

SUBJECT NAME : INTRODUCTORY LABOUR LAW
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EXAMINERS : MRS ME ROSTOLL
MODERATOR : DR E FOURIE
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GENERAL INSTRUCTIONS TO STUDENTS

- 1) Answer all questions.
 - 2) Answer all questions in the SCRIPT provided.
 - 3) Write legibly.
 - 4) Number your answers carefully.
 - 5) Leave a line open between each answer (for example, between questions 1.1 and 1.2).
 - 6) Write in full sentences where applicable. Do NOT make use of “SMS speak”.
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QUESTION 1

- 1.1 The common-law contract of employment attributes several duties to employees. List these duties. (5)
- 1.2 An Argentinian employee was dismissed by his South African employer when his residence permit expired. In order to justify the dismissal, the employer relied upon the Immigration Act 13 of 2002, which prohibits the employment of a foreign national without permission. The employer argued that the definition of "employee" contemplates or implies a valid contract of employment and that, as a result, the Labour Relations Act 66 of 1995 did not apply to the employee. Advise the employee with regards to his chances of success against his employer by referring to the judgment handed down by the Labour Court in the case of *Discovery Health Ltd v CCMA*. (8)

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QUESTION 2

Thabo is a shop assistant who works six days per week from Monday to Saturday. He earns R9500 per month. His employer also requires of him to work on public holidays and occasionally on a Sunday, but does not pay him any extra remuneration. Thabo also became ill and he had to undergo surgery to remove his appendix. Upon informing his employer that he cannot work due to the surgery his employer insisted that he would have to take unpaid annual leave for the days he will be absent from work. As Thabo did not receive a written contract from his employer he wants to know what conditions of employment are applicable to him.

Explain in detail to Thabo what the conditions of his employment will be with regard to the following:

- 2.1 Overtime; (4)
- 2.2 Sick leave and proof of incapacity; (5)
- 2.3 Work on Sundays and public holidays; (3)

[12]

QUESTION 3

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 2015. In December 2018 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 2018 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.

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.

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

- 3.1 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. (3)
- 3.2 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. List these factors. (4)
- 3.3 With reference to the given set of facts. Can an employer be held liable for the sexual harassment committed by one of its employees? Motivate your answer. (6)
- 3.4 The obligation on employers to prevent harassment in the workplace means that employers should be proactive about putting in place steps to prevent its occurrence, and if it happens, to make sure that the issue is seriously and expeditiously dealt with. What minimum measures should an employer implement to ensure compliance with this duty? (4)

[17]

QUESTION 4

An employee of the Department of Correctional Services was a medical practitioner involved in rendering health care services to prisoners in Pollsmoor Prison. He reported serious shortcomings in the provision of these services to the inspecting judge and the portfolio committee after his complaints to his employers, the Department of Correctional Services and the Department of Health had no effect. As a form of punishment the employee was transferred against his will as a result of the disclosure.

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- 4.1 Which legislation regulates the scenario as described in the set of facts above? (1)
- 4.2 Refer to your answer in question 4.1 above. Briefly explain the purpose of the said legislation. (3)
- 4.3 Assume for this question only that the disclosure was not made to the employer or any of the prescribed bodies as required by the relevant legislation, will the employee still be protected? Motivate your answer. (6)

[10]

QUESTION 5

- 5.1 Explain the onus of proof for both the employer and employee in proceedings concerning an alleged unfair dismissal. (3)
- 5.2 The Labour Relations Act 66 of 1995 provides for three remedies in the case of unfair dismissal. List these remedies. (3)

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- 5.3 Indicate in each of the following scenarios whether they amount to constructive dismissal? Briefly motivate your answer in each instance.
- 5.3.1 Sandy's employer is constantly shouting at her for working slowly. Sandy resigns as a result. (2)
- 5.3.2 Sandile's employer constantly makes racist remarks about Sandile in his presence. Sandile is fed up with this and decides to resign. (2)
- 5.4 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)

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QUESTION 6

- 6.1 The Labour Relations Act 66 of 1995 provides a number of reasons upon which a dismissal will be deemed automatically unfair. List three of these reasons. (3)
- 6.2 Can an employer raise any defence to justify a dismissal once it has been proved to be automatically unfair? Motivate your answer. (3)
- 6.3 Indicate in each of the following scenarios whether they amount to an automatically unfair dismissal. Motivate your answer in each instance.
- 6.3.1 Anand reports his employer to the Department of Labour as he is required to work more than the maximum working hours. He is dismissed when his employer finds out. (2)
- 6.3.2 When Jose tells his employer that he is homosexual he is dismissed. (2)
- 6.3.3 Sarah is dismissed when she reaches the age of 65. She feels that this is discrimination on the grounds of age. (2)

[12]

TOTAL

[80]