

INTRODUCTION TO ADMINISTRATIVE LAW

TOPIC 4: REMEDIES FOR UNLAWFUL & IRREGULAR ADMINISTRATIVE ACTION

Lesson 4.2 Judicial Remedies



Lesson 4.2: Learning Outcomes

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

Introduction

- Judicial remedies refer to the remedies that a court of law may impose following a case that is brought against an administrative agency.
- Judicial review is a procedure by which a court can review an administrative action by a public body.



Purposes of Judicial Review

- Protection of individual against illegal acts and omissions of the administrative agency
- Provide remedies for wrong done to an individual
- Ensure that the administrative bodies act lawfully within boundaries of law
- Ensure that administrative bodies perform their public duties .



Who can apply for judicial review?

- Order 53 rule 2(4) Rules of Court 2012: Any person who is adversely affected by the decision of any public authority shall be entitled to make the application for judicial review.
- Definition of “adversely affected”:
 - Person who must have locus standi (the right or capacity to bring an action or to appear in a court.)
 - Person must suffer grievance as a result of the administrative body’s action/ decision
 - The decision/ action directly affects the person’s rights

Leave

- O 53 r 3 Rules of Court 2012: An application under this Order shall not be made unless leave therefore has been granted in accordance with this rule.
- Leave: Permission obtained from a court to take some action which, without such permission, would not be allowed.
- For the purpose of leave, the application must be made *ex parte* (one side) to a judge of High Court in chambers.



Leave

- The leave application must be supported by:
 - A statement setting out the name and description of the applicant
 - The relief sought
 - The grounds for seeking the relief
 - Affidavit verifying the facts relied on
- *Affidavit: a written statement confirmed by oath or affirmation, for use as evidence in court.*

Leave

P.U. (A)

No. 109

APPLICATION FOR JUDICIAL REVIEW (O. 53, r. 2)

IN THE HIGH COURT IN AT
APPLICATION FOR JUDICIAL REVIEW NO:

In the matter of

Between
AB *Applicant*

and

CD *Respondent*

Take Notice that the Court will be moved on, the day of, 20....., by the Applicant abovenamed for the following relief:

(Here state the relief claimed)

The grounds in support of this application are those appearing in the Statement filed herewith.

The affidavit of, Affirmed on the day of, 20, and filed herein shall be read in support of this application.

Dated the day of, 20

(Seal)

.....
Registrar

Time limit for application

- O 53 r 3(6) Rules of Court 2012: An application for judicial review shall be made promptly and in any event within three months from the date when the grounds of application first arose or when the decision is first communicated to the applicant.
- Essence of O 53 r 3(6):
 - **Promptly** (ASAP)
 - **Within 3 months** from the ground for application arise/ decision is communicated

Time limit for application

- The court may extend the time limit beyond 3 months only when there is good reason to do so.
- Court will look into whether the reason for the late application is valid and justifiable.
- E.g. late application because of attempt to reach negotiated settlement is not a valid reason.



Types of judicial remedies

- Damages
- Declaration
- Certiorari
- Prohibition
- Mandamus
- Specific Relief Act 1950
- Quo warranto
- Habeas corpus



a. Damages

- In law, damages are an award, typically of money, to be paid to a person as compensation for loss or injury.
- Conditions where Court may award damages (O 53 r 5 Rules of Court 2012):
 - The statement supporting application for leave includes a claim for damages and
 - The court is satisfied that if the applicant begins a legal action, he could have been awarded damages.

a. Damages

- Types of damages:
 - **Compensatory damages:** Damages awarded for actual loss suffered
 - **General damages:** Damages for non-monetary losses suffered by a plaintiff i.e. loss of life, enjoyment, pain, suffering
 - **Special damages:** Damages that can be exactly measured in money i.e. medical bills, lost wages
 - **Liquidated damages:** Damages agreed upon by the parties entering into a contract, to be paid by a party who breaches the contract
 - **Exemplary/ punitive damages:** Damages to penalize a defendant for wrongful conduct

b. Declaration

- Declaration means declaration and clarification of the rights of a party without an order or provision as to the enforcement of such rights.
- Declaration aims to state or declare the legal position of the parties and to challenge the action of the public authority.



c. Certiorari

- Also known as quashing order
- It is a retrospective order that brings a decision made by the authority before the court and the court quashes the decision.
- Situations where Court grants certiorari:
 - Decision in excess of jurisdiction
 - Ultra vires decision (procedural or substantive)
 - Breach of natural justice
 - Error of law

d. Prohibition

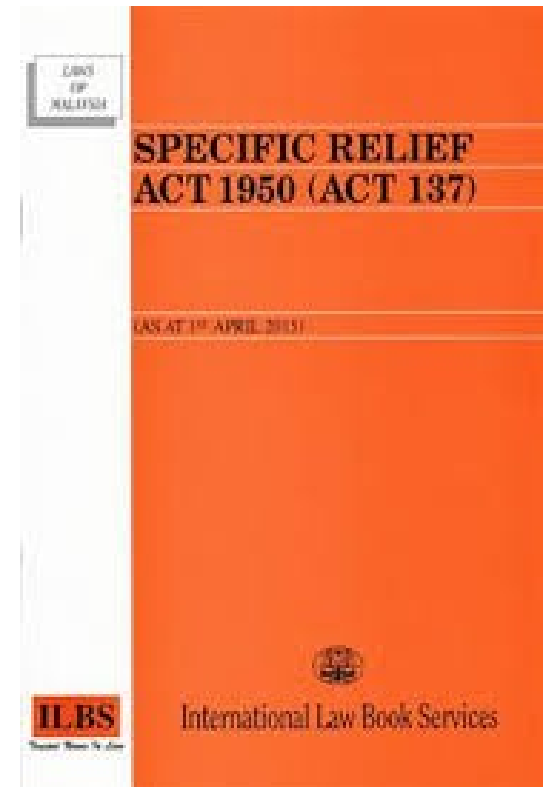
- Prohibition/ prohibiting order is a prospective order to quash a decision which is going to be made.
- Difference between certiorari and prohibition is certiorari is concerned with past decision of the administrative body.
- Prohibition is concerned with prospective decision that is going to be made.
- Examples:
 - order to prevent deportation of an immigrant = prohibition
 - order to retract suspension of a publication license = certiorari

e. Mandamus

- Also known as mandatory order.
- It is an order from the Court commanding a public authority to perform its public duty.
- Mandamus is used to enforce public duties by the decision-making body which it has failed to perform.
- It is enforced to ensure that the public duties are performed by the public authorities.
- E.g. Duty of the local council to publish in notice of new valuation list.

f. Specific Relief Act 1950

- S 44(1) **Specific Relief Act 1950**: A judge may make an order requiring any specific act to be done, or foreborne (restrained), by any person holding public office.
- Specific relief means relief of certain kind, exact, particular and determined. (Not general)



f. Specific Relief Act 1950

- Conditions to make the application:
 - Founded on affidavit of the person injured
 - State his rights
 - Demand of justice
 - Denial of rights or justice
- The judge may:
 - Allow the application OR
 - Refuse the application OR
 - Grant a rule to show cause why order applied should not be made to the agency in question

f. Specific Relief Act 1950

- How specific relief is given?
 - (a) by taking possession of certain property and delivering it to a claimant;
 - (b) by ordering a party to do the very act which he is under an obligation to do; (specific performance)
 - (c) by preventing a party from doing that which he is under an obligation not to do. (preventive/injunctive relief)

g. Quo warranto

- Quo warranto means “by what authority”.
- It is a judicial order against a person who occupies a substantive public office without any legal authority.
- The person is asked to show by what authority he occupies the position or office.



h. Habeas corpus

- Habeas corpus means “that you have the body” in Latin.
- Habeas corpus is available to secure the release of a person who has been wrongfully detained.



h. Habeas corpus

- Habeas corpus is provided under Article 5(2) Federal Constitution.
- The Court will order the person detained to be produced before the Court.
- The court will determine whether the detention is lawful.
- If detention is unlawful, the court will order the person to be released.



h. Habeas corpus

- Application for the writ of habeas corpus can be filed by the detained person himself or someone else on his behalf.
- Burden of proof on the detaining agency to show to the court detention is lawful.



h. Habeas corpus

- Situations where habeas corpus apply:
 - The detaining authority makes an order against a person who is not subject to its jurisdiction. Example - if a Syariah court orders the arrest of a non-Muslim.
 - The law applied to the case is unconstitutional.
 - The law is not applicable to the detainee. Example: *Datuk James Wong Kim Min (1976)* - He was detained in KL, Peninsular Malaysia under a law applicable only in Sarawak (Preservation of Public Security Ordinance 1962)

h. Habeas corpus

- Situations where habeas corpus apply:
 - The penalty awarded is ultra vires (in excess of) the powers of the court. For example 1st Class Magistrate orders 20 years imprisonment.
 - The arrest, detention or trial suffered from procedural flaws.
 - There is severe prosecutorial or judicial misconduct resulting in loss of due process. For example, the prosecution forced the accused to make confession.

h. Habeas corpus

- Situations where habeas corpus apply:
 - A convict claims his constitutional rights were violated at the trial. Example, right to consult lawyer was denied.
 - The court ordering detention made a legal or factual error.
 - The pre-trial detention is contrary to the law. Example, detention of theft suspect for 5 days under remand.
 - Where an initial arrest is lawful but subsequent non-compliance with the law renders the detention unlawful. In *Re Tan Boon Liat* (1977) the Advisory Board, in a preventive detention case, failed to make its recommendation to the Yang di-Pertuan Agong within three months.

h. Habeas corpus

- Grounds for release:
 - **Illegality of substance:** The detention order suffers from substantive ultra vires, lack of jurisdiction or excess of jurisdiction
 - **Illegality of purpose:** Abuse of power, bad faith (mala fide), wrong purpose, unreasonableness, arbitrary exercise of power, lack of evidentiary basis
 - **Illegality of procedure:** Mandatory procedures are not followed