

Tutorial letter 201/2/2018

Administrative Law

ADL2601

Semester 2

**DEPARTMENT OF PUBLIC, CONSTITUTIONAL
AND INTERNATIONAL LAW**

IMPORTANT INFORMATION:

This tutorial letter contains important information
about your module.

Dear Student

You should have received the following thus far:

The study guide	The text of this module's tutorial matter
Tutorial Letter 101	The general information tutorial letter
Tutorial Letter 201	This tutorial letter (online under Additional Resources)

THIS IS YOUR FINAL TUTORIAL LETTER FOR THE SECOND SEMESTER OF 2018. It contains the following:

- 1 THE JUNE/JULY 2018 EXAMINATION PAPER**
- 2 ASSIGNMENT 01: COMMENTARY**
- 3 ASSIGNMENT 02: COMMENTARY**
- 4 THE EXAMINATION: FORMAT, PREPARATION AND WRITING**

EXAMINATION DATE

ONLY PROVISIONAL DATES ARE PRESENTLY AVAILABLE. PLEASE MAKE SURE THAT YOU HAVE RECEIVED THE **FINAL EXAMINATION TIMETABLE** BY THE END OF **SEPTEMBER** (FOR THE **SECOND SEMESTER**).

1 The June/July 2018 examination paper

(Please take note that the answers we provide for the questions in the examination paper are suggested answers. They are meant to guide and assist you in preparing for the examination. Furthermore, they provide guidelines on how you should answer a question using only essential points rather than re-writing the study guide. Pay careful attention to the general comments below on how to formulate your answers to the questions in the examination.)

Set of facts:

Mr Molefe applies for a passport at the Department of Home Affairs under the South African Passport and Travel Documents Act 4 of 1994. He is very excited to visit his son who now lives in Perth, Australia. He is informed that his application will take about three months to be processed and he is given a properly dated and stamped receipt. After two months, Mr Molefe is informed by Ms Nasty, the official working at the Department of Home Affairs, that his application is unsuccessful. He is not given any reasons for this decision. In response, Mr Molefe requests reasons from Ms Nasty. After two weeks, Ms Nasty responds with a letter informing Mr Molefe that the Department of Home Affairs has decided to deny passports to elderly persons and that the definition of an "elderly person" is one considered by the relevant official working within the Department to be "old".

Answer the following questions and substantiate your answers with reference to the set of facts, where applicable.

Question 1

- 1.1 The basic values and principles governing public administration are set out in the Constitution of the Republic of South Africa, 1996. Mention both the relevant provision in the Constitution that sets out these principles and what they entail. (5)

Section 195(1) of the Constitution provides that the basic values and principles governing public administration include the promotion of an open and transparent public administration by providing the public with timely, accessible, accurate information and the promotion of a high standard of professional ethics. Services must be provided impartially, fairly, equitably and without bias.

- 1.2 Define the concept of “legality”. (3)

Legality refers to the lawfulness of state action: in other words, government by the law and under the law. All government action must be performed in accordance with certain set legal principles.

- 1.3 Is there an administrative-law relationship in the set of facts? Give reasons for your answer. (7)

An administrative-law relationship exists between two parties in an unequal relationship/vertical. One of the subjects is a person or body clothed in state authority/organ of state who is able to exercise that authority over a person or body in a subordinate position whose rights are affected by the action.

In the general administrative-law relationship the legal rules governing the relationship between the parties apply to all the subjects within a particular group. These rules thus apply impersonally, that is generally and objectively, and non-specifically and not to a particular identifiable legal subject.

In an individual administrative-law relationship legal rules apply personally and specifically between the parties. In other words, the legal rules apply to specifically identifiable legal subjects. The content of the individual relationship will vary from case to case.

Yes, Mr Molefe is subject to an individual administrative law relationship, he is in a subordinate position in relation to the officer (Ms Nasty) taking the decision in the Department of Home Affairs. The decision that was made applies to Mr Molefe specifically. There exists a vertical relationship between the parties, Ms Nasty is clothed in state authority, whereas Mr Molefe's rights are affected by the decision taken by Ms Nasty.

- 1.4 Is administrative action in evidence in the set of facts? In your answer, you should give a full definition of the concept “administrative action”, with reference to the provisions of the Promotion of Administrative Justice Act (PAJA) 3 of 2000. (15)

Section 1 of PAJA defines “administrative action” as any decision taken, or any failure to take a decision, by –

- (a) an organ of state, when-
 - (i) exercising a power in terms of the Constitution or a provincial constitution; or
 - (ii) exercising a public power or performing a public function in terms of any legislation; or
- (b) a natural or juristic person, other than an organ of state, when exercising a public power or performing a public function in terms of an empowering provision,

which adversely affects the rights of any person and which has a direct, external legal effect.

There are exceptions to the definition.

In view of the definition of “administrative action”, the decision taken by the officer, Ms Nasty, in the Department of Home Affairs to reject Mr Molefe’s application for a passport constitutes administrative action. It complies with the definition in that it involves a decision to make a decision by an organ of state (the officer at the Department of Home Affairs) exercising a public power or performing a public function in terms of legislation (the South African Passport and Travel Documents Act 4 of 1994) which has adversely affected the rights of a person (Mr Molefe) and which appears to have had a direct external legal effect. The exceptions do not apply.

[30]

Question 2

Answer the following questions. Each question is provided with a number of options as possible answers. Only **one** option or statement in each question is correct. You must therefore identify the correct option, and write down the number of the option that you have identified as the correct one next to the question number.

- 2.1 The rule *Ne bis in idem* means that...
 - (1) all administrative actions are reviewable.
 - (2) state administrators must act lawfully.
 - (3) **the same matter may not be heard twice.**
 - (4) no person may be the judge in his/her own case.
- 2.2 The South African Passport and Travel Documents Act 4 of 1994 is an example of a...
 - (1) persuasive source of law.
 - (2) **binding source of law.**
 - (3) judicial precedent.
 - (4) administrative practice.
- 2.3 Section 239 of the Constitution defines...
 - (1) **organ of state.**
 - (2) administrative action.
 - (3) just administrative action.
 - (4) lawfulness in terms of the Promotion of Administrative Justice Act (PAJA) 3 of 2000.
- 2.4 Which one of the following is **NOT** one of the three classes of administrative action?
 - (1) legislative administrative action
 - (2) judicial administrative acts
 - (3) “true” administrative acts
 - (4) **municipal acts**
- 2.5 The simplest form of delegation is...
 - (1) **an instruction or command.**
 - (2) deconcentration.
 - (3) decentralisation.
 - (4) deferment.

3, 2, 1, 4, 1

[5]

Question 3

- 3.1 Explain decentralisation as a form of delegation in administrative law. Refer to case law in your explanation. (8)

Decentralisation of administrative power is characterised by the senior functionary transferring certain powers and activities to an independent organ or body “which carries out these powers and functions

entirely in its own name". See *SA Freight Consolidators (Pty) Ltd v Chairman, National Transport Commission* 1987 4 SA 155 (W). For example, a minister appoints a board to issue transport permits or a council is appointed to run university matters. In this relationship of decentralisation, the delegator cannot interfere with the activities of the board.

Control is exercised indirectly over the decentralised institution, the board for example, by way of appointment of the members of the board and by way of appeal to or review by the original delegator.

Apart from this power of appointment and the power of appeal or review, the two institutions function independently, each in its own name. In other words, we may state that there is a "full delegation of power and the subdelegate/subdelegate becomes fully responsible for the exercise of the power".

Another example of this type of delegation is that in which a minister appoints a panel or board of experts to issue licences or concessions. The minister may not personally perform the function which he or she has delegated. This does not mean that the minister now has no power of control or supervision over the body. He or she exercises control.

- (1) by way of the appointment of the body's members; and
- (2) by way of appeal to or review by the minister of the decisions made. We speak here of an "independent control relationship" or decentralisation.

Strictly speaking, there is no question of delegation when a decentralised body is created. Rather, the exercise of public (administrative) power by independent bodies is subject to management and control of the controlling body. In *University of Pretoria v Minister of Education* 1948 4 SA 79 (T), the court found that the Minister of Education did not have the power to appoint the principal of a university, and that this appointment fell within the power of the university council. The appointment by the council had to be approved or ratified by the minister, but he or she could not substitute his or her decision for that of the council.

- 3.2 There are three forms of abuse of power by an administrator. Mention each of these forms and give a brief explanation of each. (6)

The following are forms of abuse of power by the administrator:

- (a) exercising power with an unauthorised or ulterior purpose

The administrator must use his or power for the object identified in the empowering Act. When the administrator uses his or her power for a purpose other than that set out in the enabling statute, the action amounts to the abuse of a power for an unauthorised purpose.

The test for determining whether the administrator has used his or her power to achieve the authorised purpose is objective. This means that we do not ask whether the administrator thought or believed that he was serving the authorised purpose, but rather whether, objectively speaking, the authorised purpose has been achieved. The proof of unauthorised purpose therefore depends on the results or effects of the exercise of power.

- (b) exercising power using an unauthorised procedure

We find that the administrator usually uses an unauthorised procedure when the proper and correct procedure is more difficult, time-consuming and cumbersome. The administrator then circumvents this correct, but difficult procedure by using a short cut. This form of abuse of power actually undermines the law and boils down to action *in fraudem legis* – fraudulent action – since the administrator is consciously trying to evade the procedural provisions.

- (c) exercising power using ulterior motives to defeat the purpose of the law – expressed in the Latin phrase in *fraudem legis*

In the past, our courts tended to equate the exercise of an administrative power for an unauthorised purpose with exercising power with an ulterior motive. The Latin phrase which was used to describe exercising power with an ulterior motive is in *fraudem legis*. Roughly translated it means “to defeat the law”.

However, we have to distinguish clearly between the two. When exercising power in *fraudem legis* the administrator deliberately and intentionally evades the provisions of the empowering statute. The court described such exercise of power as follows in *Dadoo Limited v Krugersdorp Municipal Council*:

‘An examination of the authorities therefore leads me to the conclusion that a transaction is in *fraudem legis* when it is designedly disguised so as to escape the provisions of the law, but falls in truth within these provisions.’

To exercise power in *fraudem legis* presupposes a fraudulent intention which is not necessarily found in the case of the abuse of power for an unauthorised purpose.

3.3 Explain the three elements of proportionality. (6)

- (1) the suitability of the administrative measure;
- (2) the necessity of the measure; and
- (3) a weighing up of the advantages and disadvantages when considering the end (purpose or objective) to be attained (narrow proportionality).

(1) Suitability

In accordance with this requirement, when exercising his or her powers, the administrator must choose only those means (from the variety of means available) that are most appropriate for achieving the desired end. This element is more or less the same as rationality. In other words, there must be a rational connection between the end and the means.

(2) Necessity

Necessity means that the administrator must take only such steps as are necessary if any prejudice to an individual is involved. In other words, the administrator must choose the action that causes least harm to those who will be affected by the measure.

(3) Weighing up the advantages and disadvantages

This is a very important requirement in that it requires weighing up the advantages and disadvantages, and considering the injury to the general public or the individual. The method or means must not be out of proportion to the advantages – the ends to the community. In short, proportionality requires the achievement of an even balance.

3.4 PAJA gives effect to the right to reasonable administrative action. The Constitutional Court has given content to the relevant provision in PAJA that deals with reasonableness. Do you think Mr Molefe’s right to reasonable administrative action was infringed? Substantiate your answer with reference to PAJA and case law. (10)

The Constitutional Court had the opportunity to pronounce on the meaning and content of section 6(2)(h) in the landmark decision of *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs*. This decision dealt with the allocation of fishing quotas by the Chief Director (responsible for marine management) in

the Department of Environmental Affairs and Tourism. The appellant challenged the Chief Director's allocation of his (the appellant's) fishing quota in terms of the provisions of the Marine Living Resources Act 18 of 1998 (MLRA). One of the questions before the Court related to the alleged unreasonableness of the Chief Director's action. The Court, per O'Regan J acknowledged the pre-Constitutional jurisprudence which failed to establish reasonableness or rationality as a free-standing ground of review. O'Regan J referred further to the *Wednesbury* decision and held that the PAJA test draws directly on the language of that decision. However, she emphasised the importance of reading section 6(2)(h) in line with the wording of section 33(1) of the Constitution. She held that even if it may be thought that the language of section 6(2)(h), if taken literally, might set a standard such that a decision would rarely if ever be found unreasonable, that is not the proper constitutional meaning which should be attached to the subsection. The subsection must be construed consistently with the Constitution and in particular section 33 which requires a simple test, namely, that an administrative decision will be reviewable if, in Lord Cooke's words [Lord Cooke in *R v Chief Constable of Sussex, ex parte International Trader's Ferry Ltd*], it is one that a reasonable decision-maker could not reach. What will constitute a reasonable decision will depend on the circumstances of each case as it is context-based. O'Regan J then proceeded to enumerate the factors relevant to determining whether a decision is reasonable. They include

- (a) the nature of the decision;
- (b) the identity and expertise of the decision-maker;
- (c) the range of factors relevant to the decision;
- (d) the reasons given for the decision;
- (e) the nature of the competing interests involved; and
- (f) the impact of the decision on the lives and well-being of those affected.

In this scenario one could argue that Ms Nasty's decision was not reasonable, since no reasons for the decision were given. The impact of decision also has a devastating effect on Mr Molefe. The nature of the interests involved: Mr Molefe's ability to travel abroad, Mr Molefe's freedom of movement, Mr Molefe's ability to see his son. The impact: Mr Molefe will not be able to see his son, because he is considered to be 'old' by Ms Nasty; subjective decision. Not clear why Ms Nasty is given the authority to make this call, whether Mr Molefe is 'old' or not. No reasons were given for the decision.

3.5 Did the Department of Home Affairs comply with the discretionary requirements for procedural fairness? Explain the relevant provision in PAJA to substantiate your answer.

(8)

The discretionary requirements for procedural fairness are listed in section 3(3) of PAJA).

The aggrieved party may be given an opportunity to obtain assistance, even legal assistance in complex cases.

The aggrieved party may be given an opportunity to present and dispute information and arguments.

The aggrieved party may be given an opportunity to appear in person.

No, the Department did not comply, nor consider, any of these requirements. Mr Molefe was not given the opportunity to obtain assistance. He was not given the opportunity to dispute information, nor was allowed to appear in person.

3.6 Do you think that Ms Nasty's response to Mr Molefe provides an adequate reason? Substantiate your answer with reference to case law.

(7)

The standard of reasons for the decision is that of adequacy. What will constitute adequate reasons will depend on the circumstances of each and every case, that is, the context within which the decision is taken. In *Nomala v Permanent Secretary, Department of Welfare* the termination of a disability grant was at issue. The applicant was informed that she had to re-apply for a disability grant. In a "standard form reasons letter" she was informed that her re-application had been unsuccessful since she was found to

be “not disabled”. In an application for the review of the refusal of the grant the “sufficiency or otherwise of the reasons contained in this letter” constituted the core of the application.

The court held that ticking boxes on the “standard form reasons letter” is inadequate since this ticking of boxes “... disclose nothing of the reasoning process or the information upon which it is based”.

The reasons given did not provide sufficient information for any disappointed applicant to prepare an appeal. Furthermore, the reasons do not educate the beneficiary concerned about what to address specifically in an appeal or a new application. It does not instill confidence in the process, and certainly fails to improve the rational quality of the decisions arrived at.

In *Minister of Environmental Affairs and Tourism v Phambili Fisheries (Pty) Ltd; Minister of Environmental Affairs and Tourism v Bato Star Fishing (Pty) Ltd* quoting Cora Hoexter the SCA held the following:

[I]t is apparent that reasons are not really reasons unless they are properly informative. They must explain why action was taken or not taken, otherwise they are better described as findings or other information.

In the same paragraph the court also quoted with approval from the Australian decision *Ansett Transport Industries (Operations) Pty Ltd v Wraith*. The decision was to the effect that in order to provide adequate reasons it is necessary for the decision-maker:

... [t]o explain this decision in a way which will enable a person aggrieved to say, in effect: “Even though I may not agree with it, I now understand why the decision went against me. I am now in a position to decide whether that decision has involved an unwarranted finding of fact, or an error of law, which is worth challenging.”

This requires that the decision-maker should set out his understanding of the relevant law, any finding of fact on which his conclusions depend (especially if those facts have been in dispute), and the reasoning processes which led him to those conclusions. He should do so in clear and unambiguous language, not in vague generalities or the formal language of legislation.

The response by the Department is not adequate reasons.

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Question 4

4.1 List the three forms of internal control. (3)

Control by superior/senior administrators or specially constituted bodies/institutions (a higher body/more senior person in the same department/office).

Parliamentary control (general administrative policy and matters of public concern may be questioned in Parliament).

Control by public bodies and commissions, such as the public protector and the auditor-general.

4.2 What is *locus standi*? Explain this principle in terms of the relevant constitutional provision. (7)

Locus standi or “legal standing” is the capacity of a person to bring a matter to court.

It is a basic rule of all legal systems that a party may take a matter to court only if he or she has an identifiable interest in the outcome, that is, when he or she has sustained loss or damage.

The Constitution has broadened the scope or range of *locus standi* of individuals and groups to seek relief in matters involving fundamental rights, including the right to just administrative action. In other words, more people who have identifiable interests in the outcome of a decision may now approach the court.

Section 38 of the Constitution entitled “enforcement of rights” provides that anyone listed in the particular section has the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened.

Section 38 reads that

Anyone listed in this section has the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened, and the court may grant appropriate relief, including a declaration of rights.

The section then proceeds to identify the persons who may approach a court. They are

- (a) anyone acting in their own interest;
- (b) anyone acting on behalf of another person who cannot act in their own name;
- (c) anyone acting as a member of, or in the interest of, a group or class of persons;
- (d) anyone acting in the public interest; and
- (e) an association acting in the interest of its members.

4.3 List and explain the various forms of judicial control. (10)

Statutory appeal

- The courts may hear appeals only where this is provided for by statute.
- An appeal may be lodged against a final decision or final order, not against a provisional order.
- Details regarding the appeal will appear in the relevant statute.
An appeal is a rehearing of the matter which is restricted to the record of the proceedings.
- It may examine the merit of the decision.

Judicial review

- The courts have inherent review jurisdiction in terms of the common law
- It entails reviewing the legality of a decision
- Review in terms of the Constitution, section 6 of PAJA, the Supreme Court Act or in terms of the relevant legislation
- Grounds of review: infringement of a fundamental right or failure to comply with sec 6 of PAJA (the requirements of valid administrative action)
- Review may go beyond the record to establish whether any irregularities were present, but may not go into the merits

Interdict

- If the applicant fears and can prove that an action or impending action by the administrator will affect his rights, he may apply for an interdict restraining the administrator from carrying out its action
- Aimed at preventing unlawful administrative action

Mandamus

- Compelling the administrator to perform some or other statutory duty

- *Mandamus* cannot stipulate *how* the power should be exercised

Declaratory order

- Used when there is a clear legal dispute or legal uncertainty regarding the validity of administrative action
- May also be used to determine whether actual or pending administrative action is lawful

Defence in criminal proceedings

- Administrative action may be challenged by raising its invalidity as a defence in criminal law

[20]

Total: {100}

2 Assignment 01

Set of facts:

Due to serious water shortages experienced during the past five years a local company in Sedgefield decides to build a facility for the desalination of seawater. Erecting a desalination plant requires an environmental authorisation by the Western Cape Department of Environmental Affairs and Development Planning in terms of the National Environmental Management Act (NEMA) 107 of 1998 and an environmental impact assessment (EIA) in terms of the Environmental Impact Assessment Regulations of 2010 which, amongst others, provide for public participation (the giving of input and objections) by interested and affected parties. The relevant Department consider the EIA carried out and grants the authorisation to build the facility for the desalination of seawater. However, the local ratepayer's association is against the construction of the desalination plant because of the expensive infrastructure required and the negative impact on the environment. The association alleges further that it was not asked for any input in the matter and that the Department did not provide any reasons for their decision.

Answer the following questions and substantiate your answers:

Question 1

Define "organ of state" with reference to the Constitution. Is there an organ of state in the set of facts? Give a reason for your answer. (8)

Suggested answer

In terms of s 239 of the Constitution the following are organs of state: any department of state or administration in the national, provincial or local sphere of government; any other functionary or institution 9 (i) exercising a public power/function in terms of the Constitution (ii) exercising a public power of performing a public function in terms of any legislation. This does not include a judicial officer.

Yes. The Western Cape Department of Environmental Affairs and Development Planning is an organ of state; forms part of the administration in the national sphere of government. The Department exercised a power/function in terms of legislation (National Environmental Management Act (NEMA) 107 of 1998).

Question 2

Identify the administrative action in the set of facts. In your answer you should give a full definition of the concept “administrative action” as provided in the Promotion of Administrative Justice Act (PAJA) 3 of 2000. (12)

Suggested answer

Section 1 of PAJA defines “administrative action” as any decision taken, or any failure to take a decision, by –

- (a) an organ of state, when-
 - (i) exercising a power in terms of the Constitution or a provincial constitution; or
 - (ii) exercising a public power or performing a public function in terms of any legislation; or
- (b) a natural or juristic person, other than an organ of state, when exercising a public power or performing a public function in terms of an empowering provision,

which adversely affects the rights of any person and which has a direct, external legal effect.

There are exceptions to the definition.

In view of the definition of “administrative action”, the decision taken by the Western Cape Department of Environmental Affairs and Development Planning to grant the authorisation to build the facility for the desalination of seawater constitutes administrative action. It complies with the definition in that it involves a decision to make a decision by an organ of state (the Western Cape Department of Environmental Affairs and Development Planning) exercising a public power or performing a public function in terms of legislation (the National Environmental Management Act (NEMA) 107 of 1998) which has adversely affected the rights of the local ratepayer’s association and which appears to have had a direct external legal effect. The exceptions do not apply.

[20]

3 Assignment 02

(The correct answers are marked in bold.)

Question 1

The following is a persuasive source of administrative law:

1. International law
2. **A white paper**
3. PAJA
4. The Promotion of Access to Information Act

Question 2

Which one of the following is **NOT** an overarching concept incorporating all the requirements for valid administrative action?

1. applying one’s mind to the matter
2. *intra/ultra vires*
3. **administrative accountability**
4. legality

Question 3

Intra vires means...

1. the person has a legal standing to bring the matter to court.
2. the person may act on behalf of another.
3. **the administrator must act within the boundaries of the powers granted to him or her.**
4. a person cannot sue in his or her own name.

Question 4

Which one of the following is **NOT** a form of abuse of powers by the administrator?

1. The exercise of power with an unauthorised or ulterior motive.
2. The exercise of power using an unauthorised procedure.
3. **The exercise of power in a reasonable and justifiable manner.**
4. The exercise power using ulterior motive to defeat the purpose of the law.

Question 5

In earlier decisions the court held that it will intervene only in cases where the administrative decision is so grossly unreasonable as to warrant the inference that the authority had failed to apply its mind in the matter. In which case was this view first supported?

- 1 ***National Transport Commission v Chetty's Motor Transport* 1972 3 SA 726 (A)**
- 2 *Tirfu Raiders Rugby Club v SARU* [2006] All SA 549 (C)
- 3 *Shidiack v Union Government* 1912 AD 642
- 4 *Foster v Chairman, Commission for Administration* 1991 4 SA 403 (C)

Question 6

Legislation is a binding source of administrative law and includes ...

1. administrative practice.
2. judicial precedent.
3. **policy documents.**
4. regulations.

Question 7

When does a decision to reject an application for asylum become operative (take effect)?

1. **upon the decision becoming known**
2. upon the stated date of the commencement of the regulation
3. upon the date of the judgment
4. upon the expiry of 90 days

Question 8

Proportionality consists of three elements. Which of the following is **NOT** one of these elements?

1. suitability
2. **conformity**
3. necessity
4. weighing the advantages and disadvantages

Question 9

Which one of the following is **NOT** a form of judicial control?

1. statutory appeal
2. declaratory order
3. **parliamentary enquiries**
4. interdict

Question 10

All administrators, administrative functionaries and institutions must exercise their powers in an impartial and unbiased manner. The existence of a reasonable suspicion of bias satisfies the test to determine bias and the apprehension of a real likelihood that the decision maker will be biased is not a prerequisite for disqualifying bias. Which one of the following cases supports this view?

1. ***BTR Industries SA v Metal and Allied Workers Union* 1992 3 SQA 673 (A)**
2. *Tirfu Raiders Rugby Club v SARU* [2006] All SA 549 (C)
3. *Shidiack v Union Government* 1912 AD 642
4. *Foster v Chairman, Commission for Administrative Affairs* 1991 4 SA 403 (C)

[10]

4 The examination: Format, preparation and writing**Format of the examination paper**

- (1) The format of the examination paper will be similar to the format of the June/July 2018 examination paper.
- (2) You will again be given a short set of facts and some of the questions will be based on these facts.
- (3) There will be FOUR (4) questions with sub-questions in the examination and they will count a total of 100 marks.
- (4) The questions in the examination (both short and long questions) will test your knowledge, your insight and your ability to apply theory to practice. Multiple-choice questions form part of the examination paper, similar to those given in your second assignment.

The shorter type of questions will carry a mark allocation varying between approximately two (2) and eight (8) marks per question.

- (5) You do not have to study any additional study material. However, make sure that you study the court cases and the relevant legal principles pertaining to them, as they are discussed in the guide.

Answering the examination questions

- ~ As mentioned above, you will write a two-hour examination paper consisting of four (4) (compulsory) questions, counting a total of 100 marks. You must answer all four questions.
- ~ Read attentively through all the questions in your examination paper in order to gain an idea of what the questions are about. Make sure that you understand the instructions before you start answering the questions. Identify key words and terms.
- ~ Do not separate subsections of questions, for example, 2(a), then 1(b), then 3(a), by answering them in different places in your examination answer book. If you wish to return to a particular question, simply leave enough space to return to it.
- ~ Number your answers correctly.
- ~ Plan your answer roughly before starting to write. You may think that this will take up too much time, but you will in fact gain time by avoiding repetition, irrelevant discussion and confusion.
- ~ Divide your time according to the number of questions and pay attention to the marks allocated to each question.
- ~ Avoid repetition and irrelevancies. You will not receive any marks for repeating a fact. Answer questions concisely but not superficially. Include every step in the legal argument in your answer, starting with the first step, no matter how obvious it may seem to you.
- ~ Distinguish between instructions such as explain, compare, list and analyse. List means just that – no discussion or embellishment is necessary. Make sure that you understand what is expected of you.
- ~ Give reasons for all your answers (briefly, or fully, depending on what is required). In fact, it is quite a good idea to write as if you are explaining the legal position to an intelligent layperson who knows nothing about the law.
- ~ When referring to case law, limit your discussion of the facts to the absolute minimum, and concentrate on the legal aspects of the issue.
- ~ It is in your own interest to write legibly and intelligibly. Even if your handwriting is a problem, there are still a few things you can do about it: write with dark ink, write on every second line, space your work by leaving lines open between questions, et cetera. Remember: it is to your advantage if we can read what you have written.
- ~ Finally, please do not contact us after you have written the examination paper. We are not allowed to discuss the paper with students or to divulge examination results. However, we will be only too happy to discuss the course and any difficulties you may experience before the examination.

All that remains is for us to wish you success in the examination.

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