

**ADL2601**

May/June 2015

**ADMINISTRATIVE LAW**

Duration 2 Hours

100 Marks

**EXAMINERS****FIRST****SECOND****DR S VILJOEN****MS E RAUBENHEIMER**

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**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 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.**
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Thomas Modiga is a citizen of Sierra Leone. At the beginning of 2014, Mr Modiga fled from Sierra Leone in fear of the deadly Ebola virus and sought refuge in South Africa on the basis that he requires protection since removal to his home country would subject him personally to a risk to his life. Upon his arrival at OR Tambo International Airport, Ms Koekemoer, the officer working for the Department of Home Affairs, granted him an asylum seeker permit in terms of section 24 of the Refugee Act 130 of 1998. A month later, the director-general of the Department of Home Affairs, Mr Apleni, summarily withdrew all permits granted to citizens from West Africa, including Sierra Leone. In fear of his likely deportation, Mr Modiga seeks your opinion regarding his legal position.

**Answer the following questions and substantiate your answers with reference to the set of facts above.**

**TURN OVER**

**Question 1**

- 1 1 Briefly identify an administrative-law relationship in the set of facts and explain the characteristics of this relationship (5)
- 1 2 Define "organ of state" with reference to the Constitution. Identify the organs of state in the set of facts and give reasons for your answer (8)
- 1 3 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)
- [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 In section 195(1) of the Constitution, the      are set out
- (a) basic values and principles governing public administration
  - (b) foundational principles regarding just administrative action
  - (c) common law rules of natural justice
  - (d) statutory requirements governing all state actions
- 2 1 2 A      administrative law relationship cannot be created, changed or ended by a decision by the director-general of Home Affairs
- (a) joint
  - (b) subjective
  - (c) individual
  - (d) general
- 2 1 3 The Refugee Act 130 of 1998 is an example of a
- (a) persuasive source of law
  - (b) binding source of law
  - (c) policy document
  - (d) international document

TURN OVER

2 1 4 It is important to determine whether administrative action is involved in a particular set of facts, because administrative action is

- (a) the threshold requirement for the application of the right to just administrative action
- (b) the requirement that entitles the person in the subordinate position to immediately seek judicial review
- (c) a requirement to hold a public enquiry in terms of section 4(5) of PAJA
- (d) required to claim compensation for unjust decisions taken by organs of state

2 1 5 In *Holmes JA* held that the court 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 to the matter

- (a) *Standard Bank of Bophuthatswana Limited v Reynolds* 1995 3 SA 74 (B)
- (b) *Kotzé v Minister of Health* 1996 3 BCLR 417 (T)
- (c) *Roman v Williams* 1998 1 SA 270 (C)
- (d) *National Transport Commission v Chetty's Motor Transport* 1972 3 SA 726 (A)

(5)

2 2 Briefly explain "just administrative action" with reference to the Constitution and the set of facts (7)

2 3 What other overarching terms are used to refer to just administrative action? (3)

2 4 List the three forms of abuse of power by an administrator. Briefly explain one of these forms (5)  
[20]

### Question 3

3 1 Explain the principle of proportionality (6)

3 2 1 In what Constitutional Court case did Justice O'Regan explain the reasonableness requirement as it is expressed in section 33 of the Constitution? (2)

3 2 2 Which English law case did Justice O'Regan refer to in this decision? Briefly explain the test that was set out in this case (2)

3 2 3 List the factors Justice O'Regan articulated to be considered in determining whether a decision is reasonable. Do you think the director-general's decision was reasonable? (8)

3 3 Explain the common law rules of natural justice. Refer to relevant case law to explain these rules (12)  
[30]

TURN OVER

**Question 4**

- 4 1 Did the director-general's decision comply with section 3(2)(b) of PAJA (the mandatory requirements for procedural fairness)? Explain your answer with reference to this section (6)
- 4 2 Is the director-general obliged to furnish Mr Modiga with written reasons? If so, when would these reasons be adequate? Refer to relevant case law (7)
- 4 3 List the three forms of internal control (3)
- 4 4 What are the advantages of internal control? (5)
- 4 5 One of the preconditions set before an affected person may take administrative action on judicial review is that he or she has to exhaust internal remedies, as required by section 7(2) of PAJA. Provide four examples of when internal control would not be the proper remedy (i.e., give four exceptions to the general rule) (4)

**[25]****{TOTAL: 100}**