

LGL3702

October/November 2015

LOCAL GOVERNMENT LAW

Duration 2 Hours

100 Marks

EXAMINERS
FIRST
SECOND

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Closed book examination

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This examination question paper consists of four (4) pages

- **Answer ALL the questions.**
 - **First read the paragraphs cited from the court case before you answer the questions.**
 - **Pay attention to the ALLOCATION OF MARKS and adapt your answer accordingly**
 - **Refer to relevant CASE LAW and OTHER LEGAL AUTHORITY**
 - **Please do NOT SEPARATE SUBSECTIONS of questions.**
 - **Credit will be given to SYSTEMATIC PRESENTATION, GRAMMATICALLY CORRECT LANGUAGE and reference to LEGAL AUTHORITY.**
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TURN OVER

Read the following paragraphs from *Zulu and Others v eThekwin Municipality and Others* [2014] ZACC 17

[7] The Municipality's and MEC's version is that in September 2012 they became aware that there was a group of people poised to invade the Lamontville property. The Control Unit went onto the Lamontville property. The Municipality says that, upon arrival on the property, the Control Unit found that there were people who were trying to invade the Lamontville property and had put up some structures that were not complete. The Municipality says that the people concerned were told that they had no right to occupy the property or to build structures on the property and that doing so was illegal. The Control Unit demolished a number of structures on the property. The Municipality says that the structures it demolished were half completed and were not occupied. It states that, subsequent to the demolitions, the Control Unit regularly patrolled the Lamontville property to make sure that the property was not invaded. According to the Municipality the Control Unit achieved this goal. The Municipality denies that the appellants have lived on the Lamontville property since September 2012 and that they continue to do so.

[8] The Municipality points out that the Lamontville property has been designated for low-cost housing for a group of people who have already been identified. It accuses the appellants of seeking to invade the Lamontville property in order to jump the queue of those waiting to be allocated houses. The appellants deny this accusation.

Answer the following questions and substantiate your answers with reference to the above extracts from the *Zulu* case, where applicable.

Question 1

- 1.1 Explain the features of pre-1994 local government. Refer to case law. (10)
 - 1.2 The objectives of local government are now enshrined in the Constitution of the Republic of South Africa, 1996. Mention the constitutional provision that captures these objectives and list the objectives. Did the municipality in the *Zulu* case adhere to these objectives? (7)
 - 1.3 Explain the principle 'separation of powers'. Is this principle strictly applied in local government law matters? (9)
 - 1.4 Why is the principle of 'cooperative government' important in the new constitutional dispensation? (4)
- [30]**

Question 2

- 2.1 Answer the following questions. Each question is provided with a number of options as possible answers. Only one option or statement in each question is correct. You must therefore identify the correct option and write down the number of the option that you have identified next to the question number.

TURN OVER

- 2 1 1 The _____ is the foundation for the establishment of the new local government framework
- Constitution
 - Local Government Transition Act 209 of 1993
 - Local Government Municipal Demarcation Act 27 of 1998
 - Local Government Municipal Structures Act 117 of 1998
- 2 1 2 Section _____ states 'This Constitution is the supreme law of the Republic, law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled'
- 1 of the Local Government Municipal Structures Act 117 of 1998
 - 2 of the Local Government Municipal Structures Act 117 of 1998
 - 2 of the Constitution
 - 195 of the Constitution
- 2 1 3 In _____, the court confirmed that a municipality is an organ of state and that municipalities must therefore respect principles of public administration
- CDA Boerdery (Edms) Bpk and Others v The Nelson Mandela Metropolitan Municipality and Others* 2007 4 SA 276 (SCA)
 - Pedro v Greater George Transitional Council* [2001] 1 All SA 334 (C)
 - Fedsure Life Assurance Ltd and Others v Greater Johannesburg Transitional Metropolitan Council and Others* 1998 (12) BCLR 1458 (CC)
 - Schubart Park Residents' Association and Others v City of Tshwane Metropolitan Municipality and Another* [2012] ZACC 26
- 2 1 4 The executive and legislative authority of a municipality is vested in its
- mayor
 - municipal council
 - executive council
 - executive mayor
- 2 1 5 A number of conclusions can be drawn from section 151 of the Constitution Which one of the following is **NOT** a conclusion that can be drawn from section 151 of the Constitution?
- Local government consists of municipalities
 - Municipalities must be established for the whole of South Africa
 - The municipal council is vested with all the authority
 - Local government is autonomous, the other spheres of government may not interfere in its matters
- (5)
- 2 2 The Constitution entitles individuals to certain rights that are directly linked to certain municipal services With reference to the paragraphs cited from the *Zulu* case, name and explain two of these rights
- (4)
- 2 3 What is a Municipal Demarcation Board (MDB)? Explain the functions of an MDB
- (5)
- 2 4 Explain how a municipality is established Refer to relevant legislation and specifically the contents of an 'establishment notice'
- (6)
- [20]**

TURN OVER

Question 3

- 3 1 What are the objectives of municipal councils? Refer to the relevant statutory provision to explain your answer. How do these objectives correspond with individuals' constitutional rights pertaining to basic services? (8)
- 3 2 Local government must constantly aim to improve channels of communication. Mention four channels of communication. (4)
- 3 3 In terms of the White Paper on Local Government (1998), municipalities must be guided by certain principles when choosing an appropriate service delivery system. List and explain each of these principles. (15)
- 3 4 In order to meet the basic requirements with regard to service delivery, which capacities must local government have? (3)
- [30]**

Question 4

- 4 1 There are two types of debt that a municipality can incur. Mention the two types of debt and explain each of them. (4)
- 4 2 What are the responsibilities of mayors in terms of the Municipal Finance Management Act 56 of 2003 (MFMA)? (5)
- 4 3 When can a municipality enter into a public-private partnership? (3)
- 4 4 The adoption and contents of a rates policy is regulated in terms of section 3 of the Municipal Property Rates Act 6 of 2004 (MPRA). Give a full and thorough explanation of the contents of this section. (8)
- [20]**

TOTAL: {100}