

INTRODUCTION TO ADMINISTRATIVE LAW

Topic 1: Administrative Law and the Administrative Agencies

Lesson 1.4 Administrative Tribunals



Lesson 1.4: Learning Outcomes

- At the end of this topic, students should be able to:
 - Define administrative tribunals.
 - Demonstrate the basic knowledge of administrative tribunals.
 - Develop communication, verbal and written skills, which play an important part in administrative law.
 - Describe about administrative tribunals in Malaysia.

Definition of administrative tribunal

- Administrative tribunal is a **body** created under **statute** (written law), **outside the ordinary court system**, to **resolve disputes**.



Characteristics of administrative tribunal

- A body outside the formal court system
- Hear complaints on specific matters
- Created by statute (written law)
- Independent body
- Subject to the principle of “natural justice”
- Hear evidence, make finding of fact and apply policies
- Its decision can be reviewed by superior courts in limited circumstances
- Not bound by rigid procedures and rules of evidence

Reasons for creating administrative tribunals

- To reduce caseload of the courts
- Need for special tribunal to solve specific and technical issue
- Some issues are not suitable to be decided by court (e.g. fixing rent or tax)
- Procedures in tribunal are simpler than the courts
- Cheaper & faster resolution of disputes than courts



Differences: administrative tribunal vs. court

Administrative tribunal	Court

Examples of administrative tribunals in Malaysia

1. Tribunal for Consumer Claims
2. Tribunal for Homebuyer Claims
3. Industrial Court
4. Special Commissioners of Income Tax
5. Customs Appeal Tribunal
6. Planning Appeal Board



1. Tribunal for Consumer Claims

- Tribunal for Consumer Claims (TCC) is created under **Consumer Protection Act 1999**.
- Purpose of TCC – Hear and determine **claims** lodged by **consumers** against **traders**.
- Who is a consumer?
 - a person who **buys goods and services** for his **personal use** or for **domestic** or household purpose.

1. Tribunal for Consumer Claims

- Limitations of TCC:
 - Claim not more than RM25,000
 - Claim can only be made by a consumer
 - Claim must be filed within 3 years of dispute
 - Lawyer/ legal representation is not allowed



1. Tribunal for Consumer Claims

- TCC cannot hear the following claims:
 - Personal injury/ death
 - Recovery of land/ any interest on land
 - Trade secret, goodwill and intellectual property
 - Entitlement under will/ distribution of property



1. Tribunal for Consumer Claims

- Composition of the TCC:
 - a Chairman and a Deputy Chairman from among members of the Judicial and Legal Service and
 - not less than 5 members having legal or judicial experience.



1. Procedures in TCC

1. Filing procedures:

- a. Consumer file a petition (Form 1) & serve to the trader within 14 days
- b. The trader may contact the consumer for settlement.
- c. If there is no settlement, trader must file statement of defence (Form 2) & serve to the consumer within 14 days.
- d. If there is counter claim, the consumer must file statement of counter-claim (Form 3) & serve to the trader.

1. Procedures in TCC

2. Hearing procedures:

- a. The Tribunal serve notice of hearing (Form 4) to consumer & trader stating date, time & place of hearing, not less than 14 days before hearing.
- b. Lawyer is not allowed during hearing.
- c. Where the trader is a company/ firm, it may be represented by a full time employee.
- d. Claim will be heard by a President sitting alone.
- e. Both parties may adduce evidence, bring witnesses & documents.
- f. The President will attempt settlement/ make award (decision).
- g. Award is final and cannot be appealed.

2. Tribunal for Homebuyer Claims

- Purpose of THC – To hear and adjudicate homebuyer's claims against developer.
- Created under the Section 16B of the Housing Development (Control and Licensing) Act 1966.



2. Composition of Tribunal for Homebuyer Claims

- Chairman and Deputy Chairman
- Not less than 5 other members of the judicial and legal services.



2. Limitations of Tribunal for Homebuyer Claims

- Only for **dispute** between a **homebuyer** & **licensed developer** under sale and purchase agreement (SPA)
- Claim that does not exceed **RM50,000**
- Brought by home buyer **not later than 12 months** from:
 - date of the issuance of the certificate of completion and compliance (CCC)
 - the expiry date of the defects liability period
 - the date of the termination of the SPA

2. Procedures for Homebuyer Claims

1. Filing procedures:

- a. The homebuyer lodge a claim (Form 1) and serve to the developer within 14 days.
- b. The developer lodge a defence (Form 2) and serve to the homebuyer within 14 days.
- c. The homebuyer may lodge a counter-claim (Form 3) and serve to the developer within 14 days.



2. Procedures for Homebuyer Claims

2. Hearing procedures:

- a. The Tribunal will issue a notice (Form 4) stating the date, place and time of the hearing on both parties, in not less than 14 days before the date of the hearing.
- b. Lawyer is not allowed during hearing.
- c. Claim will be heard by a President sitting alone.
- d. Both parties may adduce evidence, bring witnesses & documents.
- e. The President will make award (decision).
- f. Award is final and cannot be appealed.

Types of Homebuyer Claims

1. Technical claim	2. Non-technical claim

3. Industrial Court

- Industrial Court is not a court.
- It is an administrative tribunal with statutory powers.
- Industrial Court is provided under the Industrial Relations Act 1967.
- Purpose – hear dispute between:
 - Employer and employee
 - Employer and trade unions



Functions of the Industrial Court

- Determine disputes between employer and employee; and employer and trade union.
- Adjudicate collective bargaining
- Create harmonious industrial environment
- Promote social justice
- Grant cognizance to collective bargaining jointly deposited by employer and employees



Types of claims in the Industrial Court

- Unfair labour practice
- Unfair dismissal
- Trade dispute between employer and employee
- Trade dispute between employer and trade union
- Dispute on collective agreement



Other Administrative Tribunals

- **Special Commissioners of Income Tax:** If taxpayers receive a notice of assessment and disagree with it, they are allowed to make an appeal.
- **Customs Appeal Tribunal:** Any person dissatisfied with the decision of the Director General of Customs can appeal to the Tribunal.
- **Planning Appeal Board:** Any person whose the applications for planning permission were rejected by the local planning authority can appeal to the Board.

Advantages of administrative tribunals

- **Expediency:** administrative agencies are better than ordinary courts in disposing cases timely.
- **Cheaper:** Administrative adjudication is cheaper than court adjudication
- **Convenient:** Administrative adjudication is more convenient and accessible to individuals compared to ordinary courts.
- **Flexibility:** The process of adjudication in administrative agencies is flexible and informal than courts.
- **Special skills & knowledge:** Adjudicators have special skill and expertise related to the complicated dispute they adjudicate.

Disadvantages of administrative tribunals

- **Lack or little legal background:** Many members of the panel have no legal background, hence have no legal expertise.
- **Bias/ partiality:** Members of panel are also employees of administrative agencies/ local authorities.
- **Violation of separation of power:** Administrative agencies take over judicial power from court
- **No judicial precedent:** Decision/ outcome can be unpredictable because there is no judicial precedent to follow.

THANK YOU.