Law for Public Managers 1 A

Welcome to vocational school April 2017

This course is divided into two parts -

1. **Introduction to Law** (Part One)
2. **Administrative Law** (Part Two)

Before you commences with your studies I encourage you to read pages 3 to 8 of your study guide and take note of the course overview as well as page 9 that deals with marginal icons. You must familiarise yourself with these icons and their meaning before starting your academic journey.

UNIT 1

1. **Introduction to Law**

Under this unit, we will discuss the purpose and functions of law, how law impacts on our lives and how the Namibian legal system is organised. We will also explain the meaning of certain important legal concepts.

Upon completing this Unit, you will be able to:

- Define term law
- Explain the term juristic act
- Explain the purpose of law in a specific community
- Explain legal subjects
- Explain obligation
- Explain execution of property by the creditor
- Distinguish between a delict and a crime
- Illustrate the Namibian legal history by means of a diagram

**What is Law?**

A system of rules governing human relations in a community, which is recognised by the legal system and enforced by the courts of law as organs of the State’s authority.
Law can also be defined as:

The system of rules that a particular country or community recognizes as regulating the actions of its members and may enforced by the imposition of penalties.

The term “law” is defined and discussed in more details on page 11 of your study guide. There are also examples given for your easy understanding of what law is.

**Basic legal concepts**

Juristic act  
Legal subjects  
Natural persons  
Juristic persons  
Obligations  
Execution of property  
Delict  
Crime  
Differences between crime and delict

The above concepts are discussed in details on page 14 and 15 of your study guide. You are expected to study and know them.

**Brief History of Namibian Law**

Namibian law is not codified. It is a hybrid system that consists of Roman law, Roman Dutch law, South African and German law. It is illustrated by means of a graph on page 17 of your guide.

As stated above Namibian law has its roots from the following:

Common law  
Roman law  
Roman-Dutch Law  
English law
At independence, Namibia inherited many legislations/statutes that were passed by other legislative bodies before independence. These legislations dated far back as 1920 which some of them are still in force/applicable.

In terms of Article 25(1)(b) and Article 140 of the Constitution of the Republic of Namibia, all laws which were in force immediately before the date of independence (21 March 1990) shall remain in force until repealed or amended by Act of Parliament or until they are declared unconstitutional by a competent Court. Any power vested by such laws in the Government, or in a Minister or other official of the Republic of South Africa shall be deemed to be vested in the Government of the Republic of Namibia or in a corresponding Minister or official of the Government of the Republic of Namibia.

**NB:** See four (4) references listed on page 19 at the end of Unit one in your study guide.
UNIT 2

The primary functions of the courts as an organ of the state is to enforce the law. This is refers to as the administration of justice. In this Unit we are going to learn how administration of justice functions.

Upon completing this Unit, you will be able to:

- Distinguish between a criminal and civil case
- Differentiate sentences that can be imposed by different courts
- Explain the structure of the courts
- Define the term “jurisdiction”
- Distinguish the different courts in Namibia
- Name the rules of natural justice
- Explain how a person can become a legal practitioner in Namibia
- Describe the roles of the sheriff and the messenger of the courts

The administration of justice

In a democratic and civilised country such as Namibia with an organised constitutional dispensation, the State assumes the functions of the administration of justice. When a person commit an offence, the whole society of wronged or offended as the interest of the whole community is harmed so the State will penalise the wrong doer (criminal case). When harm is done to private interests of an individual, compensation is awarded to him (civil case).

Differentiation between civil and criminal proceedings

These differences are very well articulated on page 21 to 22 of your study guide and you are expected to know study and know them.

Burden of proof in criminal and civil case

In criminal case, the state has to prove its case against the accused beyond reasonable doubt. That means the standard of proof is strict that leaves no doubt in the mind of the judge or magistrate that the accused has indeed commit the offence. If there is doubt then the accused shall be released.
In civil case, the standard of proof is lower than that in criminal case. The proof is on the balance or preponderance of probabilities.

You attention is drawn to O.J. Simson case discussed on page 22 of your study guide. You can also do self-assessment/in-text questions on the same page without looking at answers on the next page to test your understanding.

**Structure of the courts**

In terms of Article 78 under Chapter 9 of the Namibian Constitution, the structure of the courts is set out. Under the structure of the courts we are going to study the following terms:

Jurisdiction
Rules of natural justice
Criteria for justice

These terms are defined and discussed on pages 24 and 25 of your study guide and you are expected to study them.

**The hierarchy of the courts**

The hierarchy of the courts has been illustrated in a diagrammatic form on page 24 of your guide and the courts are discussed on page 25 as well as page 26 of your study guide.

**The legal profession and officers of the courts**

Legal advisors
Judges and Magistrates
Public prosecutors
Legal practitioners
Conveyancers
Notary public
Advocates
The sheriff and the deputies
The messenger of the of the court
You can be able to know and differentiate the officers of the court as they are discussed on pages 26 and 27 of your study guide.

**Various forms of legal aid that is available for the public**

Pro deo representation  
Pro amico legal aid  
Pro bono legal aid  
The legal aid board

These forms of legal aid are discussed on page 27 of your guide where you can study them.

Your attention is drawn to references cited on page 28 of your study guide.
UNIT 3

Sources and Classification of Law

Introduction

In this Unit we will study about sources of our Namibian law, to see where our law comes from, and where to look in order to establish the law regarding specific issues. We will also look at overview of the classification of law in Namibia.

Upon completing this Unit, you will be able to:

- Name the sources of Namibian law
- Name the originating source of Namibian law
- Explain the term legislation
- Name the most important source of law in Namibia
- Describe the law making process
- Explain the doctrine the doctrine of *stare decisis*
- Distinguish between *ratio decidendi* and *obiter dictum*
- State the functions of public law
- State the functions of private law

Sources of law

Sources of law refer to the places where the law originates and where it can be found. The sources are listed as follows:

- The Constitution
- Legislation/statute/Act of Parliament
- Common law
- Judgments of the courts/case law
- Custom
- Customary law (indigenous law)
- Law books, law journals, foreign laws and any other legal articles

All of these courses are discussed in your study guide on page 31 to 37. You are expected to study and know all these sources.

How laws are made (in reference to legislation)
The law making process is discussed on page 32 to 33 of your study guide. All steps are very well articulated, from the initiation process until the publication in the government gazette.

You are expected to explain the doctrine of stare decisis and distinguish between *ratio decidendi* and *obiter dictum* as discussed on page 33 to 35 of your study guide.

**Classification of the law**

National law and international law

National law is a law of a specific country such as Namibia while international law is the body of rules that governing the relations between states and relates to treaties.

National law is divided into:

a) substantive and
b) adjective law

Substantive law is subdivided into:

a) Public law and b) Private law

<table>
<thead>
<tr>
<th>Public Law</th>
<th>Private Law</th>
</tr>
</thead>
<tbody>
<tr>
<td>Constitutional law</td>
<td>Law of patrimony</td>
</tr>
<tr>
<td>Administrative law</td>
<td>Law of persons</td>
</tr>
<tr>
<td>Criminal law</td>
<td>Family law</td>
</tr>
<tr>
<td>Labour law</td>
<td>Law of personality</td>
</tr>
<tr>
<td></td>
<td>Customary law (indigenous)</td>
</tr>
</tbody>
</table>

**Adjective law**

Criminal procedure
Civil procedure
Law of evidence
Interpretation of statute
You can study about the classification of laws on page 38 to 42 of your study guide. For further reading, you may consult the references cited on page 42 of your study guide as well.
Administrative law (Part Two)

Unit 1

Administrative law and its application
We will look how government organs are structured in accordance with the Namibia constitution and which state organs are in fact governed by administrative law and are thus subjected to article 18 of the Namibia constitution (article 18 is premised on administrative law)

Upon completion of this unit you will be able to:

- Define administrative law
- Describe the meaning of administrative law in detail
- Explain why administrative law forms part of public law as opposed to private law
- Recognise in a given scenario whether private or public law should be applied
- Discuss how administrative law govern the organisation, powers and actions of state administration
- Recognise that administrative law is the law relating to the state administrative
- Assess where administrative law fits into the legal system recognise the relation between administrative law and the rule of law.

Administrative law

Although the definition of administrative law by various writes (such as Professor Wiechers, Baxter and Burns) frequently differs, they are similar in substance and valuable perspectives can be gained by reading them.

The following definition was offered by Professor Burns and Professor Wiechers.

*Administrative law is that section of public law which governs the organisation, powers and actions of the state administration.*

Public law and Private law
The distinction between public and private law is set out in a tabular form on page 46 of your study guide.

The most compelling and distinctive factor or characteristic that differentiate public from private law is that: the relationship with regards to public law is an unequal one with authority.

**Administrative law vis-a-vis state administration**

The concept of state administration denotes the field of application of administrative law. The position of state administration, the executive, is that it is subordinate to the legislature.

This means that the administration derives its power from the legislature and cannot act beyond such powers. The legislature exercise power over the admiration. The judiciary is independent of all the other organs of government. It controls the administration through judicial review of administrative acts.

The central government

Three branches of the government:
The executive
The judiciary and
The legislature

Policy-making organs
The relationship between the executive and policy-making organs with regards to:
*In consultation*
*After consultation and*
*On recommendation*

These concepts are discussed in detail on page 51 of your study guide.
Unit 2

The Principles of Cooperative Government

Government consists of various levels or spheres, namely –

The national (Central) government
The Regional Councils and
Local Authority Councils

In Namibia we have moved away from a strong centralized government, to a more decentralised government. In order for the decentralisation to be effective, the principle of cooperative governance must be emphasised.

Upon completion of this unit you will be able to:

- Differentiate between the organs of the government
- Explain the functions and the power of the two houses of parliament
- Distinguish between local and national government
- Explain what cooperative governance is all about
- Describe the importance of cooperative governance

Legislative powers and functions

In terms of Article 44 and 63 of the Namibian constitution, the legislative power in Namibia is vested in parliament, which consists of the national Assembly and the National Council.

National Assembly and the National Council

The functions of the National Assembly and the National Council are set out in Article 63(2) in respect of the National Assembly and Article 74 in respect of the National Council.

Regional Councils and Local Authorities Councils

The powers and functions of Regional Councils and Local Authorities Councils are set out in the Regional Councils Act and Local Authorities Act.
The principle of cooperative governance is set out and discussed in your study guide on page 66 to 70.

It is important for the proper functioning of government and the principle of decentralisation that government at all level adhere to the principle of cooperative governance.

Your attention is drawn to references cited on page 70 for the purpose of this Unit.
Unit 3
The Sources of Administrative Law

In part one of your guide, we have learnt and discussed about sources of law in general. In this unit we are going to shift our focus and attention to the sources of Administrative Law in particular.

Upon completion of this unit you will be able to:

- Differentiate between the different sources of administrative law
- Explain and discuss the different sources
- Identify a particular sources in a set of given facts
- Explain why it is necessary to have a hierarchy of the sources of laws in Namibia

The Sources of Administrative Law

The Constitution
Legislation/Act of Parliament/Statute
Case law/judgments of courts
Common law
Administrative Custom
Rules relating to the Interpretation of Statutes

The sources discussed in Part One of your guide slightly differ from the sources of Administrative Law. Customary law/indigenous law do not feature as sources of Administrative Law.

The sources of administrative law have been enumerated in accordance with their importance in hierarchy. Thus if a legislation is contrary to the Constitution, the legislation falls ways. So too, if a legislation overrides a common law, then the common law rule will fall away.
Units: 4 to 8

These units are equally important and will be covered by exam questions. They are however self-study. I verily welcome questions and comments during vocational school as well as other platforms during the entire semester.

Examination Scope

The examination will cover the entire semester work and that will include all assignments and all tests written at fulltime and part-time modes.

Wishing you the best of luck!