

ADL2601

May/June 2016

ADMINISTRATIVE LAW

Duration 2 Hours

100 Marks

EXAMINERS

FIRST

SECOND

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Closed book examination

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This paper consists of four (4) pages

- **Answer ALL the questions.**
 - **Pay attention to the ALLOCATION OF MARKS and adapt your answer accordingly**
 - **Refer to relevant CASE LAW and OTHER AUTHORITY.**
 - **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

Set of facts

Ms Budeli lives in an informal settlement in Soweto. She decided to put her name on the waiting list for a house. After a long wait the director of housing of the municipality of Soweto, Mr Brown, informed Ms Budeli via a certified letter that a low-cost house was available for occupation and that she and her four children could take occupation within a month. A month later, Ms Budeli and her family took occupation of the house and received official documents from the deeds office, certifying Ms Budeli's ownership of the three-bedroom house.

However, a year after Ms Budeli and her children had moved into the new house, she was informed by a Mr Mooki that the Department of Human Settlements had decided to allocate the house to another applicant. The Department subsequently sent Ms Budeli a notice stating that she and her family had to vacate the dwelling within a week and that if they failed to do so they would be evicted. Ms Budeli was not provided with any reasons for this decision.

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

Question 1

- 1.1 Define 'state authority'. Is there such an authority in the given set of facts? (7)
 - 1.2 Define 'legality'. Why is it important that state officials adhere to this principle? (5)
 - 1.3 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 3 of 2000 (PAJA) (13)
- [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 next to the question number.

2.1.1 'Organ of state' is defined in _____ of the Constitution.

- (a) section 33
- (b) section 1
- (c) section 195
- (d) section 239

TURN OVER

2 1 2 Just administrative action

- (a) is defined in section 195 of the Constitution
- (b) sets the standard for all judicial decisions
- (c) is the umbrella term for action taken by any person in authority that is proportionate to its effect
- (d) is the umbrella term for action taken by any person in authority that is lawful, reasonable and procedurally fair

2 1 3 International law is an example of a

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

2 1 4 A decision to continue prosecuting Mrs King is

- (a) not an administrative decision because it does not have a direct, external legal effect
- (b) not an administrative decision because it is excluded in terms of section 1(b)(ff) of PAJA
- (c) an administrative decision because it adversely affects the rights of an individual
- (d) an administrative decision because it is included in terms of section 1(a) of PAJA

2 1 5 Which one of the following is **NOT** one of the classes of administrative acts?

- (a) 'true' administrative acts
- (b) legislative administrative acts
- (c) judicial administrative acts
- (d) municipal administrative acts

(5)

TURN OVER

- 2 2 Explain how the Promotion of Administrative Justice Act 3 of 2000 (PAJA) gives effect to the constitutional requirement that all administrative acts must be lawful (7)
- 2 3 Which rules apply when delegation of powers is permitted? (4)
- 2 4 List the three forms of delegation. Briefly explain one of these forms (4)
- [20]**

Question 3

- 3 1 Explain how the Constitutional Court interpreted the right to reasonable administrative action. Refer to case law and the Promotion of Administrative Justice Act 3 of 2000 (PAJA). Also explain whether Mr Mooki's decision in the set of facts was reasonable (15)
- 3 3 Did Mr Mooki's decision comply with section 3 of the Promotion of Administrative Justice Act 3 of 2000 (PAJA) (procedural fairness)? Explain your answer with reference to this section (15)
- [30]**

Question 4

- 4 1 Why is it important that Mr Mooki provide Ms Budeli with written reasons if she requests reasons? Refer to case law to explain your answer (8)
- 4 2 When would it be justifiable for Mr Mooki to depart from the requirement of furnishing written reasons? Refer to the relevant provision in the Promotion of Administrative Justice Act 3 of 2000 (PAJA) to explain your answer (4)
- 4 3 What are the functions of the public protector? (3)
- 4 4 What are the exceptions to the general rule that internal remedies must first be exhausted before an aggrieved party may take administrative action on judicial review? (6)
- 4 5 The Constitution has broadened the scope or range of *locus standi* of individuals and groups to seek relief in matters involving fundamental human rights. List the persons, as mentioned in section 38 of the Constitution, who may approach a court (4)
- [25]**

{TOTAL 100}