

MODULE: LABOUR RELATIONS

CODE: BMA9XK07



**COLLEGE OF BUSINESS AND ECONOMICS
FINAL EXAMINATION JUNE 2019**

DEPARTMENT OF BUSINESS MANAGEMENT

MODULE : **LABOUR RELATIONS**
CODE : **BMA9XK07**
DATE : **11 JUNE FINAL EXAMINATION**
DURATION : **3 HOURS**
TIME : **08:30 – 11:30**
TOTAL MARKS : **100 marks**

EXAMINER(S) : **Dr ES Fourie**
(EXTERNAL) MODERATOR: **Prof MM Botha (UP)**
NUMBER OF PAGES : **5**

INSTRUCTIONS TO CANDIDATES:

ANSWER ALL THE QUESTIONS. IN YOUR ANSWERS YOU MUST REFER TO RELEVANT CASE LAW, LEGISLATION, CONSTITUTIONAL AND LITERARY AUTHORITY WHERE APPLICABLE. PLEASE NOTE THAT STUDENTS MAY USE CLEAN COPIES OF LEGISLATION DURING THE EXAM.

QUESTION 1

Mr Simmers, is a 48-year-old installation manager employed by Campbell Scientific Africa (Pty) Ltd. His colleague Mr Frederick le Roux, also an employee of the company and Ms Markides were staying at a lodge near Serowe in Botswana. They were contracted to survey a site for the installation of equipment for the Botswana Power Corporation. On their last night at the lodge, the three had dinner together. While Mr Le Roux settled the bill, Mr Simmers and Ms Markides walked to the parking area to wait for him. Ms Markides in her evidence, tendered via telephone from Australia, said that while waiting for Mr Le Roux, Mr Simmers told her he felt lonely, made advances towards her and asked her to come to his room, an invitation which she said he “*reiterated a number of times*” to the point that she felt “*quite uncomfortable*”. He also asked her if she had a boyfriend, causing her to respond that she did, that she was in contact with him and that it was a serious relationship. Mr Simmers then invited her to phone him in the middle of the night if she changed her mind.

Ms Markides said she felt threatened, that his advances to her were “*not welcome at all*”. She programmed Mr Le Roux’s number into her cellphone so that he was “*one button away from a call just in case anything happened*”.

Ms Markides seeks your advice in respect of this matter. She is not sure whether a single incident can constitute harassment in terms of labour legislation. Critically analyse her legal position and advise her of any possible remedies that she may have under applicable labour legislation. In your answer, you must also consider the concepts of discrimination, harassment and the onus of proof in this dispute.

[25]

QUESTION 2

Cleopatra Country Estate (Pty) Ltd is a company that offers conference and leisure facilities to its clients. It has 200 employees, one of whom is Ms Katie Masilo. Ms Katie Masilo wilfully absented herself from work, after the employer refused to grant her leave for an extended period to attend a training course to be trained as a traditional healer. Ms Katie Masilo informed the employer that she was “disturbed in her spirits” and that her condition was serious. She provided the employer with a letter from her traditional healer.

The employer feels that the letter was invalid because it was not a letter by a medical practitioner as required by the *Basic Conditions of Employment Act 75* of 1997.

The employer wants to dismiss Ms Masilo for misconduct under the company’s workplace rules and seeks your advice as to the fairness of such dismissal. In your answer you must refer to relevant authority.

[25]

QUESTION 3

"The rationale for the new amendments of section 21 of the LRA is an attempt to adopt a more holistic approach by broadening/adjusting the scope to grant organisational rights to unions that do not enjoy a majority at the workplace."

The amendments give effect to the principles of freedom of association in that employees have the right to choose their representation and that minority unions can approach the CCMA where they have not been granted organisational rights. (*Independent Municipal and Allied Trade Union v Commission for Conciliation, Mediation and Arbitration and others* [2017] 6 BLLR 613 (LC) para 10)

Write an essay in which you critically reflect on the principle of majoritarianism and debate whether minority trade unions should be granted organisational rights in terms of the Labour Relations Act 66 of 1995.

[25]

QUESTION 4

Big Enterprises (BE), a motor car manufacturer, has concluded a recognition agreement with the National Union of Mineworkers (NUM).

In terms of this agreement, NUM is recognised in respect of its members in a defined bargaining unit – all weekly paid employees. Sixty (60) per cent of the employees in the bargaining unit are members of the union; the other forty (40) per cent of the employees in the bargaining unit are either not represented by any union whatsoever or they are represented by the Alternative Union of Mineworkers (AUW). Even so, the company always extends whatever wage increase it agrees with the union to all employees in the bargaining unit, irrespective of their union membership.

The current wage agreement expired at the end of August 2018 and the parties are in dispute over wages for 2018/2019. The dispute has been referred to the CCMA by NUM and conciliation failed. A certificate of non-resolution of the dispute has been issued by the CCMA.

Consider the above and answer the following questions:

- 4.1 NUM intends to strike about the above issue. Advise the union of the substantive limitations and procedural requirements in respect of a strike.

(10)

- 4.2 Employees of Apollo Tyres, a tyre company, give seven days' notice of their intention to embark on industrial action in support of the employees of BE. Apollo Tyres wants to approach the Labour Court for an interdict prohibiting the employees from striking. Evaluate whether the proposed industrial action by the employees complies with the relevant legislative provisions. (5)
- 4.3 Critically analyse the right to picket within the South African labour law framework. (10)

[25]

TOTAL MARKS: 100