



**NAMIBIA 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: JANUARY 2025</b>	<b>PAPER: THEORY</b>
<b>DURATION: 2 HOURS</b>	<b>MARKS: 100</b>

<b>2<sup>ND</sup> OPPORTUNITY/SUPPLEMENTARY 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 8 (eight) 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><li>6. Unless specifically stated otherwise, answer all the questions in the context of the common law, case law and relevant labour legislation, whichever is applicable.</li></ol>

**PERMISSIBLE MATERIALS:** 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 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) Because 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 after longer than one month, but shorter than a year's 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, among others, 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 Choose the statement that is **incorrect**:

- (a) In a labour context, termination of a contract of employment refers to both a dismissal and resignation.
- (b) An employer must always provide a lawful reason for the termination of a contract of employment.
- (c) An employee may not be dismissed for incapacity due to ill health or injury.
- (d) An employee who terminates an indefinite term contract by means of notice is not obliged to provide a reason for termination.
- (e) All of the above. (2)

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

- (a) In order to qualify for severance pay, an employee must, firstly, have completed a period of at least 12 months of continuous service.
- (b) Severance pay is always payable when employees are dismissed due to operational requirements.
- (c) Since an employer is obliged to notify the trade union or employees at least four weeks before the intended dismissals due to operational requirements, there is no need for any further notice period once the parties have agreed on the terms of the dismissals.
- (d) Severance pay is always payable if an employee retires at the age of 60 years.
- (e) Severance pay is always payable if an employee dies, even after retirement. (2)

1.6 Choose the **correct** statement:

- (a) A recognised trade union is referred to in the Labour Act as the "sole bargaining union".
- (b) A registered trade union may seek recognition as exclusive bargaining agent 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)

1.7 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)

1.8 Any party to a dispute who is involved in the rendering of a designated 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 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) An orchestrated stay-away action where workers publicly complain about municipal services.
- (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 In terms of the Labour Act 11 of 2007, the following is not considered 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 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)

1.12 **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) All of the statements above.
- (e) Neither one of the above options. (2)

1.13 Choose the statement that is **false**:

- (a) A conciliator is designated by the Labour Commissioner.
- (b) 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 (d) (2)

1.14 In terms of the Labour Act 11 of 2007, any party to a dispute of interest (unless such party is involved in the rendering of a designated essential service) may refer such dispute in writing to the Labour Commissioner for:

- (a) Arbitration within six months after the dispute arose.
- (b) Conciliation within one year after the dispute arose, as long as the other party agrees to such referral.
- (c) An appeal against the decision of the company.
- (d) Conciliation by a conciliator designated by the Labour Commissioner.
- (e) Neither one of the above options. (2)

1.15 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)

1.16 The date for the first conciliation meeting is determined by:

- (a) The parties to the dispute.
  - (b) The Labour Commissioner.
  - (c) The designated conciliator.
  - (d) The Minister of Health and Social Welfare.
  - (e) None of the above.
- (2)

1.17 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)

1.18 The Social Security Act 34 of 1994 provides that:

- (a) It is the duty of an employer to register itself as employer, as well as all employees (as defined in terms of the said Act) as members.
  - (b) All members, i.e. every employer and every employee (as defined in terms of the Act) are liable for contributions.
  - (c) It is an offence for an employer to recover contributions payable by the employer from his/her employees.
  - (d) A self-employed person, who does not employ any other person, may voluntarily register him/herself as both employer and employee.
  - (e) All of the above.
- (2)

1.19 Possible benefits payable in terms of the Employees' Compensation Act 30 of 1941 include:

- (a) Maternity leave benefits
- (b) Unemployment Insurance benefits
- (c) Reasonable medical expenses
- (d) Monthly pension
- (e) Both (c) and (d) (2)

1.20 Choose the **incorrect** statement:

The aims of the Affirmative Action (Employment) Act 29 of 1998 are, among others, to:

- (a) Achieve equal opportunity in employment.
- (b) Discriminate against the racially advantaged persons in employment decisions.
- (c) Redress, through appropriate affirmative action plans, the conditions of disadvantage in employment, experienced by designated groups.
- (d) Institute procedures to contribute towards the promotion of discrimination in employment.
- (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, for each of the following:**

- 2.1 This process will be followed if a party to a dispute alleges a defect in any arbitration proceedings. (2)
- 2.2 The full value of the death benefit payable in terms of the Social Security Act 34 of 1994 is payable if a member dies, retires or becomes \_\_\_\_\_. (2)
- 2.3 Reason for a dismissal if an employee is unable to work due to ill health for an unreasonably long time. (2)
- 2.4 Employees who are excluded from the operation of the Social Security Act 34 of 1994. (2)

- 2.5 Differential treatment that can be justified, when measured against the requirements of the job concerned or the operational requirements of the employer. (2)

[10]

### **QUESTION 3**

- 3.1 Mrs Bella Everyday was employed on a probation period of 3 (three) months as a switchboard operator at a large printing company. During her first month of employment, some customers started complaining that the phone was ringing for a very long time before it was eventually answered, while others complained that the operator is extremely abrupt and rude. At the expiry of the probation period, Mrs Everyday's services were summarily terminated on the basis of poor work performance without a disciplinary hearing.

Briefly set out the procedural fairness requirements to be met for a dismissal based on poor work performance. (5)

- 3.2 Suppose Mrs. Everyday is fairly dismissed at the end of her probation period. Briefly discuss whether she must receive any of the following payments, on the date of termination:

- (a) Annual leave credit (2)
- (b) Severance pay (3)

[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) Brukkaros Meat Processors CC made use of replacement labour during a lawful strike action. The union reported a dispute. (2)

4.3 Which process can be followed to have the dispute (identified in 4.2 (b) above) resolved? (1)  
[10]

### **QUESTION 5**

Cleaners in the service of the Catholic Hospital at Oshikuku in the Omusati-region are unhappy, because the management of the Catholic Health Services (CHS) and the Ministry of Health and Social Services apparently failed to react to their demands. They would like to receive improved benefits in the form of a housing subsidy and transport allowance.

**Answer the following questions:**

- 5.1 The management of the aforementioned hospital and the trade union, Public Service Union of Namibia (PSUN), entered into negotiations, but after a month of negotiations the parties reached a deadlock. PSUN wants to embark upon a strike action. Advise PSUN on the process to follow for the strike to qualify as a lawful strike. (6)
- 5.2 Discuss whether the employer could require the non-strikers to perform the work of the strikers. (2)
- 5.3 The workers would like to know whether they are entitled to any payment during the period that they are on strike. (2)  
[10]

### **QUESTION 6**

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

- 6.1 In terms of the Labour Act, conduct where an employer unilaterally changes a term or condition of a contract of employment is considered an unfair labour practice. Unilateral changes to terms and conditions of a contract of employment are, however, allowed in two circumstances. Briefly list these circumstances. (2)
- 6.2 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. Distinguish between these alternative dispute resolution procedures. (5)
- 6.3 Briefly discuss the effect and enforcement of an arbitration award. (3)  
[10]

### **QUESTION 7**

John's office administrator, Doreen, who works for a monthly salary, slipped on spilt coffee while going down the stairs on her way to another office. As a result of the fall, she broke an arm and a leg and was also in a coma for two days.

- 7.1 John wants to know whether this occupational accident has to be reported to the Commission in terms of the Employees' Compensation Act 30 of 1941. Suppose this incident qualifies as an "accident" in terms of the said Act. Briefly advise John. (3)
- 7.2 Doreen wants to know whether she qualifies for any compensation from the Accident Fund in terms of the Employees' Compensation Act 30 of 1941 for the incident as described in 7.1 above. (2)

[5]

### **QUESTION 8**

A&D Chemicals (Pty) Ltd. (A&D), a relevant employer in terms of Section 20 of the Affirmative Action (Employment) Act 29 of 1998, is a manufacturing concern, producing chemicals necessary for pain suppression.

**Answer the following questions:**

- 8.1 Complete the missing words in the following sentence:

Affirmative action is defined in the Affirmative Action (Employment) Act as a set of affirmative action measures to ensure that persons in \_\_\_\_ groups enjoy \_\_\_\_ employment opportunities. (2)

- 8.2 In terms of the Affirmative Action (Employment) Act 29 of 1998, there are three groups whose members are to benefit by the implementation of affirmative action measures. List these groups. (3)

[5]

**Grand Total: 100**

**GOOD LUCK!!**

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