



RIARA LAW SCHOOL

UNIVERSITY EXAMINATION FOR THE BACHELOR OF LAWS (LLB) DEGREE

AND

PRE-KENYA SCHOOL OF LAW CORE COURSES COMPLIANCE PROGRAMME

DECEMBER 2019

RLB 206: ADMINISTRATIVE LAW 1

INSTRUCTOR: Dr. VICTOR LANDO

INSTRUCTIONS

1. This is the final examination in Administrative Law 1. You will earn 70% of your final grade from this final examination and 30% from Continuous Assessment Assignments.
2. This examination has **THREE** questions. Please answer **ALL THREE QUESTIONS**.
3. This examination has 4 pages, including this one.
4. Time allocated for this examination is **THREE** (3) hours. You must stop writing when time is called.
5. Please sign the roll sheet when you turn in your answer sheet. If you fail to sign the roll sheet, we shall have no way of establishing that you sat for this examination and your marks will not be reported.
6. This is a **CLOSED BOOK** examination. This means you are not permitted to bring ANY hard or soft materials to the examination room. You are also not allowed to access materials stored in computers, electronic gadgets or the internet. You should not bring to the examination room any of the following: cell phones, tablets, computers, statutes, notes, outlines, or books. Neither should you bring to the examination room books or materials unrelated to this course. If you need to have medicine or food items with you, please let the invigilator know before the examination begins.
7. This examination is governed by **Riara University Academic Honesty Regulations**. Students who violate those regulations will be penalized. Students have an obligation to report to the invigilator any incidences of academic dishonesty compromising the integrity of this examination.

Question 1. (30 Marks)

Mark is a trader who has been importing and selling non-woven bags in Kenya since the ban on plastic bags was effected by the government in 2018. Before commencing his trade in the non-woven bags, he applied and was granted import licences by among others, the Kenya Bureau of Standards (KeBS) and the National Environmental Management Authority (NEMA). Having received the certification from these government departments, he proceeded to import large quantities of non-woven bags, supplying them to supermarkets, retail shops and other would-be customers, raking in good profits that have made him the largest supplier of non-woven bags in Kenya.

On 12 October 2019, Mark has an altercation with Mr. Tembo, the CEO of NEMA over a parking spot at Two Rivers' Mall. Mark had double-parked his Jaguar in front of Tembo's Range Rover and it took a whole 30 minutes for Tembo's driver to trace the owner of the Jaguar.

On reaching the parking spot, Mark apologised profusely to Tembo and explained that he had been forced to double-park as he was rushing his son to the Aga Khan Clinic on 2nd Floor. Mr. Tembo would hear none of it and told Mark. ' You will see !!...Utajua Hujui!'. Mark apologised again and even offered to pay for the parking ticket but Tembo ignored him and drove off in a huff.

On the 16th of October 2019, the National Environmental Management Authority (NEMA) through its CEO, Mr. Tembo, issued a press statement banning the sale and use of non-woven bags in Kenya.

On 17th of October 2019, NEMA officers accompanied by a contingent of police officers conduct a simultaneous raid on Mark's warehouses in Nairobi and Mombasa inviting the media to cover 'NEMA's raid on one of the most destructive polluters in Kenya.' They harass his employees and confiscate more than 350 metric tons of non-woven bags valued at Ksh.28 million.

On 18th of October 2019, Mark writes to NEMA appealing for time to be allowed to at least sell his current stock, which he had bought months before the directive by NEMA. He delivers the letter personally to the NEMA Headquarters, and by good luck, meets Mr.

Tembo the CEO, who laughs sarcastically at him and tells him..‘Now you see huh?’ Sasa umejua haujui!!’

A week later, his letter has not been responded to, and his stock is still seized. His calls and visits to NEMA Headquarters are met with the same response ‘ Our CEO is busy at the moment but he will get back to you’

He approaches your law firm for a legal opinion on his current options under the law.

Provide Mark with a detailed legal opinion on whether there has been a breach of any of his rights under Administrative Law. (30 marks)

Question 2. (20 Marks)

“I do not agree that the source of the power is the sole test whether a body is subject to Judicial Reviewit is helpful to look not just at the source of the power but at the nature of the power”.. *R v Panel on Takeovers and Mergers Ex-Parte Datafin PLC & Another 1987 ALL E.R 564.*

- a) **In light of the above statement, critically analyse the concept of a ‘public body’ within the context of administrative law in Kenya. (10 marks)**

Administrative Law may be defined as ‘..A branch of Public Law concerned with the composition, procedures, powers, duties, rights and liabilities of the various organs of government that are engaged in administering public policies...’- **AW Bradley and KD Ewing, Constitutional and Administrative Law, 15th Edition.**

- b) **In view of the foregoing, identify and critically analyse at least five (5) provisions of the Constitution of Kenya, which provide the basis for Kenya’s administrative law framework. (10 marks)**

Question 3. (20 Marks)

Mwash is a Second year student at the Riara Law School. On 2nd November 2019, he was writing his final exam in the Law of Evidence. He had not studied well for the paper and so opted to hand in one of his phones to the invigilator and sneak his other phone into the exam room to use for 'reference purposes just in case he needed to consult'. As luck would have it, all the questions came from the areas that he had studied for, and so he was quite comfortable with the paper and saw no need to 'consult his phone'. Unfortunately, he got so excited that he forgot to switch it off. One hour into the exam, his phone started ringing loudly, just when the invigilator was next to him. His phone was promptly confiscated and he was escorted out of the examination room. The next day, he received a letter from the office of the Dean of Students, informing him that he had been expelled from the University on account of academic dishonesty. The Riara University Disciplinary Guidelines, do not stipulate a specific procedure for taking disciplinary action against a student caught engaging in examination irregularities. It however grants the Dean of Students the power to among others 'take appropriate decisive action against a student' for among others, breaching examination regulations.

Mwash comes to you, as the top student in Administrative Law claiming that he has read something about Natural Justice.

Advise him, using case law and statute, on the meaning and components of the Rules of Natural Justice, and whether his expulsion by the Dean of Students was within the law. (20 marks)