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 ALL questions.

4. Please answer Section B in a separate answer book.
SECTION A

PLEASE NOTE THAT ALL QUESTIONS IN THIS SECTION ARE COMPULSORY

QUESTION 1

Please note that for the purposes of this question an extract of all of the relevant provisions of the Refugees Act 130 of 1998 is attached at the end of the exam paper on page 6 marked ‘Annexure A’.

Martin Kayode is a citizen of Zimbabwe who flees the country and seeks refuge in South Africa where he hopes to become a refugee. Martin applies for asylum in terms of the Refugees Act 130 of 1998. In his application, Martin relies on s 3 of the Act. This section provides, inter alia:

'A person qualifies for refugee status for the purposes of this Act if that person:

(a) owing to a well-founded fear of being persecuted by reason of his or her race, tribe, religion, nationality, political opinion or membership of a particular social group, is outside the country of his or her nationality and is unable or unwilling to avail himself or herself of the protection of that country, or, not having a nationality and being outside the country of his or her former habitual residence is unable or, owing to such fear, unwilling to return to it’

In his application, Martin states that he is not a supporter of the ruling Zanu-PF party. He left Zimbabwe for fear that he would be forced to join militant supporters of the ruling political party in Zimbabwe who were intimidating supporters of the political opposition. The Refugee Status Determination Officer, Themba Zuma, decides to grant asylum to Martin and he drafts and signs a letter to this effect. However, before the letter can be sent to Martin, Themba is involved in a serious accident and is hospitalised for several weeks. In his absence, an acting Refugee Status Determination Officer, Thandi Ngubane, is appointed. Thandi decides to reject Martin’s application for asylum. Thandi decides that rejecting the application would be a good way of preserving jobs for local South Africans by preventing foreigners (such as Martin) from obtaining employment at the expense of qualified locals. She also adopts the view that in order for an applicant to succeed in showing that he has a well-founded fear of persecution, he must establish that there is a real risk of him being persecuted in Zimbabwe and not merely a possibility of being persecuted. On this basis, Thandi concludes that Martin’s application for asylum must be rejected as it is unfounded (but not found to be manifestly unfounded).

Explain the legal position in each of the following separate instances:

1.1 Explain whether Thandi Ngubane was entitled to change the decision that was originally made by Themba Zuma. You can assume that an acting Refugee Status Determination Officer has the necessary authority to perform the functions and exercise powers that ordinarily vest in a Refugee Status Determination Officer appointed in terms of the Refugees Act.

[4 marks]
1.2 Martin wants to challenge Thandi’s decision to refuse his application for asylum. Discuss TWO grounds of review upon which this decision can be challenged with the exception of the grounds of review pertaining to procedural fairness; reasonableness and rationality; action taken in bad faith; relevant and irrelevant considerations; arbitrary and capricious decision making; action taken without authority; and action that is otherwise unconstitutional or unlawful.

[8 marks]

1.3 Assume that the decision made by Thandi is subsequently reviewed by the Standing Committee which is established in terms of the Refugees Act and that the Committee decides to confirm Thandi’s decision. Martin wants to challenge the authority of the Standing Committee to make this decision. Advise him on his prospects of success in this regard. In answering this question please refer to the relevant provisions of the Refugees Act set out in Annexure ‘A’ on page 6.

[4 marks]

1.4 Assume that Themba Zuma subsequently returns to work, overturns the decision made by Thandi and communicates this decision to Martin. Would Themba Zuma be entitled to revoke the decision made by Thandi under these circumstances? Explain.

[4 marks]

[Total Q1: 20 Marks]

AND

QUESTION 2

One year ago, the Msunduzi Municipality awarded a tender to Fix-It (Pty) Ltd to fix certain potholes in the Scottsville area. Fix-It (Pty) Ltd fixes the potholes efficiently and quickly and the municipal manager is so impressed that he tells the director of Fix-It (Pty) Ltd, Darren Smith, that the municipality is also looking to repair potholes in Hayfields and they would definitely award this tender to Fix-It (Pty) Ltd as he is pleased with its standard of work. On 26 March 2014, the Msunduzi Municipality calls for tenders to repair potholes in Hayfields. Fix-It (Pty) Ltd is one of several companies that apply for the tender. The cash-strapped municipality, however, is under pressure to choose an applicant that submits the most cost-effective tender. On this basis, the Municipality decides to award the tender to ABC (Pty) Ltd. It appears that cost of the work that ABC (Pty) Ltd submitted for its tender was R 70 000 whereas the cost of the work for the tender submitted by Fix-It (Pty) Ltd was R 90 000. When Darren asks the municipal manager for reasons for his decision, he is told that the tender that they submitted was for R 90 000 and ‘did not meet the criterion upon which the municipality based its decision’.

Continued/…
2.1 Darren approaches you for legal advice. He believes that the Municipality is bound to award his company the tender based on the prior discussions that he had with the municipal manager. Advise him on the legal position in this instance. During the course of your consultation, Darren also informs you that cost for the work of the tender that Fix-It (Pty) Ltd submitted was actually R 80 000 and not R 90 000. He requires advice on whether there is any basis upon which he can challenge the decision not to award the tender in light of the mistake that the municipality made with regard to the tender amounts. Advise him fully. **In answering this question, do not discuss issues relating to procedural fairness and reasons and the grounds of review pertaining to action is otherwise unconstitutional or unlawful; or action taken without authority.**

[9 marks]

2.2 Darren believes that the municipality was required to give him a hearing before it made the decision to award the tender to someone else. Advise him on the legal position.

[9 marks]

2.3 Darren is not satisfied with the reasons that have been given to him by the municipal manager and wants to challenge them on the basis that they are ‘inadequate’. Advise him on the legal position in this instance.

[7 marks]

[Total Q2: 25 marks]

**QUESTION 3**

John Smith receives a tax assessment from the South African Revenue Service (SARS) indicating that he owes SARS an amount of R 1 500 000. John Smith has a current account with Nedbank and the amount standing to the credit of his account is R 1 200 000. John does not pay the money that is owing to SARS. Acting in terms of s 99 of the Income Tax Act, SARS appoints Nedbank as an agent and instructs the bank to collect the amount that is due to SARS. John wants to challenge the notice that was issued in terms s 99 on the basis that he was not given a hearing before the notice was issued. Advise him fully on the legal position.

S 99 of the Income Tax Act reads as follows:

‘The Commissioner may, if he thinks necessary, declare any person to be the agent of any other person, and the person so declared an agent shall be the agent for the purposes of this Act and may be required to make payment of any tax, interest or penalty due from any moneys, including pensions, salary, wages or any other remuneration, which may be held by him or due by him to the person whose agent he has been declared to be.’

[Total Q3: 10 marks]

[Total SECTION A: 55 MARKS]
SECTION B

PLEASE NOTE THAT ALL QUESTIONS IN THIS SECTION ARE COMPULSORY

QUESTION 4

Mrs Shezi owns several properties within the City of Hawk Municipality and has been in dispute with the Municipality about outstanding rates and electricity accounts. She has made an application in the manner prescribed by the Promotion of Access to Information Act 2 of 2000 (PAIA) for a copy of the original documents upon which her rates assessment and electricity accounts were based. She has been informed that there are circumstances under which such a request can be refused in terms of Chapter 4 of PAIA. She is concerned that the Municipality has recently had many technical computer problems and may as a consequence, not have the documents which could have been destroyed. Discuss the grounds in terms of which the City of Hawk Municipality may refuse the request in terms of Chapter 4 of PAIA.

[Total Q3: 10 marks]

AND

QUESTION 5

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.

[Total Q4: 10 marks]

[TOTAL SECTION B: 20 MARKS]

[TOTAL MARKS FOR PAPER: 75]
ANNEXURE ‘A’

REFUGEES ACT

S 3: A person qualifies for refugee status for the purposes of this Act if that person:

(a) owing to a well-founded fear of being persecuted by reason of his or her race, tribe, religion, nationality, political opinion or membership of a particular social group, is outside the country of his or her nationality and is unable or unwilling to avail himself or herself of the protection of that country, or, not having a nationality and being outside the country of his or her former habitual residence is unable or, owing to such fear, unwilling to return to it’

(b) owing to external aggression, occupation, foreign domination or events seriously disturbing or disrupting public order in either a part or the whole of his or her country of origin or nationality, is compelled to leave his or her place of habitual residence in order to seek refuge elsewhere; or

(c) is a dependant of a person contemplated in paragraph (a) or (b).

S 21: An application for asylum must be made in person in accordance with the prescribed procedures to a Refugee Reception Officer at any Refugee Reception Office.

S 24 (1): Upon receipt of an application for asylum the Refugee Status Determination Officer:

(a) in order to make a decision, may request any information or clarification he or she deems necessary from an applicant or Refugee Reception Officer;

(b) where necessary, may consult with and invite a UNHCR representative to furnish information on specified matters; and

(c) may, with the permission of the asylum seeker, provide the UNHCR representative with such information as may be requested.

S 24 (3): The Refugee Status Determination Officer must at the conclusion of the hearing:

(a) grant asylum; or

(b) reject the application as manifestly unfounded, abusive or fraudulent; or

(c) reject the application as unfounded; or

(d) refer any question of law to the Standing Committee.

S 25 (1): The Standing Committee must review any decision taken by a Refugee Status Determination Officer in terms of section 24 (3) (b)

S 25 (3): The Standing Committee:

(a) may confirm or set aside a decision made in terms of section 24 (3) (b); and

(b) must decide on a question of law referred to it in terms of section 24 (3) (d).

S 26 (1): Any asylum seeker may lodge an appeal with the Appeal Board in the manner and within the period provided for in the rules if the Refugee Status Determination Officer has rejected the application in terms of section 24 (3) (c).