

UNIVERSITY OF KWAZULU-NATAL, PIETERMARITZBURG
SCHOOL OF LAW: JUNE 2017 MAIN EXAMINATION
MODULE AND CODE: ADMINISTRATIVE LAW (LAWS4AL/LAWP4AL)
PART -TIME AND FULL- TIME

Page 1 of 7

DURATION: 3 HOURS

TOTAL MARKS: 75

INTERNAL EXAMINER : MR A RAMDHIN

INDEPENDENT MODERATOR : PROFESSOR W FREEDMAN

EXTERNAL EXAMINER : PROFESSOR EH VAN COLLER

STUDENT NUMBER: _____

INSTRUCTIONS

1. Students are requested, in their own interests to write legibly.
2. This paper consists of **SEVEN (7)** pages. Please ensure that you have all of the pages.
3. Please answer **ANY THREE** of the **FOUR** questions. Each question is subdivided into different parts. **You must ensure that you answer all of the sub-questions for each question that you choose to answer.**
4. Please note the marks allocated for each question and apportion your time accordingly.

Continued.../

UNIVERSITY OF KWAZULU-NATAL, PIETERMARITZBURG
SCHOOL OF LAW: JUNE 2017 MAIN EXAMINATION
MODULE AND CODE: ADMINISTRATIVE LAW (LAWS4AL/LAWP4AL)
PART -TIME AND FULL- TIME

Page 2 of 7

PLEASE ANSWER ANY THREE OF THE FOLLOWING FOUR QUESTIONS:

QUESTION ONE

In March 2017, the Msunduzi Municipality calls for tenders for the erection of streetlights in the Scottsville and Raisethorpe areas. Illuminate (Pty) Ltd ('Illuminate') and Everbright (Pty) Ltd ('Everbright') each submit tenders for both areas. The municipal manager at the Msunduzi Municipality is the relevant decision-maker that is authorised to decide who to award the tenders to.

In May 2017, Mr Ntlema, the current municipal manager, awards the 'Scottsville tender' to Everbright. It appears that his predecessor, Mr Shezi, decided to award the 'Scottsville tender' to Everbright in April 2017. However, Mr Shezi resigned before he could announce his decision and notify Everbright. When Mr Ntlema commences his duties he immediately awards the 'Scottsville tender' to Everbright and notifies them of his decision. Mr Ntlema feels that he should not interfere with final decisions made by his predecessor and it is on this basis that he makes his decision.

In respect of the 'Raisethorpe tender', Mr Ntlema appoints a committee to consider the tender applications. Even though Everbright did not submit the most cost-effective tender, the committee recommends that the tender be awarded to them. Mr Ntlema does not question the basis for the committee's decision but he acts upon their decision nevertheless and informs Everbright that they have also been awarded the 'Raisethorpe tender'.

Illuminate wants to challenge the Municipality's decisions to award the 'Scottsville' and 'Raisethorpe' tenders to Everbright. Advise them on the legal position in **each of the following separate instances:**

- 1.1 Discuss **ONE** ground of review which Illuminate can rely on to challenge the decision to award the 'Scottsville tender' to Everbright. **In your answer, you must not discuss the grounds of review pertaining to procedural fairness (including the doctrine of legitimate expectations); unlawful fettering; relevant and irrelevant considerations; action taken without authority; failure to consider or refusal to decide; and arbitrary and capricious decision-making.** [5 marks]

- 1.2 Discuss **ONE** ground of review which Illuminate can rely on to challenge the decision to award the 'Raisethorpe tender' to Everbright. **In your answer, you must not discuss the grounds of review pertaining to procedural fairness (including the doctrine of legitimate expectations); unlawful fettering;**

Continued.../

UNIVERSITY OF KWAZULU-NATAL, PIETERMARITZBURG
SCHOOL OF LAW: JUNE 2017 MAIN EXAMINATION
MODULE AND CODE: ADMINISTRATIVE LAW (LAWS4AL/LAWP4AL)
PART -TIME AND FULL- TIME

Page 3 of 7

relevant and irrelevant considerations; unlawful dictation; failure to consider or refusal to decide; and arbitrary and capricious decision-making. [5 marks]

- 1.3 It transpires that the actual reason why the 'Raisethorpe tender' was awarded to Everbright was that the company paid a bribe to Mr Ntlema. This bribe was accepted and the tender was awarded to Everbright on this basis. In light of these facts, please answer the following questions:
- 1.3.1 Illuminate wants to sue the municipality in delict for the manner in which they awarded the 'Raisethorpe tender' to Everbright. Advise them on their prospects of success **[10 marks]**
- 1.3.2 Illuminate wants to apply to court to set aside the municipality's decision to award the 'Raisethorpe tender' to Everbright. Identify the remedy that Illuminate can obtain to prevent Everbright from carrying out the work required by the tender pending their court application. **[1 mark]**
- 1.3.3. Assume that Illuminate manages to have the municipality's decision set aside in court on review. Illuminate now wants the court to grant an order to the effect that Mr Ntlema must pay the legal costs involved out of his own pocket. Advise them on their prospects of success in this regard. **[4 marks]**

[TOTAL FOR Q 1: 25 MARKS]

QUESTION TWO

Duma is a fourth year law student at the University of KwaZulu-Natal. His Administrative Law lecturer, Professor Zonke, lays a complaint with the Proctor of the University alleging that Duma assaulted him on 10 April 2017. The Proctor of the University is Mr Pennywise, a law lecturer at the university who practised as an attorney for 12 years. He sends Duma an e-mail informing him of the charge against him. Duma says that he pushed Professor Zonke 'lightly' and that this was a minor incident. He tells Mr Pennywise that he cannot afford to be excluded and that 'he just wants to finish his studies'. Mr Pennywise assures Duma that he will not be excluded if he pleads guilty at the hearing and shows remorse.

The hearing takes place on 5 May 2017 and Professor Naidoo, the Dean of the School of Law, presides over it. Duma requests Professor Naidoo to allow him an external legal representative. However, Professor Naidoo immediately refuses this request, saying that 'this is not allowed by the rules for student discipline'. He also tells Duma that there are law lecturers available on campus who can assist him with legal representation.

Continued.../

UNIVERSITY OF KWAZULU-NATAL, PIETERMARITZBURG
SCHOOL OF LAW: JUNE 2017 MAIN EXAMINATION
MODULE AND CODE: ADMINISTRATIVE LAW (LAWS4AL/LAWP4AL)
PART -TIME AND FULL- TIME

Page 4 of 7

When the hearing commences, Duma pleads guilty to the charge of assault and says that he is remorseful for his actions. Professor Naidoo accepts Duma's plea of guilty and orders, inter alia, that Duma be excluded from the university for two semesters on the basis that he is a second offender. This decision is based on information which Mr Pennywise placed on record to the effect that Duma had previously been convicted by the University's disciplinary tribunal of assaulting a fellow law student. Unbeknown to both Professor Naidoo and Mr Pennywise at the time of the hearing, even though Duma was previously charged with assaulting another student, he was never convicted as the charges were subsequently withdrawn.

Duma is not happy with Professor Naidoo's decision to exclude him and he approaches you for legal advice. Advise him on the following **separate issues**:

- 2.1 Duma wants to have the decision set aside on the basis of bias. Advise him on his prospects of success. **[6 marks]**

- 2.2 Duma wants to have his exclusion set aside. Discuss **ONE** ground of review that he can rely on to challenge Professor Naidoo's decision to exclude him. **In your answer, you must not discuss the grounds of review pertaining to procedural fairness (including the doctrine of legitimate expectations); relevant and irrelevant considerations; action taken without authority; unlawful fettering; and failure to consider or refusal to decide.** **[5 marks]**

- 2.3 Duma wants to challenge Professor Naidoo's decision not to allow him an external legal representative. The University rules are silent on this matter and merely state that a student can represent himself or can be represented by a fellow student or a staff member. Explain the legal position in this instance. **[7 marks]**

- 2.4 Duma says that he had a legitimate expectation that he would not be excluded based on the undertaking given to him by Mr Pennywise. Advise Duma on the legal position. **In the course of your answer, please do NOT discuss the issue of whether a legitimate expectation can be used to obtain a substantive benefit.** **[7 marks]**

[TOTAL FOR Q 2: 25 MARKS]

UNIVERSITY OF KWAZULU-NATAL, PIETERMARITZBURG
SCHOOL OF LAW: JUNE 2017 MAIN EXAMINATION
MODULE AND CODE: ADMINISTRATIVE LAW (LAWS4AL/LAWP4AL)
PART -TIME AND FULL- TIME

Page 5 of 7

QUESTION THREE

Voortrekker High is a public school in Pietermaritzburg which teaches pupils in Afrikaans only. The school's governing body, which consists of 10 different members, is authorised to determine the school's language policy in terms of the South African Schools Act 84 of 1996 (the 'Schools Act'). The governing body decides that only Afrikaans will be the medium of instruction at the school and that they will not change the policy under any circumstances. The provincial Department of Education, however, is not happy with this and they have requested the governing body on numerous occasions to allow learners, who wish to be taught in English, to be admitted to the school.

On Friday, 5 May 2017, the Head of Department (HOD) gives the school's governing body notice that it intends revoking its power to determine the school's language policy in terms of s 22 (1) of the Schools Act. The governing body is given until Monday, 8 May 2017 at 09h:00 to make representations on why this decision should not be taken. After the governing body fails to respond to the HOD's request, the HOD proceeds to revoke the power of the governing body to determine the school's language policy. Furthermore, the HOD, purporting to act in terms of s 25(1) of the Schools Act, appoints a committee to perform the functions of the governing body including the function to determine the school's language policy. The committee subsequently decides that Voortrekker High will now be a parallel medium school (i.e. one which will instruct pupils in both English and Afrikaans).

Section 22 (5) of the South African Schools Act provides that:

'Any person aggrieved by a decision of the Head of Department in terms of this section may appeal against the decision to the Member of the Executive Council.'

And s 25(1) of the South African Schools Act provides that:

'if a governing body has ceased to perform functions allocated to it in terms of this Act or has failed to perform one or more of such functions, [the HOD] must appoint sufficient persons to perform all such functions or one or more of such functions, as the case may be, for a period not exceeding three months.'

- 3.1 The school governing body wants to challenge the HOD's decision directly in court. Advise them on whether they are entitled to do so. **[4 marks]**
- 3.2 The school governing body is of the view that the HOD did not give them timeous notice of his decision to withdraw their power to determine the school's language policy. Advise them on whether the notice given was adequate under these circumstances. In your answer, you must not discuss whether the governing body was provided with sufficient information on the HOD's decision. **[6 marks]**

Continued.../

UNIVERSITY OF KWAZULU-NATAL, PIETERMARITZBURG
SCHOOL OF LAW: JUNE 2017 MAIN EXAMINATION
MODULE AND CODE: ADMINISTRATIVE LAW (LAWS4AL/LAWP4AL)
PART -TIME AND FULL- TIME

Page 6 of 7

- 3.3 The school governing body feels that it was unfair that they were not given an opportunity to make representations to the HOD. However, the HOD counters that the school governing body was given this opportunity but that they had dispensed with their right to do so by failing to respond within the time stipulated in the notice. Advise the school governing body on whether there is any merit in the HOD's argument. **[5 marks]**
- 3.4 The school governing body wants to challenge the Head of Department's decision to appoint a committee to determine the language policy of the school. Discuss **TWO** grounds upon which this decision can be set aside. **In your answer you must not discuss the grounds of review pertaining to reasonableness, rationality and proportionality; any aspects pertaining to procedural fairness (including the doctrine of legitimate expectations); relevant and irrelevant considerations; action taken in bad faith, ulterior purpose or motive; arbitrary and capricious decision-making; and error of law.** **[2 x 5 = 10 marks]**

[TOTAL FOR Q 3: 25 MARKS]

QUESTION FOUR

Mr Salmon is the holder of a fishing licence that was granted to him in May 2015 by the Minister in terms of the Marine Living Resources Act 18 of 1998. This fishing licence authorises him to catch deep-water Cape hake fish for commercial purposes. On 26 March 2017, the Minister purporting to act in terms of s 28(4) of the said Act, gives Mr Salmon written notice to the effect that his fishing licence is going to be revoked.

Section 28(4) of the Marine Living Resources Act provides that:

'the Minister may, whenever he or she is of the opinion that it is in the interests of the promotion, protection or utilisation on a sustainable basis of a particular marine living resource, at any time by written notice to the holder of a right, licence or permit, revoke, suspend, cancel or reduce that right, licence or permit.'

Mr Salmon approaches you for legal advice. Advise him on the legal position in each of the following separate instances.

- 4.1 Mr Salmon asks the Minister to explain the basis for his decision. In reply, the Minister says that he 'was of the opinion that it is in the interests of the promotion, protection or utilisation on a sustainable basis of the Cape hake fish species to revoke the licence'. Mr Salmon is not happy with this as he believes that the

Continued.../

UNIVERSITY OF KWAZULU-NATAL, PIETERMARITZBURG
SCHOOL OF LAW: JUNE 2017 MAIN EXAMINATION
MODULE AND CODE: ADMINISTRATIVE LAW (LAWS4AL/LAWP4AL)
PART -TIME AND FULL- TIME

Page 7 of 7

Minister's decision should be capable of objective substantiation. Advise Mr Salmon on whether a court on review would be able to enquire whether there were any objective grounds behind the Minister's decision. **[5 marks]**

4.2 Mr Salmon adopts the view that once the Minister made the final decision to grant him the licence in May 2015, he could not subsequently change that decision. Accordingly, Mr Salmon contends that the Minister is now precluded from revoking his licence. Advise him on the legal position. **[4 marks]**

4.3 The Minister gives Mr Salmon written notice explaining the basis for his decision. The Minister points out that deep-water Cape hake fish are under serious threat from overfishing and recent studies indicate that the species may soon be critically endangered. The Minister also informs Mr Salmon that the Department has a policy which prohibits the catching of species of fish that are or may soon be critically endangered. Mr Salmon writes a letter to the Minister arguing that deep-water Cape hake fish is an important source of income for him and other fishers. He points out that this fish is often exported to markets in Europe, Australia and the USA thereby bringing a significant amount of money for the fishers and for the economy generally. Mr Salmon proposes that the Department should not place a blanket ban on the catching of this fish. Instead, he suggests that the Department should impose closed seasons during spawning season only. Upon considering these suggestions, the Minister decides to adhere to the Department's policy and subsequently refuses Mr Salmon's licence.

4.3.1 Mr Salmon wants to challenge the Minister's decision on the basis that he adhered too rigidly to the Department's policy and did not properly exercise his discretion. Advise him on his prospects of success. **[8 marks]**

4.3.2 Mr Salmon requests an oral hearing where he can raise his concerns with the Minister and outline his suggestions for closed seasons during the spawning season. However, upon consideration of this request, the Minister, refuses to give him an oral hearing. Mr Salmon argues that the Minister's decision in this regard was unfair and he requires legal advice on this issue. Advise him on the legal position. **[8 marks]**

[TOTAL FOR Q 4: 25 MARKS]

[TOTAL FOR PAPER: 75 MARKS]