

**ADL2601**

October/November 2016

**ADMINISTRATIVE LAW**

Duration 2 Hours

100 Marks

**EXAMINERS**

FIRST  
SECOND

PROF M BEUKES  
MS E RAUBENHEIMER

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Closed book examination

This examination question paper remains the property of the University of South Africa and may not be removed from the examination venue

**This paper consists of five (5) pages.**

- **Answer ALL the questions.**
  - **Pay attention to the ALLOCATION OF MARKS and adapt your answer accordingly.**
  - **Please do NOT SEPARATE SUBSECTIONS of questions.**
  - **Credit will be given to SYSTEMATIC PRESENTATION, GRAMMATICALLY CORRECT LANGUAGE and reference to LEGAL AUTHORITY**
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**TURN OVER**

Ms Connie Coward, scared of the high crime rate in Heaven-on Earth Valley where she lives, applies for a licence to possess a firearm in terms of section 14 of the Firearms Control Act 60 of 2000. The Act provides for a Designated Firearms Officer (DFO) of a certain rank above constable stationed at a particular police station (established in terms of the South African Police Service Act 68 of 1995) to make the decision to issue a licence or not. The licence is refused by a sergeant at the police station. Ms Coward was afforded no hearing.

Ms Coward seeks your opinion regarding her legal position.

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

### Question 1

- 1.1 Explain the characteristics of the administrative-law relationship. What kind of administrative-law relationship is in evidence in the set of facts should you find such a relationship is in evidence? Provide a reason for your conclusion. (5)
  - 1.2 Define "organ of state" with reference to the Constitution. Identify the organs of state in the set of facts and provide reasons for your answer. (8)
  - 1.3 Is "administrative action" in evidence in the set of facts? In your answer you should give as a point of departure to your answer a full definition of the concept "administrative action" as found in section 1 of the Promotion of Administrative Justice Act 3 of 2000 (PAJA). (12)
- [25]**

### Question 2

- 2.1 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.

2.1.1 Administrative law is NOT concerned with

- (a) basic values and principles governing the public administration
- (b) the actions of and interaction between the organs of state of the three branches of government: the legislature, the executive and the judiciary
- (c) the application of the common-law rules of natural justice
- (d) the day-to-day business of implementing and administering/applying policy adopted by government

TURN OVER

2 1 2 A subjective or an individual administrative-law relationship

- (a) is affected by new general legislative provisions
- (b) cannot be created, changed or ended by a decision of a director-general of any department of state
- (c) is characteristic of a relationship where legal rules governing the relationship between parties apply to all the subjects within a particular group
- (d) applies personally and specifically between parties

2 1 3 The Firearms Control Act 60 of 2000 is an example of

- (a) persuasive source of law
- (b) binding source of law
- (c) policy document
- (d) international document

2 1 4 Which one of the following decisions does NOT qualify as administrative action?

- (a) The President pardons an offender
- (b) The Executive Council of a province prepares and initiates provincial legislation
- (c) The Minister of Basic Education issues new regulations prohibiting all politicians from addressing learners at schools
- (d) The municipality of Heaven-on-Earth Valley administers the by-laws it made

2 1 5 In *Van Deventer J* held the following “ [g]ross unreasonableness is no longer a requirement for review. The constitutional test embodies the requirement of proportionality between the means and the end ”

- (a) *Roman v Williams* 1997 9 BCLR 1267, 1998 1 SA 270 (C)
- (b) *Kotzé v Minister of Health* 1996 3 BCLR 417 (T)
- (c) *Claude Neon v City Council of Germiston* 1995 5 BCLR 554 (W)
- (d) *Tettey v Minister of Home Affairs* 1999 1 BCLR 68 (D)

(5)

2 2 What does the principle “legality” refer to? Briefly mention how this principle is relevant to the set of facts (3)

2 3 Suppose the sergeant told a constable that he (the constable) can issue the firearm licence to Ms Coward and that he may use his own discretionary power to either refuse the licence or issue it. Has any administrative-law rule been contravened? (4)

TURN OVER

- 2 4 Suppose the Designated Firearms Officer (DFO) told Ms Coward that should she pay him a certain amount of money he would see to it that her application is successful and that she will have her firearm licence within a few days. Do you think any abuse of power by the DFO is in evidence in such a scenario? Introduce your answer by (a) listing the various forms of abuse of power one encounters in administrative law and (b) proceed to explain the form of abuse you think is relevant in the scenario (8)  
**[20]**

### Question 3

- 3 1 PAJA gives effect to the right to reasonable administrative action expressed in section 33(1) of the Constitution through the recognition of unreasonableness as a ground of review (s 6(2)(h))
- 3 1 1 In what Constitutional Court case did Justice O'Regan explain the content of this ground of review? (2)
- 3 1 2 Which English law case did Justice O'Regan refer to in this decision? Briefly explain the test that was set out in this case as interpreted by her (3)
- 3 1 3 List the factors Justice O'Regan identified to be considered when determining whether a decision is reasonable or unreasonable (6)
- 3 1 4 Suppose the application of Ms Coward complies with all the legal requirements but the reason provided by the DFO for refusing granting her a licence is that he is of the opinion that women carrying firearms are not feminine? Do you think the DFO's decision is reasonable? Substantiate your answer (4)
- 3 2 Do you think an adherence to either the common-law rules of procedural fairness or the rules relating to procedural fairness as provided for in PAJA is in evidence given the set of facts provided above? (15)  
**[30]**

### Question 4

- 4 1 Return to the reason provided by the DFO (see question 3 1 4 above) and explain whether you would regard the reason provided as "adequate". Refer to relevant case law (5)
- 4 2 Explain briefly the distinction between "control" and "remedy" in administrative law (5)
- 4 3 List the three forms of internal control to be found in administrative law (3)
- 4 4 What are the advantages of internal control? (5)

TURN OVER

- 4 5 One of the preconditions set before an affected person may take administrative action on judicial review is that he/she has to exhaust internal remedies as required by section 7(2)(a) of PAJA. Write down five examples of when internal control would not be the proper remedy (in other words, provide five exceptions to the general rule) (5)
- 4 6 What form of judicial control would you suggest to Ms Coward? Provide a reason for your answer and limit your answer to one form of judicial control (2)  
[25]

**TOTAL {100}**