



**NAMIBIA UNIVERSITY  
OF SCIENCE AND TECHNOLOGY**

**FACULTY OF COMMERCE, HUMAN SCIENCES AND EDUCATION**

**DEPARTMENT OF SOCIAL SCIENCES**

<b>QUALIFICATIONS: BACHELOR OF HUMAN RESOURCES; BACHELOR OF HUMAN RESOURCES MANAGEMENT; BACHELOR OF BUSINESS AND INFORMATION ADMINISTRATION</b>	
<b>QUALIFICATION CODES: 21BHUR; 07BHRM; 07BBIA</b>	<b>LEVEL: 5</b>
<b>COURSE CODE: LAL111S</b>	<b>COURSE NAME: LABOUR LAW 1A</b>
<b>SESSION: JUNE 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>	Mrs. E. Wabomba

<b>INSTRUCTIONS</b>
<ol style="list-style-type: none"><li>1. This paper consists of 6 (six) questions.</li><li>2. All questions are compulsory.</li><li>3. <b>All questions must be answered in your Examination Book</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 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 The process whereby an independent third party assists the parties to a dispute to try to reach a settlement themselves:

- (a) Conciliator
- (b) Arbitration
- (c) Conciliation
- (d) Litigation
- (e) Assessor (2)

1.2 In a civil action:

- (a) The plaintiff must prove his or her case beyond reasonable doubt.
- (b) The parties are known as the Complainant v the Accused.
- (c) The person who loses the case can be ordered to compensate the person in whose favour the judgment was made.
- (d) The punishment can take the form of a fine, imprisonment or even community service.
- (e) Neither one of the above. (2)

1.3 Case law is also known as:

- (a) Judge's law
- (b) Customary law
- (c) Law reports
- (d) Judicial precedents
- (e) None of the above. (2)

1.4 The most important source of law in Namibia is:

- (a) Legislation
- (b) Case law
- (c) Common law
- (d) Roman-Dutch law
- (e) Law made by the Honourable President of the Republic of Namibia. (2)



- 1.5 The Namibian Constitution restricts work done by children as follows:
- (a) No person under the age of 14 years may perform any type of work.
  - (b) No person under the age of 16 years may perform any type of work.
  - (c) No person under the age of 21 years may perform night work.
  - (d) No person under the age of 16 years may perform work that is likely to be hazardous or to interfere with their education, or to be harmful to their health or physical, mental, spiritual, moral, or social development.
  - (e) Neither one of the above. (2)
- 1.6 An employee on probation:
- (a) May be dismissed for incompetence without a formal hearing.
  - (b) Must receive the same treatment as any other employee in relation to the termination of services, i.e., the requirements of substantive and procedural fairness.
  - (c) Can only be appointed for a fixed term.
  - (d) May not be appointed for an indefinite term.
  - (e) Neither one of the above options. (2)
- 1.7 In order to protect its trade secrets after an employee's services had been terminated, an employer can:
- (a) Refuse to provide the employee with a certificate of service.
  - (b) Refuse to provide the employee with a testimonial.
  - (c) Provide the employee with a testimonial.
  - (d) Include a restraint of trade clause in the contract of employment.
  - (e) Include a condition in the contract of employment. (2)
- 1.8 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)
- 1.9 In terms of the Labour Act 11 of 2007, **remuneration**:
- (a) May consist partly in cash and partly in kind, provided that the payment-in-kind portion is by agreement, and it does not exceed one-third of the employee's basic wage.
  - (b) Consists of that part of the salary that is paid in money only.



- (c) Consists of that part of an employee's salary which is paid in money, including the cash value of the payment in kind, but excluding any allowances.
- (d) Is always subject to a minimum amount payable, irrespective of the industry.
- (e) None of the above. (2)

1.10 Choose the **correct** statement:

In terms of the Labour Act 11 of 2007:

- (a) A female employee who has completed at least 12 months of continuous service shall be entitled to fully paid maternity leave of at least 3 (three) months.
- (b) An employee may decide when s/he wants to take annual leave.
- (c) A female employee who has completed at least 6 months of continuous service shall be entitled to maternity leave of at least 12 weeks.
- (d) A medical certificate can only be issued by a person registered as a medical practitioner in terms of the Medical and Dental Professions Act.
- (e) Neither one of the above options. (2)

1.11 Choose the **correct** statement(s) from the following:

- (a) A hearing held in the absence of the accused employee is always regarded as unfair.
- (b) An employee is always entitled to be represented by his/her legal practitioner at a disciplinary hearing.
- (c) The chairperson of a disciplinary hearing must always be a person from outside the organisation or institution.
- (d) One of the rules of natural justice is known as the *nemo iudex in sua causa* rule, which means an employee may be dismissed without a disciplinary hearing if such employee admitted being guilty of serious breach of contract.
- (e) One of the rules of natural justice is known as the *audi alteram partem* rule, which means "listen to the other side". (2)

1.12 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) A hearing should always precede any sanction.
- (e) None of the above. (2)





- 1.13 The following are the common law remedies open to an employee if his/her employer is in breach of contract:
- (a) Reinstatement and cancellation and damages
  - (b) Specific performance and cancellation or re-employment
  - (c) Cancellation or specific performance in the form of re-instatement and payment for losses suffered (known as damages);
  - (d) A promotion and payment for losses suffered.
  - (e) Neither one of the above options. (2)
- 1.14 Summary termination (cancellation of the contract of employment without giving the required notice) is possible if:
- (a) Either party committed any form of breach of contract.
  - (b) The innocent party waives his right to claim damages in addition.
  - (c) The breach of contract is serious enough to justify termination without notice.
  - (d) Only if such ruling is given in terms of an arbitration award.
  - (e) None of the above. (2)
- 1.15 An employer will be bound by a contract concluded by its employee if:
- (a) The employee acted within his/her authority.
  - (b) The employer is guilty of a representation that the said employee does have the necessary authority to conclude the contract on its behalf, i.e., apparent authority.
  - (c) The employer benefited from the contract, even though the employee had no authority to enter into the contract in the name and on behalf of the employer.
  - (d) All of the above.
  - (e) Both (a) and (b) (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 The clause in a contract whereby Emmy is prevented from working in the vicinity of Ondangwa as a pastry chef for a period of two years after the termination of her Employment at Gourmet Pastries CC. (1)
- 2.2 An unlawful act or omission that causes harm to the person, property, or personality of another, for which the wrongdoer can be ordered to compensate the victim. (1)
- 2.3 Law that has the full force of a statute, but has been laid down by an Executive organ of government, authorised by Parliament. (1)



- 2.4 The labour official responsible for, among others, the registration of disputes from employees and employers and to take appropriate action. (1)
- 2.5 Judge Shilongo ordered the Namibia Retail and Wholesale Workers Union not to continue with their planned strike action tomorrow. (1)
- 2.6 The provisions regarding overtime work, except where it relates to payment of overtime, do not apply to employees performing this class of work. (1)
- 2.7 Sam is unhappy about an award given by an arbitrator at the Office of the Labour Commissioner in Windhoek, believing that the arbitrator has made a mistake on the application of the law. The matter can be taken on appeal to the \_\_\_ \_\_\_ in terms of section 89 of the Labour Act 11 of 2007. (1)
- 2.8 This common law rule does not apply in a situation where the employee exercises his or her right to leave a dangerous place of work. (1)
- 2.9 An employee who performs overtime on a Public Holiday must receive \_\_\_ the hourly basic wage for each hour worked. (1)
- 2.10 Discipline by means of a graduated system of sanctions or penalties imposed to give the employee an opportunity to absorb the rules of the workplace, is known as the principle of \_\_\_ \_\_\_. (1)
- [10]**

### **QUESTION 3**

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

- 3.1 Summarise (in one sentence) the main difference between an appeal and review process available to an aggrieved party. (2)
- 3.2 List the 4 (four) ways in which a contract of employment can be lawfully terminated. (4)
- 3.3 A labour inspector has the power to issue a compliance order. Briefly explain the purpose of a "compliance order". (1)
- 3.4 Briefly explain the purpose of a "declaratory order". (2)
- 3.5 The period for which an employer must keep records of both the current employees and those who left the services of the employer. (1)

**[10]**



#### **QUESTION 4**

Mr. Tjirare recruits Mr. Matsai to chop wood for a charcoal factory at Outjo. In terms of an oral contract of employment, Mr. Matsai will receive a remuneration of N\$ 500 per ton of wood or if he works hard, N\$ 600 per ton of wood. In terms of the agreement, Mr. Matsai uses his own tools, but he is told where to chop wood and what kind of wood. He, however, is not required to chop a certain amount of wood in a day; he has no fixed hours of attendance, and he is also permitted to do other private work.

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

- 4.1 Name the two types of contracts of service. (2)
- 4.2 Why is it important to be able to identify the type of contract of service? (2)
- 4.3 Decide what type of contract of service Mr. Matsai has concluded with Mr. Tjirare. Motivate your answer by referring to the different common law tests that could be applied to identify what type of contract of service the parties have concluded. (6)

[10]

#### **QUESTION 5**

Angela commenced working as a cashier at Shop and Save (Pty) Ltd, Swakopmund, about a month ago. She entered into a verbal contract of employment, setting out the nature of service and remuneration payable.

Angela works five days per week, 9 hours per day. At times, she also needs to work on Sundays and Public Holidays. She earns a basic salary of N\$ 1 200 per month and, in addition, she receives a transport allowance of N\$ 300 per month

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

- 5.1 Angela wants to know more about her rights and duties at the workplace, i.e., her individual terms and conditions of employment. Advise Angela on the process to follow (sources to consult) to determine her rights and duties. (5)
- 5.2 The maximum ordinary working hours per week Angela could be expected to work. (1)
- 5.3 Suppose Angela had worked 2 (two) hours **overtime** this past Friday (not a Public Holiday) and calculate her payment in respect of the said overtime work. (You must also include in your answer an explanation of your method of calculation.) (5)



- 5.4 Suppose a Public Holiday falls on an ordinary working day. Discuss whether employees should be remunerated for such days (although they have not worked). (4)
- 5.5 Discuss Angela's annual leave entitlement. (3)
- 5.6 Briefly set out Angela's sick leave entitlement. (2)

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### **QUESTION 6**

Gourmet Party Catering CC provides milk to their employees to consume at the workplace during their tea break or lunch time. There is a specific rule in place stipulating that, at the time of leaving the premises, employees may not be in possession of any office items and/or food.

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

- 6.1 Last week Mr Super Sin was caught in possession of 2 litres of milk by the security guard (Paulus) on duty at the entrance/exit. Mr Sin was not able to produce proof that he bought the milk and claimed that he was not aware that he was not allowed to take milk home for his family. Advise Mr Sin's supervisor, Mr Level Head, on the following, in relation to the incident:
- (a) Mr Level Head would like to institute disciplinary action against Mr Sin. Briefly set out the two broad requirements for the fairness of a disciplinary action. (2)
  - (b) Since this is not the first time that Mr Sin committed misconduct at the workplace, Mr Level Head would like to know more about the principle of progressive discipline. (5)
  - (c) Suppose Mr Sin was dismissed because of this incident. Advise Mr Sin on the route to follow to have this issue resolved if he of the opinion that his dismissal was unfair. (3)
- 6.2 Suppose in 6.1 above Mr Sin refused to be searched by Paulus. Paulus then used unreasonable force by hitting Mr Sin with his baton with brutal force, resulting in, among others, Mr Sin's nose to break. Mr Sin does not belong to any medical aid fund and the hospital costs amounted to N\$ 20 000. Mr Sin wants to know whether he can institute a claim against Gourmet Party Catering CC, based on the principle of vicarious liability. Briefly advise Mr Sin. (5)





- 6.3 Suppose an arbitrator ruled that Mr Sin's dismissal was fair and he was fortunate to secure another job as a driver for a pharmacy in the city centre of Windhoek. Since he has many years' experience in the catering industry, he wants to know whether he could supplement his income by operating up his own catering business during his free time. Briefly advise Mr Sin. (5)

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**Grand Total: 100**

**GOOD LUCK!!**



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