INSTRUCTIONS:

1. Students are requested, in their own interests, to write legibly.

2. This paper consists of SIX (6) pages. Please ensure that you have all of the pages.

3. Please note that you must answer Section A, B and C. All the questions in Section A are compulsory. In Section B and Section C you have a choice and must answer one of the two questions in each section.

4. Answer Section C in a separate answer book.
SECTION A

Please note that all questions in this section are compulsory

QUESTION 1

Fisherman’s Paradise (Pty) Ltd (‘Fisherman’s Paradise’) intends applying for commercial fishing rights in both the hake longline and pelagic sectors in terms of the Marine Living Resources Act 18 of 1998. In terms of s 18(1) of the Act, no person may, inter alia, undertake commercial fishing or subsistence fishing unless a right to do so has been granted to such a person by the Minister. The Act also provides that any application for any right, permit or licence in terms of this Act ‘shall be accompanied by an application fee determined by the Minister’. The application fee for the fishing rights in the hake longline sector is R1 000 and the application fee for the pelagic sector is R800.

On 26 March 2013, Fisherman’s Paradise submits its application for commercial fishing rights in the hake longline sector to the Department of Water and Environmental Affairs. Intending to cover the costs of their application fees for both this application, as well as their subsequent application for fishing rights in the pelagic sector, Fisherman’s Paradise decides to pay the amount of R1 800 to the Department, which payment accompanies the aforementioned application. Two weeks later, Fisherman’s Paradise submits its further application for commercial fishing rights for the pelagic sector but does not pay any further fees.

The application for fishing rights in the hake longline sector is granted. However, the application for fishing rights in the pelagic sector is rejected. It appears that the Deputy Director-General of the Department of Water and Environmental Affairs, acting upon the recommendation of an advisory committee, decided to reject the application. The application was rejected on the basis that the prescribed application fee for fishing rights in the pelagic sector did not accompany the application as was required by the legislation. It is common cause, that the Minister acting in terms of s 79(1) of the Act delegated his powers to the Director-General. In terms of this section, the Minister is empowered to delegate all of any of the powers conferred upon him to the Director-General or to an officer of the Department nominated by the Director-General; except the power to make regulations. In terms of s 79(2) the Director-General is also empowered to delegate any power conferred upon him or her in terms of the Act to an officer in the Department. It is also common cause that the Director-General delegated his powers to the Deputy Director-General, and that the Deputy Director-General appointed a committee to assist with the evaluation of the applications in accordance with a strict set of guidelines and instructions.

Fisherman’s Paradise wants to challenge the decision not to grant them the licence in respect of the pelagic sector. They argue that the Minister had to decide upon the application himself and that the decision could not be made by the Director-General,
Deputy Director-General, or the committee. Furthermore, they also want to challenge the decision not to grant the application on the basis that they had in fact paid the application fee for fishing rights in the pelagic sector when the first application was submitted. Advise them fully.

[Total Q1: 20 Marks]

**QUESTION 2**

Damien Smith is a student at the University of KwaZulu-Natal. On 1 October 2012, Damien was involved in an altercation with one of the lecturers at the Pietermaritzburg Law School, a certain Bheki Zondi. During this altercation, it is alleged that Damien assaulted Mr Zondi with his fists. On 15 November 2012, Damien receives a letter from the Proctor of the University to the effect that he is required to appear before a disciplinary committee on 1 December 2012. 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 Marvin Naidoo. In his affidavit, Marvin states that he witnessed the altercation and saw Damien hitting Mr Zondi with his fists.

Damien arrives at the hearing with an attorney, a certain Mr S Singh. However, the chairman of the disciplinary committee, Mr Khumalo, refuses to allow Mr Singh to represent Damien Smith 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 Singh leaves the premises, Damien decides to represent himself. In his defence, Damien admits that he had an argument with Mr Zondi about the mark he had received for his Administrative Law test. However, he alleges that Mr Zondi became angry when he questioned him and he slapped Damien two times. Damien alleges that he did hit Mr Zondi, but was only acting in self-defence. At the hearing, however, the Proctor produces a further affidavit from Marvin Naidoo in which he states that Mr Zondi did not hit Damien at all and that it was Damien who was the aggressor. Damien is stunned by these allegations and he is not given an opportunity to counter the allegations contained therein. At the hearing, Damien is found guilty of assaulting Mr Zondi and he is suspended from the University for two semesters.

Damien 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.

[Total Q2: 15 marks]

[TOTAL SECTION A: 35 MARKS]
SECTION B

Answer EITHER Question 3 or Question 4

QUESTION 3

The Association for Disabled Persons Society (ADPS) is an organisation in KwaZulu-Natal which has been in existence for 12 years and it looks after people with various disabilities. Although the organisation receives donations from companies and other private individuals, it is mainly dependant on the subsidy which it receives from the Provincial Department of Social Welfare. The organisation has been receiving the subsidy from the Department since its inception and this has enabled it to expand its premises and accommodate approximately 50 people. On 10 January 2013, the Department summarily decides to cancel the subsidy. This has placed the ADPS in an unfortunate situation where it may be forced to close down, thereby leaving many people stranded. You are approached by the Chairman of the ADPS. He requires advice on whether the ADPS can approach the court for an order requiring the Department to continue paying the subsidy to them. Advise him fully, making reference to any applicable cases.

[Total Q3: 15 marks]

OR

QUESTION 4

The Cape Town Municipality places a notice in a local newspaper calling for tenders. In the notice the Municipality states that its sole criterion is to choose the most cost-effective tender. Break it and Make It (Pty) Ltd is one of the applicants who submit a tender to the Municipality. The tender application is given to a certain Mr Botha, who is the official in the Municipality responsible for deciding tender applications (i.e. the authorised decision-maker). While Mr Botha is busy sorting through all the tender applications, he is approached by another official in the department, a certain Mr Nene who tells him not to award the tender to Break it and Make It (Pty) Ltd as this is a ‘white-owned company’. According to Mr Nene, tender applications should, as far as possible, be awarded to companies in which blacks are the major shareholders. Despite the fact that Break it and Make It (Pty) Ltd submitted the most cost-effective tender, Mr Botha decides to listen to Mr Nene and does not award the tender to Break it and Make It (Pty) Ltd. Mr Botha checks his records and sees that several tenders have already been awarded to Break it and Make It (Pty) Ltd and reasons that not awarding them this particular tender will not make much of a difference. Break it and Make It (Pty) Ltd want to challenge the decision not to award them the tender.

Discuss THREE grounds of review which they can rely on to set aside the decision with the exception of the grounds of review pertaining to reasonableness and rationality; and arbitrary and capricious decision-making.

[Total Q4: 15 marks]

[TOTAL SECTION B: 15 MARKS]
SECTION C

Answer EITHER Question 5 or Question 6

QUESTION 5

5.1 Under what circumstances is it competent for a court, in reviewing an administrative action, to substitute its decision for the decision of the administrator? Explain fully, referring to both PAJA and relevant case law.

[15 marks]

5.2 In terms of the Marine Living Resources Act 18 of 1998, any person who wishes to gain access to marine living resources (eg catch fish, gather crustaceans etc) requires some sort of authorisation (permit, licence). In terms of section 28(4) of the Act:

‘the Minister may, whenever he or she is of the opinion that it is in the interests of the promotion, protection or utilisation on a sustainable basis of a particular marine living resource, at any time by written notice to the holder of a right, licence or permit, revoke, suspend, cancel or reduce that right, licence or permit.’

Moegamat Jacobs is the holder of rights in the pelagic (pilchards and anchovies) sector. In May 2007 he receives a letter from the Department of Environmental Affairs and Tourism: Marine and Coastal Management Directorate, which reads:

29 April 2007

Dear Mr Jacobs

You are hereby informed that your rights to catch 1000 kg of pilchards per annum, granted in terms of the Marine Living Resources Act 18 of 1998 in January 2007, has been revoked in terms of s 28(4) of the said Act. The reason for this is that the Minister has reached the conclusion that it is in the interests of the promotion, protection or utilisation on a sustainable basis of pilchards that your rights be revoked.

Yours faithfully

etc
Jacobs writes a letter to the Minister requesting reasons for the decision to revoke his fishing rights. He receives a letter from the Department two weeks after he sent his request indicating that he has been provided reasons in the initial letter from the Minister, dated 29 April 2007.

Is the Department correct? Explain fully, providing full authority.

[10 marks]

QUESTION 6

6.1 Nonhlanhla Gumede is a resident of a rural area near Creighton 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 2011. In May 2012, 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]

6.2 Does an administrator have standing (locus standi) to apply to court for the review of its own decision? Explain fully with reference to decided cases.

[10 marks]

6.3 Mrs Ayanda Zuma is 65 years old. She lives in a rural area near Nkandla in central KwaZulu-Natal. She is illiterate and very poor, supported sporadically by a son who works in Pretoria. She travels to Eshowe, the nearest reasonably-sized town about once every two years. She applied to the KwaZulu-Natal Department of Welfare for a pension in February 2012. She received a letter in April 2012 indicating that the application was unsuccessful. She approaches you, an attorney in Eshowe, in February 2013 asking if she is able to review the decision. Will she be able to do so, despite 180 days having elapsed from the date on which she was informed of the refusal of the application? Explain fully with reference to decided cases.

[5 marks]