



PAMIBIA UNIVERSITY
OF SCIENCE AND TECHNOLOGY

FACULTY OF COMMERCE, HUMAN SCIENCES AND EDUCATION

DEPARTMENT OF SOCIAL SCIENCES

QUALIFICATIONS: BACHELOR OF HUMAN RESOURCES MANAGEMENT; BACHELOR OF BUSINESS AND INFORMATION ADMINISTRATION	
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COURSE CODE: LAL112S	COURSE NAME: LABOUR LAW 1B
SESSION: JANUARY 2024	PAPER: THEORY
DURATION: 2 HOURS	MARKS: 100

SECOND OPPORTUNITY EXAMINATION QUESTION PAPER	
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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 10 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.

Answer the following questions in the context of the common law and/or relevant labour legislation. Only write the chosen letter next to the corresponding question number.

1.1 A dismissal is automatically unfair if the reason for it is that the employee:

- (a) Disclosed information that the employee is entitled or required to disclose to another person.
- (b) Refused to follow lawful and reasonable instructions of the employer.
- (c) Belongs to a trade union
- (d) All of the above.
- (e) Both (a) and (c). (2)

1.2 Choose the statement that is **incorrect**:

- (a) In a labour context, termination of a contract of employment refers to both a dismissal and resignation.
- (b) An employer must always provide a lawful reason for the termination of a contract of employment.
- (c) An employee may not be dismissed for incapacity due to ill health or injury.
- (d) An employee who terminates an indefinite term contract by means of notice is not obliged to provide a reason for termination.
- (e) None of the above. (2)

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

- (a) In order to qualify for severance pay, an employee must, firstly, have completed a period of at least 12 months of continuous service.
- (b) Since it is a no-fault dismissal, severance pay is always payable when an employee is dismissed due to operational requirements, irrespective of the period of employment.
- (c) Severance pay is payable if an employee retires at the age of 60 years.
- (d) Severance pay is payable if an employee dies, even after retirement.
- (e) Both (a) and (c) (2)

- 1.4 An employer has the duty to negotiate in good faith with the trade union recognised as exclusive bargaining agent or, in the absence of such trade union, with the workplace union representative whenever the employer intends to terminate contracts of employment based on operational requirements. Good faith implies that the employer must:
- (a) Look after its own interests.
 - (b) Have an honest and serious intention to reach an agreement.
 - (c) Only consult the Labour Commissioner.
 - (d) Give in to the demands of the employees.
 - (e) Make concessions. (2)
- 1.5 In a labour context, if the parties to collective bargaining are unable to reach agreement, they may be said to have reached ____.
- (a) A point of no return
 - (b) Consensus
 - (c) A deadlock
 - (d) A misunderstanding
 - (e) None of the above (2)
- 1.6 Who will the trade union represent if recognised as an exclusive bargaining agent by an employer?
- (a) Only members of the trade union.
 - (b) All the interests of all employees within the bargaining unit, whether they are members or not.
 - (c) All employees within the bargaining unit, whether they are members or not, but only for the purpose of negotiating a collective agreement on any matter of mutual interest.
 - (d) The majority of employees falling within the bargaining unit.
 - (e) Neither one of the above options. (2)
- 1.7 Choose the **correct** statement:
- (a) A recognised trade union is referred to in the Labour Act as a “sole bargaining union” of employees.
 - (b) A registered trade union may seek recognition by delivering a request to the Labour Commissioner and a copy of such request must be submitted to the employer.
 - (c) An arbitrator can make an order declaring the union to be recognised as an exclusive bargaining agent, as requested.
 - (d) Only a trade union recognised by the employer as an exclusive bargaining agent may have workplace union representatives at the workplace.

- (e) In the event that the membership of an exclusive bargaining agent within the specified bargaining unit drops below the required majority, the employer must withdraw the recognition immediately and notify the Labour Commissioner of such withdrawal. (2)

1.8 Choose the **correct** statement(s).

- (a) It is not valid if the right to strike or lockout is waived in terms of a contract of employment or a collective agreement.
- (b) The right to strike is guaranteed as follows in terms of the Namibian Constitution: "All persons shall have the right to withhold their labour without being exposed to criminal penalties."
- (c) The right to lockout is the employer's counterpart to a strike.
- (d) A party may only resort to industrial action if it concerns a matter of mutual interest and none of the parties to the dispute are involved in the rendering of essential services.
- (e) All the statements are correct. (2)

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

During a lawful strike action:

- (a) Employees may be dismissed for abscondment.
- (b) Employers must require the non-striking workers to do the work of the striking workers.
- (c) As a general rule, an employer may not require the non-striking workers to do the work of the striking workers.
- (d) Striking workers are exempted from any claim for damages caused during the strike action.
- (e) None of the above. (2)

1.10 A picket, as regulated by the Labour Act 11 of 2007, can be described as:

- (a) A demonstration at, near or inside the place of employment in furtherance of a strike action.
- (b) A demonstration at or near the place of employment in furtherance of a strike action.
- (c) A demonstration where only members or officials of a registered trade union may take part.
- (d) All of the above.
- (e) Neither one of the above options. (2)

1.11 Employees involved in the rendering of essential services:

- (a) Has no remedy available to them if the dispute qualifies as a dispute of interest.
- (b) Must refer all disputes to the Labour Court.
- (c) May strike but should preferably refer all types of disputes to the Labour Commissioner for conciliation.
- (d) May not strike but may refer a dispute of interest to the Labour Commissioner for arbitration.
- (e) Both (b) and (d) (2)

1.12 Complete the following sentence by choosing the missing word from the options below:

In the event of a complaint of an unfair disciplinary action (conduct that qualifies as an unfair labour practice), the ___ must prove that the disciplinary action was fair.

- (a) Employee
- (b) Employer
- (c) Court
- (d) Parties
- (e) Legal practitioner (2)

1.13 Evaluating fairness in an employment context, involves, among others:

- (a) A consideration as to whether the conduct was objective and justifiable.
- (b) A consideration of the basic wage and benefits being provided by the employer.
- (c) The favouring of the right of the stronger party, which is usually the employer.
- (d) The favouring of the right of the weakest party, which is usually the employee.
- (e) None of the above. (2)

1.14 Choose the **incorrect** statement in relation to private arbitration in terms of the Labour Act 11 of 2007:

- (a) Can be described as arbitration in terms of a written agreement between the parties to refer a dispute to arbitration in terms of Chapter 8, Part D of the Labour Act, in which they designate their own arbitrator.
- (b) A party may be represented by any person of his/her choice.
- (c) A private arbitration award is final and binding, there is no right of appeal or review.
- (d) The arbitrator in private arbitration may make an order for costs.
- (e) The arbitrator may vary or rescind the award, at the arbitrator's instance or on the application of any party to the dispute. (2)

1.15 In terms of the Social Security Act 34 of 1994, maternity leave benefits shall, if the child concerned dies 20 (twenty) days after the actual date of confinement, be payable:

- (a) In respect of the rest of the period of maternity leave.
- (b) In respect of a further period of four weeks only, reckoned from the date of confinement.
- (c) In respect of a further period of four weeks only, reckoned from the date of death.
- (d) No further benefits are payable if the child dies after birth.
- (e) Neither one of the above options. (2)

1.16 In terms of the Employees' Compensation Act 30 of 1941:

- (a) All employees younger than 65 years can claim from the Accident Fund if injured at the workplace.
- (b) When an employee dies as a result of a work-related accident, the surviving spouse is, among others, entitled to both a lump sum and monthly pension.
- (c) A woman on maternity leave can claim her medical expenses from the Accident Fund, provided that the child had been conceived at the workplace.
- (d) All of the above.
- (e) Only (a) and (b) (2)

1.17 The Employees' Compensation Act 30 of 1941 **does not** apply to:

- (a) Casual employees.
- (b) Employees earning more than a prescribed maximum amount of remuneration per annum unless the employer made a special arrangement with the Commission.
- (c) Employees who work solely for a commission or a share in the takings.
- (d) None of the above.
- (e) Both (b) and (c) (2)

1.18 In terms of the Employees' Compensation Act 30 of 1941 an employer:

- (a) Must report all accidents to the Social Security Commission.
- (b) Must report all work-related accidents to the Social Security Commission.
- (c) Must report all work-related accidents to the Minister of Works, Transport and Communication.
- (d) Must report all work-related accidents whereby medical expenses are involved to the Labour Commissioner.
- (e) Must report all work-related accidents that involve medical expenses or absence from work for more than 3 days to the Social Security Commission. (2)

1.19 In terms of the Affirmative Action (Employment) Act 29 of 1998, the First Affirmative Action Report must be handed in:

- (a) Once an employer is declared a relevant employer.
 - (b) After the Affirmative Action Plan was submitted to the Equity Commissioner.
 - (c) Not later than 18 months after an employer was declared a relevant employer.
 - (d) Not later than 12 months after an employer was declared a relevant employer.
 - (e) Not earlier than 18 months after an employer was declared a relevant employer.
- (2)

1.20 Section 18 of the Affirmative Action (Employment) Act 29 of 1998 defines 'racially disadvantaged persons' as:

- (a) Black persons.
 - (b) All persons who belong to a racial or ethnic group which was or is, directly or indirectly, disadvantaged in the labour field as a consequence of social, economic, or educational imbalances arising out of racially discriminatory laws or practices before the Independence of Namibia.
 - (c) Black women.
 - (d) All persons who belong to a racial or ethnic group, who can prove that they have been disadvantaged in the labour field as a consequence of social, economic, or educational imbalances arising out of racially discriminatory laws or practices before the Independence of Namibia.
 - (e) All of the above.
- (2)

[40]

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 When an employee is dismissed for not being able to do the work due to an injury sustained in an accident, it is known as a dismissal based on _____. (2)
- 2.2 A dispute that could not be settled at the end of the conciliation period. (2)
- 2.3 A form of protest where striking workers congregate outside a place of work to, among others, draw public attention to a cause. (2)
- 2.4 In terms of the Labour Act 11 of 2007, subject to certain prescribed exceptions, conduct of an employer that amounts to a unilateral change to terms and conditions of employment. (2)
- 2.5 This process will be followed if a party to a dispute alleges a defect in any arbitration proceedings. (2)

[10]

QUESTION 3

About 6 months ago Sam opened his new business, specialising in events management, focusing on weddings. This is Sam's first experience as an employer, and he would like to obtain the following advice from you:

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

- 3.1 He learned that the Namibian labour legislation requires that he may only terminate the services of an employee if both the requirements of substantive – (fair and valid reason) and procedural fairness have been met. Explain to Sam the meaning of a “fair and valid reason” in the context of a dismissal. (6)
- 3.2 The provisions regarding the applicable notice periods, if termination of employment is to be effected by means of notice, as stipulated in the Labour Act 11 of 2007. Discuss in detail. (5)
- 3.3 Sam realises that the business is not as profitable as he had hoped and contemplates to retrench two employees. In order to be able to do proper financial planning, he wants to know the formula for the calculation of severance pay. (2)
- 3.4 Provided that an employee has completed at least 12 months of continuous service, an employer is obliged to pay severance pay when an employee is dismissed (unless certain exceptions apply). In which other two circumstances will severance pay be payable? (2)

[15]

QUESTION 4

Until recently, The Book Corner (Pty) Ltd (TBC), has had no union representation. However, in the past three months the Retail Workers Union (RWU) has been actively recruiting members, mainly among clerical, sales and other employees. The union has now approached management, claiming to represent 400 employees. The union demands the right of access, the right to hold meetings and the right to appoint shop stewards.

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

- 4.1 What is required before a registered trade union may apply to the employer for recognition as an exclusive bargaining agent of employees in a bargaining unit at the workplace? (2)

4.2 About six months after the recognition agreement had been signed; the RWU is seeking a salary increase of 10 % for all in the bargaining unit. The company is only prepared to offer a 5% increase. The parties have reached a deadlock and a dispute is declared. All the procedures for a lawful strike action having complied with, the workers embarked on a strike action. The management of TBC is seeking the following advice from you:

- (a) Which employees will qualify (i.e., be allowed) to join the strike? (5)
- (b) Are they allowed to make use of replacement labour during the strike action, either from inside or outside the business? Discuss briefly. (3)

[10]

QUESTION 5

5.1 Briefly explain the differences between the alternative dispute mechanisms for labour disputes, i.e., “conciliation” and “arbitration”. (3)

5.2 Analyse the following statement:

“An arbitrator’s award is automatically an order of the Labour Court.” (2)

[5]

QUESTION 6

6.1 John’s office administrator, Doreen, who works for a monthly salary, went on maternity leave. Unfortunately, Doreen’s baby died 2 (two) days after birth. John wants to know from you whether Doreen is entitled to any further maternity leave benefits from the Social Security Commission after the death of her baby. (2)

6.2 Suppose Doreen’s office is situated on the 5th floor of the NAMDOL-building. About a week after her return from maternity leave, the only elevator in the building was out of order. While she was going down the stairs, she slipped on spilt coffee and fell. As a result of the fall, she broke her left leg and was also in a coma for two days. Her medical certificates states that she unable to work for a period of 2 months due to incapacity.

John wants to know whether this incident has to be reported to the Social Security Commission in terms of the Employees’ Compensation Act 30 of 1941. Advise John. (8)

[10]

QUESTION 7

Decide in each of the following situations if the conduct amounts to unlawful/unfair discrimination. You only need to state "Yes" or "No", NO MOTIVATION is required:

- 7.1 Company ABC is giving a housing allowance to their male employees only. (2)
- 7.2 A Chinese male job applicant is told that, although he was the best candidate, a racially disadvantaged woman was appointed in terms of the company's affirmative action policy. (2)
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- 7.3 Good Hope Orphanage Home advertises positions for married couples to serve as house parents for the respective houses for the orphans. (2)
- 7.4 During an interview a female applicant is asked who would look after her young children should she be appointed. (2)
- 7.5 Watako Sushi Cuisine advertised and appointed a Japanese sushi chef, the only candidate who met all the criteria as set out in the advertisement. (2)

[10]

Grand Total: 100

GOOD LUCK!!