

## **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.**

**This examination question paper consists of five (5) 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.**
- 

**TURN OVER**

**Set of facts**

Ms Vuma applies to a provincial government's Department of Social Development for a disability grant under the Social Assistance Act 59 of 1992 and its regulations. She is informed that her application will take about three months to be processed and she is given a properly dated and stamped receipt as required by the regulations. Ms Vuma waits for the three-month period to lapse before she starts making enquiries. Her enquiries prove to be completely fruitless and she receives no information about the outcome of her application. A number of times she receives the following reply from an administrator: "Your application is still in the process of being decided upon. Come back next week."

Answer the following questions and substantiate your answers with reference to the set of facts, where applicable.

**Question 1**

- 1.1 Distinguish between a general and an individual administrative law relationship and give an example of each with reference to the set of facts. (10)
- 1.2 Give the definition of "administrative action" as provided in section 1 of the Promotion of Administrative Justice Act (PAJA) 3 of 2000. (10)
- 1.3 In view of the definition of "administrative action", state what the administrative action is in the set of facts and also state why in your opinion such action qualifies as administrative action by referring to the definition of "administrative action". (5)
- 1.4 When does administrative action take effect? (3)
- 1.5 List any two (2) binding sources of administrative law. (2)

**[30]****Question 2**

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.

- 2.1 Which one of the following is **NOT** a key feature of administrative law?
  - (1) policy documents
  - (2) state authority
  - (3) administrative action
  - (4) control of administrative action

TURN OVER

- 2.2 An organ of state is ....
- (1) defined in section 195 of the Constitution.
  - (2) defined in section 239 of the Constitution.
  - (3) not defined in the Constitution.
  - (4) defined in PAJA.
- 2.3 Legislative administrative acts are ....
- (1) not administrative action.
  - (2) not published in *Government Gazettes*.
  - (3) published in *Government Gazettes*.
  - (4) judicial administrative acts.
- 2.4 When an administrator cannot amend, repeal or vary his/her decision, he/she is said to be ....
- (1) *intra vires*.
  - (2) *ultra vires*.
  - (3) *functus officio*.
  - (4) inefficient.
- 2.5 Section 33 of the Constitution provides for just administrative action and therefore ....
- (1) the individual is unprotected in his/her dealings with administrators.
  - (2) it is aimed at assisting administrators in abusing their powers.
  - (3) the principles and the values of section 195(1) of the Constitution do not contribute to just administrative action.
  - (4) it represents an over-arching constitutional requirement that all administrative action must comply with.
- 2.6 Deconcentration is a kind of delegation where ....
- (1) no control over the delegate is possible.
  - (2) the senior administrator makes a decision and then hands it over to another administrator to implement.
  - (3) the delegator transfers certain powers to an independent body.
  - (4) powers are delegated between administrators within the same hierarchy.
- 2.7 Legitimate expectation ....
- (1) gives you a right to a hearing, and guarantees that the application will be successful.
  - (2) gives you a right to a hearing, but does not necessarily guarantee that the application will be successful.
  - (3) applies to situations in which the application of reasonableness is in issue.
  - (4) applies to situations in which the application of the right to reasons is in issue.

- 2.8 Which one of the following statements is correct?
- (1) The Auditor-General must only report on the accounts, the financial statements and the management of the national state departments.
  - (2) The Auditor-General must report on any institution that receives money for a public purpose.
  - (3) The Auditor-General is not a Chapter 9 (of the Constitution) institution.
  - (4) The Auditor-General does not support constitutional democracy.
- 2.9 Section 4 of PAJA applies in cases where an administrative action affects the rights of the public and, therefore ....
- (1) a public enquiry would be inappropriate.
  - (2) a notice and comment procedure would be inappropriate.
  - (3) has a general impact.
  - (4) does not have a general impact.
- 2.10 The *audi alteram partem* rule ....
- (1) is a statutory rule.
  - (2) means that all action must be reasonable.
  - (3) facilitates accurate and informed decision making.
  - (4) facilitates the fair distribution of work.

**[10]****Question 3**

- 3.1 Certain rules apply in cases where delegation of powers is permitted. List these rules. (4)
- 3.2 Discuss the Constitutional Court's interpretation of the right to reasonable administrative action as decided in *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs* 2004 (4) SA 490 (CC). (10)
- 3.3 One of the rules of natural justice is the rule against bias or prejudice (the *nemo iudex in sua causa* rule). Discuss this rule with reference to case law. (6)
- 3.4 Section 3 of PAJA provides for procedural fairness. Discuss the mandatory **and** the discretionary requirements for procedural fairness as set out in section 3 of PAJA with reference to case law. (10)

**[30]****Question 4**

- 4.1 Suppose Ms Vuma's application for a disability grant is summarily refused by the administrator without providing any reasons.
- (a) Section 5 of PAJA provides for the furnishing of reasons as required by section 33(2) of the Constitution. Explain to Ms Vuma what section 5 of PAJA entails. (6)

TURN OVER

- (b) Explain to Ms Vuma how the furnishing of reasons can assist her (in other words, you also have to explain to her the importance of reasons). (6)
- 4.2 Discuss the role and the powers of the Public Protector. (6)
- 4.3 What are the powers of the senior administrators when exercising internal control? (4)
- 4.4 List the forms of judicial control. (6)
- 4.5 Indicate which one of the forms of judicial control can be used to help Ms Vuma and why. (2)

**[30]****Total: {100}**