



**NAMIBIA UNIVERSITY
OF SCIENCE AND TECHNOLOGY**

FACULTY OF COMMERCE, HUMAN SCIENCES AND EDUCATION

DEPARTMENT OF SOCIAL SCIENCES

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| QUALIFICATION: BACHELOR OF EMPLOYMENT AND LABOUR RELATIONS HONOURS | |
| QUALIFICATION CODE: 08 BERH | LEVEL: 8 |
| COURSE CODE: ELL812S | COURSE NAME: EVIDENCE IN LABOUR LAW |
| SESSION: NOVEMBER 2024 | PAPER: THEORY |
| DURATION: 3 HOURS | MARKS: 100 |

| FIRST OPPORTUNITY QUESTION PAPER | |
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| EXAMINER(S) | MR OHMS M KAYAMA |
| MODERATOR: | DR FELIX MUSUKUBILI |

| INSTRUCTIONS |
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| <ol style="list-style-type: none">1. Answer ALL the questions.2. Write clearly and neatly.3. Number the answers clearly. |

PERMISSIBLE MATERIALS

1. EXAM PAPER.
2. PEN AND PENCIL.

THIS EXAM QUESTION PAPER CONSISTS OF 3 PAGES (Including this front page)

Question One

- 1.1 Discuss the scope and 5 (FIVE) sources of the law of evidence in Namibia as they pertain to labour dispute resolution. (10)
- 1.2 Mr. Andreas Lucas is a seasoned chair of disciplinary hearings who works at Exclusive Zones Limited as a Senior Manager of Logistics. After determining that the employee had engaged in misconduct, he made the request that both the employee and the initiator provide aggravating and mitigating circumstances. After considering the aggravating and mitigating elements, he concluded that, although the employee's violation merits termination, the employee-employer relationship was not irreversibly damaged. Accordingly, he suggested alternative sanctions instead of termination/dismissal. Could you **list and discuss (3)** of the sanctions he might impose on the employee under these circumstances. (6)
- 1.3 When Namibia gained its independence in 1990, the country's labour dynamic was characterized by significant inequality. The foundations of the labour law circumstance in Namibia before to its independence led to this. **Give a succinct overview** of the pre-independence labour situation in Namibia, emphasizing **the laws that restricted** employment and the **other methods** that workers utilized to find work. (14)
- [30]**

Question Two

- 2.1 Differentiate between suspensive and resolute conditions as contractual provisions with practical examples. (4)
- 2.2 Write brief explanations of the two contractual concepts, *pacta sunt servanda* and vicarious liability. (9)
- 2.3 Explain the distinction between an administrative instruction and a competent ruling using examples. (7)
- [20]**

Question Three

- 3.1 Read the information below about evidentiary burden and determine **who must prove** the circumstances and **how can it be proven**.
- a) There was a dismissal. (2)
 - b) There is a rule governing the offence. (2)
 - c) The employee knew about the rule or could be reasonably be expected to know about the rule when the offence was committed. (2)
 - d) The rule is legitimate and reasonable. (2)
 - e) The employee was constructively dismissed. (2)

- 3.2 Do the following statements amount to direct or circumstantial evidence? (2)
- a) Meno hears shrieks and sees Tyler holding a gun and running from the house where Ali is later found dying from gunshot wounds.
 - b) Meno testifies that she saw Tyler shoot Ali.
- 3.3 List 4 (FOUR) examples of evidence that may be unreliable if not properly proved or corroborated. (4)
- 3.4 Explain what is meant by the statement that says documents do not “**speak for themselves**” (4)
- [20]**

Question Four

- 4.1 What is the purpose of evidence in chief? (2)
- 4.2 In an arbitration concerning an unfair dismissal dispute, the employer alleges that the applicant assaulted the supervisor. The applicant denies that the supervisor was assaulted, and claims that in any event he was not at work on the day in question. Who bears the onus of proving / disproving: (2)
- a) That the applicant was/was not at work on the day in question?
 - b) That the assault took place?
- 4.3 List and briefly explain the factors which the arbitrator/chairperson must consider when analysing evidence. (6)
- [10]**

Question Five

- 5.1 Explain the meaning of the Parol Evidence Rule (6)
- 5.2 Briefly discuss the two principles or rules of natural justice that must be observed in any labour matter be it a disciplinary hearing or arbitration. (4)
- 5.3 It must be mentioned that the contract for employment remains the starting point for the agreement between the parties. List and explain 5 (FIVE) requirements for a valid contract of employment. (10)
- [20]**

Total Marks [100]