

# INTRODUCTION TO ADMINISTRATIVE LAW

## TOPIC 3: JUDICIAL REVIEW

### Lesson 3.1 Procedural Ultra Vires



## Lesson 3.1: Learning Outcomes

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

# Introduction

- The doctrine of ultra vires is the basic doctrine in administrative law.
- 2 concepts:
  - Intra vires: The authority/ agency exercises power **WITHIN** its limits
  - Ultra vires: The authority/ agency exercise power **BEYOND** its limits



# Introduction

- 2 type of ultra vires doctrine:
  - Substantive ultra vires
  - Procedural ultra vires



## Procedural Ultra Vires

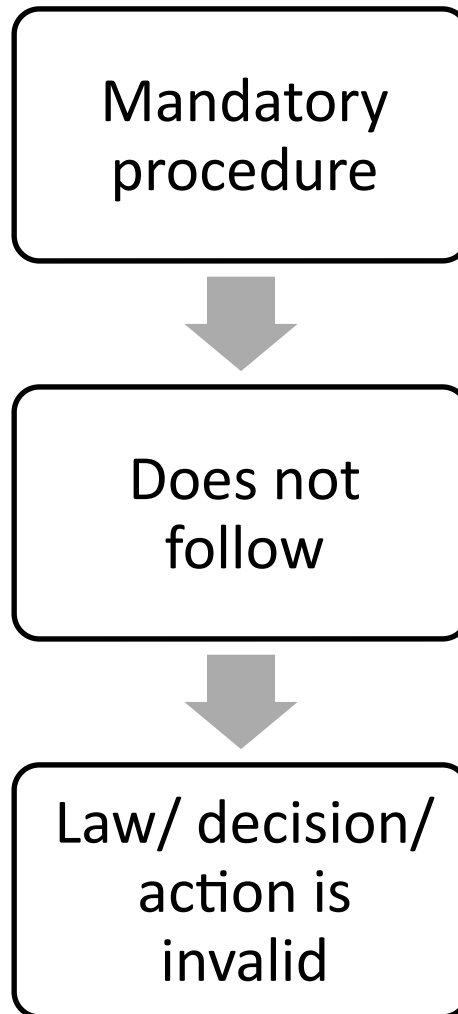
- Procedural ultra vires means the failure of the authority/ agency to follow **mandatory procedures** specified under the law.
- Procedural ultra vires may occur when the authority:
  - Makes, amends or abolishes a law (subsidiary legislation)
  - Makes a decision
  - Takes an administrative action

# Procedural Ultra Vires

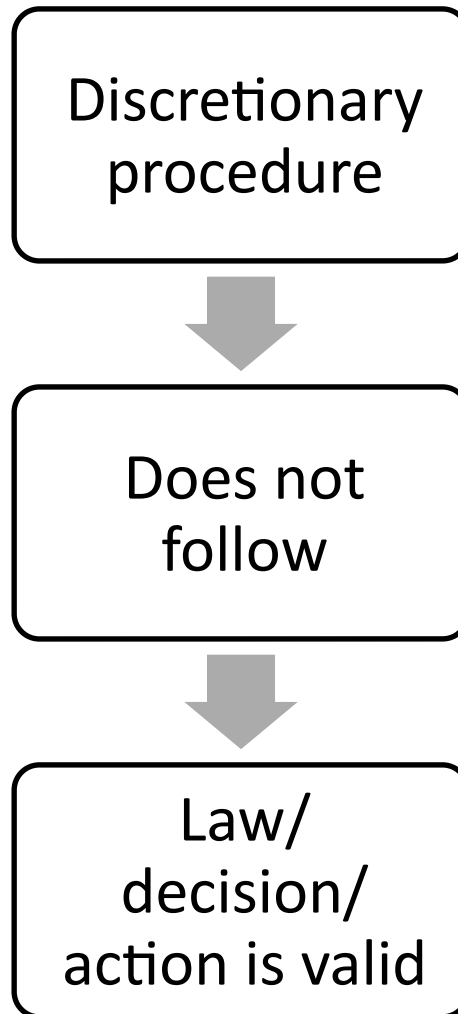
- Types of procedures:

	<b>MANDATORY</b>	<b>DISCRETIONARY</b>
Meaning	Procedures that must be followed by the authority	Procedures that may or may not be followed by the authority
Words to signify the procedure	Shall	May
Effect of non-compliance	Law/ decision/ action is invalid	Law/ decision/ action is still valid

# Procedural Ultra Vires



# Procedural Ultra Vires





# Procedural Ultra Vires

- Mechanisms to control procedural ultra vires:
  1. Mandatory consultation
  2. Publication of law
  3. Objection procedures
  4. Laying procedure
  5. Communication of decisions
  6. Rule against sub-delegation



# 1. Mandatory consultation

- Mandatory consultation:
  - The purpose of consultation is to give an opportunity to present one's view on specific matters as must have been intended by the Parliament.
  - Consultation reflects the communication of a genuine invitation, extended with receptive mind, to give advice.
  - The affected parties must be given sufficient information for them to give their views and sufficient time to do so.

## 2. Publication of law

- Publication of law:
  - Publication of subsidiary legislation is important so that no one is caught unaware of the law.
  - Section 18(2) Interpretations Act 1948 and 1967 – publication in the official Federal Gazette is sufficient information.
  - S 18(1)(b) Interpretations Act 1948 and 1967 – The Gazette shall contain of Legislative Supplement A (all Royal Proclamations, orders, rules, regulations and by-laws)

## 2. Publication of law

- Publication of law:
  - With publication, ignorance of law is no excuse (*Ignorantia juris non excusat or ignorantia legis neminem excusat*).
  - Law that is not published is invalid.
  - Laws should not take effect before they are published.
  - Sufficient information must be made public to enable parties to know what the law is and comply with it.

### 3. Objection procedures

- Procedure for objections:
  - Objection in administrative law is a formal protest against the decision or proposal of an administrative agency.
  - Some statutes provide that objection procedure is mandatory.
  - E.g. Section 13(2) of the Town and Country Planning Act 1976 provides for public inspection and objection of the local planning permission for a period not less than 4 weeks.
  - Non-compliance with objection procedure will cause the subsidiary legislation invalid.

## 4. Laying procedures

- Laying of the subsidiary legislation before the Parliament:
  - Some subsidiary legislation requires that the Minister in charge of it to lay the draft legislation before the Parliament.
  - This intends to give information to the members of the Parliament of the subsidiary legislation.
  - E.g. “Regulations made under this section shall when made have full force and effect and **shall be laid before the Dewan Rakyat as soon as they are made.**”

## 4. Laying procedures

- 4 types of laying procedure:

Type	Purpose
a. Laying simpliciter	Giving information to the Parliament. Takes effect immediately.
b. Laying with negative resolution/ annulment	Subsidiary legislation continues to take effect until annulled by the Parliament

## 4. Laying procedures

- 4 types of laying procedure:

Type	Purpose
c. Laying in draft subject to annulment	Instrument shall not be enforced until after the expiration of 40 days beginning from the day of the laying.
d. Laying in draft subject to affirmative resolution	Subsidiary legislation only upon the affirmative resolution granted by the Parliament, those proposed drafted instrument can be regarded as enforceable.



## 5. Communication of decisions

- Communication of decisions:
  - Wherever there is a statutory responsibility requiring an administrative agency to make a decision or take similar administrative action, a time limit will normally be imposed within which any such action shall be taken.
  - This decision must be communicated to the relevant parties within the stipulated time.



## 5. Communication of decisions

- Communication of decisions:
  - E.g. section 112(1) Consumer Protection Act 1999: The Tribunal shall make its award without delay and, where practicable, within **sixty days from the first day the hearing** before the Tribunal commences.
  - Delay is a form of procedural ultra vires.



## 6. Rule against sub-delegation

- *Delegatus non potest delegare*
  - Means a delegate cannot sub-delegate or further delegate its power to someone else/ other agency.
  - Exception: When the parent Act expressly allows for sub-delegation.



## 6. Rule against sub-delegation

- *Delegatus non potest delegare*
  - Qualifications for delegation:
    1. There is no legislative requirement that requires the function to be personally executed by the Minister
    2. The power should only be delegated to officers of suitable ranking and experience, and does not conflict with other officers' statutory duties.

## 6. Rule against sub-delegation

- *Delegatus non potest delegare*
  - Delegation of Powers Act 1956 (Revised 1988):
    - S 5 – Where any written law empowers a Minister to exercise power/ perform any duties, he may delegate the power/ duty to any person described by name or office, by notification.
    - S 11 – No delegation of power to make regulation.



# Constitutional principles of judicial review of agency behaviour

- Judicial review is a procedure by which a court can review an administrative action by a public body.
- 3 grounds for judicial review:
  - Illegality
  - Irrationality
  - Procedural impropriety



# Constitutional principles of judicial review of agency behaviour

- **Illegality:** Illegality means errors of law or the decision maker has acted in excess of power given to him.
- **Irrationality:** Irrationality means unreasonableness. To determine whether the act is unreasonable or not, Wednesbury test is applied –
  - Act is so outrageous (unusual, shockingly bad)
  - Defies/ defeats logic
  - Defies moral standards
  - No sensible person would act that way
- **Procedural impropriety:** Failure to follow mandatory procedures and rules of natural justice