



**PAMIBIA UNIVERSITY**  
OF SCIENCE AND TECHNOLOGY

**FACULTY OF COMMERCE, HUMAN SCIENCES AND EDUCATION**

**DEPARTMENT OF SOCIAL SCIENCES**

<b>QUALIFICATIONS: BACHELOR OF HUMAN RESOURCES MANAGEMENT; BACHELOR OF BUSINESS AND INFORMATION ADMINISTRATION</b>	
<b>QUALIFICATION CODES: 07BHRM; 07BBIA</b>	<b>LEVEL: 5</b>
<b>COURSE CODE: LAL112S</b>	<b>COURSE NAME: LABOUR LAW 1B</b>
<b>SESSION: NOVEMBER 2023</b>	<b>PAPER: THEORY</b>
<b>DURATION: 2 HOURS</b>	<b>MARKS: 100</b>

<b>FIRST OPPORTUNITY EXAMINATION QUESTION PAPER</b>	
<b>EXAMINER(S)</b>	Ms. M.M. van Zyl
<b>MODERATOR:</b>	Ms. E. Wabomba

<b>INSTRUCTIONS</b>
<ol style="list-style-type: none"><li>1. This paper consists of 7 (seven) questions.</li><li>2. All questions are compulsory.</li><li>3. <b>All questions must be answered in your Examination Book</b></li><li>4. Read all questions carefully before answering.</li><li>5. Incorrect spelling and illegible handwriting may prevent mark allocation.</li></ol>

**PERMISSIBLE MATERIALS**

1. Calculator

**THIS QUESTION PAPER CONSISTS OF 9 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 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) The resignation of an employee only because of sexual harassment at the workplace. (2)

1.2 Severance allowance is an amount always payable:

- (a) By the employer upon resignation of the employee.
- (b) By the Labour Commissioner upon retrenchment of an employee.
- (c) By the employer if the employee retires at the age of 60 years.
- (d) By the employer, among others, if the contract of employment is terminated by an employee after s/he turned 65 years of age, provided that such employee completed at least 12 (twelve) months of continuous service
- (e) By the employer, if the employee had been dismissed for a fair and valid reason and in a fair manner based on the employee's incompetence. (2)

1.3 The minimum number of **workplace union representatives** that may be elected at a workplace where there is a total of 346 employees who are members of the same trade union:

- (a) 4
- (b) 3
- (c) 6
- (d) 7
- (e) 8 (2)

1.4 Choose the **correct** statement:

- (a) A recognised trade union is referred to in the Labour Act as an “exclusive bargaining union.”
- (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) All trade unions have the right to negotiate and enter into a collective agreement.
- (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)

1.5 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 **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, 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 as a whole.
- (e) Neither one of the above options. (2)

1.7 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)

1.8 Choose the **incorrect** statement:

- (a) No maternity leave 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)

1.9 An arbitration award:

- (a) Is binding and must be followed.
- (b) Has the same force and effect of 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)

1.10 Choose the **incorrect** statement describing private arbitration in terms of the Labour Act 11 of 2007:

- (a) 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 private arbitration award is final and binding, there is no right of appeal or review.
- (c) The arbitrator in private arbitration may make an order for costs.
- (d) The arbitrator may vary or rescind the award, at the arbitrator's instance or on the application of any party to the dispute.
- (e) None of the above. (2)

1.11 In terms of the Social Security Act 34 of 1994, maternity leave benefits shall, if the child concerned dies within two weeks 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 within two weeks after birth.
- (e) To the person in whose care the mother is placed or any other person who is considered a fit and proper person to administer the benefits on behalf of the mother. (2)

1.12 An employer is allowed to introduce a change to a term or condition of employment when:

- (a) Both parties agree to the said change.
- (b) There is a more favourable change to the basic conditions of employment in accordance with legislation.
- (c) It falls within the terms of the contract of employment.
- (d) All of the above.
- (e) None of the above. (2)

1.13 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)

1.14 Any party to a dispute may refer a dispute of rights in writing to the Labour Commissioner for arbitration:

- (a) Within 30 days after the conciliation proceedings have failed, if such dispute had to be resolved through conciliation first.
- (b) As long as the other party has agreed to such referral.
- (c) Within one year after the dispute arose, if the dispute is not a dispute concerning an unfair dismissal.
- (d) Within 3 (three) days after the strike had ended and no agreement was reached.
- (e) Neither one of the above options. (2)

1.15 Choose the **correct** statement:

- (a) An arbitrator in statutory arbitration is entitled to make a cost order only in exceptional 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)

[30]

## **QUESTION 2**

**Decide in each of the following instances whether the statement is true or false. NO MOTIVATION is required:**

**(Please note that you must write out the word "True" or "False", no acronyms will be accepted.)**

- 2.1 A workplace union representative may perform the functions of that office within working hours. (2)
- 2.2 The Labour Act 11 of 2007 confers organisational rights on all trade unions. (2)
- 2.3 An employer may not make use of replacement labour during an unlawful strike action. (2)
- 2.4 Only racially disadvantaged persons shall enjoy preferential treatment in employment decisions in compliance with the Affirmative Action (Employment) Act 29 of 1998. (2)
- 2.5 New Era Investment workers went on strike to compel their employer to comply with the collective agreement relating to minimum wages, which had to be implemented already as from 1 March this year. The workers were entitled to strike, as this would qualify as a dispute of interest. (2)

[10]

### **QUESTION 3**

Trim Gym CC intends to terminate the services of five employees (in terms of Section 34 of the Labour Act 11 of 2007) because it is experiencing financial difficulties due to another upmarket gym that had opened in the city centre.

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

- 3.1 What is this type of dismissal called in the business world? (1)
  - 3.2 Give a broad outline of the step-by step process to be followed when an employer needs to reduce the workforce for economic or technological reasons. (5)
  - 3.3 One of the duties imposed upon an employer by section 34 of the Labour Act 11 of 2007 is to “negotiate in good faith” on certain prescribed issues. What is the meaning of “negotiate in good faith”? (2)
  - 3.4 Give a broad outline of the possible circumstances in which an employee will qualify for severance pay. (5)
  - 3.5 How is severance pay calculated in terms of section 35 of the Labour Act 11 of 2007? (2)
- [15]**

### **QUESTION 4**

Fishy Treats CC (FT) and the Namibia Food & Allied Workers Union (NAFAU) are parties to a collective agreement whereby FT recognised NAFAU as the exclusive bargaining agent of all employees.

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

- 4.1 What was required of NAFAU before they could apply to the employer (FT) for recognition as an exclusive bargaining of all the employees at FT? Discuss in detail. (3)
- 4.2 The collective agreement provides that “All staff members must become members of NAFAU within 30 days of the signing of the agreement and all new staff members joining the business must become members of NAFAU within thirty days of the commencement of employment.” Briefly discuss the validity of this clause. (2)

- 4.3 Suppose you are the Human Resources Manager of Fishy Treats CC (FT). 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 you are entitled and obliged to arrange the deduction of membership fees from the salaries of all their members and pay the amounts over to them. Discuss whether FT is entitled and/or obliged to make such deduction from the remuneration of the employees on the list submitted to you. (5)  
[10]

### **QUESTION 5**

The Wholesale Workers Union (WWU), representing the workers of Handy Hand Gloves (Pty) Ltd. (HHG), requested a salary increase of 10 % for all employees. The company is only prepared to offer a 5% increase. After some months of negotiations, 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, which lasted for five (5) days. Because of the strike action, HHG lost N\$ 1 million in terms of lost turnover. In addition, some strikers became very violent and damaged company property during the strike action.

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

- 5.1 The management of HHG would like to know whether they may make use of replacement labour, either from outside or inside the business, during the strike action. (3)
- 5.2 Advise HHG whether they have any claim against the trade union and/or workers for the losses suffered. Discuss with reference to the general rule and exceptions applicable. (3)
- 5.3 Explain whether the workers are entitled to any payment during the period that they are on strike. (2)
- 5.4 Suppose HHG dismissed those workers responsible for the damage to property without a hearing. The workers are claiming that this amounts to an unfair dismissal. Identify the type of dispute (i.e., Dispute of rights or Dispute of interests). Motivate your answer. (2)  
[10]



### **QUESTION 6**

Dr Armani is a lecturer in Economics at the National Elite University. He has been appointed on a two-year contract. In terms of his contract, he is entitled to his monthly salary plus additional payment for lecturing night classes. Upon receipt of his salary advice after the first month of employment, he discovered that he received no extra payment for the night classes. Upon enquiry at the Human Resources Department, he was informed that the university management had decided that night classes would be part of his ordinary duties; therefore, no extra payment is due in this respect. Dr Armani tried to negotiate with the university, but with no success.

**Answer the following questions in the context of the relevant labour legislation:**

- 6.1 Advise Dr Armani of his legal rights, including the process to follow in order to have this dispute resolved. (6)
- 6.2 Briefly explain the differences between the concepts “arbitration” and “conciliation”. (4)
- [10]**

### **QUESTION 7**

John, who recently qualified as an electrician, decided to open his own business called WeFixAll CC. Since he is the only qualified electrician in the Mariental-area, he soon had to expand and now has three employees working as his assistants. John requires your advice on the following aspects of his business:

- 7.1 The duties of WeFixAll CC in terms the following legislation:  
(a) Social Security Act 34 of 1994. (5)  
(b) Employees’ Compensation Act 30 of 1941. (2)
- 7.2 John decided to pay the school fees of the children of only the single mothers in his employment. One of the employees, Anna, whose husband had been retrenched recently, is of the opinion that John's decision amounts to unfair discrimination. Advise Anna. (3)
- 7.3 Does he need to comply with the provisions of the Affirmative Action Act (Employment) 29 of 1998. (2)
- 7.4 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”? (3)
- [15]**

**Grand Total: 100**

**GOOD LUCK!!**