

Tutorial Letter 101/3/2018

Administrative Law ADL2601

Semesters 1 and 2

**Department of Public, Constitutional and
International Law**

This tutorial letter contains important information
about your module.

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Dear Student

1 INTRODUCTION

As a student at a distance learning institution it is important that you interact with your lecturers and fellow students. You can, therefore expect that we will make contact with you on myUnisa, which will provide you with all the information you require for your studies. We will also provide guidance to you with regard to the study material and feedback on your performance (e.g. in the assignments). You must take responsibility for your studies, which includes accessing the necessary study material on myUnisa, studying the prescribed study material, and completing and submitting your assignments before or on the due dates. We hope that you will enjoy this module and wish you all the best!

Remember, as this is an online module, you need to use myUnisa to study and complete the learning activities for this course, and you need to visit the websites on myUnisa for ADL2601 frequently. The website for your module is ADL2601-18-S1 (for semester 01) or ADL2601-18-S2 (for semester 02).

Because this is a fully online module, you need to go online to read your study material and to see what you have to do for this module. Go to the following website: <https://my.unisa.ac.za> and login with your student number and password. You will see “Administrative Law ADL2601-18-S1” if you are registered for the first semester (or ADL2601-18-S2 if you are registered for the second semester) in the row of modules in the orange blocks across the top of the web page. Remember to also check in the “more”-tab if you cannot find the module in the orange blocks. Click on the module you want to open.

The study material for this module will be available on myUnisa. It is thus very important that you register on myUnisa and access the module site on a regular basis. You must be registered on myUnisa to be able to access your study material, submit your assignments, gain access to various learning resources, “chat” to your lecturer or teaching assistant and fellow students about your studies and the challenges that you might encounter, and to participate in online discussion forums. Importantly, myUnisa contains the **Official Study Material** tool, which is the only way in which you will be able to access the study material for this module if you have registered and have access to myUnisa. The **home page** for this specific module will explain how all the other tools fit into your learning experience. Please read it carefully before you try accessing all the different online tools.

Because we want you to be successful in this online module, we will also provide you with a printed copy of some of the study material, specifically the study guide and Tutorial Letter 101 (this tutorial letter). This will allow you to read the study materials even if you are not online. While these printed materials may appear to be slightly different from the online study material, they are exactly the same and have in fact been copied from the online myUnisa website.

Remember that the printed support materials are a back-up of everything you can find online on myUnisa. **In other words, you should NOT wait for the printed support materials to arrive before you start studying.**

Please consult the *my Studies @ Unisa* publication for more information on how to activate your myLife email address as well as obtaining access to the myUnisa module site.

2 PURPOSE AND OUTCOMES

2.1 Purpose

The purpose of this module is to provide students with a sound understanding of the norms and principles of administrative law. Additionally, this module seeks to expose students to the complex situations, through case studies and relevant scenarios, which would need them to apply their knowledge to practical problems that may arise due to requirements for valid and fair administrative action.

Consequently, students who complete this module will be equipped with knowledge, skills, attitudes and competencies to analyse and critically evaluate legal material (in the light of the right to just administrative action) and to formulate relevant legal arguments. The module recognises the significance of the South African Constitution and that effectively the Bill of Rights advocates for ubuntu, social responsibility and humanised law in the practice of administrative law. The module can also be studied by persons who are administrators in the public or private sectors and managers in all kinds of disciplines.

2.2 Outcomes

Outcome 1:

Analyse and evaluate legal material (the Constitution, legislation, case law and academic opinion) directly pertaining to Administrative Law.

Outcome 2:

Formulate legal arguments to practical problems that may arise in a constitutional state where just administrative action is a constitutionally protected right.

Outcome 3:

Appreciate humanisation of the law and the overarching presence and influence of ubuntu in modern Administrative Law.

3 LECTURER(S) AND CONTACT DETAILS

3.1 Lecturer(s)

The lecturers for this module are:

Prof S Viljoen
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Telephone: 012 429 2042
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To contact the University, you should follow the instructions in the my Studies @ Unisa brochure. Remember to have your student number available when you contact the University.

When contacting one of your lecturers, you should always include your student number.

3.2 Department

Public, Constitutional and International Law

3.3 University

University of South Africa (Unisa)

4 RESOURCES

4.1 Prescribed books

None

4.2 Recommended books

None

4.3 Electronic reserves (e-reserves)

None

4.4 Library services and resources information

For brief information, go to www.unisa.ac.za/brochures/studies

For detailed information, go to <http://www.unisa.ac.za/library>. For research support and services of personal librarians, click on "Research support".

The library has compiled a number of library guides:

- finding recommended reading in the print collection and e-reserves – <http://libguides.unisa.ac.za/request/undergrad>
- requesting material – <http://libguides.unisa.ac.za/request/request>
- postgraduate information services – <http://libguides.unisa.ac.za/request/postgrad>
- finding, obtaining and using library resources and tools to assist in doing research – http://libguides.unisa.ac.za/Research_Skills
- how to contact the library/finding us on social media/frequently asked questions – <http://libguides.unisa.ac.za/ask>

5 STUDENT SUPPORT SERVICES

For information on the various student support systems and services available at Unisa support systems and services available at Unisa (e.g. student counselling, language support, etc), please consult the publication *My studies @ Unisa* that you received with your study material.

Free computer and internet access

Unisa has entered into partnerships with establishments (referred to as Telecentres) in various locations across South Africa to enable you (as a Unisa student) free access to computers and the Internet. This access enables you to conduct the following academic related activities: registration; online submission of assignments; engaging in e-tutoring activities and signature courses; et cetera. Please note that any other activity outside of these mentioned are for your own cost/account e.g. printing, photocopying, et cetera. For more information on the Telecentre nearest to you, please visit www.unisa.ac.za/telecentres.

6 STUDY PLAN

Please refer to the “Learning Units” on your ADL2601 website (ADL2601-18-S1 (for semester 01) or ADL2601-18-S2 (for semester 02)) in myUnisa for a suggested week-by-week study plan.

7 PRACTICAL WORK AND WORK-INTEGRATED LEARNING

None

8 ASSESSMENT

8.1 Assessment criteria

The assignments serve as formative assessments to assist you in going through the syllabus systematically and to provide support in your preparation for the summative assessment (the examination). Moreover, the assignments serve to provide you with a year mark.

8.2 Assessment plan

There are two assignments for this module. Details regarding the submission of assignments are available on myUnisa. All the other information regarding your examinations and how your marks will be calculated, will also be available on myUnisa. The assignments for this module are also available on myUnisa.

8.3 Assignment numbers

8.3.1 General assignment numbers

The two assignments are numbered “1” and “2”. Please ensure that you indicate the assignments you submit correctly as either “1” or “2”.

8.3.2 Unique assignment numbers

Each of the two assignments is allocated a unique number. Please ensure that the particular unique number is reflected correctly in your assignment answer.

Semester 01 (ADL2601-18-S1):

Unique number, assignment 01: 665078

Unique number, assignment 02: 819012

Semester 02 (ADL2601-18-S2):**Unique number, assignment 01: 680891****Unique number, assignment 02: 716077****8.4 Assignment due dates****Semester 01 (ADL2601-18-S1):**

Assignment 01: Monday, 19 March 2018

Assignment 02: Monday, 09 April 2018

Semester 02 (ADL2601-18-S2):

Assignment 01: Monday, 27 August 2018

Assignment 02: Monday, 17 September 2018

8.5 Submission of assignments

Consult the website for your module (ADL2601-18-S1 (for semester 01) or ADL2601-18-S2 (for semester 02)) under “frequently asked questions” for the necessary guidance on the way to submit your assignment answers online.

8.6 The assignments**Semester 1****Assignment 01****Unique number: 665078****Due date: Monday, 19 March 2018****Set of facts**

Ms Nomsa April is a citizen of a war-ravaged country in West Africa. She fled her country of birth, moving gradually southwards and entered South Africa after a long journey. Ms Nomsa April applies for asylum at the Department of Home Affairs in terms of section 21(1) of the Refugees Act 130 of 1998. Pending the outcome of her application for asylum, she was granted an asylum seeker permit in terms of the Act, which allows her to stay temporarily in South Africa. Later, however, her application for asylum is rejected by the authorised refugee status determination officer without any input by Ms Nomsa April. 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.

You are a legal adviser working at a non-governmental organisation (NGO) called Consortium for Refugees and Migrants in South Africa (CRMSA). Ms Nomsa April approaches you for assistance on ways and means on how the NGO might be able to come to her assistance.

Answer the following questions and substantiate your answers:

Question 1

Briefly explain what an administrative-law relationship is. Do you think Ms Nomsa April is a subject of an administrative-law relationship? (8)

Question 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. (12)

[20]

Assignment 02

Unique number: 819012

Due date: Monday, 09 April 2018

Instructions:

1. Your answer must be completed on a Unisa mark-reading sheet.
2. There are ten questions. Each question has a number of options, or possible answers. Only one option/statement in each question is correct. You are required to identify the correct option and mark only one of the squares (options) for each question. If you mark more than one square in respect of a specific question, you will receive no mark for the answer to that question.
3. The questions cover study units 1-12 of the study guide.

Marking of the assignment:

1. Each answer carries one mark.
2. No mark will be awarded for an incorrect answer.
3. No mark will be awarded for an unanswered question.
4. The assignment is not marked negatively, that is, marks will not be deducted for incorrect answers.

Question 1

“Organ of state” is defined in section...of the Constitution.

1. 1
2. 33
3. 197
4. 239

Question 2

Which of the following is a characteristic of an administrative law relationship?

1. One of the legal subjects must be an official in one of the national departments.
2. The person in the subordinate position must have been treated unfairly.

3. The organ of state forces the subordinate party to act in a certain manner.
4. The actions of the person clothed in state authority must have been unreasonable.

Question 3

Which one of the following is **NOT** an organ of state?

1. The University of Cape Town
2. The Deputy President
3. The Premier of Gauteng
4. The Deputy Chief Justice of the Constitutional Court

Question 4

Which one of the following is **NOT** an example of or a form of internal control?

1. The Public Protector
2. Parliamentary enquiries
3. Judicial review
4. Chapter 9 (of the Constitution) institutions

Question 5

Which one of the following is **NOT** a ground for judicial review in terms of section 6 of PAJA?

1. The action taken is not rationally connected to the purpose of the empowering provision.
2. The administrator acted in accordance with provisions relating to time.
3. The action did not comply with the formal requirements relating to administrative action.
4. The administrator exceeded the geographical limits of the powers conferred.

Question 6

Section ... of PAJA regulates procedural fairness where the administrative decision adversely affects the rights of the public.

1. 3(1)
2. 5
3. 4
4. 6(2)

Question 7

The *audi alteram partem* rule means that...

1. the administrator must be reasonable.
2. the administrator must hear both sides.
3. the administrator must be impartial.
4. the administrator must be well educated.

Question 8

Which one of the following is **NOT** one of the forms of delegation?

1. mandate
2. directive
3. deconcentration
4. decentralisation

Question 9

The Constitutional Court interpreted the right to reasonable administrative action in the case of

1. *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs* 2004 4 SA 490.
2. *R v Chief Constable of Sussex, ex parte International Trader's Ferry Ltd* [1999] 1 All ER 129.
3. *Chairman, Board on Tariffs and Trade v BrencoInc* 2001 4 SA 511.
4. *Kotze v Minister of Health* 1996 BCLR 417 (T).

Question 10

An applicant waits in vain for the issue of his or her passport, he or she may then apply for a ... to compel the administrator to decide on the matter.

1. declaratory order
2. review procedure
3. interdict
4. *mandamus*

[10]

Semester 2

Assignment 01

Unique number: 680891

Due date: Monday, 27 August 2018

Set of facts:

Due to serious water shortages experienced during the past five years a local company in Sedgefield decides to build a facility for the desalination of seawater. Erecting a desalination plant requires an environmental authorisation by the Western Cape Department of Environmental Affairs and Development Planning in terms of the National Environmental Management Act (NEMA) 107 of 1998 and an environmental impact assessment (EIA) in terms of the Environmental Impact Assessment Regulations of 2010 which, amongst others, provide for public participation (the giving of input and objections) by interested and affected parties. The relevant Department consider the EIA carried out and grants the authorisation to build the facility for the desalination of seawater. However, the local ratepayer's association is against the construction of the desalination plant because of the expensive infrastructure required and the

negative impact on the environment. The association alleges further that it was not asked for any input in the matter and that the Department did not provide any reasons for their decision.

Answer the following questions and substantiate your answers:

Question 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)

Question 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. (12)

[20]

Assignment 02

Unique number: 716077

Due date: Monday, 17 September 2018

Instructions:

1. Your answer must be completed on a Unisa mark-reading sheet.
2. There are ten questions. Each question has a number of options, or possible answers. Only one option/statement in each question is correct. You are required to identify the correct option and mark only one of the squares (options) for each question. If you mark more than one square in respect of a specific question, you will receive no mark for the answer to that question.
3. The questions cover study units 1-12 of the study guide.

Marking of the assignment:

1. Each answer carries one mark.
2. No mark will be awarded for an incorrect answer.
3. No mark will be awarded for an unanswered question.
4. The assignment is not marked negatively, that is, marks will not be deducted for incorrect answers.

Question 1

The following is a persuasive source of administrative law:

1. International law
2. A white paper
3. PAJA
4. The Promotion of Access to Information Act

Question 2

Which one of the following is **NOT** an overarching concept incorporating all the requirements for valid administrative action?

1. applying one's mind to the matter
2. *intra/ultra vires*
3. administrative accountability
4. legality

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 one 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 was this view 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

Legislation is a binding source of administrative law and includes ...

1. administrative practice.
2. judicial precedent.
3. policy documents.
4. regulations.

Question 7

When does a decision to reject an application for asylum become operative (take effect)?

1. upon the decision becoming known
2. upon the stated date of the commencement of the regulation
3. upon the date of the judgment
4. upon the expiry of 90 days

Question 8

Proportionality consists of three elements. Which of the following is **NOT** one of these elements?

1. suitability
2. conformity
3. necessity
4. weighing the advantages and disadvantages

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

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 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)

[10]

8.7 Other assessment methods

None

8.8 The examination

This module is offered in a semester period of fifteen weeks. This means that if you are registered for the first semester, you will write the examination in May/June 2018 and the supplementary examination will be written in October/November 2018. If you are registered for the second semester you will write the examination in October/November 2018 and the supplementary examination will be written in May/June 2019.

During the course of the semester, the Examination Section will provide you with information regarding the examination in general, examination venues, examination dates and examination times.

9 FREQUENTLY ASKED QUESTIONS

Consult “Frequently asked questions” on myUnisa for responses/answers to such questions.

10 SOURCES CONSULTED

See your study guide for the sources consulted as regards this module, Administrative Law (ADL2601).

11 IN CLOSING

Please do not hesitate to contact one of your lecturers by email if you experience problems with the content of this tutorial letter or any aspect of the module.

We wish you a fascinating and satisfying journey through the learning material and trust that you will complete the module successfully.

Enjoy the journey!

Prof S Viljoen
Mrs E Raubenheimer

12 ADDENDUM

None