

SUBJECT NAME : INTRODUCTORY LABOUR LAW
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DATE : EXAMINATION – JUNE 2020
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TOTAL MARKS : 60

EXAMINERS : MRS ME ROSTOLL
MS K LETSIRI
MODERATOR : DR E FOURIE
NUMBER OF PAGES : 5 PAGES

GENERAL INSTRUCTIONS TO STUDENTS

Please read the following instructions *carefully*:

- 1) Please note that this is an open-source examination and you are allowed to find assistance in sources like your textbook, lecturer's notes, slides and your own notes or summaries.
- 2) Please refrain from a copy and paste approach and write your answers in your own words where applicable.
- 3) NB - The Faculty of Law takes a zero-tolerance approach towards issues like plagiarism, sharing of examination questions, and unauthorised assistance by anyone else, in writing the exam. Dishonest conduct will have severe consequences for your academic and professional careers.
- 4) Answer all questions.
- 5) Submit your answers in the space provided under each question in Blackboard.
- 6) If you are unable to type your answers in the space provided on Blackboard, please type your answers in a Word document, alternatively, write your answers on paper and take a photo thereof and email it to Mrs Rostoll at merostoll@uj.ac.za.
- 7) Number your answers carefully.
- 8) Write in full sentences where applicable. Do NOT make use of "SMS speak".
- 9) ALL students have to submit their answers no later than 11h00 on the day of the exam.
- 10) If you experience any problems with regards to either writing or submitting your examination, please contact Mrs Rostoll immediately either via email (merostoll@uj.ac.za) or WhatsApp (0828536819).

QUESTION 1

Joanne works as a hostess at The Crown Oriental restaurant. She works six days a week. Her ordinary hours are from 12h00 to 22h00. She is allowed to take a 45-minute meal break at 18h00. She gets 15 consecutive days' annual leave, which she is entitled to take during February or March. At night, Joanne has to walk three kilometres back to her house as there is no public transport. Joanne is unhappy about her employment conditions. After she told her employer that she was pregnant, he remarked that she would only be entitled to two months' unpaid maternity leave.

Explain in detail to Joanne what the conditions of her employment will be with regard to the following:

- 1.1 Maternity leave (5)
[5]
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QUESTION 2

The applicant was a former female employee of the respondent. She was employed on an annual fixed term contract ending in December of each year. The renewal of the contract was dependent on funding as the respondent was a non-profit organisation. She had been in the employ of the respondent since 2004. In December 2008 the applicant was dismissed.

The applicant alleged that the respondent's former national director had made repeated sexual advances towards her. She had repeatedly rejected such advances. The respondent's code of conduct required that instances of sexual harassment must be reported. Despite the applicant's knowledge of such code she elected not to report the advances. She believed she had control of the situation, and could not have anticipated the consequences thereof. Following the final instance of alleged sexual harassment which she refused the applicant testified that the former national director's behaviour towards her changed. She was advised in December of 2008 that her contract would not be renewed due to her poor performance. This was the first occasion in which her alleged poor performance had been raised. Furthermore, the alleged perpetrator of the sexual harassment had, prior to this matter being heard, left the employ of the respondent, and was unable to be traced.

Following the termination of her contract the applicant raised the occurrence of the alleged sexual harassment. The respondent did not respond to these allegations, nor did the evidence reflect that the claims were investigated.

PLEASE NOTE – when a question contains an assumption that assumption is only applicable to the particular question unless the context indicates otherwise.

- 2.1 Briefly explain what the constitutional concept of the right of equality is based on within an employment law context. (3)
- 2.2 In your own words summarise the primary purposes of the Employment Equity Act 55 of 1998 in two sentences? (2)

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- 2.3 There is other legislation that also supplement the Employment Equity Act 55 of 1998 in regulating equality and discrimination within the employment relationship in South Africa. Name the relevant supplementary legislation. (2)
- 2.4 With reference to the given set of facts. Can an employer be held liable for the sexual harassment committed by one of its employees? Motivate your answer. (4)
- 2.5 The obligation on employers to prevent harassment in the workplace means that employers should be proactive about putting in place steps to prevent its occurrence, and if it happens, to make sure that the issue is seriously and expeditiously dealt with. Name two minimum measures which an employer can implement to ensure compliance with this duty? (2)

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QUESTION 3

PLEASE NOTE – when a question contains an assumption that assumption is only applicable to the particular question unless the context indicates otherwise.

- 3.1 In your own words explain when will a dismissal be deemed as automatically unfair in terms of South African labour legislation? (1)
- 3.2 Indicate in each of the following scenarios whether they amount to constructive dismissal? Briefly motivate your answer in each instance.
- 3.2.1 Mandy is suspected of theft and her employers wish to search her handbag. She refuses to let them and then resigns in anger. (2)
- 3.2.2 Sue's employer tries to kiss her at an office party. She resigns the following morning. (2)
- 3.3 Indicate in each of the following scenarios whether they amount to an automatically unfair dismissal. Motivate your answer in each instance.
- 3.3.1 Mary misses 20 days of work during her pregnancy as she is very weak and nauseous. She is dismissed as a result. (2)
- 3.3.2 Sipho leaves work early to attend a union meeting, without the permission of his employer. He is dismissed. (2)
- 3.3.3 The workers at the company embark upon a strike, without following proper procedure. They are all dismissed. (2)
- 3.4 Linda is employed as a clerk at Siyasebenza (Pty) Ltd. Linda is a member of the Allied Workers Union, which is the majority trade union at Siyasebenza. AWU enters into collective bargaining with the employer for purposes of negotiating salary increases for the workers and after numerous failed attempts at reaching an agreement with the employer, AWU decides to undertake strike action. Linda decides to continue working and does not join the strike, however her employer instructs her to do the work of the striking employees. She refuses to do the work as it adds a substantial amount to her work load. Linda is subsequently dismissed.

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Linda approaches you for advice. Explain to her why this dismissal constitutes an automatically unfair dismissal. (4)

[15]

QUESTION 4

PLEASE NOTE – when a question contains an assumption that assumption is only applicable to the particular question unless the context indicates otherwise.

4.1 The employees at ABC Superstore decide to embark on strike action as their employer is failing to meet their demands.

4.1.1 Explain the procedural requirements that have to be satisfied in order for the strike to be protected. (5)

4.1.2 Assume for purposes of this question that the strike does not comply with the procedural requirements in term of the Labour Relations Act 66 of 1995. As a result, the strike is unprotected. What are the consequences of an unprotected strike? (3)

4.2 The employees at 123 Motor Manufacturers have been in consultations with their employer over the continued retrenchment of employees. Following the retrenchment of over 25 more employees, the employees at 123 Motor Manufacturers declare a dispute which results in a protected strike. In support of this strike, the employees at ABC Tyre Manufacturers also embark on strike action. Identify this form of industrial action and list the requirements that need to be satisfied in order for it to be lawful. (4)

[12]

QUESTION 5

Sipho is employed at Wood Timber Manufacturers. The company has a strict zero-tolerance policy for the use of drugs and alcohol and this is thoroughly communicated to all employees at the commencement of their employment, as well as during the course of employment. The policy states that employees at Wood Timber Manufacturers seldom deal with extremely heavy machinery and the operation of such machinery under the influence of drugs and alcohol could be very detrimental. After conducting routine medical tests, the employer discovers cannabis in Sipho's bloodstream, he is called to a disciplinary hearing and is subsequently dismissed for misconduct.

5.1 Sipho refers an unfair dismissal dispute to the Commission for Conciliation, Mediation and Arbitration (CCMA) on the basis of procedural fairness deficiencies. What is the primary function of the CCMA? (1)

5.2 From the date of dismissal, how many days does Sipho have to refer the unfair dismissal dispute to the CCMA? (1)

5.3 The referral of a dispute to the CCMA must be proper. Explain how a proper referral of a dispute to the CCMA for conciliation should be made and also

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	identify the correct form that should be completed and accompany such referral.	(5)
5.4	Refer to your answer in question 5.2. Sipho refers the unfair dismissal dispute to the CCMA beyond the stipulated time period and the referral is consequently late. Name and discuss the application that essentially asks the CCMA to excuse the late referral of a dispute.	(5)
5.5	When is the con-arb (conciliation-arbitration) process used?	(3)
		[15]
TOTAL		[60]
