NAMIBIA UNIVERSITY
OF SCIENCE AND TECHNOLOGY

FACULTY OF HUMAN SCIENCES

DEPARTMENT OF SOCIAL SCIENCES

QUALIFICATIONS: BACHELOR OF HUMAN RESOURCES; BACHELOR OF HUMAN RESOURCES MANAGEMENT; BACHELOR OF BUSINESS AND INFORMATION ADMINISTRATION; NATIONAL DIPLOMA ENGINEERING : CIVIL & PROJECT MANAGEMENT	
QUALIFICATION CODES: 21BHUR; 07BHRM; 07BBIA; 35DCPM	**LEVEL: 5**
COURSE CODE: LAL111S	**COURSE NAME:** LABOUR LAW 1A
SESSION: JUNE 2019	**PAPER:** THEORY
DURATION: 2 HOURS	**MARKS:** 100

FIRST OPPORTUNITY EXAMINATION QUESTION PAPER	
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INSTRUCTIONS

1. This paper consists of 6 (six) questions.
2. All questions are compulsory.
3. **All questions must be answered in your Examination Book**
4. Read all questions carefully before answering.
5. Incorrect spelling and illegible handwriting may prevent mark allocation.

PERMISSIBLE MATERIALS

1. Calculator

THIS QUESTION PAPER CONSISTS OF 9 PAGES (Including this front page)

QUESTION 1

Choose the answer from the given options in each of the following questions, by applying the common law, case law and/or the relevant labour legislation, whichever is applicable.

*There is **only ONE correct** answer for each question. Negative marking will not be applied but answers to questions will not be marked where more than one answer has been given.*

Only write the chosen letter next to the corresponding question number in your examination book.

1.1 The **supreme law** of Namibia is:

(a) Legislation
(b) Case law
(c) Common law
(d) The Namibian Constitution
(e) Law made by the Honourable President of the Republic of Namibia (2)

1.2 Statutes passed by Parliament, are known as:

(a) Primary legislation
(b) Common law
(c) Custom
(d) Case law
(e) Secondary legislation (2)

1.3 Choose the **correct** statement from the following:

(a) As from the date of Independence of Namibia, only the common law remained in force until repealed or amended by Act of Parliament.
(b) The Namibian Constitution provides that both the customary law and common law of Namibia in force on the date of Independence shall remain valid to the extent to which such customary and common law does not conflict with the Constitution or any other statutory law.
(c) Legislation, common law and customary law are automatically invalid if it conflicts with the Namibian Constitution.
(d) Both (b) and (c).
(e) Customary law may not be repealed or modified by an Act of Parliament. (2)

1.4 In a civil action:

(a) The plaintiff must prove his or her case beyond reasonable doubt.
(b) The parties are known as the Complainant v the Accused.
(c) The person who loses the case can be ordered to pay the legal costs of the successful party.
(d) The punishment can take the form of a fine, imprisonment or even community service.
(e) Neither one of the above. (2)

1.5 Unlawful conduct for which the wrongdoer is liable to punishment by the State is known as a:

(a) Juristic act
(b) Guilty person
(c) Cause of action
(d) Crime
(e) Delict (2)

1.6 It is important to distinguish between the *locatio conductio operarum* and the *locatio conductio operis*, because:

(a) The contractor works under the authority and control of the employer.
(b) The labour legislation is only applicable to the *locatio conductio operis*.
(c) The *locatio conductio operarum* is derived from the common law contract of lease.
(d) The labour legislation such as the Labour Act is only applicable to the *locatio conductio operarum* and the employer can be held liable for the delicts of the employee.
(e) The employer can be held vicariously liable for the delicts of the independent contractor. (2)

1.7 A fixed term contract:

(a) May never be terminated before the stipulated period had expired.
(b) Means the employee is still on probation.
(c) May be renewed either expressly or tacitly (by the conduct of the parties).
(d) Is not allowed if the employee is a Namibian citizen.
(e) Both (c) and (d) (2)

1.8 Choose the **false** statement from the following:

(a) Legislation and collective agreements are enjoying preference over the individual contract of employment.
(b) A restraint of trade clause in a contract of employment is valid and enforceable provided that it is not contrary to public policy.
(c) All parts of the Labour Act 11 of 2007 apply to all employers and employees in Namibia.
(d) Those terms specifically agreed upon expressly by the parties over and above the *essentialia* and *naturalia* are known as the *incidentialia* of a contract.
(e) The *essentialia* of a contract of employment are the nature of service and remuneration. (2)

1.9 In terms of the Labour Act 11 of 2007, an employer is obliged to:

(a) Provide accommodation to all employees or provide them with a housing allowance.
(b) Provide transportation to all employees or provide them with a transport allowance.
(c) Provide accommodation to an employee who is required to live at the place of employment or to reside at any premises owned or leased by the employer.
(d) Provide transportation to the place of recruitment to all employees who are dismissed at any place other than the place of recruitment.
(e) Both (c) and (d). (2)

1.10 Compassionate leave:

(a) Is only available to employees in the Public Service.
(b) Consists of a period of 5 working days per month.
(c) Is unpaid.
(d) Is available in the event of death or serious illness in the family of the employee.
(e) Neither one of the above options. (2)

1.11 Unless permitted in terms of a collective agreement, an employer is **not allowed** to make the following deduction from an employee's remuneration:

(a) Rent in respect of accommodation supplied by a third party.
(b) In terms of a court order.
(c) In terms of legislation, such as income tax.
(d) A loan advanced by the employer, provided that the employee agreed thereto in writing and other stipulated conditions have been met.
(e) Neither one of the above options. (2)

1.12 **Insubordination** can be defined as behaviour of an employee that:

(a) Shows a lack of diligence and competence.
(b) Provides evidence of dishonesty.
(c) Shows bad faith towards the business of the employer.
(d) Challenges the authority of the employer.
(e) Amounts to harassment. (2)

1.13 The legal doctrine in terms whereof an employer can possibly be held bound to a contract concluded by an employee in the name and on behalf of the employer, but without having any express authority to conclude such a contract:

(a) Tacit authority
(b) Implied authority
(c) *Estoppel*
(d) Vicarious liability
(e) None of the above. (2)

1.14 The procedural fairness requirement that an employee must be present at the disciplinary hearing is based on the following rule of natural justice:

(a) *Audi alteram partem* rule (the other side must be heard)
(b) *Estoppel*
(c) *Nemo iudex in sua causa* (no one may be a judge in his or her own cause)
(d) *Bona fide*
(e) The right to appeal. (2)

1.15 Summary termination (cancellation of the contract of employment without giving the required notice) is possible if:

(a) Either party committed any form of breach of contract.
(b) The employee was able to secure a better job offer.
(c) The employee is employed indefinitely.
(d) The innocent party waives his right to claim damages in addition.
(e) The breach of contract is serious enough to justify termination without notice. (2)

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QUESTION 2

Give a word or phrase (or complete the sentence), in the context of the common law, case law and the relevant labour legislation, whichever is applicable:

2.1 The source of obligations in terms whereof one person will have a claim against another if the other person's estate has increased in patrimony to the prejudice of the former. (1)

2.2 A written statement of events made by a person who swears that it is true in the presence of a person duly authorised to administer an oath. (1)

2.3 A partner in a civil marriage or a customary law union or other union recognised as a marriage in terms of any religion or custom. (1)

2.4 The cash equivalent of this type of payment may not exceed one-third of the employee's basic wage. (1)

2.5 A clause in a contract of employment whereby an employee is prevented from starting his or her own business in competition with the employer or working for a competitor(s) for a specified period in a specified geographical area after leaving the services of an employer. (1)

2.6 The Courts in Namibia that deal with both civil and criminal matters, but it does not have jurisdiction in respect of the crimes of high treason, murder and rape. (1)

2.7 The part of the Labour Act (**not only the section number**) which applies to members of the Namibian Defence Force, Namibian Police Force and municipal police service, Namibian Central Intelligence Service and the Prison Service. (1)

2.8 In terms of Section 50(1)(e) of the Labour Act it is an ___ ___ ___ for an employer to unilaterally alter any term or condition of employment. (1)

2.9 The period from the time an employee first starts work in any 24 hour-cycle to the time the employee finally stops work in that cycle. (1)

2.10 Cancellation (termination) of a contract of employment without any notice is known as ___ ___ . (1)

[10]

QUESTION 3

3.1 Johnny has a written contract of service with Dare Devil Adventures CC. He wants to know more about his rights and duties at the workplace. Advise Johnny how to establish the terms and conditions of his individual contract of employment. (5)

3.2 Since Johnny is employed in the tourism industry, he also needs to perform overtime and work on Sundays and public holidays from time to time. Suppose Johnny has agreed to work overtime at the time of entering into the contract of employment and advise him on the following aspects, as provided in terms of the Labour Act 11 of 2007:

(a) Define the term "overtime". (1)

(b) The general rule with regards to the maximum hours overtime per day and per week respectively that he can be expected to work. (2)

(c) Payment for working overtime. (2)

(d) Johnny worked three hours overtime on the 1st of May, an official public holiday in Namibia. He wants to know whether he is entitled to any extra payment for the month of May and what the amount would be. He provides you with the following information:

He works six days a week, five hours per day. In terms of his contract of employment, overtime shall be paid in terms of the provisions of the Labour Act 11 of 2007. His gross remuneration for the month of April amounted to N$ 8 000. Included in this amount is a transport allowance of N$ 500. (5)

[15]

QUESTION 4

Carlos started working as a driver for Mr Fresh Deliveries CC on 2 January this year. He works 5 days per week, 10 hours per day. Until now, he had to do deliveries of fresh fruit, vegetables and dairy products in the Windhoek area only. A week ago, his supervisor informed him that the business is expanding to the Okahandja and Rehoboth areas respectively and that he will have to travel to these areas from time to time. Carlos is not very happy about this new arrangement, since he has a small baby at home and is concerned that he will rarely see his child if he comes home very late in the evenings.

Answer the following questions (in the context of the common law and/or relevant labour legislation):

4.1 Carlos wants to know whether he should accept this decision of the employer. Discuss his legal position in respect of the changes introduced at his workplace. (6)

4.2 Suppose Carlos's contract provides that he will be subjected to a probation period of one year. Explain his rights during such probation period. (3)

4.3 Briefly discuss whether his daily and weekly hours are in line with the prescribed legislation. (4)

4.4 Suppose Carlos agreed to accept the new task to travel outside the Windhoek area and advise him on the rules relating to meal intervals at the workplace. (5)

4.5 Briefly discuss whether Carlos would be allowed to take paid time off when his baby needs to undergo heart surgery next month. (2)

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QUESTION 5

Julius was appointed as an apprentice electrician at an electrical contractor business, Lights Up (Pty) Ltd.

Answer the following questions:

5.1 Last week, while Julius and other colleagues were busy digging ditches for electrical cables, he threw some soil up in the air to show his happiness that it is Friday. As a consequence of his action, a stone hit and shattered a side window of a Mercedes Benz motor vehicle driving by the construction site at that moment. The owner of the said vehicle, Ms Watson, wants to know whether she has a claim against Lights Up (Pty) Ltd. Discuss briefly. (5)

5.2 Suppose in 5.1 that Ms Watson succeeds in her claim against Lights Up (Pty) Ltd. Advise the manager of the said company, a certain Mr Angula, whether they have the right to deduct the amount of Ms Watson's claim from Julius's salary if Julius admits guilt and agrees to the said deduction. (2)

5.3 Mr Angula wants to institute disciplinary steps against Julius for having been negligent in the exercise of his duties. Explain to Mr Angula the requirements for a fair disciplinary action, with specific focus on the criteria to judge the fairness of a legal process in general. (8)

5.4 Briefly explain to Mr Angula the principle of progressive discipline in the workplace. (5)

[20]

QUESTION 6

Mr Fix-It is a motor mechanic working for Super Cars (Pty) Ltd. Mr Fix-It needs extra money to get married. To earn this money he starts doing private repairs to cars at his home in his free time. Discuss whether Mr Fix-It is in breach of any of his obligations as employee.

[5]

Grand Total: 100

GOOD LUCK!!