

SUBJECT NAME : INTRODUCTORY LABOUR LAW
SUBJECT CODE : IAB0012
DATE : SUPPLEMENTARY EXAMINATION – JULY 2020
DURATION : 3 HOURS
WEIGHT : 50 : 50
TOTAL MARKS : 60

EXAMINERS : MRS ME ROSTOLL
MS K LETSIRI
MODERATOR : DR E FOURIE
MODE : ONLINE

GENERAL INSTRUCTIONS TO STUDENTS

Please read the following instructions *carefully*:

- 1) Please note that this is an open-source examination and you are allowed to find assistance in sources like your textbook, lecturer's notes, slides and your own notes or summaries.
- 2) Please refrain from a copy and paste approach and write your answers in your own words where applicable.
- 3) NB - The Faculty of Law takes a zero-tolerance approach towards issues like plagiarism, sharing of examination questions, and unauthorised assistance by anyone else, in writing the exam. Dishonest conduct will have severe consequences for your academic and professional careers.
- 4) Answer all questions.
- 5) Submit your answers in the space provided under each question in Blackboard.
- 6) If you are unable to type your answers in the space provided on Blackboard, please type your answers in a Word document, alternatively, write your answers on paper and take a photo thereof and email it to Mrs Rostoll at merostoll@uj.ac.za.
- 7) Number your answers carefully.
- 8) Write in full sentences where applicable. Do NOT make use of "SMS speak".
- 9) ALL students have to submit their answers no later than 11h00 on the day of the exam.
- 10) If you experience any problems with regards to either writing or submitting your examination, please contact Mrs Rostoll immediately either via email (merostoll@uj.ac.za) or WhatsApp (0828536819).

QUESTION 1 (UNIT 3 - BASIC CONDITIONS OF EMPLOYMENT)

A male employee 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:

- 1.1 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)
- 1.2 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)
- 1.3 Refer to your answer in question 1.2 above. When does this type of leave commence? (1)
- 1.4 What notice period should be given by the employee to the employer for this type of leave? (2)
- 1.5 Which legislation regulates the payment of this type of leave and how will the amount be determined? (3)

[10]

QUESTION 2 (UNIT 4 - EQUALITY)

The applicant was a former female employee of the respondent. She was employed on an annual fixed term contract ending in December of each year. The renewal of the contract was dependent on funding as the respondent was a non-profit organisation. She had been in the employ of the respondent since 2004. In December 2008 the applicant was dismissed.

The applicant alleged that the respondent's former national director had made repeated sexual advances towards her. She had repeatedly rejected such advances. The respondent's code of conduct required that instances of sexual harassment must be reported. Despite the applicant's knowledge of such code she elected not to report the advances. She believed she had control of the situation, and could not have anticipated the consequences thereof. Following the final instance of alleged sexual harassment which she refused the applicant testified that the former national director's behaviour towards her changed. She was advised in December of 2008 that her contract would not be renewed due to her poor performance. This was the first occasion in which her alleged poor performance had been raised. Furthermore, the alleged perpetrator of the sexual harassment had, prior to this matter being heard, left the employ of the respondent, and was unable to be traced.

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Following the termination of her contract the applicant raised the occurrence of the alleged sexual harassment. The respondent did not respond to these allegations, nor did the evidence reflect that the claims were investigated.

PLEASE NOTE – when a question contains an assumption that assumption is only applicable to the particular question unless the context indicates otherwise.

- 2.1 Briefly explain what the constitutional concept of the right of equality is based on within an employment law context. (3)
- 2.2 In your own words summarise the primary purposes of the Employment Equity Act 55 of 1998 in two sentences? (2)
- 2.3 There is other legislation that also supplement the Employment Equity Act 55 of 1998 in regulating equality and discrimination within the employment relationship in South Africa. Name the relevant supplementary legislation. (2)
- 2.4 Would this scenario fall within the ambit of the Employment Equity Act 55 of 1998 (in other words would the Act be applicable)? Motivate your answer. (4)
- 2.5 According to the *Amended Code of Good Practice on the Handling of Sexual Harassment Cases in the Workplace* (2005) certain factors should be considered to establish whether sexual harassment is taking place in the workplace and if the rights of an employee is being violated. Identify and apply these factors to the given set of facts. (6)

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QUESTION 3 (UNIT 5 – DISMISSAL WITH SPECIFIC FOCUS ON CONSTRUCTIVE AND AUTOMATICALLY UNFAIR DISMISSALS)

PLEASE NOTE – when a question contains an assumption that assumption is only applicable to the particular question unless the context indicates otherwise.

- 3.1 In your own words explain when will a dismissal be deemed as automatically unfair in terms of South African labour legislation? (2)
- 3.2 Charlotte is a 30-year-old female and she and her husband decide that it is time to start a family. She falls pregnant and informs her employer. Charlotte is subsequently dismissed and is told that she will be a liability to the organisation as she will always be tired and moody, she will not meet deadlines as a result, and she will later be taking maternity leave, leaving the employer short-staffed. The employer further tells Charlotte that after giving birth she will not be solely focused on her work and that this was simply “a bad time to fall pregnant”.

Charlotte approaches you for advice and you have to explain to her why this dismissal constitutes an automatically unfair dismissal. (4)

[6]

QUESTION 4 (UNIT 6 - COLLECTIVE LABOUR LAW)

The employees at ABC Superstore decide to embark on strike action as their employer is failing to meet their demands.

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- 4.1 Explain the procedural requirements that have to be satisfied in order for the strike to be protected. (5)
- 4.2 Explain in your own words what the difference is between a strike and protest action? (2)
- 4.3 The Constitution of the Republic of South Africa, 1996 guarantees the right to freedom of association. The right is afforded to all employees however, there has been some uncertainty regarding the extent to which the right to freedom of association of senior managerial employees may be limited or even excluded. Explain the position of senior managerial employees with reference to the right to freedom of association. (5)

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QUESTION 5 (UNIT 7 - DISPUTE RESOLUTION)

Sipho is employed at Wood Timber Manufacturers. 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 Wood Timber Manufacturers seldom 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 discovers cannabis in Sipho's bloodstream, he is called to a disciplinary hearing and is subsequently dismissed for misconduct.

- 5.1 Sipho 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 Sipho have to refer the unfair dismissal dispute to the CCMA? (1)
- 5.3 The referral of a dispute to the CCMA must be proper. Explain how a proper referral of a dispute to the CCMA for conciliation should be made and also identify the correct form that should be completed and accompany such referral. (5)
- 5.4 At the end of the conciliation process, the commissioner issues a certificate of outcome stating that the matter remains unresolved. Sipho decides to take the matter further at the CCMA. What is the next step? Explain this process to Sipho. (5)
- 5.5 When is the con-arb (conciliation-arbitration) process used? (3)

[15]

TOTAL

[60]