



UNIVERSITY OF JOHANNESBURG

FACULTY OF LAW (AUCKLAND PARK CAMPUS)

**SUBMISSION OF FINAL EXAMINATION PAPERS
JUNE/JULY 2017**

MODULE NAME: Introducing Labour Law

MODULE CODE: LAB0012

LECTURER (S): Ngaretso Mokoena

HEAD OF DEPARTMENT: Prof K. Van der Linde

EXIT MODULE: YES/ NO No

FOR EXIT MODULES:
EXTERNAL MODERATOR: _____

EXTERNAL MODERATOR FORM ATTACHED: _____

INSTRUCTIONS:

1. How many of the following items will be required per student?

Examination script (4 pages) 1

Scanner sheet _____

Other (please specify) _____

2. How many students are still attending lectures (with a view to the number of examination papers required)? 50

SIGNATURE OF LECTURER:

DATE:

25/05/2017

**SIGNATURE AS HEAD OF
DEPARTMENT
(AS INTERNAL MODERATOR)**

DATE:

4-6-2017

FOR ADMINISTRATIVE PURPOSES:

Noted: _____

Date: _____



UNIVERSITY OF JOHANNESBURG
KINGSWAY CAMPUS
FACULTY OF LAW
JUNE EXAMINATION

COURSE NAME : **INTRODUCTORY LABOUR LAW**

CODE : **IAB0012**

DATE : **6 June 2017**

DURATION : **12:30 – 14:30 (2 HOURS)**

WEIGHT : **50: 50 (Of year mark)**

TOTAL MARKS : **80**

EXAMINER : **MS KB MOKOENA**

MODERATOR : **PROF K VAN DER LINDE**

NUMBER OF PAGES : **5 PAGES**

INSTRUCTIONS : **QUESTION PAPERS MUST BE HANDED IN.**

ANSWER ALL QUESTIONS.

QUESTION 1

Sydney works as a designer for Jacob's Jewelers. He is a part time shop steward for the Diamond Workers Trade Union (DWTU). During March of 2014, Sydney organizes a protected strike at the workplace based on the demand that workers would like a wage increase of 10% for the year. The strike ends with the parties settling for an 8% wage increase.

After the strike, Sydney notices that his managers are treating him quite differently. He is often reprimanded for things he did not do, he is overloaded with work and he is "mistakenly" left off of invitations for social functions in the workplace. Sydney becomes depressed and struggles to do his work. He eventually resigns.

- 1.1 Sydney makes a referral to the CCMA regarding what he believes to be a constructive dismissal. Describe the onus of proof in a dispute of this nature. [2]
- 1.2 Sydney believes that the legal issues around his dismissal are very complex and would like to hire an attorney to represent him during the proceedings at the CCMA. Under what circumstances will he be allowed legal representation? [6]
- 1.3 Sydney is unsuccessful at the CCMA as the arbitrator declares his dismissal to be fair. Should he wish to take the matter further, what should he do? [2]
[10]

QUESTION 2

Pam works for Wits University as a lecturer. She is charged with sexual harassment of a colleague. She and her colleague Jacob had a consensual relationship and she has Whatsapp messages and emails which prove this. The chairperson of her internal disciplinary hearing, Matthew, refused to take the messages and emails into account because he is in love with Pam and she rejected his advances. Matthew recommends that Pam be dismissed and she is accordingly dismissed on 23 March 2017.

After her dismissal Pam is extremely distraught because her reputation has been tarnished and she is concerned that she will never find another job in academia. She is diagnosed with clinical depression and spends two months in a rehabilitative clinic.

Pam is discharged from the clinic on 23 June 2017. She believes that her dismissal is unfair and makes a referral to the CCMA.

Pam's referral is late. What factors will Pam have to explain in her application for condonation? Your answer should include your view as to whether her application for condonation will be successful in light of the facts provided. [10]

QUESTION 3

The Union of Supermarket Cashiers (USC) has members in 100 different supermarkets in Gauteng. The cashiers at Randburg Kwik Spar go on strike to demand a wage increase of 7%. Cresta Pick n Pay employees would like to go on strike in solidarity with the Kwik Spar workers.

- 3.1 Define what is meant by a “strike” in terms of section 213 of the LRA. [6]
 3.2 Under what circumstances can a union dispense with the issuing of a notice to strike? [5]
 3.3 What will the Pick n Pay strike be called? [1]
 3.4 What requirements must be met for the Pick n Pay workers’ strike to be lawful? [3]
[15]

QUESTION 4

Lee was recently offered employment as a sales assistant at Extensive Books. She will work 5 days per week and earn R4000 per month. She has not received a written contract of employment and asks your advice on what his basic conditions of employment will be. Accordingly, briefly advise Lee on what he will be entitled to in terms of the Basic Conditions of Employment Act in relation to the following:

- 4.1 Work on a public holiday and remuneration thereof [2]
 4.2 Family Responsibility leave [3]
 4.3 Maternity leave and remuneration [3]
 4.4 Notice of termination of services [5]
 4.5 Meal intervals [1]
 4.6 List the obligations of **both** the employee and the employer in an employment relationship [6]
[20]

QUESTION 5**Choose the most correct answer**

- 5.1 A restraint of trade clause in a contract of employment is valid and enforceable unless:
 a) The employee can prove that the clause was inserted without his consent
 b) The employee can prove that the clause is contrary to public policy
 c) The employee can prove that he will not be able to work within South Africa
 d) The employee can prove that he will be unemployed if the clause is enforced
- 5.2 An independent Contractor is obliged to:
 a) Perform specified work within a reasonable or specified time
 b) Obey instructions relating to the manner in which she performs her work
 c) Work for the employer for at least 40 hours per week
 d) Be at work at a time specified by the employer

- 5.3 In a temporary employment services contract, once the employee is based with the client for longer than 3 months:
- a) The employee can be dismissed without warning
 - b) The employee is deemed to be employed by the client
 - c) The employee must be given a permanent contract
 - d) The employee should consider going on strike
- 5.5 A contract of employment with a temporary employment service must be:
- a) Signed by both the employee and employer
 - b) In writing
 - c) Signed by the client
 - d) Registered with the Department of Labour
- 5.4 When an employee is the victim of an automatically unfair dismissal, he or she is entitled to a special compensatory award of:
- a) 3 months wages
 - b) 1 week's wages for every month employed
 - c) 12 months wages
 - d) 24 months wages
- 5.6 Following an unfair dismissal, an employee is entitled to be reinstated unless:
- a) He or she does not wish to return to work
 - b) It will be impractical for the employee to return to work
 - c) The circumstances of the dismissal are such that continued employment will be intolerable
 - d) All of the above
- 5.7 The two legs upon which a fair dismissal will rest are:
- a) Equal constitutional rights and equality
 - b) Substantive and procedural fairness
 - c) The Basic Conditions of Employment Act and the Labour Relations Act
 - d) All of the above
- 5.8 An example of an automatically unfair reason for dismissal would be:
- a) A dismissal based on intended pregnancy of the dismissed employee
 - b) A dismissal based on the dismissed employee's sexual harassment of another employee
 - c) A dismissal based on the participation in an unprotected strike
 - d) A dismissal based on the theft of money by the dismissed employee
- [8]

QUESTION 6

Jay's IT Assist (JIA) employs 60 employees. JIA has never prepared or implemented an employment equity plan. All of the employees of JIA are white males. Phumzile, a black woman, applies for a job as a computer technician at JIA even though she has no qualification in computers and has never operated a computer. Leanne, a white woman, who obtained a BSc degree in Computer Sciences is appointed.

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- 6.1 Is JIA a designated employer for the purposes of the Employment Equity Act? Provide at least one reason for your answer. [2]
- 6.2 What is meant by 'designated groups' in the Employment Equity Act? [6]
- 6.3 Is Phumzile suitably qualified? Provide reasons for your answer with reference to the relevant criteria. [5]
- 6.4 What are the duties of a designated employer? [4]
- [17]
- TOTAL [80]**