INSTRUCTIONS

1. You are requested, in your own interests, to write neatly and 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.
QUESTION ONE

The AmaZing Municipality calls for tenders for the removal of certain waste in the Hayfields area. Waste Removers (Pty) Ltd (‘Waste Removers’) and Dumpsters (Pty) Ltd (Dumpsters) submit tenders. The Municipality states at the outset that the tender will be awarded to the tenderer who submits the most cost-effective tender and who can complete the work in the shortest space of time. It appears that Waste Removers has met both these criteria. However, the Municipal Council (the authorised decision-maker) decides to award the tender to Dumpsters. The Council instructs a clerk, Mr Zondi, to write a letter to Dumpsters informing them of the decision.

In light of the given facts, explain the legal position in the following separate instances:

1.1 The Municipality awards the tender to Dumpsters as their tender application indicates that they can dispose of the waste in a more environmentally sound manner. This is important from the Municipality’s perspective as it wants to ensure that steps are taken to protect the environment as part of its commitment towards sustainable development. Waste Removers wants to challenge the decision not to award them the tender. In light of the given facts, discuss TWO grounds upon which they can challenge the decision. In your answer you must not discuss the grounds of review pertaining to procedural fairness (including the doctrine of legitimate expectations); error of law; reasonableness and rationality; action taken without authority; fettering by rigidity; and arbitrary and capricious decision-making. [2 x 5 marks each = 10 marks]

1.2 It transpires that the actual reason why the Municipality awarded the tender to Dumpsters was that the company paid a bribe to some members of the Municipal Council to award the tender to them. These corrupt officials accepted this bribe and awarded the tender on this basis. In light of these facts, discuss whether Waste Removers can sue the Municipality in delict for the manner in which they awarded the tender. [10 marks]

1.3 Waste Removers wants to challenge the decision on the basis that the letter sent by the Municipality was signed by Mr Zondi who was not the authorised decision-maker. Advise them on whether they are entitled to do so. [2 marks]

1.4 It appears that Dumpsters is a subsidiary of another company, New Wastelands (Pty) Ltd. It also appears that some members of the Municipal Council of the AmaZing Municipality have a 5 % share in a certain property development in the Midlands area that is being initiated by New Wastelands. Upon discovering these facts, Waste Removers want the decision to be set aside on the basis of bias. Advise them of the legal position. [8 marks]

[TOTAL FOR Q 1: 30 MARKS]
QUESTION TWO

PLEASE ANSWER BOTH QUESTION 2.1 AND 2.2

2.1 Does the doctrine of legitimate expectations only entitle an individual to a procedural benefit or does the doctrine provide substantive relief by allowing the individual to claim a substantive benefit? Critically discuss the legal position in South African law, with reference to all relevant cases. In the course of your answer, you must explain, with reference to examples, what is meant by substantive protection of a legitimate expectation. [20 marks]

2.2 Afrikaaner High is a public school in Pietermaritzburg which teaches pupils in Afrikaans only. The provincial Department of Education has requested them to allow learners, who wished to be taught in English, to be admitted to the school. However, the school’s governing body, which is authorised to determine the school’s language policy in terms of the South African Schools Act 84 of 1996 (the ‘Schools Act’), decides that only Afrikaans will be the medium of instruction at the school and that they will not change the policy under any circumstances.

The Head of Department subsequently takes a decision to revoke the power of the governing body to determine the school’s language policy in terms of s 22(1) of the Schools Act. This section authorises the Head of Department (HOD) to withdraw a function of a governing body. Furthermore, the HOD purporting to act in terms of s 25(1) of the Act appoints a committee to perform the functions of the governing body including the function of determining the school’s language policy. The committee subsequently decides that Afrikaaner High will now be a parallel medium school (i.e. one which will instruct the pupils in both English and Afrikaans). The school governing body wants to challenge the HOD’s decision to appoint a committee to determine the language policy of the school.

Discuss the grounds upon which the school governing body can have this decision set aside. In your answer you must not discuss the grounds of review pertaining to reasonableness, rationality and proportionality; any aspects pertaining to procedural fairness (including the doctrine of legitimate expectations); relevant and irrelevant considerations; fettering by rigidity, action taken in bad faith, ulterior purpose or motive; arbitrary and capricious decision-making; and error of law. [10 marks]

NB: Section 25(1) of the South African Schools Act provides, inter alia, that ‘if a governing body has ceased to perform functions allocated to it in terms of this Act or has failed to perform one or more of such functions, [the HOD] must appoint sufficient persons to perform all such functions or one or more of such functions, as the case may be, for a period not exceeding three months.'

[TOTAL FOR Q 2: 30 MARKS]
QUESTION THREE

Dumasani is a Business Law Masters student at the University of Kwazulu-Natal. The course work component for his Income Tax module requires him to submit three research papers. Dumasani submits the papers to his supervisor, Professor Fiscal. Professor Fiscal obtains a ‘Turn-It-In report’ for each research paper in order to check for plagiarism. A Turn-It-In report typically includes the following information: the title of the research paper submitted; a list of the various sources which contain identical or similar words, phrases and sentences to the research paper; and the extent of any similarity (expressed in a percentage form) between the research paper and such sources. The reports obtained by Professor Fiscal indicates that there is a 9 % similarity between Dumasani’s first research paper and the sources cited in the report; a 18 % similarity between his second research paper and the sources indicated in the report; and a 25 % similarity between his third research paper and the sources in that report. In light of this, Professor Fiscal refers the matter to the Proctor. The Proctor decides to charge Dumasani with plagiarism in respect of his second and third research papers and she issues him with the following notice on 2 June 2015:

‘You are charged with plagiarism in terms of Rule 3.2.2. You must attend a hearing on 25 June 2015 at 09h:00. The charges relate to certain research papers that you submitted for your Pollution Control module (LAWS5POLL). Mr Khune, a law lecturer, has been appointed as your legal representative.’

Two days after issuing Dumasani with this notice, the Proctor furnishes Dumasani with the relevant Turn-It-In Reports for the second and third research papers. Prior to the hearing, Dumasani makes a written request to the disciplinary committee asking them to allow him external legal representation. However, this request is rejected and the Committee informs him that it is not allowed by the rules. On 25 June 2015, Dumasani appears at the hearing with his appointed representative, Mr Khune.

After Dumasani has made his submissions to the Committee, but before they hand down their judgment, Dumasani requests the opportunity to make further submissions which he says are based on new material facts. However, the Committee informs him that they have already made a decision and that it is not possible for them to change this now. Immediately thereafter, the Committee proceeds to hand down their judgment.

The Committee decides to convict Dumasani of plagiarism in respect of the third research paper but acquit him of the charges in respect of the second research paper. In reaching its decision, the Committee relies on a University policy which indicates that plagiarism is committed if there is more than 20 % similarity with sources indicated in a Turn-It-In report. It appears, however, that the similarities identified in the Turn-It-In report in relation to the third research paper pertain to certain standard words and phrases (such as income, asset, liability, accrued, capital, etc) that are commonly used in the subject and the Income Tax Act and that some of the sentences that he was alleged to have plagiarised were actually referenced and included in quotation marks and that this was not picked up by the Turn-It-In report. The sentence handed down is that Dumasani’s ‘research paper mark for the Pollution Control module must be cancelled.’
In light of these facts, please answer consider the legal position in the following separate instances:

3.1 Dumasani is unhappy with the notice that was issued to him by the Proctor. He believes that the information contained in the notice was inadequate and he wants to challenge it on this basis. Advise him on the legal position. [6 marks]

3.2 Dumasani wants to challenge the disciplinary Committee’s decision not to allow him an external legal representative. The legal representatives of the disciplinary committee are of the view that Dumasani cannot challenge this decision now and he accepted Mr Khune as his representative and allowed him to complete the hearing on his behalf. The University rules are silent on this matter and merely state that a student can represent himself or can be represented by a fellow student or a staff member. Explain the legal position fully. [10 marks]

3.3 Dumasani wants to challenge the Committee’s decision to convict him of plagiarism in respect of his third research paper. Discuss TWO ground of review upon which he can challenge the decision. In your answer you must not discuss the grounds of review pertaining to reasonableness and rationality; any aspects pertaining to procedural fairness (including the doctrine of legitimate expectations); relevant and irrelevant considerations; failure to consider or refusal to decide; arbitrary and capricious decision-making; and material mistake of fact. [2 x 5 marks each = 10 marks]

3.4 Upon receiving the judgment of the disciplinary committee, the School of Law gives Dumasani zero for the entire course work component of his Pollution Control module. The School of Law interprets the judgment as meaning that Dumasani’s entire research paper mark must be cancelled. However, when Dumasani clarifies this, the disciplinary committee subsequently says that it is only his mark for his third research paper that must be cancelled. In other words, he is entitled to his mark for the first and second research papers. The School of Law is not happy with this. They argue that the disciplinary committee has already made a final decision and cannot subsequently change it. Explain the legal position in this instance. [4 marks]

[TOTAL FOR Q 3: 30 MARKS]
QUESTION FOUR

PLEASE ANSWER BOTH QUESTION 4.1 AND 4.2

Question 4.1
Under certain circumstances, a court may make a cost order against an administrator de bonis propriis. Explain what is meant by such an order and discuss, with reference to case law, the circumstances where such an order may be made. [4 marks]

Question 4.2
EverReady Developers (EverReady) commence a particular development which requires environmental authorisation in terms of the National Environmental Management Act 107 of 1998 (‘NEMA’). However, prior to starting the development, EverReady fails to obtain the requisite authorisation.

In terms of NEMA, no person may commence an activity (which requires authorisation) unless the competent authority has granted an environmental authorisation for that activity. Failure to comply with this provision is an offence in terms of the Act. However, in terms of s 24 G of NEMA, 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 various prescribed information and, in addition, the applicant is obliged to pay an administrative fine not exceeding R 5 million before the authorisation can be issued. In light of the above facts, please consider the legal position in the following separate instances:

4.2.1 Environmental Conscience is a non-government organisation concerned with the protection of the environment. They want to apply to court for an order stating that EverReady was not entitled to commence the development without the requisite authorisation and that their failure to do so was unlawful. Advise them on the legal position. Thereafter, briefly explain what other common law remedy Environmental Conscience could use to prevent EverReady from carrying out the development without the requisite authorisation. [6 marks]

4.2.2 EverReady Developers applies for authorisation in terms of S 24 G of NEMA. They submit the relevant report required and issue a post-dated cheque in payment of the fine in the amount determined by the Minister (in this case R 500 000). 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. Environmental Conscience alleges that the Minister’s decision to grant them 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. [8 marks]
4.2.3 EverReady Developers applies for authorisation in terms of s 24 G of NEMA. However, the Minister adopts the view that commencing with a development without the requisite authorisation is a serious offence and he decides on 6 January 2016 to reject the application on this basis. EverReady Developers approaches you for advice on 26 May 2016. They want to know whether they can have the decision of the Minister reviewed in court in terms of the Promotion of Administrative Justice Act 3 of 2000 (PAJA). Advise them on whether they are entitled to do so, and assuming that it is possible, discuss TWO grounds of review upon which they can challenge this decision. **In your answer you must not discuss the grounds of review pertaining to procedural fairness (including the doctrine of legitimate expectations); reasonableness and rationality; error of law; action taken without authority; fettering by rigidity and relevant and irrelevant considerations.**

[12 marks]

[TOTAL FOR Q 4: 30 MARKS]

[TOTAL PAPER: 90 MARKS]