



**NAMIBIA 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: MARCH 2024	PAPER: THEORY
DURATION: 2 HOURS	MARKS: 100

EXIT 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. All questions must be answered in your Examination Book4. 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 The following **does not** constitute a valid or fair ground for dismissal or disciplinary action:

- (a) Membership of a trade union
- (b) Theft
- (c) Incompetence
- (d) Wilful damage of company property
- (e) Employee selling the trade secrets of the employer (2)

1.2 Constructive dismissal can be defined as:

- (a) The dismissal of an employee due to circumstances beyond the control of the employer, for example, financial difficulties.
- (b) The resignation of an employee after negotiations for an increase in salary had failed.
- (c) The resignation of an employee, not by choice, but due to personal circumstances of the employee such as the transfer of the employee's spouse to another town.
- (d) The resignation of an employee due to intolerable circumstances at work attributable to the employer.
- (e) None of the above. (2)

1.3 In the event of a complaint of unfair dismissal or unfair disciplinary action, the burden of proof that the dismissal or disciplinary action was fair is upon the:

- (a) Employee
- (b) Employer
- (c) Employer and employee
- (d) Arbitrator
- (e) Legal practitioner (2)

1.4 What will the notice period be if an employee terminates his/her contract of employment by notice within the **first year** of employment?

- (a) One working days' notice
- (b) One week's notice
- (c) One month's notice

- (d) 14 days' notice
 - (e) Neither one of the above options. (2)
- 1.5 An exclusive bargaining agent:
- (a) Must prove that at least 80% of the employees in the bargaining unit have joined the union before it can apply to be recognised as such.
 - (b) Represents only the interests of its members in that bargaining unit.
 - (c) Has the right of access to the employer's premises any time during working hours; no permission is required.
 - (d) Is never entitled to the deduction of any fee from an employee's remuneration without such employee's written authorisation to this effect.
 - (e) Represents the interests of every employee in that bargaining unit, members and non-members, but only for the purpose of negotiating a collective agreement on a matter of mutual interest. (2)
- 1.6 In a labour context, if the parties to collective bargaining are unable to reach agreement, they may be said to have reached:
- (a) A misunderstanding.
 - (b) The right to resort to industrial action.
 - (c) Consensus
 - (d) A deadlock
 - (e) The end of negotiations. (2)
- 1.7 Choose the **incorrect** statement:
- 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) Only the parties to the agreement and their respective members. (2)
- 1.8 During a lawful strike action:
- (a) Employees may be dismissed for abscondment.
 - (b) Employers are prohibited from paying any remuneration to the striking workers, as the "no work, no pay" principle prevents the employer from paying them.
 - (c) Employers must require the non-striking workers to do the work of the striking workers.

- (d) As a general rule, an employer is not allowed to hire any individual to perform the work of a striking or lock-out employee.
 - (e) Striking workers is exempted from any claim for damages caused during the strike action. (2)
- 1.9 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.
 - (b) A demonstration at or near the place of employment in furtherance of a strike.
 - (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)
- 1.10 **Essential services** mean:
- (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 of only Namibian citizens.
 - (c) 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*.
 - (d) A service essential for the productivity of the country as a whole.
 - (e) Neither one of the above options. (2)
- 1.11 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)
- 1.12 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)

- 1.13 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 Choose the statement(s) that is **false**:
- (a) A conciliator is designated by the Labour Commissioner.
 - (b) As a general rule, the conciliator must attempt to resolve the dispute through conciliation within 30 days of the date of the first conciliation meeting.
 - (c) A conciliator may permit any individual (including a legal practitioner) to represent a party to a dispute in certain prescribed circumstances.
 - (d) The Labour Act makes provision for private arbitration.
 - (e) Both (b) and (c) (2)
- 1.15 The following is **not** a benefit in terms of the Employees' Compensation Act 30 of 1941, as amended:
- (a) Maternity leave benefits
 - (b) Medical expenses
 - (c) Transportation of injured employee
 - (d) Temporary Total Disablement
 - (e) Compensation to surviving spouse in the event of the death of a qualifying spouse (2)
- 1.16 An "employee" in terms of the Social Security Act 34 of 1994, as amended, includes:
- (a) All persons, except casual employees, younger than 60 years who are employed by any employer.
 - (b) All persons, younger than 65 years, who are employed by or working for an employer, except those employees who work for two days or less in a week for an employer.
 - (c) Any person who is employed by or working for an employer and who is receiving or entitled to receive any remuneration in respect thereof.
 - (d) Any person, younger than 65 years, other than an independent contractor, who is employed by or working for any employer.
 - (e) Neither one of the above options. (2)
- 1.17 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)
- 1.18 Unless one of the exceptions applies, for what period must an employee be a fully paid-up member of the Social Security Fund to qualify for a benefit?
- (a) 12 months
 - (b) 6 months
 - (c) 24 months
 - (d) 30 consecutive days
 - (e) 1 year (2)
- 1.19 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) None of the above. (2)
- 1.20 In terms of the Labour Act 11 of 2007, it shall not be deemed as discrimination:
- (a) To temporarily reassign the duties of a female employee who is pregnant, even if it leads to a reduction in remuneration or other benefits.
 - (b) To distinguish, exclude or prefer any individual merely on the basis of such person political opinion.
 - (c) To select any person according to reasonable criteria.
 - (d) To distinguish, exclude or prefer any individual merely on the basis of the person's HIV status.
 - (e) None 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 The rights of a registered trade union to, among others, have access to the premises of the employer and the deduction of membership fees by the employer on behalf of the trade union. (2)
- 2.2 The constitutional right of employees to form and join trade unions (Article 21(1)(e) of the Namibian Constitution). (2)
- 2.3 A party may refer a dispute concerning a dismissal within a maximum period of ____ after the date of the dismissal. (2)
- 2.4 Termination of a contract of employment without notice in the event of a serious or fundamental breach of a material term of the contract by either party. (2)
- 2.5 The official responsible for the enforcement of the decision of an arbitrator. (2)

[10]

QUESTION 3

Mr. Lemon was employed on probation as a photo lithographer with a printing company. His first mistake on one of the employer's publications was very serious, resulting in the employer suffering a large amount of financial loss. As a result of this mistake, Mr. Lemon's services were terminated on the basis of poor work performance at the end of his probation period of three months.

- 3.1 Briefly set out the requirements for substantive fairness of a dismissal based on poor work performance. (4)
- 3.2 Suppose Mr. Lemon's contract is silent on any notice period, advise him on the applicable notice period. (2)
- 3.3 Mr. Lemon wants to know whether he is entitled to any severance pay and/or leave pay on the date of his termination. Advise Mr. Lemon on these two aspects. (4)

[10]

QUESTION 4

Answer the following questions:

- 4.1 Suppose you are the Human Resources Manager of Hungry Beast CC. The Namibian Food and Allied Workers Union (NAFAU) approached you with a list of employees who are members of the said trade union. They claim that you are obliged to arrange the deduction of membership fees from the salaries of all their members and pay the amounts over to them. Discuss how you would approach this matter. (5)
- 4.2 Identify the type of dispute in each of the circumstances below. (You only need to write either the word "rights" or "interests".):
- (a) Nurses of the Catholic Hospital at Oshikuku in the Omusati-region would like to receive a housing allowance from their employer as an additional benefit. The Catholic Health Services and the Ministry of Health failed to react, and the nurses reported a dispute. (2)
 - (b) New Era Investments failed to comply with the collective agreement relating to minimum wages, which had to be implemented already as from 1 March this year. The workers reported a dispute. (2)
 - (c) Brukkaros Meat Processors CC made use of replacement labour during a lawful strike action. The union reported a dispute. (2)
 - (d) Namibia Custom Smelters (Pty) Ltd failed to provide adequate safety gear to the workers. The union reported a dispute on behalf of the workers. (2)
 - (e) Best Buy (Pty) Ltd. (Best Buy) would like their employees to work from 07h00 until 16h00 every day instead of 08h00 until 17h00 in terms of their current contracts of employment. The employees refused and Best Buy reported a dispute. (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

Last week Friday, a certain Simon Sugar, a construction worker at the new "The Palms" shopping mall development, fell from five storeys high when the rope of his safety harness broke. Apart from other injuries sustained in the fall, his left leg was crushed, and the doctor had no alternative than to amputate it. Mr. Sugar was booked off from work for 6 months.

Answer the following questions in relation to both the Social Security 34 of 1994 and the Employees' Compensation Act 30 of 1941, as applicable:

6.1 Otjiwa Construction (Pty) Ltd., the employer of Mr. Sugar, would like to know whether this incident must be reported to the Social Security Commission. Discuss in detail. (8)

6.2 Suppose Mr. Sugar qualifies for benefits as an employee in terms of both the aforementioned legislation. Two years after the incident, Mr. Sugar informs you that he had now been declared permanently disabled and wants to know what benefits he would be entitled to at this stage. (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 senior managers are previously advantaged, 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? Briefly motivate your answer. (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!!