

**ADL2601**

May/June 2013

**ADMINISTRATIVE LAW**

Duration 2 Hours

100 Marks

**EXAMINERS****FIRST****DR S MAASS****SECOND****MS E RAUBENHEIMER**

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**Closed book examination**

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**This paper consists of four (4) pages**

- 1 Answer ALL questions.**
  - 2 Pay attention to the ALLOCATION OF MARKS and adapt your answer accordingly**
  - 3 Please do NOT SEPARATE SUBSECTIONS of questions.**
  - 4 Refer to RELEVANT CASE LAW and OTHER AUTHORITY to support your answers**
  - 5 Credit will be given for WELL-STRUCTURED, COHERENT and GRAMMATICALLY CORRECT ANSWERS.**
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Ms REF Ugee is a citizen of a war-ravaged country in West Africa. She fled her country of birth, moving gradually southwards and entered South Africa after a long journey. Ms REF Ugee applies for asylum at the Department of Home Affairs in terms of section 21(1) of the Refugees Act 130 of 1998. Pending the outcome of her application for asylum, she was granted an asylum seeker permit in terms of the Act, which allows her to stay temporarily in South Africa. Later, however, her application for asylum is rejected by the authorised refugee status determination officer without any input by Ms REF Ugee. No reasons for the rejection were given, but it later transpired that the rejection was based on the informal notes of the refugee reception officer working in the refugee reception office responsible for issuing her with the asylum seeker permit. From these notes the impression might be gained that the decision had been influenced by certain irrelevant factors suggesting bias on the part of the administrator. The Refugees Act makes provision for review by the Standing Committee and appeal to the Appeal Board of a decision by a refugee status determination officer.

You are a legal adviser working at a non-governmental organisation (NGO) called Consortium for Refugees and Migrants in South Africa (CRMSA). Ms Ugee approaches you for assistance on ways and means on how the NGO might be able to come to her assistance.

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Answer the following questions and substantiate your answers

### Question 1

- 1 1 Briefly explain what an administrative-law relationship is. Do you think Ms REF Ugee is a subject of an administrative-law relationship? (6)
- 1 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 (13)
- 1 3 Identify the organs of state in the set of facts and substantiate your answer by referring to the applicable section of "organ of state" as provided in the Constitution (6)

[25]

### Question 2

- 2 1 Answer the following questions. Each question is provided with a number of options as possible answers. Only one option/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 next to the question number.
- 2 1 1 A general administrative-law relationship
- (a) is also known as a subjective relationship
  - (b) is created by a decision by an administrator
  - (c) is created by legislation
  - (d) is not affected by new general legislative provisions
- 2 1 2 Legislation is a binding source of administrative law and includes
- (a) administrative practice
  - (b) judicial precedent
  - (c) policy documents
  - (d) regulations
- 2 1 3 When did the rejection of Ms REF Ugee's application for asylum become operative (take effect)?
- (a) upon the decision becoming known
  - (b) upon the stated date of the commencement of the regulation
  - (c) upon the date of the judgment
  - (d) upon the expiry of 90 days
- 2 1 4 The decision to reject the application for asylum of Ms REF Ugee
- (a) can be changed because it is a valid beneficial administrative act
  - (b) can be changed because it is an invalid administrative act
  - (c) cannot be changed because it is a judicial administrative act

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(d) cannot be changed because it is a valid burdensome administrative act

2 1 5 Which one of the following is **NOT** an overarching concept incorporating all the requirements for valid administrative action?

- (a) applying one's mind to the matter
- (b) *intra/ultra vires*
- (c) administrative accountability
- (d) legality (5)

2 2 The set of facts clearly states that Ms Ugee's application for asylum is rejected by an authorised refugee status determination officer. Discuss the rules that apply when delegation of powers is permitted (in other words a particular task is performed by a duly authorised administrator) (5)

2 3 One of the rules of natural justice requires that the administrator should be impartial. Discuss this rule against bias with reference to the above set of facts (7)

2 4 PAJA gives effect to the right to reasonable administrative action by providing an individual the capacity under section 6(1) to institute judicial review proceedings on the ground that

*The exercise of the power or the performance of the function authorised by the empowering provision in pursuance of which the administrative action was purportedly taken, is so unreasonable that no reasonable person could have so exercised the power or performed the function (s 6(2)(h))*

Discuss this ground of review (8)

[25]

### Question 3

3 1 Does the decision to reject the application by Ms Ugee for asylum constitute procedurally fair administrative action in terms of PAJA? (15)

3 2 Was Ms Ugee entitled to reasons for the decision to reject her application for asylum? Discuss fully with reference to PAJA (10)

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### Question 4

4 1 Discuss the powers of superior/senior administrators when exercising internal control (5)

4 2 List the grounds of review relating to the decision-maker (administrator) (s 6(2)(a)(i) –(iii) of PAJA) (4)

4 3 List and explain the various forms of judicial control (10)

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4.4 Can Ms Ugee apply for judicial control?

(6)

**[25]**

**TOTAL. {100}**