INTRODUCTION TO ADMINISTRATIVE LAW

TOPIC 1: Administrative Law and the Administrative Agencies

Lesson 1.2: Statutory Inquiries





Lesson 1.2: Learning Outcomes

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



Definition of statutory inquiry

- "Statutory inquiry" originates from "statute" and "inquiry".
- Statute means a written law made by the legislative body.
- Inquiry means public hearing of a specific issue/ matter.
- "Statutory inquiry" means a public inquiry, made mandatory by statute, to resolve specific issue/ matter.

Purposes of statutory inquiry

- To collect the views of the parties to be affected by the exercise of the statutory power.
- To make some investigation in regard to any administrative matter of public importance.
- To ensure that the public body makes an informed and fair decision after hearing all the affected parties.
- To obtain information, examine facts and make conclusions and suggestions.
- To ensure accountability and responsibility of the parties involved.

Types of statutory inquiry

- 1. Land acquisition inquiry
- 2. Planning inquiry
- 3. Death inquiry (inquest)
- 4. Inquiry of matter of public importance
- 5. Human rights inquiry







(1) LAND ACQUISITION INQUIRY





Introduction

- Land acquisition means the legal process of the government acquiring private land for public purpose/ purpose beneficial to the public.
- Land acquisition inquiry must be conducted before the government acquires the land.
- Statute Land Acquisition Act 1960





Purposes of land acquisition

- for public purpose: purpose serves the general interest of the community
- for an economic development beneficial to the public of Malaysia; or
- for purpose of mining, residential, agricultural, commercial, industrial or recreational purposes.



Objectives of land acquisition inquiry

- To ensure landowner gets adequate compensation
- To protect the rights of the landowner
- To ensure land is properly valued according to market value
- To ensure the landowner gets removal expenses
 - Cost of change of residence
 - Cost of change of business premises
 - Other reasonable cost
- To ensure that all landowners are be heard





Procedures for land acquisition inquiry

- The procedures can be divided into 2 stages:
 - Administrative Stage (Pre-acquisition)
 - Judicial Stage (Post-acquisition)





No.	Form	Step	
1	А	Notification that land is to be acquired	
2	В	Notice that land to be entered & surveyed	
3	С	Preparation of plan & list of lands to be acquired	
4	D	Declaration of intended acquisition of the land	
5	Е	Notice of enquiry of persons interested	
6	F	Notice of persons interested to require evidence in writing	
7	-	Enquiry before Land Administrator	
8	G	Written award (compensation) by Land Administrator	



No.	Form	Step	
9	Н	Written award served to the persons interested	
10	I	Issuance of "certificate of urgency" to acquire land before payment of compensation	
11	J	Notice to occupants/ owners to vacate building	
12	K	Notice of possession has been taken	
13	L	Notice to demand delivery of land title	
14	-	Person interested has 6 weeks from date of award to object the award	
15	M	Land Administrator may refer any question to Court	



No.	Form	Step
16	N	Persons interested may object to the compensation award and refer the objection to court
17	0	Land Administrator shall refer the objection received to the High Court





Matters that may be objected:

- Measurement of land
- Amount of compensation
- Person who receives compensation
- Apportionment of compensation





b. Judicial stage

Court hearing:

- The Land Administrator will have to refer the objection to the High Court.
- The land reference hearing is heard by one High Court judge sitting with two assessors.
- The High Court will determine on the objection.





b. Judicial stage

- Matters Court considers to determine amount of compensation:
 - Size, shape, condition & location of the land
 - The proposed use of the land
 - Development potential of the land
 - Market conditions at the time of valuation









Introduction

- Before land developer starts any development, they must get planning permission from the local authority.
- Law Town and Country Planning Act 1976.
- Planning inquiry means an inquiry conducted before planning application is approved or rejected.





Objectives of planning inquiry

- To resolve conflict between developer and local authority
- To resolve conflict between developer and affected residents
- To protect the environment, infrastructure and heritage
- To determine whether the proposed development is suitable in the area
- To ensure developers follows safety, health and security requirements





Procedures for planning inquiry

1. Submit planning permission application:

 Together with application fee, valid land title documents, quit rent receipt, layout plan, proposed development report and land survey.

2. Tabling of the application at the Planning Approving Committee:

- The committee is chaired by the head (Mayor) of the local authority.
- Comprises of 16 representatives from the respective technical departments and local authorities' councillors.
- The Committee will decide and impose conditions and restrictions.

Procedures for planning inquiry

3. Planning appeal:

- An applicant who is dissatisfied with conditions attached may appeal to the State's Planning Appeal Board within one month.
- The Appeal Board will review the decision made by the Committee and listen to the views of both sides.
- The Appeal Board will then decide whether to grant, uphold, revoke or modify the planning permission.
- The decision of Appeal Board is final and binding on all parties.





Introduction

- Inquest is an inquiry into the cause of death when the person died in 1 of the following manner:
 - Sudden
 - Unnatural
 - By violence
 - Cause of death is unknown
- Law for inquest Part VIII, Chapter XXXII, of the Criminal Procedure Code (CPC).

Objectives of Inquest

- To identify the dead body
- To determine the date & time of death
- To know the place of death
- To determine the cause of death
- To determine the manner of death
- To inquire whether there is criminal element
- To identify the person who caused the death





Procedures of Inquest

- 1. Police investigation
- 2. Post-mortem
- 3. Magistrate decides to conduct inquiry/ not
- 4. Inquiry by Magistrate
- 5. Conclusion of inquiry





1. Police investigation

- S 329(1) CPC Investigation must be conducted upon receiving information that:
 - A person committed suicide
 - A person has been killed by another, animal, machinery or accident
 - A person died under reasonable suspicion of a crime
 - A dead body has been found & his cause of death not known
 - A person died a sudden death
 - Death in custody: police station, prison, remand prison, mental institution, rehabilitation center & detention camp.

1. Police investigation

- S 329(2) CPC Officer not below than rank of Sergeant must:
 - Immediately proceed to the place of the dead body
 - Make investigation
 - Make report of apparent cause of death (wounds, fractures, bruises, marks of injury & other objects and circumstances)
 - Submit the report to the Magistrate of local jurisdiction

2. Post-mortem

- Post-mortem is an examination/ autopsy of a corpse in order to determine cause of death.
- S 330 CPC Investigating officer must arrange post-mortem by the government medical officer for:
 - Sudden death
 - Unnatural death
 - Death by violence
 - Death by unlawful act/omission of another person
- Post-mortem report by the medical officer must be submitted to officer in charge of Police District (OCPD).
- The OCPD must submit the report to the Magistrate.



2. Post-mortem







3. Magistrate decide to conduct inquiry/ or not

- S 333(1) CPC If Magistrate is satisfied with cause of death without holding inquiry, he must report the matter to the Public Prosecutor.
- S 333(2) CPC In any other case, the Magistrate must decide to conduct the inquiry.





4. Inquiry by Magistrate

- A Magistrate must commence an inquiry of death as soon as possible after the death is reported to the Magistrate.
- It is usually conducted in an open court unless it is necessary to exclude the public from the proceeding.
- Witnesses will be called and must testify under oath.
- The Magistrate will be assisted by the Prosecuting Officer.

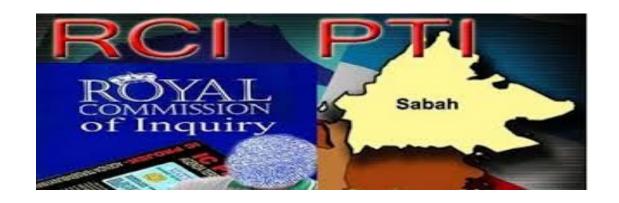




5. Conclusion of Inquiry

- The Magistrate must:
 - Hear the testimony of all witnesses
 - Examine all documents
- After that, the Magistrate may make one of the following conclusion:
 - Death caused by accident due to deceased's own fault
 - Death caused by suicide
 - Death caused by event beyond human control
 - Death due to action of known or unknown person(s)
 - Open verdict cause of death is unknown or unclear





(4) INQUIRY OF MATTER OF PUBLIC IMPORTANCE





Introduction

- Inquiry of matter of public importance means an inquiry that is conducted when the King thinks that it is of public importance and welfare to investigate a specific issue.
- Law Commissions of Enquiry Act 1950 (Revised 1973).





Matters of Public Importance

- Matters of public importance include:
 - the conduct of any federal officer;
 - the conduct or management of any department of the public service of Malaysia;
 - the conduct or management of any public institution which is not solely maintained by State funds; or
 - any other matter in which in the opinion of the Yang di-Pertuan Agong, be for the public welfare.



Example of inquiry

Inquiry	Purpose	Conclusion/ suggestion
Royal Commission for Police Reform (2004)	To inquire into: •High incidence of crime •Public perception on corruption among police •Abuse of human rights by police	 Independent body to handle complaints of police misconduct Amendment to remand period Amendment to law on confession



Objectives of inquiry into matter of public importance

- To investigate a specific issue
- To regain public trust on the government
- To ensure matters are investigated by independent body
- To promote good governance & accountability
- To improve public service





Procedures for Inquiry by the Commission

- 1. Yang di-Pertuan Agong instructs the establishment of a Commission of Inquiry.
- 2. YDPA appoints the members of the Commission (usually retired judges)
- The Commission conducts proceedings Commission has power to summon & examine witnesses and examine documents
- 4. Findings of Commission Commission will report its findings and recommendations
- 5. The government may adopt or reject the Commission's recommendations



(5) HUMAN RIGHTS INQUIRY





Introduction

- Human rights inquiry refers to an inquiry to assess the effectiveness of human rights protection and complaint of human rights abuse.
- Law Part III of the Human Rights Commission of Malaysia Act 1999 (HRCA).





Objectives of human rights inquiry

- To investigate human rights abuse
- To ensure protection of human rights
- To eliminate discrimination
- To promote human rights policy
- To provide justice for victims of human rights abuse





Procedures for human rights inquiry

- 1. Human Rights Commission convene an inquiry based on complaint/ on its own motion.
- 2. Inquiry proceedings Commission may summon & examine witnesses and examine documents.
- 3. Findings of Commission Commission reports its findings & recommendations to the government.
- 4. The government may adopt/ reject the Commission's recommendations.



Example of inquiry

Inquiry	Purpose	Conclusion/ suggestion
Review of Internal Security Act		Repeal & replace of ISAReduce the period
1960 (2003)	detention without trial	of detention from 2 years to 3 months



