



**UNIVERSITY OF JOHANNESBURG
KINGSWAY CAMPUS
FACULTY OF LAW
JUNE EXAM: 2021**

SUBJECT NAME: **INTRODUCTORY LABOUR LAW** **DURATION:** **4 hours**

SUBJECT CODE: **IAB0012** **MARKS:** **80**

EXAMINER: **Ms K Letsiri
Mr L Koen**

MODERATOR: **Prof ES Fourie**

THIS PAPER RUNS TO **6 (SIX)** PAGES

1. This exam consists of 8 questions. Answer all the questions.
2. You are not allowed to be in contact with other students during the exam. The exam remains **subject to all the normal rules and regulations of the university pertaining to examinations**.
3. Your answers will be tested for plagiarism in general and in respect of the answers of other students.
4. You have 4 hours to complete the exam.
5. You only have one attempt to do the exam.
6. When you have finished the exam, press 'save and submit'. If your device does not allow you to save and submit there is no need to be concerned as the system will auto submit once your time is up.
7. Queries during the exam can be directed to Mr Koen (likoen@uj.ac.za) or Ms Letsiri (klletsiri@uj.ac.za).

Question 1

Match Column A with Column B

1) <i>Universal Church of the Kingdom of God v Myeni Mxolisi Justice</i>	A) In this case the court held that excluding domestic workers from the COIDA is unconstitutional.
2) <i>Mahlangu v Minister of Labour</i> 2021 42 ILJ 269 (CC)	B) In this case the court found that the Section 200A presumption is always applicable irrespective of any legally enforceable contract or contractual arrangement between parties.
3) <i>Assign Services (Pty) Limited v National Union of Metalworkers of South Africa and Others</i> 2018 39 ILJ 1911 (CC).	C) In this case the court found that the Section 200A presumption is applicable only where there is a legally enforceable contract or

	contractual arrangement between parties.
4) <i>Dyokhwe v De Kock NO and Others</i> 2012 33 ILJ 2401 (LC)	D) In this case the court held that excluding domestic workers from the COIDA is constitutional.
5) <i>Rustenburg Platinum Mines Limited v UASA obo Pietersen</i> 2018 39 ILJ 1330 (LC)	E) In this case the court held that the client will become the sole employer of an employee provided through a TES upon continued employment with the client after the expiry of 3-months.
	F) In this case the court held that the employee had already been working for the employer. Such employee had, therefore, not been procured by the TES and consequentially the purported TES arrangement was a transaction in <i>fraudem legis</i> .
	G) In this case the court held that the client will become the joint/dual employer of an employee provided through a TES upon continued employment with the client after the expiry of 3-months.
	H) In this case the court explained that a workplace is exactly that and should not ordinarily be confused with a 'find me love' sanctuary or lonely hearts' club for love-sick employees.
	I) In this case the court explained that it is common for a workplace to be seen as a 'find me love' sanctuary or lonely hearts' club for love-sick employees.

[5]

Question 2

Indicate whether each of the following statements are true or false and motivate your answer.

- 2.1 The rebuttable presumption in Section 200A of the LRA applies to all persons irrespective of their income.
- 2.2 The CCMA and/or a court is bound by the parties' characterisation of their relationship as that of an independent contractor.
- 2.3 Section 60 of the EEA holds an employer liable in all instances where there was sexual harassment in the workplace. It is not sufficient for the employer to take measures to address the complaint as the mere occurrence of sexual harassment results in the imposition of liability.
- 2.4 Permanent members of the SANDF and SAPS are excluded from COIDA's scope of application while acting in defence of the country.
- 2.5 In terms of South African labour law it is assumed that employers and employees enjoy equal bargaining power.

[5]

Question 3

Thomas Shelby applied for maternity leave in terms of the employer's maternity leave policy when he and his partner became the parents of a baby following a surrogate agreement. The employer's maternity leave policy provided for four months' paid maternity leave and two months' paid leave for adoptive parents. The employer refused paying the employee four months' maternity leave, arguing that maternity leave was only available to biological mothers since pregnancy and birth create a physiological effect on the mother, preventing her from working. The employer offered two months' payment applicable to adoptive parents.

Advise the employee on the following:

- 3.1 Which judicial authority (in other words case law) changed the position that will allow the employee to claim full parental leave benefits in relation to his newborn child? (1)
- 3.2 Which of the recent 2019 amendments to the Basic Conditions of Employment Act 75 of 1997 will be applicable to the above set of facts? Briefly motivate your answer. (3)
- 3.3 Refer to your answer in question 1.2 above. When does this type of leave commence? (1)

[5]

Question 4

- 4.1. In light of section 186(1) of the Labour Relations Act 66 of 1995, identify the type of dismissal in each of the following scenarios and motivate your answer.
 - 4.1.1. Lerato, Palesa, Lesego and Mpho are dismissed for participating in unprotected strike action. The employer contacts Palesa and informs her that she may return to her work station. Lerato, Lesego, and Mpho institute a dismissal claim against the employer. (2)
 - 4.1.2. Tebogo's manager constantly gropes her and send inappropriate messages. She reports this matter to the Human Resources Manager in the workplace, however nothing is done to remedy the situation. Tebogo resigns as a result thereof. (2)
 - 4.1.3. Onthatile takes maternity leave in accordance with the Basic Condition of Employment Act 75 of 1997. When she returns to work, her access card declines to grant her access into the premises. She then approaches the security guards and is advised that management has instructed them not to grant her access to the premises as she is no longer an employee of the company. (2)
 - 4.1.4. Flora is employed by LDD (Pty) Ltd. She has been in the employ of this company for 4 years on the basis of various fixed-term contracts. On 30 April 2021, Flora is informed that her contract will not be renewed, thus, her employment has been terminated. (2)
 - 4.1.5. Khadija is employed by VMM (Pty) Ltd. On or about 25 May 2021, VMM (Pty) Ltd and MDL (Pty) Ltd concluded a sale of business agreement in terms of which the latter took transfer of the business of the former. Effectively, Khadija's contract of

employment was transferred to MDL (Pty) Ltd, which then decreased Khadija's remuneration substantially. He resigns as a result thereof. (2)

4.2. An employee had been employed for four years with the same employer in terms of numerous short-term contracts (many of which had been of no more than a month or two in duration). When her employment was terminated, the employee claimed that, in view of the repeated previous renewals, she had had a reasonable expectation of renewal. Advise the employee with regards to her position in law with reference to the case of *SACTWU v Cadema Industries (Pty) Ltd*. (6)

4.3. Peter is employed by IAB (Pty) Ltd as an Operations Manager for one of the business units at the company. The performance of the business unit has been unsatisfactory for several years. There was therefore, insufficient work to justify the number of staff members employed in that unit. As a result, the employer implemented a restructuring process in the business unit and some positions, such as Peter's, became redundant. The employer then issued a notice of contemplation of dismissal in terms of section 189(3) of the Labour Relations Act 66 of 1995. According to the LRA, the moment an employer contemplates dismissing one or more employees for operational requirements, it must consult a relevant consulting party. Explain the purpose of consultation to Peter. (4)

[20]

Question 5

Kevin De Bruyne is employed by MNC (Pty) Ltd. 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 MNC (Pty) Ltd often 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 discovered cannabis in Kevin's bloodstream. He was called to a disciplinary hearing and subsequently dismissed for misconduct.

5.1 Kevin De Bruyne 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 Kevin have to refer the unfair dismissal dispute to the CCMA? (1)

5.3 List the requirements that must be satisfied in order for a referral to the CCMA to be "proper" and identify the correct form that should be completed by the referring party. (5)

5.4 Assume for purposes of this question that Kevin 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 Assume for purposes of this question that a deadlock is reached during the conciliation meeting. Identify three ways in which the conciliator may attempt to break the deadlock. (3)

[15]

Question 6

Rethabile Ougrouz-Dos Santos is a Mozambican migrant working in South Africa. She has been working as a cleaning lady at LJK Staffing Solutions since 1 December 2019. Rethabile does not have a valid work permit and LJK Staffing Solutions were at all material times aware thereof that Rethabile was not legally permitted to work in the Republic of South Africa. LJK Staffing Solutions has run into some financial difficulty and wants to reduce the number of people it employs.

Sipho Dlamini, the CEO of LJK Staffing Solutions, is of the opinion that Rethabile's employment contract is invalid given her lack of lawful status in the RSA. He believes that this would entitle LJK Staffing Solutions to terminate Rethabile's employment without following any processes required in terms of the LRA. He advises that Rethabile does not enjoy the right to fair labour practices in South Africa. Discuss whether Sipho is correct in his assertions.

[8]

Question 7

Sibongile Tswala, a 24 year old female, is employed as a junior bookkeeper at XYZ Enterprises (Pty) Ltd. On Friday 21 May 2021, Sibongile entered the elevator on the 7th floor where her office is located. She was alone in the elevator with Mr John Wilson, a 45 year old male who is her immediate supervisor. Sibongile complimented him on his newly grown beard and asked him why he had decided to grow a beard. He responded that he uses it to "tickle", and he then proceeded to demonstrate what he meant by grabbing Sibongile and rubbing his bearded face against her face in a tickling manner, giving her a bear-hug, and a kiss on the neck and face.

When the elevator stopped on the level where John was meant to get out he did not exit the elevator immediately, telling Sibongile that there were no cameras in the elevator, and had proceeded to hold the elevator button preventing it from opening. John then held and kissed her again, telling her that "I have always wanted to do this with a black lady". At that time, the elevator door opened and it was then that John had stopped holding and kissing her. She exited the elevator and ran towards her vehicle. Upon reaching her vehicle, she sat inside feeling threatened and worried that John might have waited for her to drive to the ground level.

Sibongile reports the matter to HR on Monday saying that she felt violated and does not feel comfortable reporting to John any further. With reference to the above answer the following questions:

- 7.1 Does John's conduct amount to sexual harassment? (11)
- 7.2 Assume for purposes of this question that the HR department decides to ignore the complaint. What can Sibongile do and what are the possible consequences for XYZ Enterprises? (4)

[15]

Question 8

The Allied Beverages Union (ABU), a registered trade union, has long represented the majority of the employees at CBA Beverages (Pty) Ltd. In 2016, CBA Beverages and ABU concluded a collective agreement that requires all employees at CBA Beverages to become members of ABU. At the time a ballot was held and 80% of the employees voted in favour of the agreement.

However, employees have recently grown increasingly disconcerted with ABU whom they believe is no longer representing their interest. Several employees wish to see the agreement terminated and 40% of the employees at CBA Beverages have signed a petition calling for a vote on termination.

With reference to the above, identify the type of agreement and explain the process for its termination in terms of the LRA.

[7]

TOTAL: 80