FEEDBACK TUTORIAL LETTER

1st SEMESTER 2019

Assignment 1 and 2

FOR
LAW FOR PUBLIC MANAGERS
LPM111S
Assignment 1

Question 1

Answer the following statements as either true or false. You are further requested to motivate why you think the said statement is true or false.

1.1 Due to the multiplicity of sources of Namibian law, the role of Roman-Dutch common law in the country’s legal system is less significant.
   False. Roman Dutch common law is a crucial source of law and has shaped Namibia’s legal system pre and post-independence.

1.2 It is said the Supreme Court is only a court of appeal; no trials take place before this particular court.
   True. Trials only take place in the High Court and lower courts (Magistrate courts).

1.3 The Constitution is the supreme of the land. However, chapter 3 of the said constitution can be amended on instruction from the executive branch of government.
   False. Chapter 3 of the Constitution has entrenched provisions and can never be amended by any branch of government.

1.4 Due to its unwritten nature, customary law is often ignored by courts when adjudicating tribal matters.
   False. Courts can consult customary law whenever a case of such nature comes before it.

1.5. The word state is synonymous with the term government.
   False. Government refers to the group of authorized people who governs a country or a state. State refers to the organized political community living under a single system of government. The main difference between state and government is that state is more or less permanent whereas government is temporary.
**Question 2**

“It is constitutionally accepted for apartheid era laws prior to independence to remain in force in order to avoid a legal vacuum.”

Do you agree with this statement?

Yes. This is so by virtue of article 140 of the Namibian Constitution. The said article states that:

(1) Subject to the provisions of this Constitution, all laws which were in force immediately before the date of independence shall remain in force until repealed or amended by an Act of Parliament or until they are declared unconstitutional by a competent court.

**Question 3**

The state is the creation of the law. Please briefly explain

According to the rule of law and “rechtstaat” principle, the state is a creation of the law. The state is merely an instrument which is utilised by the law to realise its supreme purpose, viz justice. It follows that the state always remains bound to the law.

**Question 4**

Timothy is facing financial problems after his construction business collapsed as a result of the economic crisis affecting the nation. The bank is about to repossess one of his houses. To prevent this, he borrows an amount of N$ 150 000 from Tutungeni of Tutungeni Cash loans. The agreement is that Timothy has to pay back the money with 10% interest within a period of 6 months. However, Timothy defaulted on his payments and to recover some of his money Tutungeni went to Timothy’s house, beat him up and threatened to repossess his vehicles if he doesn’t pay him in the next two months.

4.1 Are Tutungeni’s actions justified under the circumstances? Please substantiate your answer
No. 1. He cannot take the law in his own hands. 1. He can be charged with a criminal offence of assault with intent to cause grievous bodily harm. 1 Tutungeni has an option to institute a civil action against Timothy instead of resorting to violence. 1

4.2 Are they any remedies for Timothy in this regard?
Yes. 1 He can open a case against Tutungeni for assault with intent to cause grievous bodily harm. 1 Namibian law doesn’t not allow for one to take the law in his own hands. 1 He can apply to the court to prevent Tutungeni from repossessing some of his cars. 1

Question 5

What type of action (criminal and civil) will be initiated in the following scenarios:

3.1 Peter writes an article in a local newspaper in which he accuses Sarko Divollo as being the head of a criminal gang terrorising the streets of Windhoek.
Civil 1

3.2 Sepo and Ndana are drinking beer at a local tavern. They are interrupted by Guribeb who without asking grabs a beer from the table and downs it without any care in the world. Livid, they grabbed him and beat him with fists and kicked him in his groin until he fainted.
Criminal 1.

3.3 Dobson Nyathi undergoes a gastric bypass surgery at a local hospital and a scissor is left in his stomach.
Civil 1

3.4 Pendapala and Witbeen are primary school learners. One day they came to school late and as punishment their school Principal ordered their class teacher to whip them with a copper cable.
Criminal 1
3.5 Sarah intends to take legal action against a company where she is employed after her boss sent her sexually explicit messages on her phone.

Civil 1

**Question 6**

Cooperative governance implies willingness on the part on one government authority to cooperate or act in conjunction with other government authorities at national, regional and local levels. Briefly discuss the significance of cooperative governance.

Each sphere of government depends on other spheres for effective functioning. 1

One sphere of government may participate in the decision-making of the other levels of government. 1

Each level of government supports and assists the other. 1

Cooperative government brings about expertise sharing and ensures the delivery of better services to the general public. 1.

**Question 7**

**Identify whether Public or Private Law applies to scenarios below. You are requested to briefly provide a reason for your answer.**

7.1 On recommendation of the Judicial Service Commission, the President appoints a High Court Judge

Public law. 1 This is a constitutional matter. The state is directly involved. 1

7.2 Sawasawasawale is summarily dismissed after he was caught on camera stealing from the butchery he was working for.

Private law. 1 Because the rules that govern this relationship is between a private individual and an institution. The state is not directly involved. 1

7.3 Satan Pedofile is found guilty and sentenced to 10 years for raping a 10 year old girl.
Public law applies. This is a criminal matter.

7.4 After a series of corruption scandals implicating her office, the President sacks the Prime Minister.

Public law. This is a constitutional issue.

7.5 After failing her job interviews at a certain grocery store, Katrina accuses the predominantly white and coloured panel of racism.

Private law. The state is not directly involved.

Question 8.

In the scenario below, you are requested to identify an administrative action. In the same vein, you are expected to refer to the concept of “functus officio” and state whether the action/s can be revoked and give a reason for your answer. You are further expected to identify when the action has legal force.

The Katima Mulilo Town Council like many urban centres in the country is facing a critical shortage of serviced land. Jack Stanza applied for a plot with the relevant Chief Clerk of the Katima Mulilo Municipality in line with the Local Authorities Act. To his disappointment, his application was turned down by the Chief Clerk. He then decided to appeal to the Chief Executive Officer (CEO) of the Katima Mulilo Town Council. This time around, the CEO overturned the decision of the Chief Clerk and granted him the right to buy a plot on town council land.

When Mr Stanza applied for the dog licence and it is turned down it is a pure administrative action (1)
The internal appeal to the CEO is also pure administrative action (1)
The first action is an onerous one (1)
Thus the author is not functus officio, therefore the author can revoke the action (1)
The internal appeal is a beneficial action, a right has been given (1)
Therefore the author is functus officio, therefore he cannot revoke the action (1)
In both, legal force is on individual notification (1)

TOTAL MARKS FOR ASSIGNMENT 01: 50
END OF ASSIGNMENT 01
ASSIGNMENT 2

Question 1

Answer the following statements as either true or false. You are further requested to motivate why you think the said statement is true or false.

1.1 Assignment and delegation are synonymous forms of delegation.

False. Assignment differs from delegation in so far as the person, to whom the powers are transferred, completely occupies the position of the original functionary and he is therefore vested with the same powers as the functionary.

1.2 A tender agreement should not always be regarded as an administrative law agreement so to enable a level playing field in the tendering process.

False. Administrative law agreements are usually concluded where the interests of particular groups or classes or persons are affected and public interest requires that the agreements should have a general and obligatory effect in respect of all persons within such groups.

1.3 A delictual action is a relationship that involves two parties and can be brought against a general relationship which is created by a legislative administrative act.

False. A delictual action is an individual relationship and cannot be brought against a general relationship which is created by a legislative administrative act.

1.4 In some exceptional cases, the courts may amend administrative action.

True. If it’s a constitutional matter the court does have the power to reform administrative action and decisions but the courts will also be guided by the doctrine of separation of powers and not lightly interfere in an administrative decision.

1.5. Despite his powerful position in the country, the President is still expected to abide by the principles of ultra vires.
True. The principles of ultra vires denotes that the government including the presidency is bound to the law in all its actions, and that its obliged to comply with the prescripts of the relevant law.

Question 2

With examples, distinguish between two types of legislation

Original legislation. The concept “original” denotes that the legislator (parliament) was vested with original legislative authority. Thus parliament is empowered to legislate on any matter provided that any statutory provision does not conflict with the Constitution.

Subordinate legislation. This refers to legislation promulgated by a person or organ who derived his or its powers from other legislation (usually statutes).

Question 3

3.1 Define the term “Delegation”.

A delegation is the process of handing some administrative action or decision to a subordinate. However, the basic rule of administrative law remains that delegation is only permitted if the functionary is authorized to do so expressly or by necessary implication.

3.2 in scenarios below, identify the type of delegation used by the Minister of Education, Arts and Culture and provide reasons for your answers thereto. You are further requested to refer to the type of power the Minister possesses in each of the given scenario.

(a) The Minister issues a directive requesting the Permanent Secretary to attend a local university’s graduation ceremony and deliver a speech on his behalf.
The Minister delegate by means of mandate (1)
The Minister issues instructions to the DPS in her Ministry (1)
who practically implement the instruction in the name of the Minister (1)
There is no transfer of discretionary power (1)
The Minister has a plenary reshaping power i.e. can revoke, amend, substitute the instructions
of the DPS, i.e. direct control (1)
The DPS can sub delegate the mandate (1)

(b) The Minister of Education, Arts and Culture orders his Director of research and innovation to attend a seminar on research, innovation and technology at Luderitz on his behalf, and to take any action in line with the policies of his Ministry and the Government of the Republic of Namibia.

The Minister delegates by means of deconcentration (1)
The Minister transfers a discretionary power within her Ministry to the Director who will still acts in the name of the Minister (1)
Minister still has reshaping powers if the matter has not been finalised (1)
No sub-delegation of this by the Director (1)

(c) The same Minister issues a directive to the Regional Education Directorate to cancel plans to officially open a local school feeding program so that she can do it herself.

The Minister delegates by means of decentralisation (1)
This is found in an independent control relationship (1)
Powers are transferred to an independent body or organ who acts in its own name (1)
The Minister may not interfere and perform the functions herself (1)
i.e. no direct control by the Minister, only approve/disapprove that actions of the Council (1)
Question 4

Briefly discuss the common law requirements relating to the form and procedure of administrative acts.

The object of the administrative act must be clear and understandable. This requirement means in effect that the particular form taken by the legislative, judicial or purely administrative act may not be vague and confusing.

Rules of natural justice must be observed. These are iudex in sua causa and the audi parterm rule. The iudex in sua causa literally means that no person may judge his own cause. The audi parterm rule encompasses the duty to act fairly and the doctrine of legitimate expectation.

Question 5

From the scenarios below, identify and explain the correct process used by courts to control administrative actions.

5.1 Titus Sakasaka is convicted and subsequently sentenced by a Magistrate court to a period of 6 years in prison for theft. He is not happy with the result. What should he do?

He can appeal his conviction and subsequent sentencing. An appeal involves a rehearing of a matter after a decision by an inferior body.

5.2 Jacobus Matokwani was arrested with a bag full of Dagga. He was promptly brought to a district Magistrates’ court and the Magistrate forgot to inform him of his right to a lawyer of his own choice. Nevertheless, the Magistrate sentenced him to an effective 3 years in prison.

Review. Review of administrative actions may be in the form of review of the proceedings of lower court by the High Court.
5.3 Sweet Coetzee owns a brickmaking company. After reaching a deadlock in negotiations with his worker’s trade union and without following any legal procedures, the workers decide to go on an indefinite strike. He is pondering as how he will compel them to go back to work.

Interdict. 1. An interdict is a prohibition of authorised action and thus where an applicant can prove that an action or proposed action will be to his/her detriment and will encroach upon his/her rights, an interdict will be asked for. 1

5.4 A certain Traditional Authorities is of the opinion and in line with its customary laws that any girl who reaches the stage of puberty is a woman and as such can be married off. However, the Ministry of Gender Equality and Child Welfare argue that the assertions made by the Traditional Authorities are invalid and contrary to the spirit of the constitution. They both seek for the superior courts to settle the dispute.

Declaration of rights. 1 A declaration of rights provides a way of determining how a legal uncertainty regarding an administrative act. 1

5.5 After being found guilty of gross misconduct, the Office of the Prime Minister issues a directive to the Ministry of Justice to dismiss Mr. Bizzare Tuntwa, a Legal Officer. However, the Permanent Secretary refuses to sign the letter of dismissal because he believes Mr. Tuntwa is innocent of all the charges levelled against him.

Mandamus. 1. This is a limited remedy because the administration cannot be compelled to do anything and its not obliged to do under the enabling statute. 1

**Question 6**

6.1 Briefly explain what is meant by Delictual liability?

Under the law of delict, state liability is based on two actions which protect different interests and also differ in the standard of fault required. 1 The one is the action legis
Aquilliae (Aquillian action) 1 for patrimonial damage and the other is the action iniuarum which is for the impairment to one’s person, dignity or reputation. 1

6.2 Crown Prince Abdulla is a designated driver to the Minister of Justice and Constitutional Affairs. One morning the Minister sent him to state house to receive important documents from the President. On his way to the state house his vehicle veered of the road and ploughed into a nearby house. Luckily no one was in the house during the accident. However, the house wall fence surrounding the house was damaged. The owner, Nkonkwena Nkonkwena wants his wall repaired as soon as possible. Who should he sue, the driver or the Ministry of Justice?

A person may be liable for the wrongful actions of another (1)  
This can be found in a principle called “vicarious liability” (1)  
It is a well-known principle in labour relationship (1) that an employer may be held liable for the negligent action of an employee (1)  
This will only happen if the actions are done while acting within the scope of his employment (1) although the employer has not fault (1)  
This principle is used to hold the state liable (1) for the action of its servants (1)