



SCHOOL OF LAW

NLLB207 ADMINISTRATIVE LAW

END OF SECOND SEMESTER EXAMINATIONS

MAY/JUNE 2024

LECTURER: MR N MAPHOSA

DURATION: 3HRS

GENERAL INSTRUCTIONS TO CANDIDATES

- 1. Do NOT write your name on the answer sheet.**
2. Write legibly.
3. Students **MAY NOT** take any material into the examination.
- 4. Answer ALL questions from Section A and TWO questions from Section B.**
5. You are advised to read all questions carefully before answering any.
6. Begin your answer for each question on a new page.
7. **CITE RELEVANT** authorities to support your arguments.
8. This examination paper consists of six pages.

SECTION A

QUESTION ONE

(a) Julie White is a Zimbabwean citizen by birth whereas John Black holds citizenship of the United States of America. John entered Zimbabwe sometime in January 2021. He was issued with a temporary employment permit for the period of January 2021 to March 2022. The application was made on his behalf by a religious group called Cornerstone Fellowship International. During John's stay in Zimbabwe, he met and fell in love with Julie. After the expiry of his employment permit John returned to his home country for a short period. He then returned to Zimbabwe on a holiday visa in May 2022 to spend time with Julie. During this period, Julie and John solemnised their marriage in terms of the Marriages Act (*Chapter 5:17*) and made a decision to settle and start their own family, in Zimbabwe. This decision prompted John to take the necessary legal steps to attain the status of a lawful resident of Zimbabwe. He applied for a residence permit on the basis of his marriage to a Zimbabwean citizen. He was granted a thirty-day extension on his holiday visa whilst his application for a residence permit was being considered.

On or about the 2nd of June 2022, John was invited for a meeting with immigration officers under the control of the Minister of Home Affairs and Cultural Heritage. He was told to leave the country as he was deemed to be a "prohibited" person in terms of s 14(1)(e)(i) of the Immigration Act [*Chapter 4:02*] ("the Act"). He was then given two options, that is, to leave the country immediately or to be deported. This was pursuant to s 17 of the Act.

John chooses the former option and on 2 June 2022 he leaves for South Africa together with his wife. Before leaving Zimbabwe, John and Julie instructed their legal practitioners to appeal against the prohibition notice, which appeal was duly noted with the Minister of Home Affairs and Cultural Heritage, in terms of s 8 of the Act. The Deputy Minister, in the absence of the Minister of Home Affairs and in consultation with the Chief Immigration Officer, decided in favour of John and set aside the prohibition notice in question. John was informed by his legal practitioners of this development on 30 June 2022. He left South Africa for Zimbabwe two days later, believing that he would finally settle down in Zimbabwe. His joy was, however, short-lived as he was denied entrance into Zimbabwe at the Beitbridge Border Post by immigration officers, on the basis that

he was still a prohibited person despite the setting aside of the prohibition status. Julie proceeded with the journey without her husband who was left in the hands of immigration officers.

Upon inquiry, John's legal practitioner was informed that the Minister returned from leave on the 1st of July 2022 and set aside the Deputy Minister's decision to lift John's prohibition status. The reason he gave was that, he was not approving any residence applications from foreigners due to the fast spreading of monkey pox. The legal practitioner was also informed that the decision was final and non-appealable since the Minister is the final authority on all immigration issues. The legal practitioner upon research, finds out there is an automatic appeal in terms of the Immigration Act and the appeal is to the Citizenship and Immigration Board and the Minister seats as President of the board.

The Legal practitioner approaches the board and upon seeking clarity on the nature of the automatic appeal, he is given a questionnaire to complete. The next day he receives a phone call from the Immigration Board to submit any supporting documentation and affidavits for the hearing of the appeal. He is informed that the appeal will be decided on written submissions. On the day of the hearing of the appeal, out of the five panel members, three are present including the Minister, who decides to proceed with the hearing since he thinks it is a straight forward matter which ought to be dismissed. The other two panelists do not object to the Minister's suggestion due to their subordinate positions in the Ministry of Home Affairs.

I. Assume that you are John's legal practitioner, advise him on the grounds to challenge the Minister's decision to revoke the upliftment of his prohibited person's status and the decision of the automatic appeal by the Immigration Board. **[22 Marks]**

II. Advise John on the appropriate remedy or remedies available to him in order to challenge these unfair decisions. **[8 marks]**

(b) Write detailed notes on the architecture of S 68 of the Zimbabwean Constitution. **[20 Marks]**

Total Marks **[50]**

SECTION B

QUESTION TWO

Muchaneta has been issued with a license to sell food from her food stall. The licensing officer who issued the license followed the written and formal requirements for the issuing of licenses set out in the municipal by-law to the letter. However, he also demanded that Muchaneta pay him an amount of US\$1500.00, as “commission” for issuing the license. (There is no such provision in the by-law). Muchaneta sells food every day at her stall. A few months later, the municipality opens a community centre next to her stall. Amongst other things, food is sold at the community centre.

One day, Muchaneta is told by Ms Justina from the centre to remove her stall. She refuses. The next day, Ms Justina arrives at the stall with a letter from the municipality informing Muchaneta that the municipality has decided to cancel/revoke her license with immediate effect and that she has to remove her stall immediately. Muchaneta approaches the licensing department at the municipality. The officials refuse to give her any reasons for the cancellation of her license. However, she is told she can appear in person before a special meeting of a License Review Committee in a week's time. At the hearing she is not allowed to present her side of the story, neither is she allowed to raise any questions about the cancellation of the license.

She is also prevented by the Chairperson of the Committee, Mrs Shady Chimbado, from asking whether the community centre will offer employment to local residents. The review committee rules that the cancellation of Muchaneta's license was lawful since provision is made for the cancellation of licenses in the by-law. Muchaneta suddenly remembers that she has heard that, Mrs Chimbado is the manager of the community center, in terms of a license issued by the municipality. At the special meeting, Muchaneta is informed by the Chairperson that she has no recourse whatsoever and that she should count her losses and move on.

Write a legal opinion to Muchaneta advising her of her administrative justice rights which have been violated and also advise her on the appropriate avenues of redress. **[25 Marks]**

QUESTION THREE

“No administrative authority can or should be given the discretion to depart from the requirement to act in a lawful manner. Such departure can never be reasonable and justifiable in any circumstances and neither can this be justified on the grounds of urgency. Even the legislature should not be empowered to pass legislation exempting an administrative authority from the obligation to act lawfully or even varying this obligation.”¹

Flowing from the above observation, examine whether the Administrative Justice Act [Chapter 10:28] is aligned to the Constitution of Zimbabwe Amendment No.20 of 2013. **[25 Marks]**

QUESTION FOUR

It has been argued that with the increasing complexity in modern administration and the functions of the state being expanded and rendered to economic and social spheres too, there is a need to shift to new reforms and provide more powers to different authorities on some specific and suitable occasions. In a country like Zimbabwe, control over private trade, business or property may be needed to be imposed, and for implementation of such a policy so that immediate actions can be taken, it is needed to provide the administration with enough power. Therefore for immediate and suitable actions to be taken there has been an immense growth of delegated legislation Zimbabwe.

Assess the correctness of the above statement and discuss the importance and usefulness of subsidiary legislation in modern state administration. **[25 Marks]**

QUESTION FIVE

The Reserve Bank of Zimbabwe through authority granted to it by the Finance Act [Chapter 23:04], decides to suspend lending by banking institutions, building societies, development

¹ G Feltoe, *Aligning the Administrative Justice Act with the Constitution*, (2019) Zimlil.

finance institutions, deposit-taking and credit-only microfinance institutions to the Government and private sector. The suspension relates to all lending, whether in local currency or foreign currency, to Government and the private sector, including corporates, other legal entities and individuals. No new credit facilities shall be issued as the suspension covers new loans, undrawn portions of agreed facilities, overdrafts and other forms of borrowing instruments, by whatever name they are called. It further decides that, with respect to pipeline transactions, where all the facility terms and conditions have been met before the above pronouncement, institutions may approach the Reserve Bank for consideration, on a case by case basis. The suspension of lending does not apply to offshore drawdowns.

Evaluate the reasonableness of the Reserve Bank of Zimbabwe's decision to suspend lending by banking institutions. **[25 Marks]**

TOTAL MARKS:

100

END OF QUESTION PAPER