

ADL2601

May/June 2014

ADMINISTRATIVE LAW

Duration 2 Hours

100 Marks

EXAMINERS**FIRST****SECOND****DR S MAASS****MS E RAUBENHEIMER****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 paper consists of three (3) 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.**

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 considers 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

- 1.1 Briefly explain what an administrative-law relationship is with reference to the given facts (7)

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- 1 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 (13)
- 1 3 Identify the organ of state in the set of facts and substantiate your answer with reference to the definition of "organ of state" as provided in section 239 of the Constitution (2)
- 1 4 List the most important statutory source of administrative law and explain why this is so (3)
[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 next to the question number.
- 2 1 1 The principles and values of section 195(1) of the Constitution are
- (a) applicable to the judiciary
 - (b) applicable to the legislative authority
 - (c) principles and values that may be taken into account by the public administration
 - (d) principles and values by which the public administration must be governed
- 2 1 2 The following is a ground for judicial review relating to the administrative action itself
- (a) The action was procedurally unfair
 - (b) The action contravenes the law or is unauthorised by the empowering provision
 - (c) The administrator lacked specified qualifications
 - (d) The action was taken for unauthorised reasons
- 2 1 3 The Western Cape Department of Environmental Affairs and Development Planning would be able to change its decision in terms of the rules of the principle of *functus officio* because
- (a) it is an invalid administrative action
 - (b) it is a judicial administrative action
 - (c) the affected person (the local ratepayer's association) has challenged the validity of the administrative action before a court
 - (d) the local company has acquired rights as a result of the invalid administrative action
- 2 1 4 The following is a persuasive source of administrative law
- (a) International law
 - (b) White papers
 - (c) PAJA
 - (d) NEMA

2 1 5 The following section of PAJA provides for remedies in proceedings for judicial review

- (a) Section 6
- (b) Section 7
- (c) Section 8
- (d) Section 5

(5)

2 2 Explain what a legislative administrative act is and indicate when such an action takes effect or becomes operative (7)

2 3 List and describe the different forms of delegation (8)
[20]

Question 3

3 1 Discuss the Constitutional Court's interpretation of the right to reasonable administrative action as set out in *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs* 2004 4 SA 490 (10)

3 2 Does the decision to grant the environmental authorisation constitute procedurally fair administrative action in terms of PAJA? (15)

3 3 Was the Western Cape Department of Environmental Affairs and Development Planning obliged to give reasons for its decision in terms of PAJA? (5)
[30]

Question 4

4 1 The Public Protector plays an important role in the control of administrative action. What are the powers of the Public Protector? (5)

4 2 List and discuss the prerequisites/preconditions set before an affected person may take administrative action on judicial review (12)

4 3 Name and discuss which form(s) of judicial control you would advise the local ratepayer's association to pursue in order to challenge the administrative action (8)
[25]

TOTAL: {100}