



**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: JULY 2019	PAPER: THEORY
DURATION: 2 HOURS	MARKS: 100

SUPPLEMENTARY/SECOND OPPORTUNITY EXAMINATION QUESTION PAPER	
EXAMINER(S)	Mr. C. Harris Mrs M. Saayman Ms. M.M. van Zyl
MODERATOR:	Mrs. H. von Alten

INSTRUCTIONS	
<ol style="list-style-type: none">1. This paper consists of 7 (seven) questions.2. All questions are compulsory.3. <u>All questions must be answered in your Examination Book</u>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 8 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 Choose the **correct** statement:

- (a) Namibian law is recorded in one comprehensive piece of legislation.
- (b) Legal subjects are human beings or legal entities subject to the law.
- (c) All persons can perform juristic acts and litigate.
- (d) In a criminal case the accused has to prove that s/he is not guilty.
- (e) In civil litigation, the party bearing the proof must prove his/her case beyond reasonable doubt. (2)

1.2 The following statement is **false**:

- (a) Legislation remains valid until such a time that it has been declared unconstitutional by a competent court.
- (b) Both customary and common law are automatically invalid if it conflicts with the Namibian Constitution or any other statutory law.
- (c) Case law is also known as judgments of the courts or judicial precedents.
- (d) An Act of Parliament is also known as subordinate legislation, as all legislation can be tested against the provisions of the Namibian Constitution.
- (e) None of the above. (2)

1.3 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. (2)

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

- (a) In a review, the court considers the procedural aspects of the original adjudication process.
- (b) In an appeal, the focus is on the result of the trial or proceedings.
- (c) The Labour Court has the jurisdiction to review decisions of all the Cabinet Ministers.
- (d) The Regional Court only has jurisdiction to deal with criminal cases.
- (e) The Labour Court has the exclusive jurisdiction to grant an order to enforce an arbitration agreement. (2)

1.5 The official responsible for the enforcement of an arbitration award:

- (a) Labour Commissioner
- (b) Court orderly
- (c) Deputy Sheriff
- (d) Labour inspector
- (e) Messenger of Court (2)

1.6 If it is alleged that there has been an irregularity in the procedure in a case before court, the aggrieved party can:

- (a) Request the same court to review the case.
- (b) Request a higher court to review the case if such a party wants the higher court to focus on the method of obtaining the verdict.
- (c) Request the Labour Commissioner to review the case.
- (d) Appeal to the Labour Commissioner.
- (e) Ask for urgent interim relief until a final order has been made. (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 An employee on probation:

- (a) May be dismissed for incompetence without a formal hearing.
- (b) Must receive the same treatment as any other employee in relation to the termination of services, i.e. the requirements of substantive and procedural fairness.
- (c) Can only be appointed for a fixed-term.
- (d) Can only be appointed for an indefinite term.
- (e) Neither one of the above options. (2)

1.9 Choose the **correct** statement:

- (a) An employer can expect from any employee to perform night work.
- (b) An employee is not obliged to work overtime, unless the parties agreed thereto beforehand or such an employee is performing urgent work.
- (c) An employer can expect from all employees to work overtime.
- (d) An employer can never expect from any employee to work on a Sunday or public holiday.
- (e) An employer can never force an employee to take annual leave. (2)

1.10 The “no work, no pay” principle **does not** apply in a situation where:

- (a) The employee is absent from the workplace without a valid reason.
- (b) The employee is on a lawful strike.
- (c) The employee exercised his or her right to leave a dangerous place of work.
- (d) The employer exercised its lawful right to a lockout.
- (e) Neither one of the above options. (2)

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

- (a) Compassionate leave can only be granted if either your spouse or one of your children had died.
- (b) During the period of maternity leave, the provisions of the contract shall remain in force and the employee is entitled to the remuneration except the basic wage.
- (c) Every employee is entitled to four consecutive weeks’ of annual leave after a period of 12 (twelve) consecutive months’ of employment with full remuneration.
- (d) Every female employee is entitled to a minimum of 12 (twelve) weeks of maternity leave after completion of a minimum of 12 (twelve) months of continuous service.
- (e) Both (b) and (c) (2)

1.12 The Labour Act 11 of 2007 provides that an employee's remuneration must be paid:

- (a) Whenever the employer's cash flow allows such payment.
- (b) By direct deposit.
- (c) Within one hour after completion of the ordinary hours of work on the normal pay day of the employee.
- (d) To the spouse if such employee is employed in a bottle store or place of entertainment.
- (e) Within one hour of commencement of duties on the normal pay day of the employee. (2)

1.13 The Labour Act 11 of 2007 provides that an employee must produce a medical certificate:

- (a) Whenever s/he wants to qualify for paid sick leave.
- (b) If the employee has been absent from work due to incapacity for more than two consecutive days, failing which, the employer is entitled to apply the common law rule of "no work, no pay" rule.
- (c) If such employee has been admitted to hospital for an operation.
- (d) Signed only by an individual registered as such in terms of the Medical and Dental Professions Act 10 of 2004 if such employee wants to qualify for paid sick leave.
- (e) None of the above. (2)

1.14 In order to apply the principle of progressive discipline:

- (a) An employer is obliged to introduce a disciplinary code at the workplace.
- (b) An employer must have a disciplinary code approved by the Labour Commissioner.
- (c) Discipline at the workplace must be focused on correcting the employee's behaviour by means of a graduated system of sanctions or penalties.
- (d) An employer can impose a more serious sanction where the employee committed a different offence to the one for which s/he received a warning.
- (e) A hearing should always precede any sanction. (2)

1.15 The principle of vicarious liability implies that an aggrieved party can sue:

- (a) The employer for the delicts of the employee in certain prescribed circumstances.
- (b) The employee for his or her own delicts and/or for that of his/her colleagues.
- (c) Any party who committed a delict.
- (d) Any third party with the ability to pay.
- (e) Neither one of the above options. (2)

[30]

QUESTION 2

Decide in each of the following instances whether the statement is true or false and motivate your answer.

- 2.1 An employer can only expect an employee to work overtime if such employee agreed to do so. (2)
- 2.2 Part of the remuneration of an employee may consist of an in-kind payment, such as a crate of beer. (2)
- 2.3 A workplace union representative must submit occasional leave if s/he would like to attend meetings or a training course. (2)
- 2.4 In Namibia, the absolute minimum age at which a child may legally start working is 16 years. (2)
- 2.5 Since compassionate leave is fully remunerated, if not used, an employee can be remunerated for compassionate leave days not taken. (2)

[10]

QUESTION 3

Answer the following questions by applying the common law, case law and/or the relevant labour legislation, whichever is applicable:

- 3.1 Compare the onus of proof in a criminal case with that in a civil case. (2)
- 3.2 Complete the following sentence:

The relationship in the workplace can be divided into two broad categories, i.e. individual labour law and ... labour law. (1)
- 3.3 Name the three (3) types of leave entitlement of a male employee. (3)
- 3.4 List the 4 (four) possible ways in which a contract of employment can be terminated. (4)

[10]

QUESTION 4

Elias works for Pay TV (Pty) Ltd. and produces a weekly sports programme, for which he is paid N\$ 500 per programme. Elias has completed three years of the five-year term contract that he has signed with Pay TV. The contract is headed "Contract of Work". In terms of the contract, Elias can work from an office at Pay TV, but he has no fixed hours of attendance and is also permitted to do other work. In addition, he has total freedom regarding the contents of each of his programmes. Elias is not a member of the company's medical aid fund, nor the pension fund and pays tax to the Receiver of Revenue as a freelancer.

- 4.1 Name the two types of contracts of service. (2)
- 4.2 Why is it important to be able to identify the type of contract of service? (2)
- 4.3 Applying the common law, decide what type of contract of service Elias has concluded with Pay TV. Motivate your answer by referring to the different tests that could be applied to identify what type of contract of service the parties have concluded. (6)

[10]

QUESTION 5

Answer the following questions against the backdrop of the Labour Act 11 of 2007, the Labour Amendment Act 2 of 2012 and the common law:

- 5.1 Lukas is in the process of negotiating a contract of employment with U-Save Supermarket for the position as floor supervisor. They offered him a contract for the period 1 July 2019 until 31 December 2020. Critically discuss the implications of the aforesaid term of Lukas's contract. (8)
- 5.2 Lukas wants to know the maximum daily and weekly hours respectively that U-Save Supermarket can expect from him to work. (2)

[10]

QUESTION 6

When Billy was employed as a factory worker at Unisex Clothing Manufacturers (Pty) Ltd, the parties entered into 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 and entered into a collective agreement which provides for 25 working days' annual leave.

- 6.1 Define a collective agreement. (2)

- 6.2 Explain whether Billy would be entitled to 20 or 25 working days' annual leave, against the backdrop of all the guidelines to establish the terms and conditions of employment of an individual employee in general. (8)

[10]

QUESTION 7

While operating a 50-ton vehicle at Black Mountain Uranium Mine (Pty) Ltd, Tombo, an employee of the mine, caused an accident by allowing his vehicle to hook onto certain electrical cables, dragging them down and seriously injured a group of consultants who were visiting the mine at the time. In the process, Tombo also bumped and fractured his skull against the side of the vehicle. (It is alleged that Tombo would not have been injured if he adhered to the company's safety requirements to wear a hardhat on site.) He was immediately taken to hospital, where he was treated and also tested for the intake of alcohol. It was established that the alcohol content of his blood was significantly beyond the legal limit. He also showed apparent symptoms of being under the influence of alcohol; in particular, he smelt of alcohol, had red eyes and demonstrated a general appearance of being intoxicated.

The manager of Tombo's employer, certain Mr No Nonsense, approaches you for legal advice on the following:

- 7.1 How he should deal with Tombo regarding this incident. Also include a brief exposition of the purpose and contents of the two rules of natural justice. (10)
- 7.2 Could the company be held liable for the injuries sustained by the visitors to the mine at the time of the incident and Tombo respectively? Discuss in detail. (10)

[20]

Grand Total: 100

GOOD LUCK!!