



PAMIBIA UNIVERSITY
OF SCIENCE AND TECHNOLOGY

FACULTY OF COMMERCE, HUMAN SCIENCES AND EDUCATION

DEPARTMENT OF SOCIAL SCIENCES

QUALIFICATIONS: BACHELOR OF HUMAN RESOURCES; BACHELOR OF HUMAN RESOURCES MANAGEMENT; BACHELOR OF BUSINESS AND INFORMATION ADMINISTRATION	
QUALIFICATION CODES: 21BHUR; 07BHRM; 07BBIA	LEVEL: 5
COURSE CODE: LAL111S	COURSE NAME: LABOUR LAW 1A
SESSION: JULY 2022	PAPER: THEORY
DURATION: 2 HOURS	MARKS: 100

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

INSTRUCTIONS
<ol style="list-style-type: none">1. This paper consists of 6 (six) 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 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.

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

1.1 **Arbitration** can be described as a process:

- (a) Whereby an independent third party assists the parties to a dispute to try and reach a settlement themselves.
- (b) Where the duty rests upon both parties to a dispute to prove his or her claim.
- (c) At the end whereof the conciliator will grant judgment after evaluation of all the evidence presented.
- (d) Whereby an independent third party, known as the arbitrator, hears the evidence being presented by the respective parties and then determines the dispute between them by giving an award.
- (e) All of the above. (2)

1.2 Choose the **false** statement from the following:

- (a) *Nemo iudex in sua causa* means that the presiding officer may not have a personal interest or derive any benefit from the outcome of a dispute.
- (b) The right to equality and freedom from discrimination, as guaranteed in terms of Article 10 of the Namibian Constitution, may be limited based on reasonableness and necessity.
- (c) In a disciplinary hearing at the workplace, an employer needs to prove the employee's guilt beyond reasonable doubt.
- (d) Crimes can be divided into two main classes, i.e., common law and statutory law offences.
- (e) None of the above. (2)

1.3 Law that has the full force of a statute but has been laid down by an Executive organ of Government, authorised by Parliament, is known as:

- (a) Primary legislation
- (b) Common law
- (c) Custom
- (d) Case law
- (e) Secondary legislation (2)

1.4 If it is alleged that there has been an **irregularity** in the procedure in a case before Court, the aggrieved party can:

- (a) Request the same Court to review the case.
- (b) Request a higher Court to review the case if such a party wants the higher Court to focus on the method of obtaining the verdict.
- (c) Request the Labour Commissioner to review the case.
- (d) Appeal to the Labour Commissioner.
- (e) Ask for urgent interim relief until a final order has been made. (2)

1.5 **Implied terms** of a contract:

- (a) Can be described as those terms that are automatically incorporated into the contract by operation of law, unless the parties expressly excluded them.
- (b) Are not the same for all contracts; it depends on the class or category of contract.
- (c) May be expressly excluded, provided that the result is not in conflict with the law.
- (d) Are also known as the *naturalia* of a contract
- (e) All of the above. (2)

1.6 Choose the **false** statement(s) from the following:

- (a) Legislation and collective agreements are enjoying preference over the individual contract of employment.
- (b) A restraint of trade clause in a contract of employment is valid and enforceable provided that it is not contrary to public policy.
- (c) All parts of the Labour Act 11 of 2007 apply to all employers and employees in Namibia.
- (d) *Incidentalialia* of a contract are those terms specifically agreed upon expressly by the parties over and above the *essentialia* and those required by law.
- (e) All the statements are false. (2)

1.7 The Labour Act 11 of 2007 provides that an employee's remuneration must be paid:

- (a) Whenever the employer's cash flow allows such payment.
- (b) Only by direct deposit.
- (c) Within one hour after completion of the ordinary hours of work on the normal pay day of the employee.
- (d) To the spouse if such employee is employed in a bottle store or place of entertainment.
- (e) Within one hour of commencement of duties on the normal pay day of the employee. (2)

1.8 When an employee is required to perform **night work**, the employer shall remunerate such employee for the night work (in terms of the Labour Act 11 of 2007):

- (a) 1½ times remuneration per hour.
- (b) Double remuneration per hour.
- (c) Additional payment of 6% of that employee's hourly remuneration.
- (d) Additional payment of 6% of that employee's hourly basic wage.
- (e) Additional remuneration of 10% per hour. (2)

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

The "no work, no pay" principle applies in a situation(s) where:

- (a) The employee is absent from the workplace without a valid reason.
- (b) The employee is on a lawful strike.
- (c) The employer exercised its lawful right to a lockout.
- (d) The employee exercised his or her right to leave a dangerous place of work.
- (e) Neither one of the above options. (2)

1.10 In terms of the Labour Act 11 of 2007, the following persons can be expected to work on Sundays and Public Holidays, even in the absence of an agreement between the parties:

- (a) Employee performing domestic service in a private household.
- (b) General work on a farm.
- (c) Health and social welfare care and residential facilities, including hospitals, hospices, orphanages, and old age homes.
- (d) All of the above.
- (e) All of the above, except (b). (2)

1.11 An employee must produce a medical certificate:

- (a) Whenever the employer requires the employee to do so.
- (b) If the employee has been absent from work due to incapacity for more than two consecutive days, failing which, the employer is entitled to apply the common law rule of "no work, no pay" rule.
- (c) Whenever such employee wants to qualify for paid sick leave.
- (d) If the employee has been absent from work due to incapacity for one day on either a Friday or Monday.
- (e) Both (b) and (d) (2)

1.12 Choose the **correct** statement:

- (a) A female employee who has completed at least 6 months of continuous service shall be entitled to maternity leave of at least 12 weeks.
- (b) A female employee who has completed at least 12 months continuous service shall be entitled to fully paid maternity leave of at least 4 (four) months.
- (b) An employee may decide when s/he wants to take annual leave.
- (c) For the purposes of maternity leave, a medical certificate can only be issued by a person registered as a medical practitioner in terms of the Medical and Dental Professions Act.
- (d) Neither one of the above options. (2)

1.13 **Dismissal** is a very drastic and final stage of discipline and may be used **only**:

- (a) After a previous warning for the same offence.
- (b) If the misconduct was so serious that it renders the continuation of the contract impossible, or the employee's actions amount to repudiation of the contract.
- (c) After a final written warning was given.
- (d) Once the Court convicted the accused employee on a criminal charge and sentenced him/her to imprisonment without the option of the payment of a fine.
- (e) Neither one of the above options. (2)

1.14 In order to apply the principle of progressive discipline:

- (a) An employer is obliged to introduce a disciplinary code at the workplace.
- (b) An employer must have a disciplinary code being approved by the Labour Commissioner.
- (c) Discipline at the workplace must be focused on correcting the employee's behaviour by means of a graduated system of sanctions or penalties.
- (d) An employer can impose a more serious sanction where the employee committed a different offence to the one for which s/he received a warning.
- (e) A hearing should always precede any sanction. (2)

1.15 Choose the **false** statement(s) from the following:

- (a) The general rule is that a person cannot be held liable for the delicts of others.
- (b) The Labour Act 11 of 2007 provides that, unless certain exceptions apply, an employer can be held liable if, among others, a manager contravenes the said Act.
- (c) An employer may be held vicariously liable for the delict of an employee even if the employee committed an act expressly prohibited by the employer or which is illegal.

- (d) An employer is always bound by a contract concluded by an employee in the name and on behalf of the employer. (2)
- (e) None of the above. (2)

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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 A written statement of events made by a person who swears that it is true in the presence of a person duly authorised to administer an oath. (1)
- 2.2 An unlawful act or omission for which the wrongdoer is liable for punishment by the State. (1)
- 2.3 A partner in a civil marriage or a customary law union or other union recognised as a marriage in terms of any religion or custom. (1)
- 2.4 The cash equivalent of this type of payment may not exceed one-third of the employee's basic wage. (1)
- 2.5 A clause in a contract of employment whereby an employee is prevented from starting his or her own business in competition with the employer or working for a competitor(s) for a specified period in a specified geographical area after leaving the services of an employer. (1)
- 2.6 The Courts in Namibia that deal with both civil and criminal matters, but it does not have jurisdiction in respect of the crimes of high treason, murder, and rape. (1)
- 2.7 A Court order declaring the rights of the parties. (1)
- 2.8 Failure of an employee to obey work-related orders. (1)
- 2.9 The period from the time an employee first starts work in any 24 hour-cycle to the time the employee finally stops work in that cycle. (1)
- 2.10 Cancellation (termination) of a contract of employment without any notice is known as _____. (1)

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QUESTION 3

Answer the following questions with reference to the common law and/or the relevant labour legislation:

- 3.1 NamTrack offered Filemon a contract of employment in the position of train conductor. One of the clauses in the contract stipulates that the contract period is from 1 July 2021 until 31 December 2022. Against the backdrop of the Labour Amendment Act 2 of 2012, critically discuss the said stipulation in Filemon's contract. (5)
- 3.2 Suppose in 3.1 above that Filemon accepted the position of employment and upon commencement of his duties, he was told that he must first serve a probation period of six months during which he will not qualify for benefits such as housing and medical aid. Filemon wants to know whether he may be treated differently from other employees doing the same or similar work. Advise Filemon. (3)
- 3.3 Upon successful completion of his probation period, Filemon was told that he must now sign a new contract of employment. The employer added a new clause in this latest contract, stating that his bonus payment is no longer a guaranteed benefit, but shall depend on his performance. Discuss Filemon's legal position. (5)
- 3.4 Suppose Filemon has agreed to work overtime. He wants to know whether he is entitled to any extra payment for overtime work, since his contract of employment is silent on this aspect. Advise Filemon. (2)

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QUESTION 4

Mrs. Williams recently opened a bookstore on Independence Avenue, Windhoek. She has two students in her employment to assist her in the shop in the mornings and afternoons respectively.

Answer the following questions (in terms of the common law and Labour Act 11 of 2007, whichever is applicable in the given circumstances):

- 4.1 Advise Mrs Williams on the following rules regarding working hours for her employees:
- (a) Maximum daily and weekly hours (2)
 - (b) Maximum daily and weekly overtime hours (2)
 - (c) Maximum daily spread-over. (1)
- 4.2 Suppose a Public Holiday falls on an ordinary working day. Discuss whether employees should be remunerated for such days (although they have not worked). (3)

- 4.3 Mrs. Williams wants to know whether her assistants are entitled to a meal interval. Briefly discuss the general right of employees to be granted a meal interval. (3)
- 4.4 Provide a broad overview of the provisions relating to compassionate leave. (4)

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QUESTION 5

Answer the following questions with reference to the common law and/or the relevant labour legislation:

- 5.1 Mr Hassan, the principal of a religious school (Gobabis Grace Academy), received a final written warning, without a disciplinary hearing, from the School Board for assaulting one of the parents (Mr Bones) on the school grounds on the day Mr Hassan discovered that Mr Bones is having an affair with his (Mr Hassan's) wife. Decide whether Mr Hassan was treated fairly, including brief reference to the criteria to judge the fairness of a legal process in general. (8)
- 5.2 Mr Hassan wants to lodge an internal appeal against the penalty and wants to know the difference between the concepts of appeal and review respectively. Briefly explain. (2)
- 5.3 Suppose in 5.1 Mr Bones suffered a stroke as a direct consequence of Mr Hassan's assault. Mr Bones was booked off (unpaid) for 3 months. Briefly discuss whether Mr Bones can institute a claim against Mr Hassan's employer, Gobabis Grace Academy? Discuss in detail. (5)

[15]

QUESTION 6

Thomas is in the employment of Beat-It Panel Beaters & Spray Painters CC (referred to as "Beat-It" in the questions below) as a spray painter, working from 08h00 - 16h30 from Mondays to Fridays.

Answer the following questions with reference to the common law and/or the relevant labour legislation:

- 6.1 Thomas operates his own private panel beating and spray-painting business after hours and over weekends at his home. Discuss whether Thomas is breaching any of his obligations towards his employer. (5)

- 6.2 Thomas's newly appointed supervisor, a certain Mr Grumpy, would like to extend the working hours of all the employees of Beat-It from 08h00 - 18h00 on Mondays to Fridays (exclusive of the meal interval from 13h00 - 14h00); he also wants them to work every alternative Saturday from 08h00 - 13h00. Discuss whether Mr Grumpy is entitled to introduce these changes and the legal position of the employees of Beat-It when confronted with this suggestion. (5)
- 6.3 Mr Grumpy (supervisor and acting Human Resources Manager) wants to update some of the human resources policies at Beat-It. He requires your advice on the role of a disciplinary code at the workplace. Briefly discuss. (5)

[15]

Grand Total: 100

GOOD LUCK!!



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A handwritten signature in black ink, appearing to be 'M' or 'M' with a flourish.