

**ADL2601**

October/November 2015

**ADMINISTRATIVE LAW**

Duration 2 Hours

100 Marks

**EXAMINERS**

**FIRST**

**SECOND**

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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 examination question paper consists of four (4) 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.**
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**TURN OVER**

**Set of facts:**

Mrs Mangu and Mr Hurter are neighbours. Mrs Mangu applied for the removal of a restrictive condition that limits her right to build higher than one storey. Her application was summarily turned down by the Department of Public Works and she was not given any reasons for this decision. It later appears that the official who turned down the application was Mr Hurter. Mrs Mangu and Mr Hurter have a history of neighbourly disputes concerning Mr Hurter's encroaching wall and Mrs Mangu's noisy Saturday evenings.

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

**Question 1**

- 1.1 Briefly explain what an administrative-law relationship is. Do you think Mrs Mangu is a subject of an administrative-law relationship? (6)
- 1.2 Is Mr Hurter an organ of state? Explain your answer with reference to the Constitution of the Republic of South Africa, 1996. (7)
- 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 respect of 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 Just administrative action is regulated in terms of..
- (a) section 33 of the Constitution
  - (b) section 195 of the Constitution
  - (c) section 1 of PAJA
  - (d) section 33 of PAJA
- 2.1.2 The \_\_\_\_\_ is a binding source of administrative law
- (a) decision by the United States Supreme Court
  - (b) Green Paper on asylum seekers
  - (c) Constitution
  - (d) 2014 journal article by Prof C Hoexter

**TURN OVER**

- 2 1 3 An administrative act will take effect
- (a) once the decision-maker has made a reasonable decision
  - (b) as soon as the regulation has been promulgated
  - (c) as soon as the judicial institution gives its ruling
  - (d) upon the decision becoming known
- 2 1 4 Public administration must be governed by the 'democratic values and principles enshrined in the Constitution'. Which one of the following is **NOT** included as one of these principles?
- (a) The promotion and maintenance of a high standard of professional ethics
  - (b) The promotion of efficient, economic and effective use of resources
  - (c) A development-orientated public administration
  - (d) The provision of services in a fair manner and according to municipal means
- 2 1 5 of administrative power is characterised by the senior functionary transferring certain powers and activities to an independent organ or body 'which carries out these powers and functions entirely in its own name'
- (a) Deconstruction
  - (b) Decentralisation
  - (c) Deconcentration
  - (d) Mandate
- (5)
- 2 2 Briefly explain the simplest form of delegation (3)
- 2 3 Explain the form of delegation also referred to as an 'independent control relationship'. (7)
- 2 4 There are three forms of abuse of power by an administrator Explain when an administrator exercises power in bad faith You may give an example (5)
- [20]**

### Question 3

- 3 1 Briefly explain how PAJA gives effect to the right to reasonable administrative action **DO NOT** explain how PAJA gives effect to the right to written reasons. (5)
- 3 2 In *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs* 2004 4 SA 490 (CC), Justice O'Regan listed factors that must be considered to determine whether a decision is reasonable List the factors Do you think Mr Hurter's decision was reasonable? (8)
- 3 3 One of the rules of natural justice requires that the administrator must be impartial Discuss the rule against bias with reference to the above set of facts (7)
- 3 4 Does the decision to reject the application by Mrs Mangu to remove the restrictive condition constitute procedurally fair administrative action in terms of PAJA? Substantiate your answer with reference to the relevant provisions in PAJA (10)
- [30]**

TURN OVER

**Question 4**

- 4 1 Suppose Mrs Mangu approached the Department of Public Works and requested reasons for Mr Hurter's decision, would the Department be obliged to provide Mrs Mangu with reasons? Substantiate your answer with reference to the relevant provisions in PAJA (5)
- 4 2 Suppose the Department responded to Mrs Mangu's request for reasons as follows 'No restrictive conditions are removed at this point in time.' Do you think that this response provides an adequate reason? Substantiate your answer with reference to case law (7)
- 4 3 What are the powers of senior administrators when exercising internal control? (4)
- 4 4 List and explain the various forms of judicial control (9)

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