INSTRUCTIONS

1. You are requested, in your own interests, to write legibly.

2. This paper consists of SEVEN (7) pages. Please ensure that you have all of the pages.

3. Please answer ANY THREE of the FOUR questions. Each question is subdivided into different parts. **You must ensure that you answer all of the sub-questions for each question that you choose to answer.**

4. Please note the marks allocated for each question and apportion your time accordingly.
PLEASE ANSWER ANY THREE OF THE FOLLOWING FOUR QUESTIONS.

Question 1

The Msunduzi Municipality calls for tenders for the erection of street lights in the Scottsville area. Bright Lights (Pty) Ltd (‘Bright Lights’); Never Dull (Pty) Ltd (‘Never Dull’) and Everbright (Pty) Ltd (‘Everbright’) all submit tenders. Bright Lights submits a tender quoting their price for the work required at R 90 000 and undertake to complete the work within six weeks. Never Dull submits a tender quoting their price for the work required at R 80 000 and undertake to complete the work within twelve weeks. Everbright undertake to complete the work within eight weeks and according to documents before the Municipality, Everbright’s quote for the work is R 130 000. Having considered the prices and the completion times for the respective tenders, the cash strapped Municipality awards the bid to Never Dull as they submitted the most cost-effective tender. When Never Dull is informed of the decision, they immediately start ordering all of the necessary materials and equipment that they need to complete the work. In light of the above facts, explain the legal position in each of the following separate instances:

1.1 Bright Lights wants to challenge the decision to award the tender to Never Dull on the basis that the Municipality, in making its decision, placed too much of emphasis on the amount of the bid submitted by the prospective applicants and did not give sufficient consideration to the duration of time needed to complete the work. Advise Bright Lights on whether they can have the decision set aside on this basis in terms of s 6 (2) (e)(iii) of PAJA (i.e. the ground of review pertaining to relevant and irrelevant considerations) [5 marks]

1.2 Bright Lights argue that their tender offered the best of both worlds in that it was both cost effective and time saving. On the contrary, they argue that while Never Dull bid was cost-effective, it would take twice as long to carry out the tender. Advise Bright Lights on whether they can challenge the decision to award the tender to Never Dull on the basis that the Municipality made a decision that was not reasonable in terms of s 6 (2) h of PAJA). In answering this question, you must not discuss rationality and proportionality. [7 marks]

1.3 Assume that it is subsequently discovered that the tender submitted by Everbright was R 70 000 and not R 130 000. Due to oversight of an official of the Municipality the wrong documents were placed before the Municipality which contained the incorrect figure.

1.3.1 Can Everbright challenge the decision of the Municipality to award the tender to Never Dull under these circumstances? Explain. [3 marks]
1.3.2 Assume that a court subsequently sets aside the tender awarded to Never Dull as a result of the error made by the Municipality in awarding the tender to them. Can Never Dull claim delictual damages from the Municipality for the out-of-pocket expenses that it incurred? Explain fully [10 marks]

[TOTAL FOR Q 1: 25 MARKS]

Question 2
Xholisa Zondi is in prison for raping and murdering a woman, Mrs Honey, fourteen years ago. Xholisa has been diagnosed with cancer and is terminally ill. In November 2014, Xholisa applies to the Correctional Supervision and Parole Board ('Parole Board') for medical parole but the Board refuses his application. In terms of s 79 (1) of the Correctional Services Act 111 of 1998, any sentenced offender may be considered for placement on medical parole by the Parole Board if:

'(a) such offender is suffering from a terminal disease or condition or if such an offender is rendered physically incapacitated as a result of injury, disease or illness so as to severely limit daily activity or inmate self-care;

(b) the risk of re-offending is low; and

(c) there are appropriate arrangements for the inmate’s supervision, care and treatment within the community to which the inmate is to be released.

In December 2014, the Parole Board decides to refuse Xholisa’s application on the basis that even though he is terminally ill, he has not yet been rendered physically incapacitated by his illness (you can accept for the purposes of this question that this information is factually true). The board also adopts the view that refusing him parole will send a strong message to society that heinous crimes especially against vulnerable members of society such as women will not be tolerated.

The Board also informs Xholisa that he must still undergo a further rehabilitation programme (he had already completed one rehabilitation programme before in May 2014) before he can be eligible for parole. This is the first time that Xholisa has been informed of the need to undergo a further rehabilitation programme. When Xholisa first applied for medical parole in March 2014, the chairman of the Parole Board promised him that he would be granted parole the next time he applied provided he completed a rehabilitation programme.

2.1 Discuss THREE grounds of review upon which Xholisa can challenge the Board’s decision, made in December 2014, to refuse him medical parole. In your answer you must not discuss the grounds of review pertaining to procedural fairness (including the doctrine of legitimate expectations); reasonableness and rationality; action taken without authority; failure to consider or refusal to decide; action otherwise unconstitutional and unlawful; relevant and irrelevant considerations; and action taken in bad faith. [3 x 4 marks each =12 marks]

Continued.../
2.2 Xholisa wants to know whether he can bring his application for judicial review in July 2015 as he needs to undergo some medical treatment in the interim. Advise him on the legal position. [3 marks]

2.3 Xholisa wants the court to make an order granting him medical parole instead of referring the matter back to the Parole Board. Explain whether the court may grant such an order under these circumstances. [6 marks]

2.4 Xholisa argues that he is entitled to parole as the chairman of the Parole Board is obliged to honour the promise that he made to him in March 2014. Advise him on the legal position. In answering this question do not discuss any aspects pertaining to procedural fairness (including the doctrine of legitimate expectations). [4 marks]

[TOTAL FOR Q 2: 25 MARKS]

Question 3
Clueless Developers (Pty) Ltd (‘Clueless Developers’) commence a particular development along the South Coast of Kwazulu-Natal. Unbeknown to them at that time, the activity in question actually required prior environmental authorisation in terms of the National Environmental Management Act 107 of 1998 (‘NEMA’). When Clueless Developers (Pty) Ltd realise their mistake, they immediately apply to the Minister for authorisation to continue with the activity in terms of s 24 G of NEMA. In terms of this section, a person who has commenced an activity without the requisite authorisation may apply to the Minister for authorisation ex post facto. Prior to granting the authorisation, however, the Minister must consider a report compiled by the applicant setting out, inter alia, a description of the need and desirability of the activity; an assessment of the nature, extent, duration and significance of the consequences for or impacts on the environment of the activity; a description of mitigation measures undertaken or to be undertaken; and a description of the public participation process followed. In addition, the applicant is obliged to pay an administrative fine not exceeding R 5 million before the authorisation can be issued.

Clueless Developers prepares an initial detailed report and after receiving comments from the public, they make a few minor amendments to the report and submit it to the Minister. The Minister refers this report to an advisory committee which he had appointed to assist him in considering such applications. The Minister instructs the committee to advise him specifically on whether the activity in question may have any adverse impact on the environment and whether Clueless Developers have taken sufficient measures in order to minimise the impact of the activity on the environment. The committee decides that everything is in order and recommends that authorisation can be granted. The Minister subsequently orders Clueless Developers to pay a fine of R 50 000.
Clueless Developers (Pty) Ltd issues a post-dated cheque for R 50 000. Upon receiving the cheque, the Minister immediately grants them authorisation having regard, inter alia, to the report submitted and the recommendation by the committee. The cheque is honoured by the bank when it is presented for payment two weeks later (NB: as the cheque was post-dated the proceeds of the cheque was only obtainable when the post date arrived).

The KZN Natural Resources Protection Organisation (KNRPO), a concerned environmental group, wants to challenge the Minister’s decision to grant authorisation to Clueless Developers. You can assume for the purposes of this question that KNRPO has the necessary legal standing to challenge the decision.

3.1 KNRPO argues that a fair procedure was not followed as they were not given an opportunity to comment on the final report compiled by Clueless Developers. KNRPO did, however, view and make comments on the initial report that was compiled. Advise them on their prospects of success in this regard. In the course of your answer do not discuss any aspects pertaining to the doctrine of legitimate expectations.

[5 marks]

3.2 KNRPO allege that the Minister’s decision to grant the authorisation is a nullity as the fine was not paid before the authorisation was granted as required by s 24 G. Advise them on the position in this regard.

[10 marks]

3.3 KNRPO allege that the Minister unlawfully abdicated his power to the advisory committee and want the decision to be set aside on this basis. Advise them on the legal position.

[6 marks]

3.4 Assume, for the purposes of this question, that the post-dated cheque issued by Clueless Developers was dishonoured. Would the Minister have been entitled to revoke the authorisation that he granted? Explain.

[4 marks]

[TOTAL FOR Q 3: 25 MARKS]

**Question 4**

Naughty Zondi, a student at the University of Kwazulu-Natal, is charged with contravening Rule 9 of the University Rules in that he is alleged to have plagiarised an assignment for Agricultural Sciences 301. On 5 March 2015, Naughty receives a letter from the Proctor requiring him to appear before a disciplinary inquiry on 15 March 2015. In terms of the University Rules, a student is entitled to 14 days prior notice of any disciplinary hearing. The Proctor subsequently contacts Naughty and asks him whether he is happy for the matter to proceed on 15 March 2015. Naughty is anxious to get the matter over with and he informs her that he is prepared to go ahead on this date.
Naughty arrives with a lawyer, Mr Naidoo, at the hearing. However, the disciplinary committee consisting of Mr G Mack; Dr D Soobs and Ms C Winters refuse to entertain his request at all and inform him that external legal representatives are not allowed. In this regard the University rules state:

'A student may conduct his/her own defence or may be assisted by any student or a member of staff of the University. Such representative shall voluntarily accept the task of representing the student. If the student is not present, the committee may nonetheless hear the case, make a finding and impose punishment.'

At the hearing, the lecturer, Mr Cliff, presents a Turn-It-In Report showing that Naughty’s assignment was 70% plagiarised. He also presents various supporting documents showing the extent of the plagiarism. Naughty, however, is not shown the report and accordingly does not have an opportunity to respond to it.

At the end of the hearing, the committee finds Naughty guilty of plagiarism and cancels his result for the assignment. This is a devastating blow for Naughty as it means that he is unable to graduate and, to make matters worse, he cannot afford to pay for another year of studies. Naughty is also informed of his right to take the matter on appeal to the Student Discipline Court in terms of the University Rules.

In light of the above facts, answer the questions in each of the following separate instances:

4.1 Naughty wants to immediately challenge the committee’s decision in court instead of taking the matter on appeal to the Student Discipline Court. Explain whether he is entitled to do this.

[4 marks]

4.2 Would it be possible for Naughty to challenge the fairness of the committee’s decision on the basis that they did not adhere to the 14 day notice period required in terms of the University Rules? Explain.

[3 marks]

4.3 Naughty wants to challenge the committee’s decision to refuse him external legal representation. Advise him on his prospects of success in this regard.

[6 marks]

4.4 Naughty wants to challenge the committee’s refusal to allow him to view the Turn-It-In report and supporting documents and to challenge this evidence. Advise him on his prospects of success in this regard.

[6 marks]
4.5 Assume that Naughty takes the matter on appeal to the Student Discipline Court and that Mr C Frontier, Mr G Mack; Dr D Soobs and Ms C Winters and Mr N Zuma, who all sit on the Student Discipline Court, decide to uphold the decision of the disciplinary committee. Is there any basis upon which Naughty can challenge the decision of the Student Discipline Court? Explain fully.

[6 marks]

[TOTAL FOR Q 4: 25 MARKS]

[TOTAL PAPER: 75 MARKS]