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EXAMINATIONS OFFICE

HERBERT CHITEPO LAW SCHOOL
BACHELOR OF LAWS HONOURS DEGREE
LEVEL 5 SEMESTER 1
EXAMINATION QUESTION PAPER

MODULE CODE: LLB514
MODULE NARRATION: ADMINISTRATIVE LAW AND LOCAL GOVERNMENT LAW
DATE: JUNE 2024
DURATION: 3 HOURS

INSTRUCTIONS TO CANDIDATES:

1. Answer THREE questions in all. Question one is compulsory.
2. You are advised to read all questions carefully before attempting to answer.
3. You are advised to cite relevant authorities to support your answers.
4. Write legibly.

SECTION A

Question 1 [This question is compulsory]

Julie White is a Zimbabwean citizen by birth whereas John Black holds citizenship of the United States of America. John entered Zimbabwe sometime in January 2021. He was issued with a temporary employment permit for the period of January 2021 to March 2022. The application was made on his behalf by a religious group called Cornerstone Fellowship International. During John's stay in Zimbabwe, he met and fell in love with Julie. After the expiry of his employment permit John returned to his home country for a short period. He then returned to Zimbabwe on a holiday visa in May 2022 to spend time with Julie. During this period, Julie and John solemnized their marriage in terms of the Marriage Act (*Chapter 5:11*) and made a decision to settle, and start their own family, in Zimbabwe. This decision prompted John to take the necessary legal steps to attain the status of a lawful resident of Zimbabwe. He applied for a residence permit on the basis of his marriage to a Zimbabwean citizen. He was granted a thirty day extension on his holiday visa whilst his application for a residence permit was being considered.

On or about the 2nd of June 2022, John is invited for a meeting with immigration officers under the control of the Minister of Home Affairs. He is told to leave the country as he is deemed to be a "prohibited" person in terms of s 14(1)(e)(i) of the Immigration Act [*Chapter 4:02*] ("the Act"). He is then given two options, that is, to leave the country immediately or to be deported. This was pursuant to s 17 of the Act.

John chooses the former option and on 2 June 2022 he leaves for South Africa together with his wife. Before leaving Zimbabwe, the applicants instructed their legal practitioners to appeal against the prohibition notice, which appeal was duly noted with the Minister of Home Affairs, in terms of S8 of the Act.

The Deputy Minister in the absence of the Minister of Home Affairs and in consultation with the Chief Immigration Officer decides in favour of John and sets aside the prohibition notice in

question. John is informed by his legal practitioners of this development on 30 June, 2022, and he leaves South Africa for Zimbabwe two days later, believing that he would finally settle down in Zimbabwe. His joy is, however, short-lived as he is denied entrance into Zimbabwe at the Beitbridge Border Post by immigration officers, on the basis that he was still a prohibited person despite the setting aside of the prohibition status. Julie proceeds with the journey without her husband who is left in the hands of immigration officers.

Upon inquiry John's legal practitioner is informed that the Minister returned from leave on the 1st of July 2022 and set aside the Deputy Minister's decision to lift John's prohibition status. The reason he gave was that, he is not approving any residence applications from foreigners due to the fast spreading of monkey pox. The legal practitioner is also informed that, the decision is final and non-appealable since the Minister is authority on all immigration issues. The legal practitioner upon research finds out there is an automatic appeal in terms of the Immigration Act and the appeal is to the Immigration Board and the Minister seats as President of the board.

The Legal practitioner approaches the board and upon seeking clarity on the nature of the automatic appeal, he is given a questionnaire to complete. The next day he receives a phone call from the Immigration board to submit any supporting documentation and affidavits for the hearing of the appeal. He is informed that, the appeal will be decided on written submissions. On the day of the hearing of the appeal, out of the five panel members three are present including the Minister, who decides to proceed with the hearing since he thinks it is a straight forward matter which ought to be dismissed. The other two panelists do not object to the Minister's suggestion due to their subordinate positions in the Ministry of Home Affairs.

- (i) Assuming that you are John's legal practitioner, advise him on the grounds to challenge the Minister's decision to revoke upliftment of his prohibited person's status and the decision of the automatic appeal by the immigration board.

[Total:20marks]

- (ii) Advise John on the appropriate remedy or remedies available to him in order to challenge these unfair decisions.

[Total: 10 marks]

[Sub-Total: 30 marks]

SECTION B

Answer any two questions from this section.

Question 2

Muchaneta has been issued with a license to sell food from her food stall. The licensing officer who issued the license followed the written and formal requirements for the issuing of licenses set out in the municipal by-law to the letter. However, he also demanded that Muchaneta pay him an amount of US\$1500.00, as "commission" for issuing the license. (There is no such provision in the by-law.) Muchaneta sells food every day at her stall.

A few months later the municipality opens a community centre next to her stall. Amongst other things, food is sold at the community centre. One day Muchaneta is told by Ms Justina from the centre to remove her stall . She refuses. The next day Ms Justina arrives at the stall with a letter from the municipality informing Muchaneta that the municipality has decided to cancel/revoke her license with immediate effect and that she has to remove her stall immediately. Muchaneta approaches the licensing department at the municipality. The officials refuse to give her any reasons for the cancellation of her license.

However, she is told she can appear in person before a special meeting of a license review committee in a week's time. At the hearing she is not allowed to present her side of the story, neither is she allowed to raise any questions about the cancellation of the license. She is also prevented by the chairman of the committee, Mrs Shady Chimbado, from asking whether the community centre will offer employment to local residents.

The review committee rules that the cancellation of Muchaneta's license was lawful since provision is made for the cancellation of licences in the by-law. Muchaneta suddenly remembers that, she has heard that, Mrs Chimbado is the manager of the community center, in terms of a licence

issued by the municipality. At the special meeting, Muchaneta is informed by the Chairperson that, she has no recourse whatsoever and that she should count her losses and move on.

Write a legal opinion to Muchaneta advising her of her administrative justice rights which have been violated and also advise her on the appropriate avenues of redress.

[Total: 20 marks]

Question 3

On 7 November 2023, Mr Moyo received a radio communication from the Commissioner General of Police to the effect that he had been discharged from the Police Service with effect from the 2nd day of November 2023. Aggrieved, applicant filed his notice of intention to appeal to the Chairperson of the Police Service Commission on 7 November 2023. On 14 November 2023 he filed his notice and grounds of appeal with the Chairperson of the Police Service Commission.

However the 1st respondent did not reinstate the applicant pending the determination of his appeal. Instead, in a letter dated 20 November 2023, served to his legal practitioners, Mr Moyo was advised that the Chairperson of the Police Service Commission had turned down his appeal. He was not informed of the reasons despite asking for them verbally.

Advise Mr Moyo on whether or not he can challenge the decision of the Chairperson of the Police Service Commission, the grounds he can use to challenge the decision and the court he can approach for a legal recourse.

[Total: 20 marks]

Question 4

With the increasing complexity in modern administration and the functions of the state being expanded and rendered to economic and social spheres too, there is a need to shift to new reforms and providing more powers to different authorities on some specific and suitable occasions. In a country like Zimbabwe, control over private trade, business or property may be needed to be imposed, and for implementation of such a policy so that immediate actions can be taken, it is needed to provide the administration with enough power. And so, therefore for immediate and suitable actions to be taken there has been an immense growth of delegated legislation Zimbabwe.

Assess the correctness of the above statement and discuss the importance and usefulness of subsidiary legislation in modern state administration.

[Total: 20 marks]

Question 5

Since the adoption of the Zimbabwean 2013 Constitution, there have been discussions on the issue of decentralization of government powers. Although there have been debates on this subject, little has been done to implement the ideas of decentralization. With this in mind write a legal opinion to the Minister of local Government, Public Works and National Housing clearly explaining the nature and scope of Administrative devolution.

[Total: 20 marks]

TOTAL MARKS: 70.

END OF QUESTION PAPER