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ADL2601

May/June 2017

ADMINISTRATIVE LAW

Duration   2 Hours   100 Marks

EXAMINERS
FIRST   MS E RAUBENHEIMER
SECOND   PROF S VILJOEN

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

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This examination question paper consists of four (4) pages.

- **Answer ALL the questions.**

- **First read the set of facts before you answer the questions.**

- **Pay attention to the ALLOCATION OF MARKS and adapt your answer accordingly.**

- **Refer to relevant CASE LAW and OTHER LEGAL AUTHORITY.**

- **Please do NOT SEPARATE SUBSECTIONS of questions.**

- **Credit will be given to SYSTEMATIC PRESENTATION, GRAMMATICALLY CORRECT LANGUAGE and reference to LEGAL AUTHORITY.**

Set of facts

Ms Naidoo is a citizen of a war-torn country in Africa She fled her country of birth and entered South Africa after a long journey Ms Naidoo applies for asylum at the Department of Home Affairs in terms of section 21(1) of the Refugees Act 130 of 1998 Her application for asylum is rejected by the authorised refugee status determination officer without any input by Ms Naidoo 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

Answer the following questions and substantiate your answers

Question 1

1 1   Briefly explain what an administrative-law relationship is. Do you think Ms Naidoo 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)   the Constitution
(b)   judicial precedent
(c)   policy documents
(d)   regulations

2 1 3   When did the rejection of Ms Naidoo'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 expiration of 90 days

2 1 4   The decision to reject the application for asylum of Ms Naidoo

(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
(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 Naidoo'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 Naidoo for asylum constitute
       procedurally fair administrative action in terms of PAJA?   (15)

3 2   Was Ms Naidoo entitled to reasons for the decision to reject her application for asylum?
       Discuss fully with reference to PAJA   (10)
                                                                                          [25]

Question 4

4 1   Discuss the powers of superior/senior administrators when exercising internal control   (6)

4 2   List the grounds of review relating to the decision-maker (administrator) (s 6(2)(a)(i) –(iii)
       of PAJA)   (3)

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

4 4   Can Ms Naidoo apply for judicial control?   (6)
                                                                                          [25]

                                                                           TOTAL: {100}