

**SUBJECT NAME** : INTRODUCTORY LABOUR LAW  
**SUBJECT CODE** : IAB0012  
**DATE** : SUPPLEMENTARY EXAMINATION – JULY 2019  
**DURATION** : 2 HOURS  
**WEIGHT** : 50 : 50  
**TOTAL MARKS** : 80

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**EXAMINERS** : MRS ME ROSTOLL  
**MODERATOR** : DR E FOURIE  
**NUMBER OF PAGES** : 4 PAGES

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#### GENERAL INSTRUCTIONS TO STUDENTS

- 1) Answer all questions.
  - 2) Answer all questions in the SCRIPT provided.
  - 3) Write legibly.
  - 4) Number your answers carefully.
  - 5) Leave a line open between each answer (for example, between questions 1.1 and 1.2).
  - 6) Write in full sentences where applicable. Do NOT make use of “SMS speak”.
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### **QUESTION 1**

1.1 An employment contract may terminate in a number of different ways. List two ways and briefly explain what each one entails. (4)

1.2 A former employer, who is a booking agent and events planning company that specialised in providing artists and celebrities for appearance at corporate functions, attempted to enforce a restraint of trade clause against its former employee. The employer requested the Labour Court to restrain the employee from competing with its business for a period of three years. The employer argued that it had a legitimate interest in its relationships with the artists it represented and that such relationships needed to be protected by the enforcement of the restraint provision. The employee argued that the services of the artists were available to any person who wished to hire them and that the employer did not have an interest to protect. The employee also argued that, as the entertainment industry was the only industry in which he had skills and experience the restraint would deprive him of his livelihood.

Advise the employee with regards to his chances of success against his employer by referring to –

1.2.1 the general purpose and operation of a restraint of trade clause within South African law; and (5)

1.2.2 the judgment handed down by the Labour Court in the case of *David Crouch Marketing v Du Plessis*. (3)

**[12]**

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### **QUESTION 2**

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:

2.1 Annual leave; (4)

2.2 Maternity leave; (4)

2.3 Night work; (4)

2.4 Meal intervals and daily and weekly rest periods; (4)

**[16]**

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### **QUESTION 3**

The vice-chancellor of a local university overruled the selection committee's recommendation that O'Brien, a white woman, be appointed to a junior lecturing post in which she had acted in a temporary capacity for two years. The vice-chancellor instructed the committee to reconsider its decision in the light of the university's affirmative action policy. The committee reaffirmed its view that Mrs O'Brien was the best candidate, but in light of the vice-chancellor's instruction, the committee recommended the appointment of a black male candidate who had been

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interviewed. O'Brien claimed that she had been dismissed from the post and that she had been discriminated against as an applicant for employment. The university did not dispute that there had been discrimination on the basis of her race, but sought to justify it on the basis that it had applied its affirmative action policy in selecting the black male applicant.

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

- 3.1 Briefly explain what the constitutional concept of the right of equality is based on within an employment law context. (3)
- 3.2 Discuss the primary purposes of the Employment Equity Act 55 of 1998? (4)
- 3.3 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)
- 3.4 The Employment Equity Act 55 of 1998 as well as the Labour Relations Act 66 of 1995 provide the employer with a number of possible defences or justification grounds against a claim of unfair discrimination. List these defences. (3)
- 3.5 Refer to the set of facts given above. With reference to the case of *McInnes v Technikon Natal* discuss O'Brien's position in law and whether she will be successful with her claim against the university. (4)

**[16]**

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### **QUESTION 4**

Superfine Textiles had in the past granted bursaries to the children of employees who enrolled for tertiary education. Although it was always made clear to employees that bursaries were granted at the discretion of management, applications for bursaries were never turned down. When Mark Williams' daughter passed matric with an average of 68% in 2017, he applied for a bursary for her to study law at a South African university. Management informed Mark that his daughter did not qualify as they had decided to award bursaries only to those pupils who attained an average of at least 70% in the matric exam. This decision was justified by explaining that as a result of a downturn in the profitability of the business, it was no longer affordable to grant bursaries to all who applied. Mark alleged that the employer had committed an unfair labour practice relating to a benefit. Management's view was that since there was no contractual entitlement to a bursary, their decision could not be regarded as an unfair labour practice and that the employee should commence strike action if he so wished, since the current dispute was a dispute of interest. Mark needs advice as to whether he can refer the dispute to the CCMA.

- 4.1 South Africa's labour legislation makes provisions for unfair labour practices committed by an employer during the course of the employment relationship. Identify the relevant legislation that regulates such practices? (1)
- 4.2 Refer to your answer in question 4.1 above. How is an unfair labour practice defined in terms of the said/identified legislation? (4)
- 4.3 What is the difference between a dispute of right and a dispute of interest? Briefly motivate your answer by giving an example of each to illustrate the difference. (4)

**[9]**

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**QUESTION 5**

- 5.1 Employees are not protected from being dismissed altogether. However, a dismissal will be justified if it is regarded as fair (in other words it was effected for a fair reason and in accordance with a fair procedure). What possible reasons can be given that would deem the dismissal to be fair? (3)
- 5.2 In *Solid Doors (Pty) Ltd v Theron NO*, the Labour Appeal Court held that three requirements must be present in order to establish a constructive dismissal. Identify these requirements and critically discuss what each one entails. (6)
- 5.3 Indicate in each of the following scenarios whether they amount to constructive dismissal? Motivate your answer in each instance.
- 5.3.1 Mandy is suspected of theft and her employers wish to search her handbag. She refuses to let them and then resigns in anger. (2)
- 5.3.2 Sue's employer tries to kiss her at an office party. She resigns the following morning. (2)

**[13]**

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**QUESTION 6**

- 6.1 Which dispute resolution forums may be approached by an employee who believes that his dismissal was automatically unfair? In your answer indicate the time periods that must be complied with. (8)
- 6.2 When will a dismissal be automatically unfair? (2)
- 6.3 Indicate in each of the following scenarios whether they amount to an automatically unfair dismissal. Motivate your answer in each instance.
- 6.3.1 Mary misses 20 days of work during her pregnancy as she is very weak and nauseous. She is dismissed as a result. (2)
- 6.3.2 Sipho leaves work early to attend a union meeting, without the permission of his employer. He is dismissed. (2)
- 6.3.3 The workers at the company embark upon a strike, without following proper procedure. They are all dismissed. (2)

**[14]**

**TOTAL**

**[80]**