

**LGL3702**

May/June 2016

**LOCAL GOVERNMENT LAW**

Duration 2 Hours

100 Marks

**EXAMINERS ·**

FIRST

DR S VILJOEN

SECOND

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 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**

Carefully read the following paragraph from *CDA Boerdery (Edms) Bpk and Others v The Nelson Mandela Municipality and Others* 2007 (4) SA 276 (SCA)

Under the pre-constitutional dispensation, municipalities owed their existence to and derived their powers from provincial ordinances. Those ordinances were passed by provincial legislatures which themselves had limited law-making authority, conferred on them and circumscribed by Parliamentary legislation. Parliament's law-making power was untrammelled, and it could determine how much legislative power provinces exercised. The provinces in turn could largely determine the powers and capacities of local authorities. Municipalities were therefore at the bottom of a hierarchy of law-making power: constitutionally unrecognised and unprotected, they were by their very nature 'subordinate members of the government vested with prescribed, controlled governmental powers'.

Answer the following questions and substantiate your answers with reference to the above extract

### Question 1

- 1 1 Explain the features of pre-1994 local government. What were the consequences of this hierarchical structure of government described in the extract from *CDA Boerdery*? (15)
- 1 2 Explain what "the rule of law" means (8)
- 1 3 In what Constitutional Court case did the court confirm the value of ubuntu? (2)

**[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 "Separation of powers" is also known as

- (a) decentralisation
- (b) deconcentration
- (c) *trias politica*
- (d) ubuntu

TURN OVER

- 2 1 2 The objects of local government are captured in \_\_\_\_\_ of the Constitution
- (a) section 33
  - (b) section 152
  - (c) section 1
  - (d) section 195
- 2 1 3 Local government is a/an \_\_\_\_\_ of government
- (a) sphere
  - (b) level
  - (c) arm
  - (d) subordinate
- 2 1 4 There are four levels of public participation in municipal affairs. Which one of the following is **not** one of these levels?
- (a) as voters
  - (b) as participants in the judicial process
  - (c) as consumers and end-service-users
  - (d) as local partners in resource mobilisation
- 2 1 5 The establishment of a municipality takes place by the publication of a notice in the \_\_\_\_\_
- (a) mayor's office
  - (b) local newspaper
  - (c) *Local Gazette*
  - (d) *Provincial Gazette*
- (5)
- 2 2 The Constitution makes provision for the establishment of three categories of municipalities. List and explain each of these categories. Also mention the relevant constitutional provision. (7)
- 2 3 Explain which areas must have a metropolitan municipality. Also refer to the relevant section in the specific Act that defines such areas. (8)
- 2 4 What are the objects of a municipal council? Mention the specific Act as well as the section that sets out these objectives. (10)

[30]

TURN OVER

**Question 3**

- 3 1 Define a "municipal service" Also mention the relevant Act and the section in the Act that defines "municipal service" (7)
- 3 2 What requirements must municipal services comply with in terms of section 73(2) of the Local Government Municipal Systems Act 32 of 2000? (6)
- 3 3 Municipal services can be divided into two broad categories, namely, support services and operational services Explain each of these services and list the support services (7)

**[20]****Question 4**

- 4 1 What is the object of the Local Government Municipal Finance Management Act 56 of 2003 (MFMA)? (8)
- 4 2 Section 120(1) of the Local Government Municipal Finance Management Act 56 of 2003 (MFMA) stipulates that a municipality may enter into a public-private partnership agreement, but only if the municipality can demonstrate that the agreement will meet three requirements List the three requirements (3)
- 4 3 Section 34 of the Municipal Property Rates Act 6 of 2004 (MPRA) requires a property valuer to undertake a number of duties List these duties (8)
- 4 4 Define "performance management" in relation to local government (3)
- 4 5 The new constitutional dispensation requires that municipalities discharge certain duties Municipalities must consequently develop the required capacity to ensure compliance with the demands of the Constitution Efficient municipal capacity would result in a number of advantages being realised Name these advantages (3)

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