



**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 2022</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>	Dr. C. Harris 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><u>All questions must be answered in your Examination Book</u></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 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 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 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)

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

- (a) An employee who has the right to terminate the contract of employment by means of notice of termination may do so for any reason whatsoever.
- (b) The reason for a dismissal must not only be fair but also valid. i.e., lawful.
- (c) An employee may be dismissed for incapacity due to ill health or injury.
- (d) An employee will never be entitled to any severance pay if s/he resigned.
- (e) Failure to comply with the provisions laid down in section 34 of the Labour Act (collective termination or redundancy) constitutes an offence. (2)

- 1.4 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)
- 1.5 The minimum number of workplace union representatives that may be elected at a workplace where there is a total number of 32 employees who are members of the same trade union:
- (a) 2
  - (b) 3
  - (c) 4
  - (d) 5
  - (e) 6 (2)
- 1.6 An exclusive bargaining agent:
- (a) Represents only the interests of its members in that bargaining unit.
  - (b) Represents all the interests of every employee in that bargaining unit, members and non-members, in relation to all functions of such trade union.
  - (c) 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.
  - (d) Has the right of access to the employer's premises any time they feel like it, no permission is required.
  - (e) Is never entitled to receive any fee from an employee without such employee's individual written authorisation to this effect. (2)
- 1.7 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) Striking workers is exempted from any claim for damages caused during the strike action.
  - (e) None of the above. (2)

- 1.8 In order to be able to strike lawfully:
- (a) It is not necessary to qualify as an “employee”, as defined in the Labour Act 11 of 2007.
  - (b) An employee does not need to belong to a trade union to be able to strike.
  - (c) An employee must have been a party to the dispute that has been referred to conciliation.
  - (d) All of the above are correct.
  - (e) Both (b) and (c) (2)
- 1.9 Employees involved in the rendering of essential services:
- (a) Has no remedy available to them if the dispute qualifies as a dispute of interest.
  - (b) Must refer all disputes to the Labour Court.
  - (c) May strike but should preferably refer all disputes to the Labour Commissioner for arbitration.
  - (d) May not strike but may refer a dispute of interest to the Labour Commissioner for arbitration.
  - (e) Both (b) and (d) (2)
- 1.10 In terms of the Labour Act 11 of 2007, the following is **not** considered as an **unfair labour practice** by an employer:
- (a) Bargaining in bad faith.
  - (b) Unilateral change of any term or condition of employment.
  - (c) Engaging in conduct that subverts orderly collective bargaining or intimidation of any person.
  - (d) Unfair dismissal.
  - (e) Unfair disciplinary action. (2)
- 1.11 In terms of the Labour Act 11 of 2007, a dispute concerning an **unfair labour** practice must be resolved through:
- (a) The intervention of the Labour Court, since this is a matter concerning the interpretation of the Namibian Constitution.
  - (b) Compulsory conciliation
  - (c) Arbitration
  - (d) Industrial action
  - (e) Neither one of the above options. (2)
- 1.12 **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) Both (a) and (b)
  - (e) Neither one of the above options. (2)
- 1.13 An arbitration award:
- (a) Is only binding if the award is an advisory award.
  - (b) May be varied or rescinded only by the Labour Commissioner.
  - (c) Becomes an order of the Labour Court on filing it in the Court.
  - (d) May be enforced by a labour inspector.
  - (e) Both (c) and (d) (2)
- 1.14 A party to a dispute who alleges a defect in the arbitration proceedings, may:
- (a) Apply to the Labour Commissioner for the setting aside of the award.
  - (b) Appeal to the Labour Commissioner for the review of the award.
  - (c) Lodge a complaint with the Minister of Labour and Social Welfare.
  - (d) Apply to the Labour Court for an order reviewing and setting aside the award.
  - (e) Apply to the High Court for an order reviewing and setting aside the award. (2)
- 1.15 Who shall be registered in terms of Section 20 of the Social Security Act 34 of 1994 as members of the fund?
- (a) All employers and all employees.
  - (b) All employers, all employees and casual workers.
  - (c) All employees and employers, excluding the Office of the Prime Minister.
  - (d) All employers, including the State, and all employees who are younger than 65 years.
  - (e) Neither one of the above options. (2)
- 1.16 The Social Security Act 34 of 1994 determines that, if a female dies while receiving maternity leave benefits, the following rule(s) shall apply:
- (a) No further benefits will be payable as from the date of death.
  - (b) Benefits shall be payable for the rest of the period of maternity leave.
  - (c) Such benefits shall be payable to the person in whose care the child is left or placed or another fit and proper person who will administer the benefits on behalf of the child.
  - (d) Both (b) and (c).
  - (e) In respect of a further period of four weeks only, reckoned from the date of death. (2)

1.17 The following is **not** a benefit in terms of the Employees' Compensation Act 30 of 1941, as amended:

- (a) Reasonable medical expenses
- (b) Transportation of injured employee
- (c) Temporary Total Disablement
- (d) Compensation to surviving spouse
- (e) Maternity leave (2)

1.18 The Employees' Compensation Act 30 of 1941 **does not** apply to:

- (a) Domestic workers who work only one day per week.
- (b) Employees earning more than a prescribed maximum remuneration per annum.
- (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)

1.19 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 based on such person political opinion.
- (c) To select any person according to reasonable criteria.
- (d) To distinguish, exclude or prefer any individual based on the person's HIV status.
- (e) None of the above. (2)

1.20 Section 18 of the Affirmative Action (Employment) Act 29 of 1998 defines 'racially disadvantaged persons' as:

- (a) Black persons.
- (b) All persons who belong to a racial or ethnic group which was or is, directly or indirectly, disadvantaged in the labour field because of social, economic, or educational imbalances arising out of racially discriminatory laws or practices before the independence of Namibia.
- (c) Coloured persons.
- (d) All persons who belong to a racial or ethnic group who can prove that they have been disadvantaged in the labour field because of social, economic, or educational imbalances arising out of racially discriminatory laws or practices before the independence of Namibia.
- (e) All 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 constitutional right of employees to form and join trade unions (Article 21(1)(e) of the Namibian Constitution). (1)
- 2.2 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. (1)
- 2.3 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. (1)
- 2.4 The official responsible for the enforcement of the decision of an arbitrator. (1)
- 2.5 A dispute that could not be settled at the end of the conciliation period. (1)
- 2.6 Differential treatment that can be justified when measured against the requirements of the job concerned or the operational requirements of the employer. (1)
- 2.7 A party may refer a dispute concerning a dismissal within a maximum period of \_\_\_\_ after the date of the dismissal. (1)
- 2.8 When an employee is dismissed for not being able to do the work due to an injury sustained in an accident, it is known as a dismissal based on \_\_\_\_\_. (1)
- 2.9 In \_\_\_\_ arbitration, the arbitrator has the right to make a cost order, irrespective of the circumstances. (1)
- 2.10 A person who has the abilities, formal qualifications or relevant experience for a position of employment as defined in Section 1 of the Affirmative Action (Employment) Act 29 of 1998. (1)

**[10]**

### QUESTION 3

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

ABC (Pty) Ltd had to retrench 10 (ten) employees because it is experiencing financial difficulties. On the last day of the month the managing director calls the employees to his office, explains the situation to them, terminates their services and gives them two weeks' notice pay.

Answer the following questions:

3.1 What is this type of dismissal called in the business world? (1)

3.2 Name the two requirements that must be met for a fair dismissal. (2)

3.3 Complete the following sentence:

To qualify for severance pay, an employee must have completed at least 12 months of service and the employee was either:

(a) \_\_\_\_\_ or

(b) \_\_\_\_\_ or

(c) \_\_\_\_\_ . (3)

3.4 The 10 (ten) employees would like to report a dispute of unfair dismissal to the Office of the Labour Commissioner. Explain to them the differences between the two alternative dispute resolution systems available, i.e., conciliation and arbitration. (4)

[10]

### QUESTION 4

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

4.1 Union ABC (a registered trade union) would like to apply for recognition as an exclusive bargaining agent of Company XYZ. Briefly explain to the union the requirements and process to follow to get such recognition. (4)

4.2 Suppose Union ABC was able to get the recognition as the exclusive bargaining agent of all the employees at Company XYZ. They claim that you are obliged to arrange the



deduction of membership fees from the salaries of all the employees, both member and non-members, and pay the amounts over to them. In your capacity as the Head of Human Resources of Company XYZ, discuss how you would approach this matter. (5)

4.3 Decide in each of the following instances whether the dispute can be classified as a dispute of right or a dispute of interest and motivate your answer:

(a) NAFAU demands a 100% increase of the transport allowance for all the workers of Hungry Beast CC, the employer. The employer refuses and NAFAU reports a dispute to the Office of the Labour Commissioner. (2)

(b) An employee is dismissed without a disciplinary hearing. The employee reports the dispute to the Office of the Labour Commissioner. (2)

(c) Twin Towers Construction CC fails to provide protective clothing and equipment to its employees. The trade union reported a dispute to the Office of the Labour Commissioner on behalf of the employees. (2)

[15]

#### QUESTION 5

**Answer the following questions in the context of the common law and the Labour Act 11 of 2007, where applicable:**

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 The Labour Act 11 of 2007 provides that, unless the matter had been regulated by agreement between the parties, the **period of notice** shall be determined by the period of employment of a particular employee. Briefly discuss these provisions with due regard to the minimum periods of notice. (3)

[5]

#### QUESTION 6

John recently qualified as an electrician and 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 employed three workers as his assistants. John requires the following advice from you:

6.1 The duties of WeFixAll CC in terms of the Social Security Act 34 of 1994. Explain in detail. (4)

6.2 John's office administrator, Doreen, went on maternity leave. Unfortunately, Doreen's baby died shortly after birth. John wants to know from you whether Doreen is entitled to any further maternity leave benefits after the death of her baby. (3)

6.3 A few days after Doreen returned to work, she lost her balance on the stairs to her office on the 1<sup>st</sup> floor and fell with her head against the railings, resulting in a momentary loss of consciousness. A subsequent medical examination showed that she had not sustained any permanent damage or serious injury. The specialist, however, put her under observation in the hospital for the day to monitor her brain functions. She managed to recover fully and was able to return to work after two days of absence.

Briefly advise John, in terms of the Employees' Compensation Act, if this incident must be reported to the Social Security Commission. (3)

[10]

### **QUESTION 7**

**Briefly state whether each of the following situations amount to unlawful/unfair discrimination (Yes/No) in terms of the Labour Act 11 of 2007? Motivate each respective answer.**

***PLEASE NOTE:*** No marks will be awarded for Yes/No without a proper motivation.

7.1 Company ABC is giving a housing allowance to their male employees only. (2)

7.2 In an advertisement for positions in the Department of Correctional Services one of the minimum job specifications is that all prison guards should weigh not less than 70 kilograms and be at least 1,7 metres tall. (2)

7.3 Good Hope Orphanage Home advertises positions for married couples to serve as house parents for the respective houses for the orphans. (2)

7.4 A restaurant specialising in African cuisine, wants to create a certain theme and ambience and therefore only appoint Africans, dressed in their traditional dress as waiters and waitresses. (2)

7.5 During an interview a female applicant is asked who would look after her young children should she be appointed. (2)

[10]

**Grand Total: 100**

**GOOD LUCK!!**