, duty to render proper accounts and duty to distribute the estate to the beneficiaries. Section 68, particularly subsection 3, deals with investing the residue of the estate which may or may not have been distributed. In dealing with investments, the personal representative must keep in mind the two core fiduciary elements of no conflicting interest and no profits. In the case of *Khaw Cheng Bok & Ors v Khaw Cheng Poon & Ors* [1998] 3 MLJ 457, the court found that the executors showed a want of proper capacity to execute their duties of honesty and reasonable fidelity, such as by taking remuneration.

Remuneration is a form of secret profit that is explicitly prohibited for those owing fiduciary obligations. Section 35(2) of the Trustee Act 1949 provides that a trustee may take reimbursement for all expenses incurred during the course of executing the trust. This does not include reimbursement or remuneration for the trustee's care and trouble, as was the case in *Khaw Cheng Bok*. That being said, there are exceptions to the prohibition on trustees from taking remuneration, such as when remuneration is provided for under the trust instrument, authorised by the court as under Section 46, or with the consent of all the beneficiaries to the trust (Hingun and Ahmad, 2013). In a similar vein, *Abdul Malik Ishak JCA in Vellasamy a/l Pennusamy & Ors v Gurbachan Singh a/l Bagawan Singh & Ors* [2010] 5 MLJ 437 established that a fiduciary would have to account for the secret profits incurred, which would be held on constructive trust for the beneficiary.

Section 61 of the PAA provides that the purchase of the deceased's property by the personal representative is voidable at the behest of any other person interested in the property, which includes the beneficiaries. This position is in line with the principle known as the self-dealing rule as under the common law. As opposed to the self-dealing rule, the fair dealing rule allows the fiduciary to purchase a beneficiary's interest as long as the fiduciary can prove that the purchase was not entered into through coercion, undue influence, duress and other similar vitiating factors (Hingun and Ahmad, 2013). The fiduciary's duties to distribute the assets of the estate and render accounts in a proper manner are already established as basic duties of a personal representative. Distribution of assets of the estate is a natural end to the administration process. However, before distribution can be done, accounts of the estate must be provided to the beneficiaries for their perusal and approval (Raman, 2012). In the previously cited *Yvonne Wong Yee Woon* case, the defendant was removed from her administratorship for multiple reasons, including the fact that the defendant had consistently failed to produce accounts of the estate when requested by the plaintiff.

Implications of breach of fiduciary duties

According to Raman (2012), a personal representative is generally indemnified from being personally liable for the debts and obligations of the estate. However, should there be loss incurred from the estate attributable to the fiduciary's mismanagement of the estate borne out of a lack of diligence or reasonable conduct, then the personal representative may be liable for the loss. If the personal representative obtains the consent of the beneficiaries allowing the breach, they may be absolved of their liability. Thus, they must take care to ensure that no loss is incurred during the course of their personal representation of the estate. A personal representative may be criminally liable and charged under Section 406 of the Penal Code for criminal breach of trust. Interestingly, Illustration (a) under Section 405 showcases a scenario of criminal breach of trust in which an executor misappropriates the estate for his own personal use, directly opposing the directions of the will instructing the distribution of the estate to the rightful heirs. Additionally, a breach of a personal representative's fiduciary duties may result in delay in administering the estate. This delay carries with it serious implications and creates a ripple effect in the administration of the estate that may take years to undo. The longer the process of administration, the higher likelihood that there would be a series of deaths of beneficiaries throughout the delay, which adds a layer of complexity that is not needed to what is already a complicated process for most families who lack knowledge on the process. This is due to the fact that the order of succession must be

strictly adhered to, for both Muslim and non-Muslim descendants. Furthermore, according to Nasrul et al. (2018), if the deceased held money in their personal bank accounts which lay dormant for more than seven years as a result of the delay, the money would then be transferred to the Registrar of Unclaimed Money as under the Unclaimed Moneys Act 1965. The authors also highlighted another important adverse effect of delay, which is that the relationship between the beneficiaries may take a turn for the worse.

Results and Discussion

Personal representatives undertake the critical role of fiduciary duties in inheritance management by ensuring honesty, integrity and fairness in delivering their tasks. While statutory provisions such as the Probate and Administration Act 1959 and the Trustee Act 1949 provide legal frameworks, challenges still arise due to inconsistencies in the expertise of personal representatives and the technical nature being handled by them in estate administration process. It is found that their role extends beyond asset distribution where they are also responsible for ensuring that the assets are preserved and the interests of beneficiaries are safeguarded. Therefore, personal representatives must exercise due diligence, maintain transparency and act in the best interest of the estate to prevent breaches of fiduciary obligations. It also found that the participation of key stakeholders, including the government and relevant agencies is essential in addressing these challenges. Strengthening the enforcement mechanisms and providing clear procedural guidelines can enhance the efficiency of estate management. Furthermore, the administrative bodies must collaborate by improving transparency and facilitating digitalisation to smoothen the process. By fostering a more coordinated approach, the risks associated with fiduciary breaches, conflicts of interest, and delays in estate distribution can be minimised, ensuring that beneficiaries receive their rightful entitlements. Another equally important is the need to enhance public awareness and understanding of estate administration. Many individuals lack fundamental knowledge of inheritance laws and procedures, which can lead to unnecessary disputes and difficulties in managing the deceased's estate. Educating the public on the importance of estate planning, responsibilities and accountabilities of personal representatives can empower them to make sound decisions when carrying the task of managing the estate. The family members and beneficiaries should be able to decide on those who are to be appointed as personal representatives based on their knowledge and competency, rather than age seniority and blind abidance to the elders. If no one is competent, they should consider seeking service from legal practitioners or trust companies such as Amanah Raya Berhad to ensure that the estate is managed fairly and professionally.

Conclusion

The legal provisions analysed ensure that personal representatives cannot do as they wish with the estates of the deceased they are entrusted with, and must act with the best interests of the beneficiaries in mind. As these provisions do not cover all aspects of fiduciary responsibilities, case laws are referred to. In spite of this, further legislative and procedural reforms are needed to address emerging challenges and to ensure that the administration of estates remains fair, efficient, and reflective of contemporary societal values in line with fiduciary principles established under the law. Personal

representatives, with their fiduciary duties, remain the cornerstone of estate administration, tasked with the critical role of managing and distributing estates in a manner that upholds the law and respects the rights of all beneficiaries. As such, personal representatives must be knowledgeable and take care to adhere to their fiduciary duties, as failure would spell liability that they do not wish to incur upon themselves.

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Conflict of interest

The authors declare that there are no conflicts of interests.

REFERENCES

- [1] Abdullah, H.K.M., Ab Rahman, S., Awang, M.D. (2022): Review On Issues of Administration and Distribution of Islamic Inheritance In Malaysia. – *Jurnal Al-Sirat* 22(1): 107-119.
- [2] Hingun, M., Ahmad, W.A. (2013): *Equity & Trusts in Malaysia*. – Sweet & Maxwell Asia 448p.
- [3] Hng, K.R. (2024): Duties and responsibilities of trustees in Malaysia. – *Sim & Rahman Web Portal* 6p.
- [4] Ibrahim, N., Shazali, K.H.I., Rusgianto, S. (2024): A Systematic Literature Review of Islamic Inheritance in Malaysia. – *Islamiyyat* 46(1): 113-131.
- [5] Nasrul, M.A.B.D., Hak, W.N.M.S., Hak, N.A., Miskam, S. (2018): The Roles Of The Personal Representative In Estate Administration In Malaysia. – *European Proceedings of Social and Behavioural Sciences* 10p.
- [6] Noor, N.A.M., Abd Aziz, A.S. (2022): Empowering Personal Representatives' Statutory Duties in Administration of Deceased's Estates. – *Environment-Behaviour Proceedings Journal* 7(SI11): 15-20.
- [7] Nordin, S., Ahmad, M.A. (2023). Significant Effect Of Perceive Information Quality and Trust Continuous Intention To Use On Users' Inheritance Filing Toward Using Electronic Filing System (EFS) In Malaysia. – *Journal of Global Business and Social Entrepreneurship (GBSE)* 9(27): 79-10.
- [8] Raman, G. (2012): *Probate and administration in Singapore and Malaysia*. – Singapore: LexisNexis 334p.
- [9] Roslan, N.F., Ahmad, A.A. (2022): Pentadbiran harta pusaka dan implikasi negatif harta tidak dituntut. – *Malaysian Journal of Social Sciences and Humanities (MJSSH)* 7(4): e001453-e001453.
- [10] Shazali, K.H.I., Ibrahim, N., Ismail, M.N., Aziz, B., Aziz, S., Aziz, A., Mohamad, M. (2024): The Roles and Functions of JKPTG: The Contribution of the Estate Distribution Section (BPP). – *International Journal of Academic Reserach in Economics and Management Sciences* 13(3): 252-266.
- [11] Tan, R. (2022): Significant Changes to the Small Estates (Distribution) Act 1955. – *Malaysian Bar* 2p.

- [12] Yusof, J.A.M., Saiman, M.Z. (2024): The Level of Understanding on the Importance of Estate Management Among the Muslim Community in Selangor. – *Journal of Contemporary Islamic Studies* 10(2): 17p.