



**UNIVERSITY OF JOHANNESBURG  
KINGSWAY CAMPUS  
FACULTY OF LAW  
EXAM PAPER 2: 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 4 (FOUR) PAGES

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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](mailto:likoen@uj.ac.za)) or Ms Letsiri ([klletsiri@uj.ac.za](mailto:klletsiri@uj.ac.za)).

**Question 1**

Siyanda Dhlamini works as a hostess at Corner House 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, Siyanda has to walk three kilometres back to her house as there is no public transport. Siyanda 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. Siyanda has been contributing to the Unemployment Insurance Fund (UIF) from the commencement of her employment to date. She approaches you for advice.

Explain in detail to Siyanda whether her conditions of her employment are in line with the Basic Conditions of Employment Act 75 of 1997. In your answer, refer to the following: (i) ordinary hours of work [3]; (ii) maternity leave [4]; (iii) night work [3]. Refer to case law where applicable.

**[10]**

## **Question 2**

Candice Finn is employed by ILL (Pty) Ltd as an Operations Analyst 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 Candice'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.

Answer the following questions.

- 2.1. In terms of the hierarchy established by the Act, list the parties that have to be consulted in relation to dismissals for operational requirements. (4)
- 2.2. Differentiate between small-scale and large-scale retrenchments. (2)
- 2.3. Assume for purposes of this question that Candice, after learning about the proposed dismissals, vandalises the property of the employer by spray painting the walls and smashing the windows, and is subsequently dismissed.
  - 2.3.1. Identify the type of dismissal in terms of s 188 of the Labour Relations Act 66 of 1995. (1)
  - 2.3.2. Explain the requirements for substantive fairness in the case of the type of dismissal identified in question 2.3.1 above. (5)
  - 2.3.3. Refer to your answer at 2.3.1 above and assume for purposes of this question that Candice's employer seeks to conduct a disciplinary enquiry. Explain to Candice in detail, what the requirements for procedural fairness will be in this respect. (8)

**[20]**

## **Question 3**

- 3.1. Winston Bishop is employed by ABC Security (Pty) Ltd as a security guard. On 22 May 2021, Winston is deployed to work at Orlando Stadium during the Soweto Derby. He finds alcohol on the premises but fails to report this to control. Instead, Winston consumes the alcohol. Following a disciplinary hearing, Winston is dismissed for misconduct on the basis of failing to do a proper hand-over at the completion of his shift, consuming alcohol while on duty, failing to protect the client's property and jeopardizing a major contract. Winston refers an unfair dismissal dispute to the CCMA.
  - 3.1.1. From the date of dismissal, how many days does Winston have to refer the unfair dismissal dispute to the CCMA? (1)
  - 3.1.2. Define "settle agreement" in the context of conciliation at the CCMA. (1)
  - 3.1.3. Assume for purposes of this question that the conciliation meeting fails and the matter goes on to arbitration. Name and describe the document that the commissioner will issue at the end of the arbitration proceedings. (2)
  - 3.1.4. Assume Winston disagrees with the commissioner's findings and seeks to take the matter on review to the Labour Court. Any party to a dispute who alleges a defect in

any arbitration proceedings may generally apply to the Labour Court for review of that decision and for an order setting aside the arbitration award. Explain the meaning of “defect” in terms of section 145(2) of the Labour Relations Act 66 of 1995 as well as the test for review as established in *Sidumo v Rustenburg Platinum Mines Ltd.* (6)

[10]

#### **Question 4**

4.1 Distinguish between the following concepts:

4.1.1 Direct and indirect discrimination; (2)

4.1.2 A part time employee and a temporary employee; (2)

4.2 You are the HR Manager at ZYZ Marketing Services (Pty) Ltd. (ZYZ Marketing Services) a public relations and advertising service provider. ZYZ Marketing Services is considering various fixed term appointments. Answer the following questions in this respect-

4.2.1 Describe the maximum time period for which a fixed term contract of employment is generally allowed. (1)

4.2.2 List the two general exceptions to the time period explained above. (2)

4.2.3 ZYZ Marketing Services recruits internationally and appoints Ms Anna Kaspersky. ZYZ Marketing Services obtain a valid work permit for Anna that will subsist for 12 months. Explain whether a fixed term contract of employment for 12 months will be allowed in this instance. (3)

[10]

#### **Question 5**

Lindiwe Madonsela, a 21-year old female, is employed as a social media marketer at CBA Beverages (Pty) Ltd. She reports directly to Lukholo Dlamini who is the marketing manager at CBA Beverages. On Saturday 22 May 2021, Lukholo hosted an informal braai for all employees in the marketing department at his house. The purpose of the braai was to thank all employees in the marketing department for their hard work and to celebrate a 25% increase in sales over the past two months. Lukholo asked Lindiwe if she has a boyfriend and suggested that if she moved in with him he could help her cover her bills. Lindiwe politely declined.

On Monday 24 May Lukholo summoned Lindiwe to his office. He indicated to Lindiwe that if she were to become his lover he would recommend her for an upcoming promotion. Lindiwe declined and indicated that Lukholo's advances were making her feel uncomfortable. He then asked Lindiwe to leave his office immediately. He again summoned Lindiwe to his office on Wednesday 26 May and indicated that her performance had not been satisfactory. He suggested that he is bound to report her decline in performance but would be willing to overlook it if Lindiwe were to take him up on his previous offer. Lindiwe declines and immediately reports the matter to HR.

With reference to the above answer the following questions:

5.1 Does Lukholo's conduct amount to sexual harassment? (10)

5.2 For purposes of this question assume that the HR department decides to ignore the complaint entirely. What can Lindiwe do and what are the possible consequences for CBA Beverages? (5)

[15]

**Question 6**

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

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

[5]

**Question 7**

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 who are not members of ABU to contribute an agency fee to ABU. At the time a ballot was held and 45% of the employees voted in favour of the agreement. The agency fee is set at R150 per month whilst ABU members pay only R50 per month in membership fees.

With reference to the above, identify the type of agreement and explain whether the agreement in question meets the legal requirements for this type of agreement.

[5]

**Question 8**

Tina Malatji had been working for ABC Beverages (Pty) Ltd. (ABC Beverages) since 1 April 2017 as a receptionist. Management advised her that ABC Beverages requires her to conclude a new contract of employment with KJL Staffing Solutions (Pty) Ltd. (KJL Staffing Solutions), a registered temporary employment service (TES) in terms of the Labour Relations Act. The contract between Janice and KJL Staffing Solutions was to subsist for 3 months.

Phumzile Rakau, the CEO of ABC Beverages, says that they undertook this transaction with a view towards ending the employment relationship with Tina at the end of the three-month period. She believes it will allow them to avoid paying severance pay. Comment on the legality of this arrangement. You do not need to discuss the obligation to pay severance pay in your answer.

[5]

**TOTAL 80**