



**NAMIBIA UNIVERSITY
OF SCIENCE AND TECHNOLOGY
FACULTY OF HUMAN SCIENCES**

DEPARTMENT OF SOCIAL SCIENCES

QUALIFICATIONS: BACHELOR OF HUMAN RESOURCES; BACHELOR OF HUMAN RESOURCES MANAGEMENT; BACHELOR OF BUSINESS AND INFORMATION ADMINISTRATION	
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COURSE CODE: LAL 112 S	COURSE NAME: LABOUR LAW 1B
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DURATION: 2 HOURS	MARKS: 100

SECOND OPPORTUNITY/SUPPLEMENTARY EXAMINATION QUESTION PAPER	
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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.	

PERMISSIBLE MATERIALS

1. Calculator

THIS QUESTION PAPER CONSISTS OF 9 (NINE) 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 in your examination book.

- 1.1 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)
- 1.2 In terms of the Labour Act 11 of 2007, what will be 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)
- 1.3 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)

1.4 For the purposes of a claim of constructive dismissal in terms of the Labour Act 11 of 2007, sexual harassment is defined as:

- (a) Any unwarranted conduct of a sexual nature.
- (b) Any unwarranted conduct of a sexual nature, which constitutes a barrier to equality in employment, where the victim had made it known to the perpetrator that s/he finds the conduct offensive and the perpetrator should have reasonably realised that the conduct is regarded as unacceptable.
- (c) Any unwarranted conduct of a sexual nature, which constitutes a barrier to equality in employment, where the victim had made it known to the perpetrator that s/he finds the conduct offensive or the perpetrator should have reasonably realised that the conduct is regarded as unacceptable.
- (d) Any unwarranted conduct where the victim had made it known to the perpetrator that s/he finds the conduct offensive.
- (e) All of the above options. (2)

1.5 Choose the incorrect statement:

A registered trade union shall have the right to:

- (a) Bring a case on behalf of its members and to represent its members in any proceedings brought in terms of the Labour Act 11 of 2007.
- (b) Have access, subject to such reasonable conditions, to any premises under the control of such employer in order to enable such office-bearer, official or person to perform any of his or her functions in terms of the Labour Act.
- (c) Negotiate with the employer the terms of, and enter into, a collective agreement.
- (d) All of the above.
- (e) Neither one of the above options. (2)

1.6 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)

- 1.7 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)
- 1.8 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)
- 1.9 Any party to a dispute concerning any basic condition of employment (in terms of the Labour Act 11 of 2007), may refer such dispute 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) Only if 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) If it can be categorised as a dispute of interest.
 - (e) Neither one of the above options. (2)
- 1.10 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)

1.11 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) The Social Security Commission is entitled to review any benefits granted, in certain prescribed circumstances.
- (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)

1.12 In terms of the Social Security Act 34 of 1994, sick leave benefits shall be payable:

- (a) For a maximum period of two consecutive years.
- (b) For a minimum period of two consecutive years.
- (c) In respect of a member who was incapable for at least 10 consecutive days.
- (d) Irrespective of any other compensation or remuneration which a member may receive.
- (e) Neither one of the above options. (2)

1.13 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)

1.14 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)

1.15 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)

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QUESTION 2

Decide in each of the following instances whether the statement is true or false and motivate your answer.

- 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.

Answer the following questions in terms of the Labour Act 11 of 2007:

- 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 List the 5 (five) aspects on which the parties have to negotiate, when this type of dismissal is contemplated. (5)
- 3.4 Briefly set out the circumstances where the employer has the duty to pay severance pay. (5)
- 3.5 How is severance pay calculated? (2)

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QUESTION 4

The Namibia Public Workers Union (NAPWU) is seeking a salary increase of 16 % for all employees employed by the Namibian Broadcasting Corporation (NBC). NBC is prepared to offer an 8% increase. The parties have reached a deadlock and a dispute is declared.

Answer the following questions:

- 4.1 NAPWU intends to call out a strike action. Advise the officials of NAPWU of all the legal requirements that have to be met before the workers could actually go on strike. (5)
- 4.2 The workers would like to know whether they are entitled to any payment during the period that they are on strike. (2)
- 4.3 Suppose the workers commenced with a legal strike action. However, during this time, some of the strikers became very violent and damaged company property. Advise the NBC whether they have any claim against the trade union and/or workers. Discuss with reference to the general rule and exceptions applicable. (3)

[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 1st working day next month. No reason was given for this decision and there was no consultation to seek a mutual agreement to this effect.

- 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 aforesaid 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)

7.3 Suppose you are the Human Resources Manager of BN. Explain to your top management the requirements laid down, in terms of Section 19 of the Affirmative Action (Employment) Act 29 of 1998, when appointments are made. (5)

[10]

Grand Total: 100

GOOD LUCK!!