

ADL2601

October/November 2013

ADMINISTRATIVE LAW

Duration 2 Hours

100 Marks

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

Mr Nkosi is the proud owner of a wine farm (commonly known as Blue Hills), which is situated in Constantia. On 1 October 2013 Mr Nkosi received a notice of expropriation in terms of section 7 of the Expropriation Act 63 of 1975 from the Minister of Public Works stating the following

- The whole of erven 711 (commonly referred to as Blue Hills) will be expropriated
- The proposed date of expropriation is 1 December 2013
- The offered amount of compensation is R500 000

Mr Nkosi is aware of the fact that the Minister of Public Works does have the power to expropriate his property – this is clear in terms of section 2 of the Expropriation Act 63 of 1975 – which states that the Minister may expropriate property for public purposes. However, Mr Nkosi is unaware of the reasons for the proposed expropriation. He was also not informed why the whole of his property should be expropriated. In addition, the market value of Blue Hills was estimated in October 2013 to be R20 million.

Answer the following questions and substantiate your answers.

TURN OVER

QUESTION 1

- 1 1 Define "organ of state" with reference to the Constitution. Is there an organ of state in the set of facts? Give a reason for your answer (8)
- 1 2 Is there a **general** administrative-law relationship present in the set of facts? Give a brief reason for your answer (3)
- 1 3 List two binding sources of administrative law (2)
- 1 4 Is administrative action in evidence in the set of facts? In your answer, you should give a full definition of the concept "administrative action" with reference to the provisions of the Promotion of Administrative Justice Act (PAJA) 3 of 2000 (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/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 The Minister's decision in the set of facts is an example of a
- (a) true administrative act
 - (b) judicial administrative act
 - (c) legislative administrative act
 - (d) just administrative act
- 2 1 2 Just administrative action is defined in section 33 of the Constitution. The term " " can also be used to refer to just administrative action
- (a) proportionality
 - (b) applying one's mind to the matter
 - (c) reasonableness
 - (d) fairness
- 2 1 3 Consider the following statement: "Any administrator must act within the powers conferred on him or her by the empowering statute." Which requirement in section 33 of the Constitution resonates this statement?
- (a) Procedural fairness
 - (b) Reasonableness
 - (c) Lawfulness
 - (d) Impartiality

TURN OVER

2 1 4 The general rule regarding the delegation of powers is that the administrator who has authority to take administrative action must exercise that authority himself or herself. This principle was confirmed in the case of _____ where Innes ACJ stated the following

“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 discharged.”

- (a) *University of Pretoria v Minister of Education* 1948 4 SA 79 (T)
- (b) *SA Freight Consolidators (Pty) Ltd v Chairman, National Transport Commission* 1987 4 SA 155 (W)
- (c) *Foster v Chairman, Commission for Administration* 1991 4 SA 403 (C)
- (d) *Shidiack v Union Government* 1912 AD 642

2 1 5 Which of the following is **NOT** a form of abuse of power by an administrator?

- (a) *audi alteram partem*
- (b) *in fraudem legis*
- (c) exercising power with an unauthorised purpose
- (d) exercising power using an unauthorised procedure (5)

2 2 Suppose the Minister's reason for the expropriation was that the Department of Public Works required Mr Nkosi's property in order to build a new house for the newly elected President of South Africa. Mention the three elements of "proportionality" and explain whether the Minister's decision to expropriate Mr Nkosi's property is reasonable (or not) with reference to these elements (8)

2 3 PAJA gives effect to the right to reasonable administrative action in section 6(2)(h). The Constitutional Court has given content to the relevant provision in PAJA that deals with reasonableness. Do you think Mr Nkosi's right to reasonable administrative action was infringed? Substantiate your answer with reference to PAJA and case law (12)
[25]

QUESTION 3

3 1 Did the Minister comply with the mandatory requirements for procedural fairness? Explain the relevant provision in PAJA to substantiate your answer (8)

3 2 If the Minister decides to depart from the requirements of fair procedure, as required by PAJA, section 3(4)(b) of PAJA lists certain factors to be considered to determine whether this decision to depart is reasonable and justifiable. List the factors as prescribed by section 3(4)(b) (5)

TURN OVER

- 3.3 Suppose Mr Nkosi approached the Department of Public works and requested reasons for the Minister's decision. Would the Minister be obliged to provide Mr Nkosi with reasons? Substantiate your answer with reference to the relevant provisions in PAJA (5)
- 3.4 Suppose the Minister responded to Mr Nkosi's request for reasons as follows "The Department of Public Works requires the mentioned property in order to build a house." Do you think that this response provides an adequate reason? Substantiate your answer with reference to case law (7)
[25]

QUESTION 4

- 4.1 Briefly explain the three forms of internal control (6)
- 4.2 What are the powers of senior administrators when exercising internal control? (4)
- 4.3 Why should internal remedies first be exhausted before an aggrieved party may approach a court of law? (2)
- 4.4 When would internal control not be the proper remedy? (7)
- 4.5 Would the judicial remedy of *mandamus* assist Mr Nkosi in this matter? Give reasons for your answer (2)
- 4.6 List the orders that the court can make in proceedings for judicial review with reference to PAJA (4)
[25]

TOTAL: {100}