

ZIMBABWE EZEKIEL GUTI UNIVERSITY

FACULTY OF LAW DEPARTMENT OF PUBLIC LAW

Supplementary Examination

January/February 2019

COURSE : Administrative Law
Course Code : LLB106
TIME ALLOWED : 3hrs
TOTAL MARKS : 70

INSTRUCTIONS TO CANDIDATES

1. Answer one (1) Question from Section A and two (2) Questions from Section B
 2. Students may carry unannotated copies of the 2013 Constitution of Zimbabwe and the Administrative Justice Act into the exam
 3. The question paper consists of **5 pages** including the cover page.
 4. Each question should be on a fresh page and every page must be numbered.
 5. Cell phones (and any electronic gadgets) are not allowed into the examination room.
 6. Notes, handouts and textbooks are not allowed into the examination room.
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Section A

Answer any two (2) questions

x Question 1

Write **short notes** on the significance of the following terms/phrases as they apply to Administrative Law:

- (a) *Audi alteram partem rule* (5 marks)
- (b) *Nemo judex in causa sua* (5 marks)
- (c) Judicial Review (5 marks)
- (d) Duty to give reasons (5 marks)
- (e) Discretionary powers (5 marks)

[25 Marks]

Question 2

Discuss the main features of the right to administrative justice in section 68 of the Constitution, outlining why it is important in Zimbabwe's legal system. [25 Marks]

Question 3

- (i) Critically discuss the factors that a court considers in determining bias and unreasonableness in administrative issues (15 marks)
- (ii) In the event that a court finds that a decision passed by an administrative body was unreasonable as it was biased, discuss two remedies that the court must grant and justify why? (10 marks)

Section B: Answer any Two (2) questions in this section

Question 3

In December 2017, the government announced that it was going to grant all war veterans suffering from disability as a result of the liberation struggle a flat US\$12 000-00 for their welfare. X is a 74-year-old war veteran, who is illiterate, very poor and suffers from extreme pain due to a bullet lodged in her right chest. His left arm is almost paralysed and is almost impossible to use for any length of time. X applied for the disability grant from the Department of Welfare on 03rd June 2018. He received a letter from the Department of Welfare in July 2018, containing a standard form response. The standard form response indicated that her application had been declined as the medical form supposed to accompany X application was not attached nor filled. After having been duly advised to take the matter further, X approaches you for legal advice in January 2019.

- (a) Advise X on whether the decision of the Department of Welfare can be reviewed in terms of the Administrative Justice Act 12 of 2004, and the major grounds for the review. **(15 marks)**
- (b) Suppose you are a judge of the Administrative Court and have granted the application for review in favour of X. Make reasonable recommendations on measures that the Department of Welfare must take to cater for persons such as X and thus avoid unnecessary litigation. **(10 marks)**

[Total for Question 4: 25 Marks]

Question 4

The Chidodo Rural Council (the Council) called for tenders for the erection of street lights in the Chidodo residential area. Bright Lights (Pty) Ltd; Never Dull (Pty) Ltd and Sunbright (Pty) Ltd ('Sunbright') all submitted their application by submit bidding for the advertised tender. Bright Lights submits a tender quoting their price for the work required at \$40 000 and undertook to complete the work within 13 weeks. Never Dull submits a tender with their price for the work required at \$50 000 and undertook to complete the work within 10 weeks. Sunbright undertook to complete the work within 11 weeks and quoted \$110 000 for the work. Having considered the prices and the completion times for the respective tenders, the cash strapped Council awarded the bid to Never Dull as they submitted the most cost-effective tender. When Never Dull was informed of the decision, they immediately ordered all of the necessary materials and equipment that was required to complete the work.

In light of the above factual scenario, consider the legal position in each of the following instances:

(a) Advise Bright Lights on whether they can consider challenging the decision to award the tender to Never Dull and have the decision set aside in terms of s 5 of AJA. Justify (08 marks)

(b) Imagine that upon being awarded the tender, Never Dull realises that their pricing was too low and requested Chidodo RDC to raise the contract price for the tender. Chidodo RDC raised the price to \$80 000-00.

Advise Bright Lights on whether they can proceed to challenge the decision to award the tender to Never Dull in terms of s 3(a) of AJA. Justify your answer (09 marks)

(c) Assume that it later emerged that the managing director of Never Dull was an uncle to the aunt of the receptionist at Chidodo RDC offices. Consider whether Sunbright can challenge the award of the tender to Never Dull and the basis for such action. Justify your answer (08 marks)

[Total for Question 5: 25 Marks]

Question 5

The Amazing Municipality calls for tenders for the removal of certain waste in the Hayfields area. Waste Removers (Pvt) Ltd ('Waste Removers') and Dumpsters (Pvt) Ltd (Dumpsters) submit tenders. The Municipality states at the outset that the tender will be awarded to the tenderer who submits the most cost-effective tender and who can complete the work in the shortest space of time. It appears that Waste Removers has met both these criteria. However, the Municipal Council (the authorised decision-maker) decides to award the tender to Dumpsters. The Council instructs a clerk, Mr Zondi, to write a letter to Dumpsters informing them of the decision.

In light of the above facts, explain the legal position in the following instances:

(a) The Municipality awards the tender to Dumpsters as their tender application indicates that they can dispose of the waste in a more environmentally sound manner. This is important from the Municipality's perspective as it wants to ensure that steps are taken to protect the environment as part of its commitment towards sustainable development. Waste Removers wants to challenge the decision not to award them the tender. In light of the given facts, discuss the grounds upon which they can challenge the decision. (7 marks)

(b) It transpires that the actual reason why the Municipality awarded the tender to Dumpsters was that the company paid a bribe to some members of the Municipal Council to award the tender to them. These corrupt officials accepted this bribe and awarded the tender on this basis. In light of these facts, discuss whether an interested party can challenge the decision to award the tender on this basis. (10 marks)

c) It appears that Dumpsters is a subsidiary of another company, New Wastelands (Pvt) Ltd. It also appears that some members of the Municipal Council of the Amazing Municipality have a 5% share in a certain property development in the Midlands area that is being initiated by New Wastelands. Upon discovering these facts, Waste Removers want the decision to be set aside on the basis of bias. Advise them of the legal position based on applicable legal principles. **(8 marks)**

[Total for Question 6: 25 Marks]

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