



SUBJECT : **LABOUR LAW 1A (BAH11A1/LLA41A1) EXAMINATION 2018**
DATE : 12 June 2018
DURATION : 2 hours
TOTAL MARKS : 100
EXAMINER : Ms L van der Merwe
MODERATOR : Mr IR Nel

INSTRUCTIONS TO STUDENTS

1. Answer all questions in the answer sheet provided.
2. Read each question carefully.
3. Write legibly.
4. Use blue or black ink only.
5. Number each question clearly.
6. Leave a line open between answers.
7. Follow the instructions provided carefully.

THIS PAPER RUNS TO 6 (SIX) PAGES AND IS MADE UP OF SECTIONS A, B AND C.

SECTION A

INSTRUCTION:

Use the following set of facts below to answer questions 1- 7.

John, Ryan, Kobus, Sarah and Sipho (the Employees) are employed by Euro Paints (Pty) Ltd (the Employer) as painters. They have made numerous requests to Euro Paints (Pty) Ltd to reduce their daily working hours from 13 hours to 8 hours. Euro Paints (Pty) Ltd has declined the request from the Employees to reduce their daily working hours. John advises his colleagues that he is extremely unhappy at work and considers doing a project at a nearby university as an independent contractor. The Employees approach you for legal advice.

1. Provide 5 (five) common law duties of the Employees. (5)
2. Explain 3 (three) differences between an employee and an independent contractor. (6)
3. List 5 (five) sources of labour law that you may consult when providing advice to the Employees. (5)
4. Assume that the Employees want to engage in a protected strike to persuade the Employer to reduce their daily working hours. The Employer has advised that he will prevent the Employees from entering the business premises should they refuse to work for less than 13 hours per day.
 - 4.1 Define and discuss the main difference between a lock-out and strike. (4)
 - 4.2 List the requirements for a protected strike. (4)
 - 4.3 Provide the consequences of an unprotected strike. (3)
5. Sarah advises you that she has information that she would like to disclose that relates to the Employer's negative conduct towards customers and competitors.
 - 5.1 Advise Sarah of 4 (four) persons that she could make a disclosure to in terms of the Protected Disclosures Act 26 of 2000 (PDA). (4)
 - 5.2 Sarah makes a disclosure, in terms of the PDA, and she is subsequently demoted. Advise Sarah of the 4 (four) types of unfair labour practices contained in the Labour Relations Act 66 of 1995 (LRA). (4)
6. Assume that John has been employed by the Employer for 2 (two) years.
 - 6.1 List 5 (five) ways that John's contract of employment may be terminated. (5)
 - 6.2 What is the required notice period that John will be required to serve prior to terminating his contract of employment. (1)
 - 6.3 John wants to make use of family responsibility leave. His contract of employment does not contain any provisions in this regard. List 3 (three) instances in which John may be granted family responsibility leave. (3)

7. The Employer alleges that John arrived at work intoxicated on numerous occasions.

7.1 Identify the ground, in terms of the LRA, that the Employer could rely on to dismiss John. (1)

7.2 Discuss the substantive and procedural fairness requirements that the Employer has to prove to rely on the ground identified in Question 7.1. (7)

SUB TOTAL: SECTION A [52]

SECTION B

QUESTION 1

INSTRUCTION:

Link the description in Column A to the most suitable phrase contained in Column B. Example: 1A.

	COLUMN A		COLUMN B
1	Person with a disability	A	Provision of safe working conditions
2	Matter for consultation by workplace forums	B	Affirmative action
3	Dominant impression test	C	An employer is liable to third parties for delicts committed by its employees within the scope of employment
4	Common law duty of employer	D	Indirect unfair dismissal
5	The use of so-called objective criteria that operates to the systematic disadvantage of a particular category of persons	E	Designated group
6	Members of the South African National Defence Force	F	The partial or complete concerted refusal to work, or the retardation or obstruction of work, for the purpose of promoting or defending the socio-economic interests of workers
7	Analysis of its employment policies, practices, procedures to ensure no discriminatory barriers	G	Excluded from the ambit of the Basic Conditions of Employment Act, 1997
8	Employer's delictual liability	H	Restructuring of the workplace
9	Protest action	I	To warrant his/her competence and reasonable efficiency
10	Common law duty of employee	J	Requires consideration of all facts relating to the relationship between parties to determine whether someone is an employee or not
		K	Strike

(10)

QUESTION 2

INSTRUCTION:

Identify the type of dismissal in respect of the following employees:

- 2.1 Aaliyah is dismissed because she informs her employer that she is pregnant. (1)
- 2.2 Shane is constantly absent from work, without taking official leave, and he gives no explanation for his absences. (1)
- 2.3 Sipho refuses to follow the reasonable instructions of his employer, and instead he chooses to do as he pleases. (1)
- 2.4. Zaid is dismissed for participating in a protected strike. (1)
- 2.5 Sandra is dismissed for refusing to do the work of her fellow employees while they are on strike. (1)
- 2.6 Kyle is dismissed for lying about his qualifications in his curriculum vitae. (1)
- 2.7 John is dismissed after contracting a rare lung disease that prevents him from working as a miner. (1)
- 2.8 Richard utilises narcotics while he is on duty. (1)
- 2.9 Trevor no longer works due to his employer shutting down parts of its car manufacturing plant due to the declining economy. (1)
- 2.10 Lola utilises her company's internet for personal reasons and incurs a bill of R250 000. (1)

SUB TOTAL: SECTION B**[20]**

SECTION C

QUESTION 1

Name any 5 (five) constitutional rights relevant to labour law. (5)

QUESTION 2

Identify 5 (five) types of dismissals that are regarded as automatically unfair. (5)

QUESTION 3

Discuss the role that the Commission for Conciliation, Mediation and Arbitration plays in Relation to labour matters. (3)

QUESTION 4

Define the term 'bargaining council' and provide 3 (three) functions of a bargaining council. (6)

QUESTION 5

Discuss the consequences of a protected strike. (5)

QUESTION 6

Define the concept 'essential service' **AND** advise whether persons identified as essential services are allowed to participate in a strike. (4)

SUB TOTAL: SECTION C	[28]
GRAND TOTAL:	[100]
