

Tutorial letter 201/2/2017

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 2017. It contains the following:

- 1 THE OCTOBER/NOVEMBER 2016 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 October/November 2016 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:

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 Services 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 that such a relationship is in evidence? Provide a reason for your conclusion. (5)

An administrative-law relationship exists between two parties in an unequal /vertical relationship. 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.

Yes, an individual administrative-law relationship is in evidence since Ms Coward in a subordinate position and the Designated Firearms Officer (DFO) (organ of state) is in a position of state authority.

It is also important to note that the relationship is characterised by a situation when rules apply personally and specifically between the parties in a subordinate position and that the relationship is created by individual administrative decisions.

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)

In terms of s 239 of the Constitution an “organ of state” includes:

- (a) any department of state or administration in the national, provincial or local sphere of government; or
 - (b) any other functionary or institution that (i) exercises a power or performs a function in terms of the Constitution or a provincial constitution; or (ii) exercises a public power or performs a public function in terms of any legislation.
- A court or a judicial officer is excluded.

The organs of state which can be identified are the sergeant and the police station. The sergeant because he is a functionary who is (i) exercising a power or performs a function in terms of the Constitution or (ii) exercises a public power or performs a public function in terms of any legislation.

The police station as such because it represents a department of state or administration established in terms of the pertinent legislation.

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)

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.

The decision not to grant the firearm licence amounts to administrative action because it complies with the definition in that it involves a decision by an organ of state (the DFO at the police station) which has adversely affected the rights of a person (Ms Coward) and which appears to have had a direct external legal effect.

[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. (The correct answer is marked in bold.)

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.

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)

“Legality” is a principle used by the courts to determine whether administrative action was not only authorised by law but also performed in accordance with the prescripts laid down by the law (the Constitution in particular). The basis for legality is that the public administration must serve and promote the public interest, and protect as well as respect fundamental rights.

Since legality can be said to mean that organs of state and individuals exercising public power are bound by the law and are not elevated above it, the fact that Ms Coward’s application was refused without the provision of reasons resulted in the principle of legality being negated.

- 2.3 Suppose the sergeant told a constable that he (the constable) can issue the firearm license 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)

The rule against delegation of powers has been contravened. The decision regarding the licence was not made by a Designated Firearms Officer (DFO). The rule finds expression in the Latin maxim *delegatus delegare non potest* (“the person to whom a power is granted may not delegate it to another”). The general rule is that where a discretionary power has been granted to a particular functionary because of his or her specific qualifications, knowledge or expertise, the exercise of this discretion cannot be delegated to another functionary or institution (if not, it will undermine the requirement that powers must be exercised by an administrator with specific qualifications, knowledge or expertise).

The leading case dealing with delegation is *Shidiack v Union Government* 1912 AD 642 in which it was held:

Where the legislature places upon any official the responsibility of exercising a discretion which the nature of the subject-matter and the language of the section show can only be properly exercised in a judicial spirit, then that responsibility cannot be vicariously [i.e. “someone else”]. The person concerned has a right to demand the judgment of the specially selected officer (at 648).

- 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)

- (a) The list of the various forms of abuse of power:

- Exercising power with an unauthorised or ulterior purpose;
- Exercising power using an unauthorised procedure; and
- Exercising power using ulterior motives to defeat the purpose of the law (expressed in the Latin phrase *in fraudem legis*)

- (b) The form of abuse relevant to the scenario is: Exercising power using ulterior motives to defeat the purpose of the law (expressed in the Latin phrase *in fraudem legis*). The use of power *in fraudem legis* means to deviate deliberately from the purpose of the empowering statute. In other words, what is evident from the set of facts is that the DFO in exercising power uses ulterior motives to “defeat” the law (acts *in fraudem legis*).

The action by the DFO can therefore be described as an example of the perversion/undermining of the purpose of the Act. What is more, the action of the DFO shows a particular state of mind – a dishonest one – to make money in a dishonest way, to issue the licence with strings attached.

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)

Bato Star Fishing (Pty) Ltd 2004 (4) SA 490 (CC)

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)

The *Wednesbury*-decision (she held that the PAJA test draws directly on the language of that decision – *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1947] 2 All ER 680 (CA). In that decision the Court held that a decision is “so unreasonable that no reasonable authority could ever have come to it” (at 683E and 685C) – the exact words of section 6(2)(h).

3.1.3 List the factors Justice O'Regan identified to be considered when determining whether a decision is reasonable or unreasonable. (6)

- the nature of the decision
- the identity and expertise of the decision-maker
- the range of factors relevant to the decision
- the reasons given for the decision
- the nature of the competing interests involved
- the impact of the decision on the lives and well-being of those affected.

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)

What will constitute a reasonable decision will depend on the circumstances of each case as it is context based. The simple test for unreasonableness as set out in *Bato Star* is one that states that administrative action will be reviewable, if it is one that a reasonable decision-maker could not reach. Given the factors enumerated by O'Regan, J (particularly the nature of the decision and reason given by the DFO) the decision based on the subjective view of the DFO is unreasonable.

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)

Common-law rules are encapsulated in the rules of natural justice. The rules include the *audi alteram partem* rule as interpreted and developed by our courts, consists of the following:

The individual must be given an opportunity to be heard on the matter (ie the opportunity to put his/her case).

The individual must be informed of considerations which count against him or her.

Reasons must be given by the administrator for any decisions taken.

Over and above the three-legged *audi alteram partem* rule, the rules of natural justice embrace also a second rule, namely *nemo iudex in sua causa* (literally: no-one may be a judge in his/her own cause). In other words, the decision-maker must be, and must be seen ("reasonably perceived") to be impartial or unbiased. This is known as the rule against bias.

The most common examples of bias are the following:

- (a) the presence of pecuniary/financial interest; and
- (b) the presence of personal interest.

The provisions of PAJA (section 3):

Fair administrative practice depends on the circumstances of each case (s 3(2)(a) of PAJA).

Mandatory requirements: (these seem like a codification of rules of natural justice) (s 3(2)(b) of PAJA)

- Adequate notice of the nature and purpose of proposed action
- Reasonable opportunity to make representations
- Clear statement of administrative action
- Adequate notice of right of review or internal appeal
- Adequate notice of right to request reasons

Discretionary requirements: (s 3(3) of PAJA)

- Opportunity to obtain assistance, even legal assistance in complex cases
- Opportunity to present and dispute information and arguments
- Opportunity to appear in person

S 3(4) of PAJA states that the requirements in s 3(2) of PAJA may be departed from only if reasonable and justifiable. This is determined by taking all relevant factors into account, which include:

- The objects of the empowering provision
- The nature and purpose of and need for the action
- The likely effect of the administrative action
- The urgency of the matter
- The need to promote efficient administration and good governance (s 3(4)(b))

Section 3(5) of PAJA states that the administrator may also follow a different but fair procedure if the empowering provision authorises this.

The decision to refuse the licence does not constitute procedurally fair administrative action in terms of PAJA because, *inter alia*: Ms Coward was not given an opportunity to make representations (an opportunity to be heard); and was not given adequate notice to request reasons for the administrative action.

S 3(4) and S 3(5) of PAJA do not seem to be relevant for present purposes.

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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)

Section 5 of PAJA provides for the furnishing of reasons as required by section 33(2) of the Constitution. In other words, section 5 gives effect to section 33(2).

The administrator (to whom the request is made) is obliged to give that person adequate reasons in writing within 90 days of receiving the request (s 5(2)). In other words, the administrator *must* provide adequate reasons.

Cases in which the adequacy of reasons was at issue are *inter alia*: *Nomala v Permanent Secretary, Department of Welfare* 2001 8 BCLR 844 (E) (ticking boxes on the “standard form reasons letter” do not constitute reasons since they do not “educate be beneficiary concerned about what to address specifically in an appeal or a new application. It does not instil confidence in the process, and certainly fails to improve the rationality 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* 2003 (6) SA 407 (SCA) Hoexter is quoted who said “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” (at par 40).

In *Moletsane v The Premier of the Free State* 1995 9 BCLR 1285 it was held that in terms of the interim Constitution that administrative action be justifiable in relation to the reasons given for and that “the more drastic the action taken, the more detailed the reasons which are advanced should be. The degree of seriousness of the administrative act should therefore determine the particularity of the reasons furnished” (at 1288).

Conclusion: There is no link between the application for the firearm licence and the reason given, since the reason was not *inter alia* “properly informative”; therefore, it was not an adequate reason.

4.2 Explain briefly the distinction between “control” and “remedy” in administrative law. (5)

Simply put, to control administrative action is to ensure that administrative action is valid. A remedy on the other hand is anything that serves to cure defects or improve conditions.

In essence, they are similar, but a distinction is nonetheless drawn when they are used in a legal context. Baxter (1984:677) explains the difference between “control” and “remedy” as follows when the supervisory functions of courts are at issue:

What is important, however, is that a clear distinction should be drawn between the two separate functions which the court performs, namely, reviewing the legality of the action in question, and granting an appropriate order if it finds the action to be unlawful.

De Ville (2005:297) explains the content of this distinction as follows:

A distinction has to be drawn between the review [read: “control”] of administrative action and the granting of a remedy as a result of a finding that a ground of review is present. Whereas review entails an enquiry into the legality of the administrative action (ie whether a ground of review is present), the specific remedy that is granted usually follows after a finding of illegality and can take a variety of forms depending on the context. Control, in turn, can take various forms.

(We find the following two broad categories in administrative law: Internal control (i.e., control within the administration itself) and judicial control.)

4.3 List the three forms of internal control to be found in administrative law. (3)

The three forms of internal control are:

- Control by superior (senior) administrators or specially constituted bodies/institutions;
- Parliamentary control; and
- Control by public bodies and commissions, such as the Public Protector and the Auditor-general

4.4 What are the advantages of internal control?

The advantages of or prerequisites for the requirement that internal remedies must be exhausted before approaching a court of law have been justified as follows:

- It is unreasonable for a person to rush to court before his or her internal remedies have been exhausted.
- The internal remedies are usually cheaper and more expedient/easier to use.
- It helps to prevent the courts being overloaded with cases that may be more efficiently dealt with by the administration itself.

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)

The recognised exceptions have this in common: they are all examples of situations in which internal control would not be the proper remedy, because:

- the case has already been prejudged by the administrator
- the decision has been made in bad faith (*mala fide*), fraudulently or illegally, or has in effect not been made at all
- the aggrieved party has an option whether to use the extrajudicial remedy or to proceed directly to judicial review (see *Jockey Club of SA v Feldman* 1942 AD 340)
- the administrative authority has come to an unacceptable decision as a result of an error of law (e.g. when the administrator by reason of “mistake of law” presumes that he/ she has the authority to take action)
- the administrative body concerned has agreed that judicial review proceedings may start immediately
- the administrative body concerned has no authority to rectify the particular irregularity complained of
- the internal remedy cannot provide the same protection as judicial review. (For example, in *Msomi v Abrahams* 1981 2 SA 256 (N) this was held to be a strong indication that internal remedies need not be exhausted.)

It is important to remember that these exceptions are nothing more than practical solutions to the problems when internal control is not a proper remedy.

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)

Ms Coward could apply for an interdict to stop the refusal until the matter has been reviewed. (The explanation of the urgency of the matter; that she has a clear legal interest; that there is no other satisfactory remedy; and that she will suffer irreparable prejudice if the interdict is not granted, falls outside the scope of the answer.)

An appeal may only be lodged if the particular legislation provides for it.

The High Court has inherent review jurisdiction. In a review the court will consider the procedural fairness of the withdrawal. (It will be permitted to go outside the record of the proceedings.)

Mandamus: To compel the administrator to provide reasons.

[25]
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2 Assignment 01

Set of facts

Keep-it-Green Manufacturers is a company that manufactures rubbish bins. For the past ten years the company has been supplying the Polokwane municipality with rubbish bins for placement throughout the town. The municipal manager informs Keep-it-Green Manufacturers that the contract is about to expire and undertakes to fax the new tender documents to the company. However, the documents are e-mailed to the wrong address, resulting in Keep-it- Green Manufacturers missing the due date for tenders.

The municipal by-laws provide that a committee consisting of the councilor responsible for finance, the municipal manager and the chief financial officer decide on the award of municipal tenders. The committee delegates the task of awarding the tender for the supply of rubbish bins to the head of secretarial services in the municipality who awards the tender to Wheelybin Services CC.

Question

Is administrative action present in this set of facts (scenario)? Provide a **full** discussion of the concept “administrative action” with reference to the provisions of the Promotion of Administrative Justice Act (PAJA) 3 of 2000.

Answer the question using the following method: (a) Set out the elements of the concept involved first and then examine/explain them (and do NOT introduce your answer with a conclusion); (b) apply these elements you have examined to the set of facts; and then (c) reach your conclusion: “yes” or “no” and provide substantiation/reasons for your conclusion.

Limit your answer to two (2) typed pages (at a maximum three (3) pages); spacing 1.5 and please do not forget to acknowledge your sources (even when your only source is the study guide).

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 to award the tender to Wheelybin Services CC is an administrative action. It complies with the definition in that it involves a decision by an organ of state (the municipality) exercising a public power or performing a public function in terms of legislation which has adversely affected the rights of a person (Keep-it-Green Manufacturers) and which appears to have had a direct external legal effect. The exceptions do not apply.

3 Assignment 02

(The correct answers are marked in bold.)

Question 1

Administrative law forms part of ...

1. international law
2. common law
3. **public law**
4. private law

Question 2

A general administrative-law relationship is created, changed or ended by ..., that is by general means.

1. **legislation**
2. judicial decision
3. any organ of state
4. the authorised organ of state

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 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 this view was 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

A legitimate expectation is recognised in which section of PAJA?

1. section 4(1)
2. section 3(2)
3. section 33(1)
4. **section 3(1)**

Question 7

In what circumstances may the minister identify a group of administrative actions in respect of which the administrator must automatically furnish reasons?

1. when the court specifies that the minister may do so
2. when a large group of individuals is affected negatively and adversely by the administrative action
3. **when the administrator requests the minister to do so**
4. when the minister requests the administrator to do so

Question 8

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 that 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)

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

Which section of PAJA deals with the procedure for judicial review?

1. section 6
2. section 2
3. section 3(2)
4. **section 7**

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 October/November 2016 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. (I know that we know, but we must be able to see that you know.)

~ 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. What has happened is of less importance than the reason on which the judgment is based.

~ 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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