

ADL2601

October/November 2012

ADMINISTRATIVE LAW

Duration 2 Hours

100 Marks

EXAMINERS

FIRST

SECOND

DR S MAASS

MS E RAUBENHEIMER

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This paper consists of THREE (03) pages

PLEASE PAY CAREFUL ATTENTION TO THE FOLLOWING:

1. PLEASE COMPLETE THE ATTENDANCE REGISTER ON THE BACK PAGE, TEAR OFF AND HAND OVER TO THE INVIGILATOR.
2. THIS IS A CLOSED BOOK EXAMINATION.
3. ANSWER ALL THE QUESTIONS.
4. PAY ATTENTION TO THE ALLOCATION OF MARKS AND ADAPT YOUR ANSWERS ACCORDINGLY.
5. CREDIT WILL BE GIVEN TO SYSTEMATIC PRESENTATION, GRAMMATICALLY CORRECT LANGUAGE AND REFERENCE TO LEGAL AUTHORITY.

African Silver (Pty) Ltd is an established mining company that has successfully operated its business in the South African mining industry over the last five decades under the previous mining regime. South Africa is the world's biggest producer of platinum and African Silver (Pty) Ltd was the leading company that extracted platinum in the Bushveld complex, the main producing area of this mineral in South Africa. African Silver (Pty) Ltd, as leading company that specialized in extracting and refining this metal, has spent years and millions of Rands in order to improve its mining operations, specifically related to the extraction and refinement of platinum.

In October 2002, the Minerals and Petroleum Resources Development Act 28 of 2002 (MPRDA) came into operation, which makes provision for equitable access to and sustainable development of the nation's mineral and petroleum resources. In terms of the MPRDA, African Silver (Pty) Ltd's limited real right to

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mine automatically ceased to exist on the date the Act came into operation. In consequence, African Silver (Pty) Ltd had to apply for "new order" mining rights to carry on with its business. On 16 January 2003, African Silver (Pty) Ltd applied for mining rights in the Bushveld complex. The application was summarily turned down by the Department of Minerals and Energy without giving any reasons to African Silver (Pty) Ltd. In the interim, mining rights pertaining to the Bushveld complex were granted to African Golden (Pty) Ltd. The official who turned down African Silver (Pty) Ltd's application is a shareholder in African Golden (Pty) Ltd.

Answer the following questions and substantiate your answers.

QUESTION 1

- 1.1 Identify the organs of state in the given set of facts. Explain your answers with reference to the constitutional definition of organ of state. (6)
- 1.2 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. (13)
- 1.3 Do the following actions constitute administrative action? Explain your answers.
- I the enactment of the MPRDA, (2)
 - II the decision of the Department of Minerals and Energy to grant African Golden (Pty) Ltd mineral rights, (2)
 - III African Silver (Pty) Ltd's request for reasons (2)
- [25]

QUESTION 2

- 2.1 What is the basis of administrative legality? (3)
- 2.2 Explain the principle of legality in the constitutional framework. (3)
- 2.3 In order to determine whether African Silver (Pty) Ltd's right to reasonable administrative action was infringed, explain the Constitutional Court's interpretation of the right to reasonable

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administrative action In your answer, you should apply the Court's interpretation to the given set of facts, and refer to the relevant case law and provisions in PAJA (14)

[20]

QUESTION 3

- 3 1 The rules of natural justice require that the administrator should be impartial Discuss whether bias is in evidence in the above set of facts (10)
- 3 2 Discuss fully whether African Silver (Pty) Ltd has received procedurally fair treatment in terms of PAJA (10)
- 3 3 Suppose the reasons given for the refusal of African Silver (Pty) Ltd's application are that it is not BEE (*Black Economic Empowerment*) compliant Discuss whether this would be considered "adequate" reasons (5)
- 3 4 Explain in what circumstances a departure from the requirement to furnish written reasons might have been applicable In your answer, you should refer to the relevant provisions in PAJA (5)
- [30]

QUESTION 4

- 4 1 List the forms of internal control (3)
- 4 2 Mention the advantages of internal control (5)
- 4 3 List the exceptions to the general rule that internal remedies must first be exhausted (7)
- 4 4 Explain the various forms of judicial control (10)
- [25]

TOTAL. {100}