



**UNIVERSITY OF JOHANNESBURG
KINGSWAY CAMPUS
FACULTY OF LAW
EXAM PAPER 3: 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

2.1 Distinguish between the following concepts:

2.1.1 Direct and indirect discrimination; (2)

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

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

[5]

Question 3

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 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 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 5

Angeline Tswala, a 24 year old female, is employed as a junior bookkeeper at XYZ Enterprises (Pty) Ltd. On Friday 21 May 2021, Angeline 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. Angeline 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 Angeline 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 Angeline 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.

Angeline 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:

- 5.1 Does John'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 Angeline do and what are the possible consequences for XYX Enterprises? (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 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.

[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