INSTRUCTIONS

1. Students are requested, in their own interests, to write legibly.
2. This paper consists of THREE (3) pages. Please ensure that you have all of them.
3. You must answer any THREE (3) questions.
QUESTION 1

(a) You are approached by Manoj Vandayar who is a director of XYZ Petroleum (Pty) Ltd. The company is the process of building a bridge of more than 100 square metres over a stream in Himeville, KwaZulu-Natal. The building of such a bridge is an activity which requires basic assessment in terms of the National Environmental Management Act 107 of 1998 (NEMA) and the Environmental Impact Assessment Regulations, 2014.

From your discussions with Manoj, it has become apparent that the activity in question has already commenced without the necessary authorisation having first been obtained. Manoj now wants to know –

(i) whether he can still obtain the necessary authorisation from the relevant environmental authority, and

(ii) whether he can be prosecuted for commencing the activity without the authorisation.

Advise him as fully as possible.

(10 marks)

(b) Describe the importance of the consideration of alternatives in the environmental authorisation process, including reference to any relevant cases.

(5 marks)

(c) ABC Mining Ltd received a directive from the Department of Water Affairs (the ‘DWA’) in terms of s 19 of the National Water Act 36 of 1998, requiring it to continue pumping water out of the shafts on the mine it operates in Klerksdorp. ABC sells its mining operations to DEF Gold Ltd. Shortly thereafter, DEF is liquidated. The DWA contacts ABC and indicates that it remains bound by the directive, until such time as a permanent arrangement can be made to deal with the pumping of water from the mines in the area. ABC consults you to find out whether the directive is valid. Advise ABC. In your answer you must include an explanation of what a s 19 directive entails and refer to relevant case law.

(10 marks)

(25 marks)
QUESTION 2

Write an essay in which you critically discuss the manner in which the concept of sustainable development has been integrated into South African law. In your answer you must draw examples from relevant legislation and case law.

(25 marks)

QUESTION 3

Fanyana Mncwango, the CEO of Mncwango Mining Co Ltd, approaches you for advice in respect of a mining development he is planning. He is intending to carry out prospecting activities, followed by mining, in certain areas under the jurisdiction of the eThekwini Municipality. The land on which he wants to mine is currently zoned as open space (which is not the appropriate zoning for mining). He tells you that an official in the Department of Mineral Resources informed him that there was no need to make an application for rezoning because the Minerals and Petroleum Development Act 28 of 2002 (MPRDA) takes precedence over town planning laws. He wants you to inform him if this is correct. In the course of your answer, make reference to the applicable legislation, including at least the Constitution of the Republic of South Africa, 1996, and the MPRDA; and at least the Gauteng Development Tribunal (Johannesburg Metropolitan Municipality v Gauteng Development Tribunal 2010 (6) SA 182 (CC)) and Maccsand (Maccsand (Pty) Ltd v City of Cape Town 2012 (4) SA 181 (CC)) cases.

(25 marks)

QUESTION 4

One of the objectives of the National Environmental Management: Biodiversity Act 10 of 2004 is to give effect to those international agreements relating to biodiversity that have been ratified by the South African government and which are therefore binding on the Republic (s 2(b)). The Act is not specific about which international agreements these are. Explain which international agreements these might be; and explain how the Biodiversity Act gives effect to them.

(25 marks)

(TOTAL FOR PAPER: 75 MARKS)