



## **FACULTY OF MANAGEMENT JUNE EXAMINATION**

**DEPARTMENT OF INDUSTRIAL PSYCHOLOGY AND PEOPLE MANAGEMENT**

**Honours in HRM, HRD & ERM**

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<b><u>SUBJECT</u></b>	<b>: LABOUR LAW</b>
<b><u>CODE</u></b>	<b>: DVB07X7</b>
<b><u>DATE</u></b>	<b>: JUNE 2014 MAIN EXAM</b>
<b><u>DURATION</u></b>	<b>: 2 HOURS</b>
<b><u>TOTAL MARKS</u></b>	<b>: 100 (75: Written section and 25: Examination assignment)</b>

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<b><u>EXAMINER</u></b>	<b>: MR MM BOTHA (UNIVERSITY OF JOHANNESBURG)</b>
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<b><u>MODERATOR</u></b>	<b>: MRS E GERICKE (UNIVERSITY OF PRETORIA)</b>
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<b><u>NUMBER OF PAGES</u></b>	<b>: 3 PAGES</b>
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### **INSTRUCTIONS TO CANDIDATES:**

- **QUESTION PAPERS MUST BE HANDED IN.**
  - This paper consists of Section A (the written examination) and Section B (take home question). Please answer all the questions.
  - This is a closed book assessment.
  - Read the questions carefully and apply them to the case-study.
  - Number your answers clearly.
  - Write neatly and legibly on both sides of the paper in the answer book, starting on the first page.
  - Structure your answers by using appropriate headings and sub-headings.
  - The general policies, procedures and rules of the University of Johannesburg pertaining to written assessments apply to this assessment.
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## **SECTION A**

### **QUESTION 1 (CHOOSE BETWEEN PART A OR B). ONLY ANSWER ONE.**

*“The application of section 197 has been most controversial in transactions in which businesses, or parts of businesses, are outsourced ... An outsourcing transaction raises questions regarding the application of section 197, potentially at least, in relation to the definition of a ‘business’, and whether or not there has been a transfer of a business as a going concern.” Van Niekerk (ed) Law@work 2<sup>nd</sup> edition*

#### **PART A**

Critically analyse the meaning of the concepts “transfer”, “business” and “going concern”. Refer to relevant case law, legislation and principles in your answer.

[20]

OR

#### **PART B**

Critically analyse the meaning of “second-generation outsourcing” and what types of arrangements are covered within this meaning. Refer to relevant case law, legislation and principles in your answer.

[20]

### **QUESTION 2**

- 2.1 Section 193 of the LRA clearly establishes reinstatement or re-employment as primary remedies for an unfair dismissal. Briefly distinguish between these two concepts. (5)
- 2.2 Reinstatement and re-employment are the primary remedies afforded to an unfairly dismissed employee. However, an award of reinstatement or re-employment is not suitable under certain circumstances. NAME these circumstances. (4)
- 2.3 What might be argued that the right to freedom of association can be limited in terms of closed shop and agency shop agreements, recognised and regulated by the LRA. Briefly distinguish between a closed shop and agency shop agreement. (6)

[15]

### **QUESTION 3**

Montserrat is a forensic detective at the Department of Correctional Services in the Western Cape. Montserrat falls within the Coloured population group. Montserrat was overseen for a promotion for the second year in a row due to the fact that the Department wants to apply national demographics and not provisional demographics. The Department wants to appoint more African people in senior forensic detective positions. They claim that they are within their rights not to appoint a suitable and qualified Coloured person into a senior position. Montserrat approaches you for advice and wants to know if the Department are entitled to oversee him again for a promotion and whether they are within their rights. Advise Montserrat with reference to relevant case law as to the basis of the Department's claim, as well as the onus of proof, in such a dispute. Refer to relevant case law, principles and proposed amendments, as well as whether national or provisional demographics, should be allowed in this instance or not.

[40]

### **SECTION B: EXAMINATION EQUIVALENT ASSIGNMENT**

This question is handed in separately.

[25]

**TOTAL:**

**[100]**

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