

ZIMBABWE EZEKIEL GUTI UNIVERSITY

FACULTY OF LAW DEPARTMENT OF PUBLIC LAW

COURSE : **Administrative and Local Government Law**
Course Code : **LLB 106**
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 one (1) question

Question 1

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

- (a) Natural justice (4 marks)
- (b) Legitimate expectation (4 marks)
- (c) Judicial Review (4 marks)
- (d) Delegated legislation (4 marks)
- (e) Discretionary powers (4 marks)

[Total for Question: 20 Marks]

Question 2

With reference to relevant case law and/or statutory provisions, discuss the doctrine of legitimate expectation as applied in Zimbabwean law. In your answer, discuss the possible purpose of the doctrine to administrative justice. [20 Marks]

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

Question 3

Answer (i) and (ii)

- (i) X is a resident of Chiweshe in Mashonaland Central Province. X is 74 years old, illiterate, very poor and suffers from a medical condition that makes it almost impossible for her to use her hands for any length of time. In June 2017, X applied for a disability grant from the Department of Welfare and in June 2018, she received a letter from the provincial Department of Welfare, containing a standard form, indicating that her application had been declined. The form contained several tick-boxes, one of which, labelled "Medical form incomplete", had been ticked. In November 2018, after having been duly advised to take the matter further, she approaches you for legal advice. It has been a considerable period of time since she received the letter from the Department.

(j) Advise X on whether the decision of the Department of Welfare can be reviewed in terms of the Administrative Justice Act 12 of 2004 [Chapter 10:28]. In your answer, you are required to focus on any potential procedural impediments to the potential review and what the substantive grounds of the review would be. **(15 marks)**

(ii) Lulu Zondi is a resident of a rural area near Kotwa in Mtoko in Mashonaland East Province. She is 65 years old, illiterate and poor. She applied for a pension (for which she qualifies in terms of the relevant legislation) to the Department of Social Welfare in June 2017. In May 2018, she approaches you, a candidate attorney at ZEGU, asking whether there are any legal steps she can take to obtain a decision, because she has heard nothing from the department.

Advise her fully on her options and prospects of success in her case, including whether she will be entitled to payment of all the benefits to which she would have been entitled had the decision been made timeously, together with interest **(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. X Lights (Pty) Ltd ('X Lights'); Never Dull (Pty) Ltd ('Never Dull') and Sunbright (Pty) Ltd ('Sunbright') all submit tenders. X Lights submits a tender quoting their price for the work required at \$90 000 and undertake to complete the work within 6 weeks. Never Dull submits a tender with their price for the work required at \$80 000 and undertook to complete the work within 15 weeks. Sunbright undertake to complete the work within 10 weeks and according to documents before the Council, Sunbright's quote for the work was \$110 000. 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) X Lights wanted to challenge the decision to award the tender to Never Dull on the basis that the Council, in making its decision, placed too much emphasis on the amount of the bid submitted by the prospective applicants and did not give sufficient consideration to the duration of the time required to complete the work.

Advise X Lights on whether they can have the decision set aside on this basis in terms of s 5 of AJA (grounds of review and whether the administrative authority failed to act reasonably in terms of section 3 of AJA)

(7 marks)

- (b) X Lights argued that their tender was the best in that it was cost effective and time saving. On the contrary, they argued that while Never Dull bid was cost-effective, it would take twice as long to carry out the tender.

Advise X Lights on whether they can challenge the decision to award the tender to Never Dull on the basis that the Council made a decision that was not reasonable in terms of s 3(a) of AJA. **(5 marks)**

- (c) Assume that it was subsequently discovered that the tender submitted by Sunbright was \$70 000 and not \$110 000. Due to oversight of an official of the Council, the wrong documents were placed before the Council which contained the incorrect figure.

(i) Explain whether Sunbright can challenge the decision of the Council to award the tender to Never Dull under these circumstances? Justify your answer **(3 marks)**

- (ii) Assume that the High Court subsequently sets aside the tender awarded to Never Dull as a result of the error that was made by the Council in awarding the tender to them. Can Never Dull claim delictual damages from the Council for the out-of-pocket expenses that it incurred? Explain your justification fully **(10 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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