

ZIMBABWE EZEKIEL GUTI UNIVERSITY

FACULTY OF LAW

**ADMINISTRATIVE AND LOCAL GOVERNMENT LAW
EXAMINATION**

LLB106

18 NOV 2019

DURATION: 3 HOURS

22 JAN. 2020

INSTRUCTIONS TO CANDIDATES

1. Answer **four questions only**.
2. Section A is compulsory.
3. Choose any 2 questions from Section B

INFORMATION FOR CANDIDATES

1. Notes, handouts and textbooks are not allowed into the examination.
2. Cellphones are not allowed into the examination room.
3. Begin each answer to a full question on a fresh page.

**NB: DO NOT TURN OVER THE QUESTION PAPER OR COMMENCE WRITING
UNTIL INSTRUCTED TO DO SO.**

1. Mbuwa Khumbula is a student at the Zimbabwe Ezekiel Guti University. On 10 September 2019, Mbuwa was involved in an altercation with one of the lecturers at the Law School, a certain Professor Luckless Munyama. During this altercation, it is alleged that Mbuwa assaulted Mr Munyama with his fists. On 15 October 2019, Mbuwa receives a letter from the Proctor of the University to the effect that he is required to appear before a disciplinary committee on 1 November 2019. The letter informs him of the nature and severity of the offence with which he has been charged and clearly sets out the details of the date, time and venue of the hearing. Attached to the letter is an affidavit from a witness, a certain Isee Chashata. In his affidavit, Isee states that he witnessed the altercation and saw Mbuwa hitting Professor Munyama with his fists.

Mbuwa arrives at the hearing with an attorney, a certain Mr Can-do Mashapa. However, the chairman of the disciplinary committee, Mr Mambo, refuses to allow Mr Mashapa to represent Mbuwa Khumbula on the basis that external legal representation is not allowed. In terms of the relevant University rules 'an accused student may personally conduct his/her defence or alternatively the student may be represented by another student or member of staff of the University'. After Mr Mashapa leaves the premises, Mbuwa decides to represent himself. In his defence, Mbuwa admits that he had an argument with Professor Munyama about the mark he had received for his Administrative Law test. However, he alleges that Professor Munyama became angry when he questioned him and he slapped Mbuwa two times. Mbuwa alleges that he did hit Professor Munyama, but was only acting in self-defence. At the hearing, however, the Proctor produces a further affidavit from Isee Chashata in which he states that Professor Munyama did not hit Mbuwa at all and that it was Mbuwa who was the aggressor. Mbuwa is stunned by these allegations and he is not given an opportunity to counter the allegations contained therein. At the hearing, Mbuwa is found guilty of assaulting Professor Munyama and he is suspended from the University for two semesters.

Mbuwa is concerned about the procedural fairness of the decision. Advise him of all possible defects in procedural fairness present in this case and how they would be addressed in a review application. [25 marks]

2. "One of the most effective controls is for Parliament in the first place carefully to spell out the limits of the delegate's law-making powers so that there can be no doubt when the delegate is exceeding his powers."
 - a) Critical discuss this view and explore other ways in which Parliament could effectively control the exercise of delegated legislative powers [15 marks]
 - b) Explain whether it is constitutional for Parliament to delegate to the President or the Executive the power to amend legislation passed by Parliament [10 marks]

3. "The traditional dichotomies between appeal and review have been eroded in modern administrative law". Discuss indicating clearly what the traditional dichotomies are as well as the manner of the erosion [25 marks]
4. Section 62 of the Zimbabwean constitution gives every citizen and permanent resident a right to information held by the government, in so far as it is required in the interests of public accountability.
 - a) Discuss the importance of this right in relation to the Government efforts in curbing corruption [15 marks]
 - b) Under what circumstances should access to government information be denied [10 marks]
5. Does the doctrine of legitimate expectations only entitle an individual to a procedural benefit or does the doctrine provide substantive relief by allowing the individual to claim a substantive benefit? Critically 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]
6. "The Zimbabwean 2013 Constitution has altered the scope, content and application of administrative law". Outline and explain this seismic shift of the grundnorm of administrative law [25 marks]
7. "The doctrine of ultra vires is a mirror image of the principle of legality". Explain the nature and ambit of the Ultra Vires Doctrine in relation to the Administrative Justice Act, the Zimbabwean Constitution, and decided cases. [25 marks]
8. The *nemo iudex in sua causa* principle is necessary in determining whether or not an administrative order is biased. Discuss this principle and critically comment on the demerits of administrative bias. [25 marks]
9. The preamble to chapter 14 of the Constitution of Zimbabwe states that; '*...there must be devolution of power and responsibilities to lower tiers of government in Zimbabwe...*'
 - (a) Illustrate the nature, extent and fundamental features of Zimbabwe's provincial governance system. In your answer explain and outline the degree of administrative autonomy and independence from central government granted to provincial government by the Constitution [10 marks]
 - (b) Does the Constitution create a satisfactory system of provincial government for Zimbabwe? In your view, does Zimbabwe require partial or total devolution of political power? Justify your answer.[10 marks]
 - (c) 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. [5 marks]