## 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

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**Supplementary / Second Opportunity Examination Question Paper**

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<th>EXAMINER(S)</th>
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This question paper consists of 7 pages (including this front page)
QUESTION 1

Choose the correct answer from the given options in each of the following questions. 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 most important source of law in 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

1.2 A Court order restraining a person from doing something, is referred to as:
   (a) An award
   (b) A judgment
   (c) Review
   (d) Appeal
   (e) An interdict.

1.3 Case law is also known as:
   (a) Judge's law
   (b) Stare decisis
   (c) Law reports
   (d) Judicial precedents
   (e) None of the above.

1.4 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) The Labour Act 11 of 2007 applies to all employers and employees in Namibia.
   (d) Incidentalia of a contract are those terms specifically agreed upon expressly by the parties over and above those required by law.
   (e) All the statements are false.

1.5 Annual leave:
   (a) Consists of a period of at least four consecutive weeks after a period of 12 months' consecutive employment.
   (b) Is fully remunerated.
   (c) Is determined by the number of days an employee works in an ordinary work week.
(d) May be reduced by the number of days during the annual leave cycle which, on request of an employee, the employer granted to the employee as occasional leave on full remuneration.

(e) All of the above. (2)

1.6 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)

1.7 The "no work, no pay principle" applies in the following situation:

(a) Where employees are on a legal strike action.
(b) Where an employee exercised his/her right to leave a dangerous place of work.
(c) Where an employee absconded from the workplace.
(d) Both (a) and (c).
(e) None of the above. (2)

1.8 The basic principles in terms of which disputes have to be heard are known as the:

(a) Criteria for justice.
(b) Common law rules of natural justice.
(c) Stare decisis rule
(d) Bona fide rules of justice
(e) Rules of equality and freedom from discrimination in terms of Article 10 of the Namibian Constitution. (2)

1.9 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)

1.10 Unless certain exceptions apply, 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.
(e) Neither one of the above options.

1.11 Choose the correct statement(s) from the following:

(a) An employer may not grant or agree to more favourable conditions of service than those provided in Chapter 3 of the Labour Act 11 of 2007.
(b) The essentialia of a contract of employment are the provision of work and payment of remuneration.
(c) One of the naturalia of the employment relationship is the "no work, no pay" principle.
(d) All the above statements are correct.
(e) None of the above.

1.12 Choose the false statement(s) from the following:

An employee's duties include the duty to:

(a) Co-operate with the employer to keep the workplace safe and healthy by taking reasonable care to ensure his/her own safety and health in the workplace as well as the safety and health of any individual who may be affected by the employee's activities at work.
(b) Be respectful and obey all instructions of the employer, even if the employee does not agree.
(c) Promote the employer's business and act in good faith.
(d) All of the above.
(e) All the statements are true.

1.13 In order to protect its trade secrets after an employee's services had been terminated, an employer can:

(a) Refuse to provide the employee with a certificate of service.
(b) Refuse to provide the employee with a testimonial.
(c) Provide the employee with a testimonial.
(d) Include a restraint of trade clause in the contract of employment.
(e) Include a condition in the contract of employment.

1.14 Choose the correct statement(s) from the following:

(a) A hearing held in the absence of the accused employee is always regarded as unfair.
(b) An employee is always entitled to be represented by his/her legal practitioner at a disciplinary hearing.
(c) The chairperson of a disciplinary hearing must always be an objective person from outside the organisation or institution.
(d) An employee always has the right to an internal appeal.
(e) Even if a criminal charge had been laid against the accused employee where the conduct may justify a dismissal, the employer should still hold a disciplinary hearing/enquiry.
1.15 The employee’s duty to act in good faith is fiduciary in nature. The fiduciary duty demands from an employee to:

(a) Ensure that the employer makes a good profit.
(b) Assist the employer to keep the workplace safe and healthy.
(c) Ensure that his/her own interests do not conflict with those of his/her employer.
(d) Be respectful and obey all lawful and reasonable instructions of the employer.
(e) Neither of the above options.

QUESTION 2

Answer the following short questions:

2.1 A labour inspector has the power to issue a compliance order. Briefly explain the purpose a “compliance order”. (1)

2.2 Summarise the main difference between an appeal and review process available to an aggrieved party in one sentence. (2)

2.3 Briefly distinguish between arbitration and conciliation in a labour context. (2)

2.4 Name the two types of contracts of service. (2)

2.5 What is the absolute minimum age at which a child may legally start working in Namibia, as stated in section 3(2) of the Labour Act 11 of 2007? (1)

2.6 Briefly explain the function(s) of a “declaratory order”. (2)

QUESTION 3

3.1 CoolFreight CC offered Simon a contract of employment in the position of Manager: Operations. The contract period is from 1 April this year until 31 March next year. Discuss the consequences of the aforesaid term of Simon’s contract and compare this term with a situation where the period of employment had not been stipulated in the contract of employment. (5)

3.2 Suppose in 3.1 above that Simon accepted the position of employment and, upon commencement of his duties, he was told that he must first serve a probation period of six months. Explain to Simon his rights during such probation period. (5)
QUESTION 4

When Billy was employed as a factory worker at Unisex Clothing Manufacturers (Pty) Ltd, he and his employer concluded a contract of employment in terms of which Billy would be entitled to 20 working days annual leave (as provided for in terms of the Labour Act 11 of 2007). Approximately two years after Billy’s appointment, he joined the Industrial & Allied Union. The Union and the company then negotiated a collective agreement which provided for 25 working days annual leave.

4.1 Define a collective agreement. (2)

4.2 Explain whether Billy would be entitled to 20 or 25 working days annual leave, focusing on the guidelines on how to establish the terms and conditions of employment of an individual employee. (8)

[10]

QUESTION 5

James recently opened his own pizza restaurant, called “Pizza Hub”. He approached you for advice (in terms of the Labour Act 11 of 2007) on the following aspects:

5.1 When should his employees be granted a meal interval and what is the duration of such interval supposed to be? (3)

5.2 The maximum ordinary working hours per day and per week respectively, applicable to his waiters, who work 5 days per week. (2)

5.3 Briefly explain the rules on overtime and night work, as applicable to James’s business. (10)

5.4 Briefly discuss the following duties of an employer in terms of the Labour Act 11 of 2007:

(a) Keeping of records. (3)

(b) To provide a certificate of employment and/or testimonial to an employee who leaves its services. (2)

[20]
QUESTION 6

Miss Curly is a qualified hairdresser working for Salon Smart who needs extra money to go overseas. To earn this money she starts doing her friends’ hair at home and in her free time every Saturday afternoon.

Answer the following questions:

6.1 Briefly discuss whether Miss Curly has breached any of her obligations towards her employer. (5)

6.2 At her salon at home, Miss Curly has one assistant in her employment by the name of Hilma. One Saturday afternoon Hilma was mixing hair dye for one of the regular customers, when she accidentally spilled some chemicals on a very expensive leather jacket of one of their customers, Ms. Grumpy, who immediately threatened to sue the salon to replace her leather jacket.

Miss Curly wants to know whether she could be held liable for Hilma’s negligence. Discuss briefly. (5)

6.3 Miss Curly would like to discipline Hilma for this incident. Briefly explain to her the principle of progressive discipline in the workplace. (7)

6.4 Suppose Hilma was dismissed as a result of this incident. Advise Hilma on the route to follow to have this issue resolved if she’s of the opinion that her dismissal was unfair. (3)

[20]

Grand Total: 100

GOOD LUCK!!