INSTRUCTIONS TO STUDENTS

Answer THREE (3) questions.

Unless the context of the question suggests otherwise, you may assume in each question that the administrative action involved is ‘administrative action’ in terms of s 1 of the Promotion of Administrative Justice Act 3 of 2000.

Question 1

State schools in KwaZulu-Natal have for years been receiving funds for maintenance of school buildings from the provincial education department. In February 2009, the MEC for Education in KwaZulu-Natal, Agnes Apple, announces that the provision of funding for buildings maintenance will continue for the foreseeable future. In May 2009, the MEC notifies all state schools in the province that funding for buildings maintenance has been terminated with immediate effect, these funds being required for the provision of sanitation services for schools lacking such facilities. The governing body of Woodlands High School, having already carried out repairs to its buildings to be paid out of the money it was expecting from the Department, is concerned about this decision and comes to you for advice.

Advise the governing body on its possible legal response, providing full explanation of the law including reference to relevant authority. In particular, advise the governing body as to whether it can ask the Court to order the MEC to pay the school the funds it was expecting for buildings maintenance.

[25 marks]
Question 2

(a) In terms of the KwaZulu-Natal Physical Planning Act 2 of 2000, local authorities (municipalities) are responsible for drawing up town-planning schemes for their areas of jurisdiction. These schemes zone different areas for different functions – for example, residential, commercial, industrial, etc. If a person wishes to build a structure (house/office block/factory etc) within such a zone, the authorisation of the local authority in question is required, provided that the building in question is appropriate for the zone in question. Should somebody wish to erect a building in an area where there would be conflict with the scheme (for example, an office block in a residential area), the authorisation of the MEC of Local Government and Housing (LGH) is required before the local authority can give consent for the building development in question.

The MEC purports to delegate his powers in respect of granting this authorisation to the Durban Metropolitan Council. The Act is silent as to the ability of the MEC to delegate his/her powers. Is this delegation lawful? Discuss fully, setting out all relevant authority.

(b) Section 23 of the National Environmental Management: Air Quality Act 39 of 2004 provides:

(1) The Minister [of Environmental Affairs and Tourism] … may, by notice in the Gazette, declare any appliance or activity … as a controlled emitter if such appliance or activity … results in atmospheric emissions which through ambient concentrations, bioaccumulation, deposition or in any other way, presents a threat to health or the environment or which the Minister or MEC reasonably believes presents such a threat.

(2) Before publishing a notice in terms of subsection (1) or any amendment to the notice, the Minister or MEC must- [inter alia]

(d) consider-

(i) any sound scientific information; and

(ii) any risk assessments. …

The effect of the declaration of something as a controlled emitter is set out in section 25:
“No person may manufacture, sell or use any appliance or conduct an activity declared as a controlled emitter unless that appliance or activity complies with standards established in terms of section 24 of the Act.”

In May 2007, the Minister receives a recommendation from officials in his Department that the Acme Incinerator Model T56 ought to be declared a controlled emitter in terms of section 23. The recommendation cites an article in the international publication Air Quality Monthly which argues that the Acme Incinerator is an inefficient incinerator that has an emission output that is unacceptable according to World Health Organisation standards.

Question 2 (b)…/
Question 2 (b)… continued

A week later, the Minister publishes a notice in the Gazette indicating that the Acme Incinerator Model T56 is a controlled emitter in terms of section 23 of the Act, solely on the basis of the recommendation which quotes the article mentioned above.

Acme Products (Pty) Ltd, when it is informed about the decision, is incensed. The company is about to embark on a marketing campaign indicating that this is a state-of-the-art incinerator, which emits less pollution than any other comparable incinerator. This assertion is based on peer-reviewed tests carried out by the world-renowned Umhlanga Rocks Institute of Technology. Acme argues that Air Quality Monthly is published by Shadee Productions (Pty) Ltd, which produces the SP 44/7 incinerator, which is Acme’s main competitor. Moreover, Acme contends, the analysis which underpins the article in question is scientifically unsound.

Indicate any ONE ground of review other than audi alteram partem which Acme could pursue in attempting to have the Minister’s decision set aside. Explain fully, providing full authority.

(10 marks)

(c) A student at the University of KwaZulu-Natal, Sid Stink, is charged with contravening the Rules of Student Discipline in that he physically assaulted an administrative assistant in the Faculty of Management Studies when she told him that his Economics assignment was not ready for collection. One of the witnesses to the assault was Dr Simon Salt, a senior lecturer in the School of Economics. One of the members of the Student Discipline Court who will be hearing Stink’s case is Professor Vincent Vinegar, a Professor of Chemistry. Stink’s representative, Mr Nick Nerd, is aware of the well-known fact that Salt and Vinegar are partners and have, in fact, approached one of Nerd’s colleagues in the Law Faculty for advice about their getting married. Nerd makes application for Professor Vinegar’s recusal from the case, whereupon the latter tells Nerd that the application is an attack on his integrity and that he would never dream of dealing with Salt’s evidence any less objectively than that of any other witness. Ought Vinegar to recuse himself? Discuss fully, providing full reference to relevant authority.

(7 marks)

[25 MARKS]
Question 3

(a) Wastego (Pty) Ltd makes an application for a waste disposal site licence in terms of the National Environmental Management: Waste Act 59 of 2008. The Department of Environmental Affairs and Tourism, which decides on the licence applications, uses a guideline document entitled ‘Guidelines for the licensing of waste disposal sites’, which has been compiled in compliance with the requirements of the Act, in order to assess applications. One month after submitting its application, Wastego receives a letter containing the following: ‘We regret to inform you that your application for a waste disposal licence is unsuccessful, due to the failure to comply with the specifications in Part V.7 of the Guidelines for the licensing of waste disposal sites’. The letter from the Department contains no further information relating to these specifications, nor does it contain the relevant part of the Guidelines.

The CEO of Wastego approaches you asking whether it is entitled to reasons for the decision. Advise him, providing full reference to relevant authority, including decided cases.

(10 marks)

(b) Trimlawn Garden Services CC, a small Pietermaritzburg close corporation, wins a tender to trim the road edges in the suburbs of Prestbury, Boughton and Blackridge and enters into a contract with the Pietermaritzburg Municipality to carry out the job. After three months, the Municipality alleges that Trimlawn is not carrying out the job satisfactorily and terminates the contract, without giving Trimlawn a hearing, and claims that the (alleged) poor performance is a material breach of the contract. Is the Municipality’s decision administrative action, as defined in s 1 of PAJA? Explain fully, with reference to decided cases.

(10 marks)

(c) In terms of the National Water Act 36 of 1998, appeals against certain administrative decisions taken in terms of the Act are heard by the Water Tribunal. Section 148(4)(a) provides that the procedure for lodging, hearing and deciding an appeal is contained in Part 2 of Schedule 6. An excerpt from Part 2 of Schedule 6 is attached to this question paper on page 6. (headed: ‘Lodging and hearing of appeals and applications’).

In the light of the excerpt provided, explain fully whether an appellant will be able to ask the Water Tribunal to review a procedural irregularity in the original decision.

(5 marks)

[25 MARKS]
Question 4

(a) Hlengiwe Khumalo is a resident of a rural area near Umgababa in KwaZulu-Natal. She is 65 years old, illiterate and very poor. She applied for a pension (for which she qualifies in terms of the relevant legislation) to the KwaZulu-Natal Department of Welfare in June 2007. In May 2008, she approaches you, an attorney, asking whether there are any steps she can take to obtain a decision, because she has heard nothing from the department.

Advise her fully, 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)

(b) Sindisile Zuma is a resident of a rural area near Nongoma in northern KwaZulu-Natal. She is 44 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 March 2008 she applied for a disability grant. In June 2008, 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 May 2009, after having been advised by an educated cousin who lives in Durban to take the matter further, she approaches you for advice. Advise her on whether the decision of the Department can be reviewed in terms of PAJA, given that it has been more than 180 days since she received the letter from the Department.

(Note: You are required to deal with any potential procedural impediments to the potential review, not with what the substantive ground of review would be.)

(10 marks)

(c) The KZN Midlands Green Trust (KMGt), a non-governmental organization, has been involved in providing input into a proposed development in the Nottingham Road area. The KMGt feels that the development will adversely affect the environment in the location. The developer, Greenwash Holdings Ltd (GH), applies for environmental authorisation in terms of the National Environmental Management Act and the competent authority, the KwaZulu-Natal Department of Agriculture and Environmental Affairs, approves the application, subject to certain conditions. KMGt appeals against the decision, in terms of the relevant provision allowing for appeal, submitting a thirty-page document setting out its grounds for challenging the decision. The MEC, responsible for hearing the appeal, on receipt of the appeal document, forwards it to GH to enable the latter to comment on the document. One week later, the MEC receives GH’s comments on the appeal document. When KMGt request an opportunity to comment on GH’s comments, the MEC refuses. Is this procedurally fair? Explain fully, with reference to decided cases.

(5 marks)