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Family Name					
Given Name/s					
Student Number					
Teaching Period	Semester 1, 2019				

LWZ304 – Administrative Law	DURATION	
	Reading Time:	10 minutes
	Writing Time:	120 minutes
INSTRUCTIONS TO CANDIDATES		
<ol style="list-style-type: none"> 1. Students must answer ANY THREE (3) QUESTIONS out of the four available problem questions. 2. All questions are worth equal marks. This examination is worth 60% of the total mark. 3. Writing is permitted on the exam question paper during reading time. 4. Recommended time for each question is 40-45 minutes. <p>Enter the number of each question attempted in the appropriate column on the front page of the exam answer booklet.</p>		
EXAM CONDITIONS		
<p><u>You may begin writing from the commencement of the examination session.</u> The reading time indicated above is provided as a guide only.</p>		
This is an OPEN BOOK examination		
Any calculator is permitted		
Any handwritten material is permitted		
Any hard copy, English dictionary is permitted (annotated allowed)		
ADDITIONAL AUTHORISED MATERIALS	EXAMINATION MATERIALS TO BE SUPPLIED	
Any printed material with the exception of CDU Library books	3 x 16 Page Book	

**THIS EXAMINATION IS PRINTED
DOUBLE-SIDED.**

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LEFT BLANK.**

ANSWER ANY THREE (3) OF THE FOLLOWING FOUR QUESTIONS.

QUESTION ONE

The *Building Act 1993* (NT) was passed to establish technical standards for buildings, the registration of building practitioners, the regulation of building matters and the establishing of a building appeal process (Long Title). Section 125 of the Act provides as follows:

- (1) The Director of Building Control (“Director”) may make regulations:
 - (a) Regulating and restraining the erection and construction of buildings;
 - (b) Regulating, controlling or prohibiting any activity on a building site that is, in the opinion of the Director, likely to affect the use and enjoyment of neighbouring properties; and
 - (c) Fixing and declaring the maximum price at which labour may be charged for building works.
- (2) The Director must publish notice of any regulations made pursuant to subsection (1) in the *Northern Territory Government Gazette* within 21 days of their promulgation.
- (3) Failure to comply with subsection (3) will not affect the validity of any regulations made pursuant to subsection (1).

On 3 February 2019, the Director promulgated the *Building Regulations 2019* (NT), relying on s125 of the Act. Regulation 2 provided as follows:

- (1) A building practitioner must not commence construction a building without the permission of the Director, and the Director may grant or refuse such permission in their absolute discretion;
- (2) If a building site adjoins a residential property, a building practitioner must no use a jackhammer before 9am and after 7pm.
- (3) A building practitioner must not charge a client fees for labour in excess of the following:

Maximum price per hour = (2 x cost of project materials) + \$100

- (4) The maximum penalty for breaching sub-regulations (1)-(3) is \$5,000.

The Director was on holidays between 4 February 2019 and 25 February 2019. He caused notice of the Regulations to be published in the *Northern Territory Government Gazette* on 4 March 2019.

Anthony Mason is a building practitioner licenced under the Act. On 22 March 2019, he started building a house for a client in Wagaman in the Northern Territory. The house is in a highly developed residential area. Anthony’s client wants to move into her house as soon as possible, so Anthony has been working day and night to get the work done, including by using his jackhammer until 10pm. Further, Anthony wasn’t aware of the Regulations and didn’t seek the permission of the Director before starting construction. Finally, because of his late night work, he has been charging his client a “late night loading fee” which means his labour fees exceed those in regulation 2(3) of the Regulations. His client is happy to pay the extra money in order to get the job done quickly.

The Director charges Anthony with breaching each of sub-regulations (1)-(3) of Regulation 15.

Anthony seeks your advice about whether the Regulations are valid. Your answer should include reference to relevant authorities.

20 MARKS

QUESTION TWO

The *Firearms Act 1997* (NT) provides for the regulation, control and registration of firearms in the Northern Territory (Long Title). Its objects are to regulate the use and possession of firearms to ensure the safety of the community and to support the formation and constitution of recreational firearms organisations (s1). Pursuant to s2 of the Act, it is an offence to carry a firearm without a firearms licence. Section 3 of the Act provides as follows:

- (1) The Commissioner of Police (“Commissioner”) may grant a person a firearms licence if the Commissioner is satisfied that the person is a fit and proper person to possess a firearm.
- (2) Subject to subsection (2), the Commissioner may take into account any matter in determining whether a person is fit and proper to possess a firearm, including whether the person is a member of a recreational firearm association.
- (3) When considering whether the Commissioner is satisfied that a person is fit and proper to possess a firearm, the Commissioner must consider whether the person has been convicted of a firearm related offence.
- (4) A decision of the Commissioner under subsection (1) is final and shall not be challenged in any court on any ground.

Ron and Hermione each apply to the Commissioner for firearms licences.

- Ron’s application discloses that he has committed a number of firearm related offences, which he disclosed on his application. However, he has since completed firearms safety training and believes that he is now fit and proper to possess a firearm. Ron is a florist and the founding member of the recreational firearms association, Guns n’ Roses.
- Hermione committed some minor firearm related offences when she was young. Her application also discloses that she is a member of the group Firearms For All (“FFA”), a recreational firearms association. The Northern Territory Police suspects the FFA is linked to the illegal distribution of unlicensed firearms in the Territory. A number of the FFA’s members have been convicted of firearm related offences and it is struggling to retain its membership.

In her reasons to Ron, the Commissioner says:

“I note you have been convicted of a number of firearm related offences. Because of the amount of training you have since undertaken, I have not considered in any real detail the nature and extent of that offending. I am satisfied you are fit and proper to possess a firearm. Application granted.”

In her reasons to Hermione, the Commissioner says:

“I note you have been convicted of some firearm related offences. More troublingly, I note you are a member of FFA. Northern Territory Police are concerned about the FFA and consider it should be shut down. Refusing you a licence will be another nail in the FFA’s coffin. Application dismissed.”

Safer Streets Inc (“SSI”) is an incorporated body whose objects include public safety campaigns and anti-firearm lobbying. It produces pamphlets on firearm related issues and organises rallies from time to time to lobby for gun reform. It also undertakes activities regarding road safety and property crime detection. About one third of its revenue and activities are dedicated to reducing the proliferation of firearms in the community. One of its members, Harry, is a neighbour of Ron and says that he has seen illegal firearms being used illegally on Ron’s property and is worried about his family’s safety.

Advise SSI and Harry: Can either or both of them challenge the Commissioner’s decisions to grant a licence to Ron? Assess the prospects of success and identify the relief that should be sought.

Advise Hermione of her prospects of successfully challenging the Commissioner’s decision to refuse her a licence and identify the relief that should be sought.

Your answer should include reference to relevant authorities.

20 MARKS

QUESTION THREE

The *Pharmacy Practitioners Registration Act 2008* (Cth) requires all pharmacists who practice in Australia to hold a certificate granted by the Pharmacists Practitioners Board (“Board”). Certificates must be renewed every five years. The Act allows the Board to grant, refuse or revoke certificates having regard to the applicant’s physical and mental capacities, pharmacological practice skills, and character. The Board is established by the Act and comprises 12 pharmacists with significant experience and standing in the profession. Decisions of the Board are made by majority vote and members may recuse themselves at any time.

Professor Bernadette Morter is the Chairwoman of the Board. While in Canberra for Board meetings, she reads *The Canberra Times* and sees that a local pharmacist, Bill Pestle, has been visited by ACT police regarding the suspected illegal dissemination of opioids into the Canberra community. Opioids are a class of drugs which are heavily regulated in Australia and must be prescribed by a doctor. They are highly addictive and the Board has been increasingly concerned by a proliferation in the over-prescription and abuse of these drugs. After making informal inquiries with her Canberra colleagues, Professor Morter hears rumours that Mr Pestle is issuing opioids without prescriptions.

Shortly thereafter, Mr Pestle applies to the Board for a renewal of his practicing certificate. The Board sends Mr Pestle a letter requesting he appear before it to answer questions about his physical and mental capacity and skill to practice. He is not told anything else before he attends the meeting.

When he attends, Mr Pestle provides the Board with evidence that he has met his continuing professional education requirements and is otherwise eligible to have his certificate renewed. Professor Morters questions Mr Pestle about his prescription of opioids and says she has letters from two of his former customers which say that he issued them opioids without a prescription. When Mr Pestle asks for copies of the letters, Professor Morters said the Board will not release them for privacy reasons. Mr Pestle then asks for an adjournment of four weeks to allow him to get legal representation and prepare a response, but Professor Morters says he can have 14 days to provide written submissions, after which time the Board will hand down its decision whether to renew his certificate.

You are a lawyer with the Australian Government Solicitor tasked with advising the Board in relation to all its deliberations. After the meeting, you speak casually with two members of the Board, Charles Swab and Roberta Pills.

- Mr Swab says he is glad it looks like Mr Pestle's certificate won't be renewed. He is thinking of buying a pharmacy down the street from Mr Pestle's and the two would be stiff competitors.
- Ms Pills says she gave an interview with the ABC a few weeks before. She told the journalist that opioids are a scourge and any pharmacist who unlawfully dispensed opioids should never be allowed to practice again.

Professor Morter calls you into her office and asks whether you have any thoughts about Mr Pestle's application. Advise Professor Morter of:

- 1. The risks, if any, that arise from these facts, including the bases on which the Board's decision might be challenged if it refused Mr Pestle's application;**
- 2. What steps the Board might take to mitigate those risks.**

Your answer should include reference to relevant authorities.

20 MARKS

QUESTION FOUR

By reference to relevant authorities and legislation, answer each of the following three questions:

3. What are the elements of a challenge under the *Administrative Decisions (Judicial Review) Act 1977* (Cth)?
4. How do those elements differ from a challenge pursuant to the s75(v) of the *Constitution*?
5. Following the enactment of the *Administrative Decisions (Judicial Review) Act 1977* (Cth), is it still important for the High Court to retain its original jurisdiction to engage in judicial review?

20 MARKS

END EXAM