



SUBJECT : ADMINISTRATIVE LAW

CODE : ADL41B0/ADR0021

DATE : 16 SEPTEMBER 2020

DURATION : 3 HOURS

WEIGHTING : 60% OF SEMESTER MARK

TOTAL MARKS : 50

**EXAMINERS : DR R LAUBSCHER
ADV M FINN**

MODERATOR : PROF D DE VILLIERS

NUMBER OF PAGES : 4 PAGES

INSTRUCTIONS:

1. Please answer all questions.
2. Answers may be typed and saved in a Word document/PDF or handwritten, photographed and saved as PDF. Photographed papers must be clear and legible.
3. All questions must be clearly numbered, but may be done in any order.
4. All answer scripts must be electronically uploaded under the Turn-it-In link on Blackboard. If this is not possible for whatever reason, the student must electronically submit the script to the lecturer via email or Whatsapp within the allocated three hour test period (or as soon as possible thereafter). For this purpose, the lecturer's email address and Whatsapp number are as follows: rventer@uj.ac.za and 0731602903. The lecturer will be available on email, phone and Whatsapp for the duration of the test.
5. Regarding essay questions, the use of footnotes are not required.
6. Students may use all study materials and legislation in their possession when answering the exam paper, including consulting case law and legislation online.
7. By submitting their test script students agree to adhere to UJ's policy on plagiarism and rules related to the writing of tests and exams. Students may under no circumstances contact any other person for assistance in answering the test paper. Turn-it-In will pick up on copied answers. Any academic transgressions will be followed by disciplinary action by the University.

QUESTION 1:

Read the following statements and indicate in each instance whether the statement is true or false and which judgment proves your answer. You need only indicate one judgment per statement and provide a short explanation of your answer. (Please note: no mark will be awarded if you do not substantiate your answer.)

1.1) Private entities (such as private companies) can exercise public powers and are therefore able to perform administrative actions reviewable in terms of PAJA. (2)

1.2) Only legislation may serve as an “empowering provision” for purposes of PAJA. (2)

1.3) A private club, for example, is not bound by the requirement of procedural fairness with regard to disciplinary proceedings. (2)

1.4) In the pre-democratic era, ouster clauses were successfully used to exclude the judicial review powers of the courts with regard to the legality of regulations pertaining to states of emergency. (2)

1.5) It is important for courts to find the equilibrium imposed on our constitutional arrangements by our unique history, so that courts do not blur the distinction between reviews and appeals. (2)

[10]

QUESTION 2:

One basic principle of administrative law in SA is that, if a decision fulfils the definition of administrative action in the Promotion of Administrative Justice Act (PAJA), then the applicable pathway for review will be in terms of PAJA, rather than the principle of legality. This, it is argued, is required by the doctrine of subsidiarity.

With reference to case law, critically discuss whether South African courts have consistently applied the doctrine of subsidiarity in administrative law.

In your answer, make sure you refer to relevant legal authority and consider:

2.1) How the doctrine of subsidiarity is defined; (2)

2.2) The relevance of the doctrine of subsidiarity to administrative law; (2)

2.3) How courts have approached the doctrine of subsidiarity in administrative law, and whether this approach has been consistently applied; (5)

2.4) Why courts may favour the principle of legality over PAJA as a pathway of review; and (4)

2.5) Whether the courts’ approach promotes the avoidance of PAJA. (2)

[15]

QUESTION 3:

The South African Passports and Travel Documents Act of 1994 does not contain provisions on delegation of the powers of the Minister of Home Affairs. Answer the following questions:

3.1) As the Act contains no delegation provision, does this mean that any delegation of the powers of the Minister in terms of the Act to a subordinate official would be unlawful? Motivate your answer and briefly refer to the common law position regarding delegation, as well as the position regarding delegation in terms of the 1996 Constitution. **(3)**

3.2) Suppose that the Minister has delegated the power to create regulations determining the conditions for issuing passports to minors in terms of the Act to a subordinate official. Would it be possible to review the Minister's delegation on the ground of lawfulness? Discuss fully with reference to case law. **(10)**

3.3) The South African Passports and Travel Documents Act provides as follows:

Section 4(1): "The Minister **may make regulations regarding –**

....

(e) **the fees payable** for the issue of a South African passport or travel document;

...

(g) generally, all matters which the Minister deems necessary or expedient to be prescribed in order to attain the objects of this Act: Provided that regulations under paragraph (e) shall only be made **in consultation with the Minister of Finance.**"

a) If the Minister of Home Affairs omits to consult with the Minister of Finance when making regulations regarding the fees payable for issuing passports, on which (lawfulness) ground(s) of review in terms of PAJA would the Minister's omission be reviewable? **(2)**

b) If the Minister of Home Affairs completely relies on the Minister of Finance's opinion when making these regulations, on which (lawfulness) ground of review in terms of PAJA would the Minister's decision be reviewable? **(1)**

(3)

3.4) Suppose the Minister of Home Affairs (or an official to whom he has delegated his powers) accepts a bribe from an applicant in order to issue a passport or travel document in contravention with the Act. Answer the following questions:

a) Indicate the main lawfulness ground of review in terms of PAJA which should be relied on to review this action. **(1)**

b) Indicate two other (lawfulness) grounds of review in terms of PAJA that could also be used in reviewing the action. **(2)**

...4/

c) Indicate why it is necessary that the specific lawfulness ground of review that you referred to in (3.4)(a) above is recognized as a separate ground of review in terms of PAJA when the action could also be dealt with in terms of other lawfulness grounds.

(3)

(6)

3.5) Suppose the Minister of Home Affairs was involved in a disagreement with one of his subordinates, because the subordinate refused to comply with an instruction that had been given to her. Subsequently, and unrelated to this disagreement, the subordinate applied for a passport in her personal capacity. Still upset by the earlier disagreement, the Minister of Home Affairs turns down her application. Explain the application of the lawfulness ground of review in terms of PAJA regarding ulterior motives and ulterior purposes with reference to case law.

(3)

[25]

TOTAL: 50