

# **Tutorial Letter 201/2/2014**

## **Administrative Law**

**ADL2601**

### **Semester 2**

### **Department of Public, Constitutional and International Law**

This tutorial letter contains important  
information about your module.

Bar code

Dear Student

You should have received the following thus far:

The study guide	The text of this module's tutorial matter
Tutorial letter 101	The general information tutorial letter
Tutorial letter 102	October/November 2013 examination and memorandum (online under Additional Resources)
Tutorial letter <b>201</b>	<b>This</b> tutorial letter (online under Additional Resources)

THIS IS YOUR **FINAL** TUTORIAL LETTER FOR THE SECOND SEMESTER OF 2014. It contains the following:

- 1 ASSIGNMENT 01: COMMENTARY**
- 2 ASSIGNMENT 02: COMMENTARY**
- 3 THE EXAMINATION: FORMAT, PREPARATION AND WRITING**

#### **EXAMINATION DATE**

ONLY PROVISIONAL DATES ARE PRESENTLY AVAILABLE. PLEASE MAKE SURE THAT YOU HAVE RECEIVED THE **FINAL EXAMINATION TIMETABLE** BY THE END OF **SEPTEMBER** (FOR THE **SECOND SEMESTER**).

#### **1 ASSIGNMENT 01**

Mr Ndima, a South African citizen, plays soccer for Bafana Bafana. The team has been invited to play an international match in London, England, and Mr Ndima accordingly applies for a passport at the Department of Home Affairs. Ms Strydom is the official in charge of Mr Ndima's application and decides to turn down the application without providing any reasons for her decision. It later appears that Ms Strydom has a personal resentment towards Mr Ndima, since her son, Mr Strydom (also a very competent soccer player), competed against Mr Ndima for a position in the Bafana Bafana team, unfortunately unsuccessfully.

Answer the following questions and substantiate your answers:

#### **Question 1**

Define "organ of state" in terms of the Constitution, 1996. Identify the organ of state in the set of facts and show why such an identification of the organ of state is important. (10)

In terms of section 239 of the Constitution an 'organ of state' means-

(a) any department of state or administration in the national, provincial or local sphere of government; or

(b) any other functionary or institution:

(i) exercising a power or performing a function in terms of the Constitution or a provincial constitution; or

(ii) exercising a public power or performing a public function in terms of any legislation, but does not include a court or a judicial officer.

Ms Strydom is an organ of state because it falls within the definition of organ of state in that she is an official working in the Department of Home Affairs.

The answer (that Ms Strydom is an organ of state) is important because an organ of state is one of the primary bodies whose decisions may amount to administrative action in terms of section 1 of PAJA.

## Question 2

Discuss whether bias is in evidence in the set of facts.

(10)

*Nemo iudex in sua causa* is one of the rules of natural justice and it is the rule against bias or prejudice. It means that no-one can be the judge in their own cause. One cannot act if there is personal or financial interest.

In *Rose v Johannesburg Local Road Transportation Board* 1947 4 SA 272 (W) the chairman of the board dealing with transportation permits was a director of three taxi companies. His financial interest in these clearly constituted bias in adjudicating on the permits.

In *Liebenberg v Brakpan Liquor Licensing Board* 1944 WLD 52 the mayor of the town insisted on being present when the board was considering a liquor licence application of his brother. Although the board insisted this did not influence the decision, the court held that the suspicion of bias was enough to set aside the decision because of the mayor's personal interest.

*BTR Industries SA v Metal and Allied Workers Union* 1992 3 SA 673 (A) also held that a reasonable suspicion of bias satisfies the test. The Constitutional Court confirmed this test in the *SACCAWU v Irvin & Johnson* case.

There is definite bias (personal interest) in evidence here as Ms Strydom has carried a longstanding grudge against Mr Ndima.

[20 marks]

## 2 ASSIGNMENT 02

### Question 1

Which of the following is a characteristic of an administrative-law relationship?

- 1 One of the legal subjects must be an officer in one of the national government departments.
- 2 The person in the subordinate position must have been treated unfairly.
- 3 The organ of state forces the subordinate party to act in a certain manner.
- 4 The actions of the person clothed in state authority must have been unreasonable.

Answer: 3 (see page 22 of the study guide).

### Question 2

A general administrative-law relationship is created, changed or ended by ..., that is, by general means.

- 1 legislation
- 2 judicial decision
- 3 any organ of state
- 4 the authorised organ of state

Answer: 1 (see page 24 of the study guide).

### Question 3

Which one of the following is **NOT** a binding/authoritative source of administrative law?

- 1 The Constitution
- 2 Foreign law
- 3 Case law
- 4 International law

Answer: 2 (see page 48 of the study guide).

### Question 4

An Act of Parliament that complements the provisions of the Constitution and is crucial to administrative law as well is the ...

- 1 Promotion of Access to Information Act 2 of 2000.
- 2 Prevention of Administrative Justice Act 3 of 2000.
- 3 Preferential Procurement Policy Framework Act 5 of 2000.
- 4 Public Service Act, 1994 (Proclamation 103 of 1994).

Answer: 1 (see page 41 of the study guide).

### Question 5

“Administrative action” is defined in section 1 of PAJA. Which one of the following examples complies with this definition?

- 1 The prosecutor decides to continue prosecuting Mrs Radebe.
- 2 The municipal council of Diepsloot municipality fails to address the housing shortage.
- 3 Justice Naidoo holds the Minister of Home Affairs accountable for failing to issue Mr Viljoen’s passport.
- 4 An officer in the Department of Health decides to appoint Ms Fargan as the architect to design a new state hospital.

Answer: 4 (see pages 59-60 of the study guide).

**Question 6**

Just administrative action is aimed at preventing organs of state, public institutions and functionaries, as well as natural and juristic persons – administrators – from abusing or misusing their power in their dealings with an individual who is in a subordinate position. Hence, the constitutional demand that administrative action must be performed ...

- 1 proportionally, legitimately and in a democratic manner.
- 2 cost-effectively and in a timely and transparent manner.
- 3 lawfully, reasonably and in a procedurally fair manner.
- 4 effectively, reliably and in a sensible manner.

Answer: 3 (see page 86 of the study guide).

**Question 7**

Any person whose rights have been materially and adversely affected by any administrative action may request written reasons. Which of the following statements is correct?

- 1 The administrator has the discretion to provide the person affected with reasons.
- 2 The administrator is not obliged to provide the person with reasons if he/she acted in line with the Constitution.
- 3 The administrator must provide written reasons within 90 days of making his/her decision.
- 4 The administrator to whom the request is made is obliged to furnish adequate reasons.

Answer: 4 (see page 177 of the study guide).

**Question 8**

In what circumstances may the minister identify a group of administrative actions in respect of which the administrator must automatically furnish reasons?

- 1 When the court specifies that the minister may do so.
- 2 When a large group of individuals is negatively and adversely affected by the administrative action.
- 3 When the administrator requests the minister to do so.
- 4 When it will be more time and cost efficient because of the nature of administrative action taken.

Answer: 3 (see page 178 of the study guide).

**Question 9**

A ... is used where there is a clear legal dispute or legal uncertainty regarding administrative action.

- 1 *mandamus*
- 2 declaratory order

- 3 review procedure
- 4 instruction

Answer: 2 (see page 178 of the study guide).

### Question 10

Why should internal remedies first be exhausted before a court of law is approached?

- 1 The courts do not generally hear administrative disputes.
- 2 Administrative disputes are too expensive to be heard by the courts.
- 3 This helps to prevent the courts from being overloaded with cases.
- 4 Internal remedies provide better remedies than any the judiciary can offer.

Answer: 3 (see page 164 of the study guide).

[10 marks]

## 3 THE EXAMINATION: FORMAT, PREPARATION AND WRITING

### Format of and hints for the examination

(1) The **format** of the examination paper will be similar to the format of the October/November 2013 examination paper.

(2) You will again be given a short set of facts and all the questions will be based on these facts. The set of facts will, however, differ from the set of facts in the previous examination paper.

(3) There will be **FOUR (4)** questions with sub-questions in the examination and they will count a total of **100** marks.

(4) Your knowledge of **basic concepts of administrative law**, taken from the study guide and featuring in the given set of facts, will be tested. In other words, you may expect some concepts that you will have to list or define/explain in each question. You may also be given multiple-choice questions, similar to those given in your second assignment.

The answers to these shorter type of questions will obviously be concise and to the point, varying between approximately 2 and 10 marks per question. This type of question usually gives students who have memorised their definitions (or basic concepts) the opportunity to do well since no discussion or application of the facts will be necessary. You simply need to know your basic concepts to earn marks.

(5) There will also be **short discussion-type questions** relating to a given set of facts, but this time in the form of an **application of the basic concepts you will be asked to explain**. In these types of questions you have to either discuss or explain a particular statement (see the questions in the October/November 2013 examination paper and take note of the answers). These questions will generally count more marks, ranging between 7 and 15 marks per question.

(6) Bear in mind that **study units 5-12** (the requirements for just administrative action and control of administrative action) are really the **backbone** of your administrative-law studies and **are extremely important**. Make sure that you study and understand the requirements for just administrative action very well, especially the topics on

- lawful administrative action
- reasonable administrative action
- procedural fairness and the rules of natural justice
- the furnishing of written reasons

(7) You do **not** have to study any additional literature, or additional case law. However, make sure that you study the court cases and the relevant legal principles pertaining to them, as they are **discussed in the guide**.

(8) **It is important that you know and understand the definition of “administrative action”, including the exclusions to this definition, as found in PAJA, and the definition of “organ of state” in section 239 of the Constitution. You should know the rules of natural justice and the corresponding sections in PAJA, as mentioned in 6 above.**

## ANSWERING THE EXAMINATION QUESTIONS

~ As mentioned above, you will write a **two-hour** examination paper consisting of **four** (4) (compulsory) questions, counting a total of 100 marks. You must answer all four questions.

~ **READ** attentively through all the questions in your examination paper in order to gain an idea of what the questions are about. Make sure that you understand the instructions before you rush into writing an answer. Identify key words and terms.

~ **DO NOT** separate subsections of questions, for example, 2(a), then 1(b), then 3(a), by answering them in different places in your examination answer book. If you wish to return to a particular question, simply leave enough space to return to it.

~ **NUMBER** your answers correctly.

~ **PLAN** your answer roughly before starting to write. You may think that this will take up too much time, but you will in fact gain time by avoiding repetition, irrelevant discussion and confusion.

~ **DIVIDE** your time and keep rigidly to the time you have allocated to a particular question. **REMEMBER**, you have to answer 100 marks in two hours. Be extremely careful with your time allocation. Therefore, make sure that you write what needs to be written within that time limit! If the time you have allocated for a particular question has expired, you should leave it right there and proceed to the next question. If you have time left, you can go back to that question and try to earn one or two more marks.

**NB:** Appeals on your answer sheet, such as “time up”, will earn no sympathy. In fact, being unable to complete the paper as a result of a lack of proper time allocation counts as an aggravating, not an extenuating circumstance!

~ **AVOID** repetition and irrelevancies. You will not receive any marks for repeating a fact. Answer questions concisely but **NOT** superficially. Include every step in the legal argument in your answer, starting with the first step, no matter how obvious it may seem to you. (I know that we know, but we must be able to see that **you** know.)

~ **DISTINGUISH** between instructions such as explain and compare, list (or enumerate) and analyse. List means just that – no discussion or embellishment is necessary. These are time-saving questions.

~ **GIVE REASONS FOR (SUBSTANTIATE)** all your answers (briefly, or fully, depending on what is required). A bare “yes” or “no” is NOT enough. In fact, it is quite a good idea to write as if you are explaining the legal position to an intelligent layperson who knows nothing about the law.

~ When referring to **CASE LAW**, limit your discussion of the facts to the absolute minimum, and concentrate on the legal aspects of the issue. What has happened is of less importance than the reason on which the judgment is based.

~ It is in your own interests to **WRITE LEGIBLY AND INTELLIGIBLY**. You will not receive more credit for three books filled with unintelligible, ungrammatical scrawl than for one book filled with legible, coherent discussion. Usually, the candidates with the most appalling handwriting write a great deal which is totally unnecessary because they write before they think, fearing they will not finish. **THERE IS NO NEED FOR ANYONE WHO KNOWS THE WORK TO FEAR THAT HE/SHE WILL BE UNABLE TO FINISH, IF THE ANSWERS ARE PROPERLY THOUGHT OUT AND PLANNED**. Even if your handwriting is a problem, there are still a few things you can do about it: write with dark ink, write on every second line, space your work by leaving lines open between questions, et cetera. **Remember**: it is to your advantage if we can read what you have written.

~ Finally, please do **not** contact us after you have written the examination paper. We are not allowed either to discuss the paper with students or to divulge examination results. However, we will be only too happy to discuss the course, and any difficulties you may be experiencing, **before** the examination.

All that remains is for us to wish you success in the examination.

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