

INTRODUCTION TO ADMINISTRATIVE LAW

TOPIC 4: REMEDIES FOR UNLAWFUL & IRREGULAR ADMINISTRATIVE ACTION

Lesson 4.4 Liability proceedings



Lesson 4.4: Learning Outcomes

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

Introduction

- Government proceedings are legal proceedings that involve the government, and this will include all government departments.
- Proceedings commenced by or against the government are governed by the:
 - Government Proceedings Act 1956
 - Rules of Court 2012
 - Limitation Act 1953
- “Government” refers to Federal Government and State Government.



Definition of liability

- Liability means legal responsibility, duty or obligation for one's acts or omissions.
- Proceedings refer to the steps or measures taken in the course of action – civil and criminal, before a court or tribunal.



Government can sued & be sued

- Article 69(2) Federal Constitution: The government may sue and be sued.
- S 3 Government Proceedings Act 1956 (GPA): Right of the Government to sue.
- The GPA also gives the right to the private individuals and entities (companies, partnership etc) to sue the government.



Basis of government liability

- There are several basis to sue the government:
 - Liability in contract
 - Liability in tort
 - Liability in breach of statutory duty
 - Liability in misfeasance in public office
 - Liability in restitution



a. Liability in contract

- Government Contracts Act 1949 authorizes the federal and state government to enter into contract.
- Conditions for the contract to be valid (S 3 GCA 1949):
 - In writing
 - Made in the name of the Government of Malaysia/ the Government of the State
 - Signed by the Minister/ Chief Minister or any officer authorized by the Minister/ Chief Minister in writing

a. Liability in contract

- S 4(c) Government Proceedings Act 1956: Claims arises out of any contract made by the authority of the Government are enforceable by civil proceedings against the government.
- S 8 Government Contracts Act 1949: No public officer shall be personally liable for the contract.



a. Liability in contract

- Breach of government contract: The act of breaking the terms set out in the government contract.
- Relief against the government in the case of breach of contract:
 - Damages: award, typically of money, to be paid to a person as compensation for loss.
 - Declaration: declaratory order of the rights of the parties
- Court has no power to grant injunction or specific performance against the government for breach of contract.

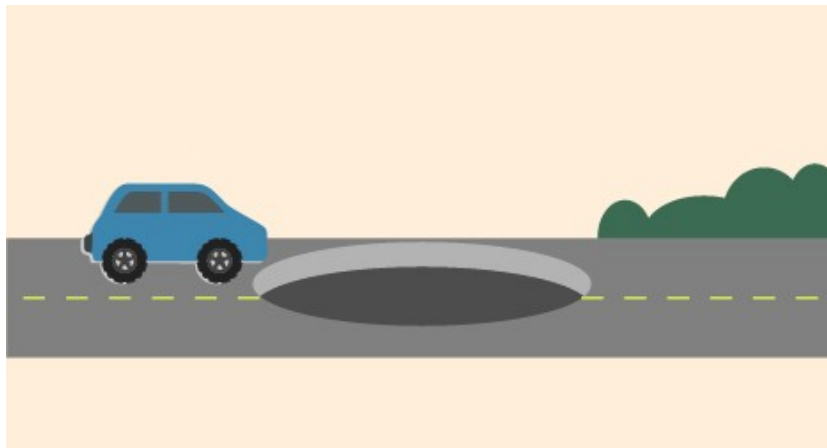
b. Liability in tort

- S 5 Government Proceedings Act 1956: The Government shall be liable for any wrongful act, neglect or default committed by any public officer, in pursuance of duty imposed by law and an act under the instruction of the government.
- Tort: is a civil wrong that causes someone else to suffer loss or harm resulting in legal liability for the wrongdoer who commits the tortious act.



b. Liability in tort

- Liability of the government for the tortious act committed by the public officer is known as “vicarious liability”.
- Vicarious liability refers to a situation where someone is held responsible for the actions or omissions of another person.
- In the context of government, vicarious liability arises where the government will be responsible for the act or omission of the public officer.



b. Liability in tort

- Elements to prove vicarious liability:
 - Government (employer) – public officer (employee) relationship
 - Wrongful/ tortious act – e.g. negligence, nuisance, occupier's liability, trespass to land, trespass to goods
 - Tort committed within the course of employment – not for personal purpose (frolic on its own unrelated to employment)
 - Claim could have been brought against such officer personally: officer must be liable for the tort first

b. Liability in tort

- Relief in tort is restricted to damages - award, typically of money, to be paid to a person as compensation for loss or injury.
- S 29 Government Proceedings Act 1956: Specific performance and injunction against government cannot be granted.



c. Liability in breach of statutory duty

- Breach of statutory duty arises where the defendant is under a statutory duty to perform an act, he does not perform the act, either in accordance with the terms of the statute, or at all, causing the plaintiff to suffer loss or injury.



c. Liability in breach of statutory duty

- Elements to prove breach of statutory duty:
 - Duty is provided by the statute. The statute must also be specific in the duty it imposes.
 - The authority owes the duty to the plaintiff
 - The authority is in breach of the duty
 - The plaintiff suffers consequential loss
 - The loss must be the kind that relevant to what the statute intends for

c. Liability in breach of statutory duty

- Raymond Cheah Choon Sing v Jurutera Daerah, Jabatan Kerja Raya Seberang Perai Tengah & Ors:
 - The plaintiff was riding his motorcycle to work along a road when he suddenly fell into two contiguous potholes. He was thrown off his motorcycle and sustained injuries.
 - He sued the defendant for breach of statutory duty for failing to maintain the public road.
 - The authority was under the duty of keeping the public roads in good repair and condition by conducting regular inspections and necessary repairs.

d. Misfeasance in public office

- Misfeasance in public office is the deliberate and dishonest wrongful abuse of the powers given to a public officer.
- The tort could be established where:
 - a public officer performed or omitted to perform an act with the object of injuring the plaintiff, and
 - where he performed an act which he knew to be beyond his power and that would injure the plaintiff.



d. Misfeasance in public office

- Elements to prove misfeasance in public office:
 - Defendant is a public officer
 - The misfeasance falls under either:
 - a. targeted malice by a public officer where a public officer exercised his power for an improper purpose with the specific intention of injuring the plaintiff; or
 - b. a public officer acted knowingly that he has no power to do the act complained of and that the act would probably injure the plaintiff
 - Plaintiff has sufficient legal rights to sue the defendant
 - Defendant's action caused the plaintiff's loss and damage

e. Liability in restitution

- Restitution is the restoration to the proper owner property or the monetary value of loss.
- The government's liability for restitution may arise from:
 - Mistaken payments
 - Ultra vires demands



e. Liability in restitution

- Mistaken payments:
 - Refers to payment made to the government due to mistake
 - Such payment is recoverable
 - E.g. overpayment for full-settlement of PTPTN loan
 - Reason for recovery is because the government enjoys unjust enrichment due to the mistake of the payer.

e. Liability in restitution

- Ultra vires demands:
 - Refer to money paid on account of demand beyond lawful authority
 - Ultra vires demand – payment that is not authorized by law, made under duress, coercion or undue influence.
 - Example: unlawful tax demand supposed to be authorized by regulations which turns out to be invalid, can be recovered.

Criminal liability

- Criminal liability is a personal liability.
- E.g. A, a police officer commits corruption. A has personal liability for the crime, not the government.
- There is no vicarious liability for the criminal acts of public officials.



Limitations of action

- Limitation Act 1953 provides “expiration date” to take action.
- S 38 Government Proceedings Act – Law on time limitation applies to suit involving government.
- S 6 Limitation Act – contract & tort: within 6 years from the date the cause of action accrued.
- S 29 Limitation Act – fraud/ mistake: within 6 years from discovery of fraud/ mistake.
- S 9 Limitation Act – recovery of land: within 12 years from the date the cause of action accrued.