



PAMIBIA 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	
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COURSE CODE: LAL112S	COURSE NAME: LABOUR LAW 1B
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DURATION: 2 HOURS	MARKS: 100

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

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

PERMISSIBLE MATERIAL: 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 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 A dismissal is automatically unfair if the reason for it is that the employee:
- (a) Discloses information that the employee is entitled or required to disclose to another person.
 - (b) Refuse to follow lawful and reasonable instructions of the employer.
 - (c) Belongs to a trade union
 - (d) All of the above.
 - (e) Both (a) and (c). (2)
- 1.5 In terms of the Labour Act 11 of 2007, the notice period if an employee terminates his/her contract of employment by notice within the first month of employment?
- (a) One working day
 - (b) One week
 - (c) One month
 - (d) 14 days
 - (e) Neither one of the above options (2)
- 1.6 An employer has the duty to negotiate in good faith with the trade union recognised as exclusive bargaining agent or, in the absence of such trade union, with the workplace union representative(s) and the employees, whenever the employer intends to terminate contracts of employment based on operational requirements. Good faith implies that the employer must:
- (a) Look after its own interests.
 - (b) Have an honest and serious intention to reach an agreement.
 - (c) Make concessions.
 - (d) Give in to the demands of the employees.
 - (e) Both (b) and (d) (2)
- 1.7 In a labour context, if the parties to the collective bargaining process 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)

1.8 The minimum number of workplace union representatives that may be elected at a workplace, where there is a total number of 32 (thirty-two) employees who are members of the same trade union, is:

- (a) 2
- (b) 3
- (c) 4
- (d) 5
- (e) 6

(2)

1.9 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, both members and non-members, in relation to all functions of such trade union.
- (c) Represents the interests of every employee in that bargaining unit, both 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)

1.10 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)

1.11 Employees involved in the rendering of a designated essential service:

- (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)

1.12 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)

1.13 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 locked-out employee.
- (e) Striking workers are exempted from any claim for damages caused during the strike action. (2)

1.14 Employees may not strike, and employers may not lock out employees where the dispute concerns:

- (a) Forced labour.
- (b) The failure of an employer to provide employees with protective clothing.
- (c) Recognition of a registered trade union as an exclusive bargaining agent.
- (d) A unilateral change in the terms and conditions of service of employees.
- (e) All of the above. (2)

1.15 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)

1.16 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)

1.17 In terms of the Social Security Act 34 of 1994, as amended:

- (a) A woman who takes up other employment during the time that she is receiving maternity leave benefits will still be entitled to the full maternity leave benefits.
- (b) Sick leave benefits are payable for a maximum period of 2 (two) consecutive years.
- (c) Death benefits are payable to the member's dependants, unless there are no dependants, in which event it shall be payable into the deceased estate.
- (d) The death benefit is only payable in the event of the death of the member.
- (e) Both (b) and (c). (2)

1.18 Choose the **incorrect** statement:

In any conciliation or arbitration proceedings:

- (a) A party to a dispute may appear in person.
- (b) Any party may be represented by a member, office bearer or official of that party's registered trade union or registered employers' organisation.
- (c) If the party is an employee, such employee may be represented by a co-employee.
- (d) A party to a dispute may under no circumstances be represented by a legal practitioner.
- (e) If the party is a juristic person, representation is allowed by a director, member, or employee of that juristic person. (2)

1.19 As a general rule, the Employees' Compensation Act 30 of 1941 **does not** apply to:

- (a) Employees employed in dangerous workplaces.
- (b) Employees earning more than a prescribed maximum 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)

1.20 In terms of the Labour Act 11 of 2007, it shall **not** be deemed as discrimination to:

- (a) Distinguish, exclude, or prefer any individual on the basis of such person's political opinion.
- (b) Temporarily reassign the duties of a female employee who is pregnant, even if it leads to a reduction in remuneration or other benefits.
- (c) Select, for the purposes of employment or occupation, any person according to reasonable criteria.
- (d) Distinguish, exclude, or prefer any individual solely on the basis of the person's HIV status.
- (e) None of the above. (2)

[40]

QUESTION 2

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

[PLEASE NOTE: *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 Every employee, as defined by the Labour Act 11 of 2007, should be registered with the Social Security Commission in terms of the Social Security Act 34 of 1994. (2)
- 2.3 All employers in Namibia shall comply with the Affirmative Action (Employment) Act 29 of 1998. (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 In terms of the Employees' Compensation Act 30 of 1941, both employers and employees contribute monthly on a 50-50 basis to the Accident Fund. (2)

[10]

QUESTION 3

Charlies Chocolate Factory CC (Charlies) became famous for its delicious handmade Belgian chocolates. It is now supplying chocolates to all the major outlets and hotels in Namibia and even expanded business to Angola. Due to the increased popularity, the demand is now far exceeding the supply. A member of the enterprise, Mr. Beyers, is in the process of importing machines, which could produce chocolates at a much faster pace than by hand. The productive capacity of these machines will inevitably lead to job losses.

In the context of the scenario above, answer the questions:

- 3.1 Briefly explain whether Charlies is entitled to terminate the contracts of employment of those employees whose positions became redundant. (3)
 - 3.2 Give a broad outline of the steps to follow when an employer needs to reduce the workforce in the circumstances described in 3.1 above. (5)
 - 3.3 Briefly set out the circumstances where the employer has the duty to pay severance pay. (5)
 - 3.4 How is severance pay calculated? (2)
- [15]**

QUESTION 4

Identify the type of dispute in each of the circumstances below. [PLEASE NOTE: *You only need to write either the word "rights" or "interests".*]

- 4.1 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)
- 4.2 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)
- 4.3 Brukkaros Meat Processors CC made use of replacement labour during a lawful strike action. The union reported a dispute. (2)
- 4.4 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)
- 4.5 Best Buy (Pty) Ltd. 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 (Pty) Ltd. reported a dispute. (2)

[10]

QUESTION 5

Mr. Nashandi, a senior financial clerk, has been informed that his daily working hours of 8 hours will increase to 9 hours per day as from the first working day next month. No reason was given for this decision and there was no consultation to seek a mutual agreement to this effect.

Answer the following questions against the backdrop of the above scenario:

- 5.1 What is meant by the concept “managerial prerogative”? (2)
- 5.2 Is Mr. Nashandi’s employer guilty of an unfair labour practice? Explain. (3)
- 5.3 Briefly describe the process of referral of a dispute of an unfair labour practice to the Labour Commissioner. (2)
- 5.4 Briefly discuss the effect and enforcement of an arbitration award. (3)

[10]

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 you to advise him about the following:

- 6.1 The duties of WeFixAll CC in terms of the Social Security Act 34 of 1994. Explain in detail. (5)
- 6.2 The duties of WeFixAll CC in terms of the Employees’ Compensation Act 30 of 1941 in the event of an accident, as defined in terms of the said Act. Explain briefly. (5)

[10]

QUESTION 7

Biofuel Namibia Ltd (BN), a relevant employer in terms of Section 20 of the Affirmative Action (Employment) Act 29 of 1998, advertised a position of webmaster at the company’s head office in Windhoek.

- 7.1 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)

- 7.2 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!!