



**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; NATIONAL DIPLOMA ENGINEERING : CIVIL & PROJECT MANAGEMENT	
QUALIFICATION CODES: 21BHUR; 07BHRM; 07BBIA; 35DCPM	LEVEL: 5
COURSE CODE: LAL 111 S	COURSE NAME: LABOUR LAW 1A
SESSION: JULY 2025	PAPER: THEORY
DURATION: 2 HOURS	MARKS: 100

SECOND OPPORTUNITY EXAMINATION QUESTION PAPER	
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INSTRUCTIONS
<ol style="list-style-type: none">1. This paper consists of 6 (six) 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 PAGES (Including this front page)

QUESTION 1

Choose the answer from the given options in each of the following questions, by applying the common law, case law and/or the relevant labour legislation, whichever is applicable.

*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 The official responsible for the enforcement of an arbitration award:

- (a) Labour Commissioner
- (b) Court orderly
- (c) Deputy Sheriff
- (d) Labour inspector
- (e) Messenger of Court (2)

1.2 Case law is also known as:

- (a) Judge's law
- (b) Judgments of the Court
- (c) Law reports
- (d) Judicial precedents
- (e) Both (b) and (d) (2)

1.3 An unlawful act or omission that causes harm to the person, property or personality of another is known as a:

- (a) Juristic act
- (b) Guilty person
- (c) Cause of action
- (d) Breach of contract
- (e) Delict (2)

1.4 Which Court's decisions create binding precedents for all other courts?

- (a) Regional Courts
- (b) Magistrate's courts
- (c) Chief's and headmen's courts
- (d) Supreme Court
- (e) None of the above (2)

- 1.5 Choose the correct statement from the following:
- (a) In a review, the court considers the procedural aspects of the original adjudication process.
 - (b) In an appeal, the focus is on the result of the trial or proceedings.
 - (c) The Labour Court has the jurisdiction to review decisions of all the Cabinet Ministers.
 - (d) The Regional Court only has jurisdiction to deal with criminal cases.
 - (e) All the statements are correct, except (c). (2)
- 1.6 A valid contract of employment is concluded when:
- (a) The parties have signed a written contract, setting out the rights and duties of the respective parties, even if the performance is unlawful.
 - (b) The parties have registered their contract at the Office of the Labour Commissioner and the Social Security Commission.
 - (c) The parties have reached consensus on the *essentialia* and the duration of the contract; both parties have contractual capacity; performance is both possible and lawful and the parties have signed a contract to this effect in the presence of a Commissioner of Oaths.
 - (d) The parties have the serious intention to create legal obligations and they have reached consensus on the *essentialia*; they both have contractual capacity; performance is both possible and lawful and they have signed a contract to this effect, if required to do so in terms of legislation.
 - (e) A person commences to work for an employer. (2)
- 1.7 Choose the correct statement from the following:
- (a) A child over the age of seven (7) years may conclude a valid contract with the assistance of his/her guardian.
 - (b) A child under the age of sixteen (16) years may be employed, provided that it is not likely to be hazardous or to interfere with his/her education or harmful to his/her health, physical, mental or spiritual, moral or social development.
 - (c) In terms of the Labour Act 11 of 2007, the minimum age for night work is sixteen (16) years.
 - (d) Both (a) and (b).
 - (e) All the statements are false. (2)

1.8 Choose the **false** statement(s):

A term of a contract:

- (a) Can be made part of a contract of employment either expressly, tacitly or impliedly.
- (b) Can only be made part of a contract if done in writing and signed by the respective parties.
- (c) Can be varied by mutual agreement between the parties.
- (d) Is also known as a clause or provision of a contract.
- (e) Obliges a party to act in a specific manner; or not to do a specific act; or it qualifies (limits) the contractual obligations. (2)

1.9 Choose the statement that is **correct**:

- (a) On the termination of a contract of employment, for whatever reason, the employer shall furnish the employee with a testimonial.
- (b) On the termination of a contract of employment, for whatever reason, the employer shall furnish the employee with a certificate of employment.
- (c) An employer must always state the reason for the termination of the contract of employment on the certificate of employment.
- (d) All the statements are false.
- (e) All the statements are correct. (2)

1.10 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 does not exceed one-third of the employee's basic wage.
- (b) Is that part of the salary that is paid in money.
- (c) Is 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)

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

- (a) Compassionate leave can only be granted if either your spouse or one of your children had died.
- (b) During the period of maternity leave, the provisions of the contract shall remain in force and the employee is entitled to the agreed remuneration except the basic wage.
- (c) Every employee is entitled to four consecutive weeks of annual leave after a period of 12 (twelve) consecutive months of employment with full remuneration, but the number of days may be reduced by the number of days occasional leave granted to an employee during the cycle, on full remuneration.

- (d) Every female employee is entitled to a minimum of 12 (twelve) weeks of maternity leave after completion of 12 (twelve) months of continuous service.
- (e) Both (b) and (c). (2)

1.12 **Insubordination** can be defined as behaviour of an employee that:

- (a) Shows a lack of diligence and competence.
- (b) Provides evidence of dishonesty.
- (c) Shows bad faith towards the business of the employer.
- (d) Challenges the authority of the employer.
- (e) Amounts to harassment. (2)

1.13 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) An employee always has the right to an internal appeal.
- (d) Even if a criminal charge had been laid against the accused employee, where the conduct may justify dismissal, the employer should still hold a disciplinary hearing/enquiry prior to a dismissal.
- (e) None of the above. (2)

1.14 **Dismissal** is a very drastic and final stage of discipline and may be used **only**:

- (a) After a previous warning for the same offence.
- (b) If the offence was so serious that it renders the continuation of the contract impossible or the employee's actions amount to repudiation of the contract.
- (c) After a final written warning was given.
- (d) Once the Court convicted the accused employee on a criminal charge and sentenced him/her to imprisonment without the option of the payment of a fine.
- (e) Neither one of the above options. (2)

1.15 Choose the **correct** statement:

In terms of section 132 of the Labour Act 11 of 2007:

- (a) An employer is solely liable if a manager, agent or employee contravenes the Labour Act, irrespective of the circumstances.
- (b) An employer is liable, without exempting the offender, if a manager, agent or employee contravenes the Labour Act, irrespective of the circumstances.
- (c) An employer is liable, without exempting the offender, if a manager, agent or employee contravenes the Labour Act, subject to certain exceptions.

- (d) An employer is liable, without exempting the offender, if a manager, agent or employee contravenes the Labour Act, unless the employer gave instructions forbidding such contravention.
- (e) None of the above. (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 Judge Shilongo ordered the Namibia Retail and Wholesale Workers Union not to continue with their planned strike action tomorrow. (1)
- 2.2 'Audi alteram partem' (listen to the other side) and 'Nemo iudex in sua causa' (no one may be a judge in his/her own cause). (1)
- 2.3 The employee's duty not to acquire interests or benefits for himself without the knowledge of the employer. (1)
- 2.4 The principle on which an employer can rely in refusing to pay remuneration while his/her/its employees are on strike. (1)
- 2.5 Nicky is employed as a domestic worker. The maximum hours Nicky could be required to work per day if she works three days per week. (1)
- 2.6 The number of sick leave days Jonas is entitled to in a cycle of thirty-six (36) months, if he works from Mondays to Saturdays every week. (1)
- 2.7 The cash equivalent of this type of payment may not exceed one-third of the employee's basic wage. (1)
- 2.8 The absolute minimum amount payable to, among others, farm workers and workers in the construction industry in Namibia. (1)
- 2.9 A partner in a civil marriage or a customary law union or other union recognised as a marriage in terms of any religion or custom. (1)
- 2.10 Law that has the full force of a statute, but has been laid down by an Executive organ of government, authorised by Parliament. (1)

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QUESTION 3

Mike has been employed by Beat-it Panel Beaters & Spray Painters (Pty) Ltd. Mike is provided with the necessary tools to do his work; he is obliged to report on and off duty at specified times; he takes instructions from his employer; he gets paid according to the hours worked and gets paid at a higher rate if the work is performed outside the normal working hours and he gets paid leave of 4 weeks during December.

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

- 3.1 Why is it important to be able to identify the type of contract of service? (2)
- 3.2 Applying both section 128A (Presumption as to who is an employee) of the Labour Amendment Act 2 of 2012 and the common law, decide what type of contract of service Mike has with Beat-it Panel Beaters & Spray Painters (Pty) Ltd.

(8)

[10]

QUESTION 4

Mrs. Williams recently opened a book store in the Grove Mall, Windhoek. She has two students in her employment, Lukas and Dina, to assist her in the shop in the mornings and afternoons respectively. Initially, the shop was only open from Monday to Friday from 08h00 until 18h00, but as it became more known and popular amongst the public, she received several requests to keep the shop open until 19h00 and also over weekends, especially for those customers who work far outside the centre of town.

Answer the following questions (in terms of the common law and Labour Act 11 of 2007, whichever is applicable in the given circumstances):

- 4.1 Mrs. Williams wants to extend the working hours of her afternoon assistant until 19h00 instead of 18h00 and she also wants both of them to work over weekends.

Discuss whether she could introduce these changes at the workplace and the legal position of her employees in this respect. (6)

- 4.2 What is the maximum daily and weekly hours respectively, she may expect from her employees to work. (2)

- 4.3 Although the official closing time of the shop is 18h00 in the afternoon, there are still customers browsing around and asking for assistance after the official closing time. She wants to know whether her employee may simply pack up and leave at exactly 18h00? Briefly discuss. (4)
- 4.4 Since Dina was not available, Lukas worked three hours overtime on the 1st of May, an official public holiday in Namibia. Lukas wants to know whether he is entitled to any extra payment for the month of May and what the amount would be. He provides you with the following information:
- He works six days a week, five hours per day. In terms of his contract of employment, overtime shall be paid in terms of the provisions of the Labour Act 11 of 2007. His gross remuneration for the month of April amounted to N\$ 8 000. Included in this amount is a transport allowance of N\$ 500. (6)
- 4.5 Suppose Dina was absent without a valid reason for two consecutive days last month, i.e. the 10th and 11th of May. Briefly discuss the rights of the employer in such an instance. (2)

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QUESTION 5

Selma is employed as a travel consultant at Easy Travel CC, a small enterprise with only four employees, who perform their work in rotation, since clients can call the office until 22h00 in the evening. Selma was initially employed for a three-month period. On the expiry of the fixed term, she was offered permanent employment, which she accepted. Two weeks after she was made a permanent employee, she informed her supervisor that she was pregnant. Selma's sister, who is also employed by Easy Travel, is also pregnant. The supervisor was concerned about this development, since it meant that 50% of the employees would be on maternity leave, more or less at the same time. The supervisor convened a meeting with all concerned, where it was agreed that Selma's sister would be entitled to maternity leave (her pregnancy was planned), but that Selma would only be allowed to take one month unpaid leave for this purpose.

Explain to Selma her rights (in line with the provisions of the Labour Act 11 of 2007) pertaining to the following:

- 5.1 Maternity leave (7)
- 5.2 Night work (3)
- 5.3 Meal intervals (5)

[15]

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 employees may only take home milk that they bought.

- 6.1 Last week Mr Super Sin was caught in possession of 2 litres of milk by the security guard on duty at the entrance/exit. He 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 aforementioned incident:
- (a) The right of the business to discipline Mr Sin in this particular instance. (3)
 - (b) Briefly set out the two broad requirements for the fairness of a disciplinary action. (2)
 - (c) Suppose Mr Sin was dismissed as a consequence of this incident. He wants to lodge an internal appeal against the penalty and wants to know the difference between the concepts of appeal and review respectively. Briefly explain. (2)
 - (d) Advise Mr Head on the legal duty of an employer to provide an employee with a testimonial and/or certificate of employment upon termination of employment. (3)
- 6.2 Suppose in 6.1 above that Mr Sin refused to be searched by the security guard. 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)

[15]

Grand Total: 100

GOOD LUCK!!