



ZIMBABWE EZEKIEL GUTI UNIVERSITY

FACULTY OF LAW

EXAMINATION PAPER

COURSE CODE : LLB 106
COURSE TITLE : Administrative and Local Government Law
DURATION : 3 Hours
LEVEL : 1.2
DATE :

INSTRUCTIONS TO CANDIDATES:

1. Answer **FOUR questions**. Question ONE in section A is compulsory. Answer any **THREE** questions from section B. Each question carries 25 marks.
2. Students may bring into the exam un-annotated and clean texts of applicable legislation. Copies with notes inside shall not be allowed and may be confiscated. No student is allowed to share his/her copy with another.
3. Students are **NOT** allowed to carry and use electronic gadgets such as laptops and cellular phones, among other things.
4. Write legibly.
5. Number your answers accordingly.

SECTION A: COMPULSORY

Question 1

After an extensive public outreach and committee hearings, Parliament passes and the President signs the Farm Protection Act. The Act creates a new agency known as the Drought Control Board (DCB) and makes DCB the only lawful user of a new, governmentally-developed rainmaking technology (nicknamed raintech) that can, under some circumstances, induce rain from clouds. Raintech offers great promise for agricultural districts that have been subject to devastating drought conditions, but the technology is extraordinarily expensive and its use must be sharply limited until the cost comes way down. There is great competition among districts for access to raintech. The Act gives DCB rulemaking and adjudicatory power, and provides as follows;

“DCB shall decide how best to allocate priority to districts for the use of raintech and shall identify criteria that it considers appropriate for making these allocation decisions. In doing so, DCB shall ensure that raintech is used for the overall benefit of Zimbabwean agriculture, and that the agency’s allocation decisions are fair, reasonable and equitable in light of the competing demands for raintech use. Before DCB makes any final decision to use raintech in any district that has requested such use, there shall be a hearing at which all affected districts and others may make their views known, and DCB shall make these views part of the record for decision. Final DCB decisions granting or denying a request for raintech shall be subject to judicial review as provided in the Administrative Justice Act.”

DCB’s first action is to publish in the Government Gazette a Statutory Instrument (SI) 67/2021 entitled; “Proposed Rule on DCB Decision making Procedures.” The SI identifies the Farm Protection Act as DCB’s source of authority, invites public comments, and provides that: “DCB will make decisions allocating raintech use as follows;

- i. DCB staff, after carefully studying the impact of droughts on agricultural districts and data about current conditions in these districts, will develop Raintech Selection Criteria for allocating priority to the districts that have applied to DCB for raintech use. After these Selection Criteria are finalized, they will be published.
- ii. An annual deadline for submission of applications by districts for raintech use shall be set. All applications that are submitted shall promptly be made available to the public.
- iii. After carefully studying the applications, DCB shall issue a proposed decision in which it applies the Selection Criteria to the applicants and tentatively determines which districts will be entitled to use raintech during that season. This proposed decision shall be promptly made available to the public.

Question 4

In times of public health emergencies, members of the public have the right to receive factual, regular, intelligible and science-based information on the threat COVID19 poses to their health, the role and impact of the measures adopted for preventing and containing the virus, the precautionary measures that members of the public should take, and on the scale of the spread.” (Press Statement on Human Rights Based Effective Response to the Novel COVID-19 Virus in Africa, 24 March 2020, available at: <https://www.achpr.org/pressrelease/detail?id=483>).

Assess the Government of Zimbabwe responsiveness to access to information practices (whether proactive or otherwise). In your answer be careful to identify the existing legal framework for access to information in Zimbabwe as well as major opportunities and constraints for the promotion of access to information in Zimbabwe. [25 marks]

Question 5

In the case of *Hamata v Chairperson Peninsula Technikon Internal Disciplinary Committee 2002 5 SA 449 (SCA)* the court ruled that legal representation is not necessarily a *sine qua non* of a fair hearing.

Discuss the court reasoning in connection to the constitutional right to procedural fairness. [25 marks]

Question 6

“Section 134(a) explicitly states that Parliament’s primary law making power must not be delegated. This primary law making is the enactment of Acts of Parliament. This is the power excluded from delegation” as per Zhou J in case of *Mfundo Mlilo v Minister of Finance and Economic Development HH605-19*.

Discuss the significance of this judgement to the concept of delegated or subsidiary legislation. In your answer be careful to mention the methods of regulating the making of subordinate or delegated legislation [25 marks]

Question 7

“There is nothing to celebrate concerning the devolution of power in Zimbabwe’s 2013 Constitution. Indeed, the manner of ‘devolution’ of governmental power to provinces and metropolitan councils belies central government fear of provinces and metropolises, and is therefore meant to suppress any meaningful contribution of provinces to national political governance.” Comment. [25 marks]

the Senate Agriculture Committee, testifies and calls DCB's proposed decision "reasoned, thoughtful, wise and faithful to the Farm Protection Act." Agricultural and other interests from the Big 3 districts enthusiastically applaud the decision as having the largest dollar impact on the national agricultural economy. Finally, environmentalists complain that DCB failed to consider potential adverse environmental effects of raintech and should not yet be using the technology at all. DCB then adopts its proposed decision as its final decision.

You are the judge assigned to several lawsuits, filed at different times, all of which arise out of DCB's actions. How would you rule on the following questions?

- a) Bindura district with a record of drought that plans to apply for raintech use wants to challenge in court the "Final DCB Rule on Decision making Procedures". **(15 marks)**
- b) After DCB issues its final "Big 3 Decision," an environmental group called Ingazvakanaka 1945, with several identified members who live in the Big 3 districts and who claim that raintech will harm their local environments, want to challenge this decision. **(10 marks)**

[25 marks]

Section B choose any three (3) Questions

Question 2

Outline and discuss the need to align the Administrative Justice Act [chapter 10:28] to the Constitution of Zimbabwe 2013. In your answer be careful to analyse the provisions of the Administrative Justice Act which you think are *ultra vires* the provisions of the Constitution. **[25 marks]**

Question 3

The Constitution of Zimbabwe 2013 in section 243(1)(e) now provides that one of the functions of the Zimbabwe Human Rights Commission is to protect the public against abuse of power and maladministration by State and public institutions and by officers of those institutions. Thus all the functions previously exercised by the office of the Public Protector are now exercised by the Zimbabwe Human Rights Commission. It is debatable whether it was advisable to abolish the office of the Public Protector and give all of its functions to the Human Rights Commission in the 2013 Constitution. Evaluate this position. **[25 marks]**

- After the proposed decision is published, DCB shall hold a hearing at which affected districts and other interested persons may express their views on the proposed decision.
- v. After reviewing and considering the hearing testimony, DCB shall make any modifications to its proposed decision that are necessary in light of the hearing testimony, and then shall publish its final decision allocating raintech use for that year. Any person aggrieved by this final decision may thereafter seek judicial review in accordance with the Administrative Justice Act.

In response to this Proposed Rule on DCB Decision making Procedures, many commenters object to DCB's plan to have agency staff develop the Selection Criteria without any public input or comment. After the comment period closes, DCB publishes its "Final Rule on DCB Decision making Procedures," which incorporates everything that was in the Proposed Rule on DCB Decision making Procedures (above), and then adds the following to paragraph 1 of that Rule: "Before DCB announces its Raintech Selection Criteria, DCB officials shall hold a series of town-hall style meetings in major agricultural Districts. These meetings shall allow interested members of the public to voice any opinions about the selection criteria for DCB's raintech program. In addition, DCB shall establish an electronic bulletin board on the Internet that will allow anyone to post and receive messages about the Selection Criteria. DCB shall circulate to appropriate agency staff all information received at town hall meetings or on the electronic bulletin board, but shall be under no obligation to respond to this information nor to use it in formulating Selection Criteria unless, in its discretion, DCB elects to do so." The explanatory statement accompanying these rules discusses at length DCB's belief that the procedure set out in the Final Rule on DCB Decision making Procedures accords with what Parliament sought through the Farm Protection Act, and that this procedure will allow DCB to make fair, reasonable and equitable decisions. Months later, DCB publishes its Raintech Selection Criteria, which provide that "DCB will be able to make raintech available to 3 Districts this year. DCB will publish all applications made by Districts for raintech use, and will select 3 Districts based on an assessment of the total dollars of economic damage suffered by each District-applicant in the last 2 years because of drought, combined with the total dollars of economic damage attributable to drought as projected by DCB staff for the present year. These criteria will ensure that the hardest-hit districts get priority for raintech assistance." DCB receives applications from 8 districts with significant agricultural economies that have been adversely affected by droughts in recent years and that expect to be so affected this year. In accordance with the procedures set out in its Rule on DCB Decision making Procedures, the agency issues its proposed decision, which comes to be called the Big 3 Decision. This decision announces DCB's plan to award raintech use to the 3 districts namely Gokwe, Zaka, and Uzumba Marimba Kufunga (UMK) largest districts that applied because DCB's computation reveals that these 3 districts have suffered in the last 2 years, and are expected this year to suffer, the greatest total dollar losses due to drought. None of these "Big 3" districts share a border with one another. The head of DCB and other high-ranking agency officials then preside over a hearing on the proposed decision. Senator Tumble Trumple, who represents one of the Big 3-districts and chairs

Question 8

“Traditional administrative law principles suggest, at best, an aggrieved party may be entitled to certain procedural rights prior to any decision being made to renege on such an assurance. The assurance creates a legitimate expectation and requires the principles of procedural fairness be applied before that expectation is defeated. However, under traditional administrative law theory, the assurance does not create any enforceable substantive right or expectation – to do so would be to fetter the public body’s or official’s ultimate discretion and undermines their ability to govern in the public interest. This move from procedure to substance is a radical one that takes judicial review of administrative action well beyond its traditional boundaries.”

Discuss the legal position in Zimbabwe administrative law, with reference to all relevant case law authorities. In the course of your answer, you must explain, with reference to examples, what is meant by substantive protection of a legitimate expectation. **[25 marks]**

******End of Examination******