



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	
QUALIFICATION CODES: 07BHRM; 07BBIA	LEVEL: 5
COURSE CODE: LAL112S	COURSE NAME: LABOUR LAW 1B
SESSION: JANUARY 2023	PAPER: THEORY
DURATION: 2 HOURS	MARKS: 100

SECOND OPPORTUNITY / SUPPLEMENTARY EXAMINATION QUESTION PAPER	
EXAMINER(S)	Dr. C. Harris Ms. M.M. van Zyl
MODERATOR:	Ms. E. Wabomba

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.

Only write the chosen letter next to the corresponding question number.

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

In terms of the Labour Act 11 of 2007, an employer is entitled to terminate the services of an employee:

- (a) If such an employee fails or refuses to do anything that an employer must not lawfully require or permit an employee to do.
- (b) On account of the re-organisation, transfer, reduction or discontinuance of the business for economic or technological reasons.
- (c) If such an employee is a workplace union representative and represents a fellow employee in a disciplinary hearing.
- (d) If such employee's political opinion conflicts with that of the employer and/or fellow employees.
- (e) Neither one of the above options. (2)

1.2 What will the notice period (in terms of the Labour Act 11 of 2007) be if an employee terminates his/her contract of employment by notice within the **first year** of employment?

- (a) One working days
- (b) One week
- (c) One month
- (d) 14 days
- (e) Neither one of the above options. (2)

1.3 One of the procedural requirements for a fair dismissal based on operational requirements is to notify certain parties of the intended dismissal(s). Unless a collective agreement provides for more favourable procedures, Section 34 of the Labour Act 11 of 2007 prescribes as follows:

- (a) The employer must inform the Labour Commissioner and all trade unions represented at the workplace.
- (b) At least 3 (three) months before the intended dismissals are to take place, the employer must inform, among others, the Labour Commissioner of the intended dismissals.
- (c) At least four weeks before the intended dismissals are to take place, the employer must inform, among others, the Labour Commissioner and any trade union recognised as the exclusive bargaining agent of the intended dismissals.

- (d) A notice about the intended dismissal based on operational requirements must indicate, among others, the names of those employees whose services will be terminated.
- (e) None of the above. (2)
- 1.4 In a labour context, bargaining in bad faith includes:
- (a) A fair reason for refusing to make a concession.
- (b) Refusal to compromise.
- (c) A fair reason for refusing to agree to a proposal.
- (d) A failure and/or refusal to negotiate honestly and sincerely.
- (e) Neither one of the above options. (2)
- 1.5 A **collective agreement** binds:
- (a) The parties to the agreement.
- (b) Members of the parties to the agreement.
- (c) All the employees in the bargaining unit if the agreement was concluded by an exclusive bargaining agent.
- (d) Any employee or employer who becomes a member of the respective trade union or employers' organisation after the agreement became binding.
- (e) All of the above. (2)
- 1.6 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)
- 1.7 "**Essential services**" means:
- (a) Any service that, if interrupted, would endanger the life, personal safety or health of the whole of the population of Namibia.
- (b) A service that, if interrupted, would endanger the life, personal safety or health of the whole or any part of the population of Namibia and which has been designated as such by the Minister in the *Government Gazette*.

- (c) A service that, if interrupted, would endanger the life of only Namibian citizens.
 - (d) A service essential for the productivity of the country.
 - (e) Neither one of the above options. (2)
- 1.8 Any party to a dispute who is involved in the rendering of essential service which, if interrupted, would endanger the life, health or personal safety of the whole or any part of the residents of Namibia:
- (a) Shall, where the dispute is a dispute of rights, refer the matter to the Labour Court.
 - (b) May, where the dispute is a dispute of interests, refer the matter to arbitration.
 - (c) Shall have the right to take action by way of a strike or lock-out.
 - (d) Shall have the right to picket.
 - (e) Neither one of the above options. (2)
- 1.9 The Namibian Constitution guarantees:
- (a) The right to lock-out by an employer.
 - (b) The right to strike by employees.
 - (c) The right to assemble peaceably and without arms.
 - (d) Freedom of association.
 - (e) All of the above except (a). (2)
- 1.10 In terms of the Labour Act 11 of 2007 an unfair labour practice includes:
- (a) Any unfair conduct of an employer towards an employee.
 - (b) Discrimination
 - (c) Sexual harassment
 - (d) Conduct where the employer unilaterally changes any term or condition of employment.
 - (e) All of the above. (2)
- 1.11 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)

1.12 Choose the **correct** statement:

- (a) An arbitrator in statutory arbitration is entitled to make a cost order irrespective of the circumstances.
- (b) Arbitration tribunals have jurisdiction to hear and determine any dispute or any other matter arising from the interpretation, implementation or application of the Labour Act.
- (c) Unless the dispute has already been conciliated, the arbitrator must first attempt to resolve the dispute through conciliation.
- (d) All the statements are correct.
- (e) Only (b) and (c) (2)

1.13 An arbitration award:

- (a) Is binding, unless the award is advisory.
- (b) Is automatically an order of the Labour Court.
- (c) May be varied or rescinded by the arbitrator who has made the award.
- (d) May be enforced by a labour inspector.
- (e) All the statements, except (b), are correct. (2)

1.14 **Conciliation** in terms of the Labour Act 11 of 2007:

- (a) Is based on consensus between the parties, as no settlement will be imposed on any party.
- (b) Always includes an advisory award.
- (c) Is always followed by an arbitration process if the matter remains unresolved at the end of the conciliation period.
- (d) All of the statements above.
- (e) Neither one of the above options. (2)

1.15 Choose the **incorrect** statement:

- (a) No maternity benefits shall be payable to a female member who resumes her employment or takes up any other employment during any period while she receives maternity leave benefits.
- (b) A medical practitioner, nurse or midwife registered as such may certify the expected date of birth of a female member in terms of Section 29 (5) of the Social Security Act 34 of 1994.
- (c) A self-employed person is allowed to register himself or herself voluntarily as an employer and employee in terms of the Social Security Act 34 of 1994.
- (d) An employer, who deducts any contributions from the remuneration of an employee and fails to pay over such contribution to the Commissioner within the prescribed period, shall be guilty of an offence.
- (e) Sick leave benefits are payable in respect of a member who was incapable for at least 60 consecutive days. (2)

- 1.16 The Social Security Act 34 of 1994, as amended, applies to:
- (a) All employers and employees in Namibia, including casual employees.
 - (b) All employers and employees in Namibia, excluding casual employees.
 - (c) All employers and employees in Namibia, excluding employees of 65 years and older.
 - (d) Both (b) and (c)
 - (e) None of the above. (2)
- 1.17 In terms of the Employees' Compensation Act 30 of 1941, when an employee dies because of a work-related accident:
- (a) The surviving spouse is entitled to a lump sum payment of a maximum of N\$ 5000.
 - (b) The surviving spouse is entitled to a lump sum payment of a minimum of N\$ 5000.
 - (c) Both the surviving spouse and each child under the age of 18 years are entitled to a prescribed monthly pension.
 - (d) The surviving spouse and all children of the deceased employee are entitled to a monthly pension.
 - (e) Both (b) and (c). (2)
- 1.18 Possible benefit(s) payable in terms of the Employees' Compensation Act 30 of 1941 include:
- (a) Maternity leave benefits.
 - (b) Unemployment Insurance benefits equal to the remuneration such employee received prior to having been declared permanently disabled.
 - (c) Reasonable medical expenses.
 - (d) Monthly pension.
 - (e) Both (c) and (d). (2)
- 1.19 The administration of the Affirmative Action (Employment) Act 29 of 1998 is carried out by the:
- (a) Labour Advisory Council
 - (b) Employment Equity Commission
 - (c) Labour Commissioner
 - (d) Social Security Commission
 - (e) Affirmative Action Committee (2)

1.20 Section 1 of the Affirmative Action (Employment) Act 29 of 1998 defines a 'suitably qualified person' as a person who has:

- (a) The necessary formal qualifications for a position of employment.
- (b) The necessary ability for a position of employment.

- (c) The abilities, formal qualifications or relevant experience for a position of employment.
- (d) Been disadvantaged in the labour field because of past discriminatory laws.
- (e) The abilities, formal qualifications and relevant experience for a position of employment. (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 In terms of section 5(9) of the Labour Act 11 of 2007, resignation by an employee because of sexual harassment at the workplace. (1)
- 2.2 An order from the Labour Court ordering strikers who take part in an unlawful strike or picketing action to cease such action. (1)
- 2.3 This process will be followed if a party to a dispute alleges a defect in any arbitration proceedings. (1)
- 2.4 A form of protest where striking workers congregate outside a place of work to, among others, draw public attention to a cause. (1)
- 2.5 A lump sum payable to an employee upon termination of a contract of employment in prescribed circumstances, provided that such employee had served a minimum period of 12 (twelve) months of employment. (1)
- 2.6 The right of an employer to manage and run the business in the best interest of the business, inclusive of the right to change work practices without the consent of the affected employees. (1)
- 2.7 The Death Benefit, payable in terms of the Social Security Act 34 of 1994, can also be claimed upon either ___ or permanent disability. (1)
- 2.8 The decision of an arbitrator, given within 30 days of the conclusion of the arbitration proceedings. (1)

- 2.9 Employees who are excluded from the operation of the Social Security Act 34 of 1994. (1)
- 2.10 Differential treatment that can be justified, when measured against the requirements of the job concerned or the operational requirements of the employer. (1)

[10]

QUESTION 3

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

The Management of Africa Restaurants Ltd (AR) resolved to restructure and reduce its organisation to ensure that resources were concentrated on its core business. External consultants were appointed to advise on the restructuring. The consultants presented their final report and recommendations to the board of directors of AR, which, after having debated it, accepted it. The report essentially involved the restructuring of AR, resulting in fewer posts that existed before. In terms of this plan, positions will be filled from the top downwards. The process commenced with the appointment of the CEO and, following that, the appointment of the strategic business unit (SBU) leaders and similar posts. The SBU leaders were permitted to propose individuals for appointment to their units. Any remaining vacancies were to be advertised and other staff could apply.

- 3.1 Give a broad outline of the step-by step process to be followed (in terms of the Labour Act 11 of 2007) when an employer needs to reduce the workforce for economic or technological reasons. (7)
- 3.2 The provisions regarding notice (or pay in lieu of notice) apply also in the case of dismissals based on operational requirements. In the absence of an agreement regulating the **period of notice** of an employee, the provisions of the Labour Act 11 of 2007 shall apply. Briefly set out these provisions. (3)

[10]

QUESTION 4

The Namibia Public Workers Union (NAPWU) is seeking a salary increase of 16 % for all employees employed by the Namibian Broadcasting Corporation (NBC). NBC is prepared to offer an 8% increase. The parties have reached a deadlock and a dispute is declared.

Answer the following questions:

- 4.1 Name and define the type of dispute between the parties. (2)
- 4.2 NAPWU intends to call out a strike action. Advise the officials of NAPWU of all the legal requirements that must be met before the workers could actually go on strike. (6)

- 4.3 The workers would like to know whether they are entitled to any payment during the period that they are on strike. (2)
- 4.4 Suppose the workers commenced with a legal strike action, however, during this time some of the strikers became very violent and damaged company property. Advise the NBC whether they have any claim against the trade union and/or workers. Discuss with reference to the general rule and exceptions applicable. (3)
- 4.5 Briefly discuss whether the non-striking workers may refuse to do the work of the striking workers. (2)

[15]

QUESTION 5

- 5.1 In terms of the Labour Act, conduct where an employer changes a term or condition of a contract of employment is considered an unfair labour practice. Changes to terms and conditions of a contract of employment are, however, allowed in two circumstances. Briefly list these circumstances. (2)
- 5.2 One of the major changes brought about by the Labour Act 11 of 2007 lies in the area of alternative dispute resolution systems in the form of arbitration and conciliation.
- Briefly distinguish between these alternative dispute resolution procedures. (4)
- 5.3 As a general rule, a party to a dispute is not allowed to bring a legal practitioner as his/her/its representative to a statutory arbitration procedure.
- Set out the circumstances in which a party will be allowed to have a legal practitioner as a representative. (4)

[10]

QUESTION 6

Dr Cobra is a medical doctor from Cuba, employed at a private medical centre "The Health Centre (Pty) Ltd." in Oshakati, busy with the second year of a three-year fixed term contract. Last month she applied for and succeeded in her application for a job at the Roman Catholic Hospital in Windhoek. She is very happy with the job offer, more so because she could now join the rest of her family, who are all living in Windhoek. Today, she submitted a 24-hour resignation letter to her employer.

- 6.1 Dr Cobra wants your advice on the death benefit payable in terms of the Social Security Act 34 of 1994, as amended. She specifically wants to know whether her brother would qualify as a "dependant" in terms of the said Act, as her extended family will come to live with her once she has relocated to Windhoek. (2)

- 6.2 One month after Dr Cobra commenced duties in Windhoek, she contracted a hospital-acquired infection that is seriously affecting her heart function.

Advise Dr Cobra on the following aspects in terms of the Social Security Act 34 of 1994, as amended:

- (a) Requirements to qualify for benefits in general and sick leave benefits specifically. (4)
- (b) Other benefits payable to qualifying employees. (2)
- 6.3 Dr Cobra wants to know whether she will be entitled to receive a disability pension in terms of the Employees' Compensation Act 30 of 1941 if she contracts a disease arising out of and in the scope of her employment? (2)

[10]

QUESTION 7

A&D Chemicals (Pty) Ltd. (A&D) is a manufacturing concern, producing chemicals necessary for pain suppression. It is the only concern in Namibia. The company has grown from a family-owned business into a very large organisation, now listed on the Namibian Stock Exchange. However, members of the original family are still employed in senior managerial positions and the organisational style remains paternalistic.

The Managing Director believes that he needs to do something about equity. All employees are white and the majority are males; there are, however, a few female secretaries and clerks.

Answer the following questions:

- 7.1 Does A&D legally have to comply with the provisions of the Affirmative Action (Employment) Act 29 of 1998? (2)
- 7.2 Affirmative action is defined in the Affirmative Action (Employment) Act 29 of 1998 as a "...set of affirmative action measures designed to ensure that persons in designated groups enjoy equal employment opportunities ...".

List the "designated groups" who are to benefit by the implementation of affirmative action measures. (3)

[5]

Grand Total: 100

GOOD LUCK!!