



<b><u>FACULTY</u></b>	: LAW
<b><u>DEPARTMENT</u></b>	: PUBLIC LAW
<b><u>CAMPUS</u></b>	: APK
<b><u>MODULE</u></b>	: ABR0021/ LLW41B0 LABOUR LAW
<b><u>SEMESTER</u></b>	: SECOND SEMESTER
<b><u>EXAM</u></b>	: SPECIAL EXAM

**DATE** : 20 JANUARY 2022

**ASSESSOR(S)** : Prof ES FOURIE (UJ)

**MODERATOR** : PROF MM BOTHA (UP)

**DURATION** : 4 HOURS

**MARKS** : 60

**PLEASE NOTE YOU MUST EMAIL YOUR ANSWERS TO: [esfourie@uj.ac.za](mailto:esfourie@uj.ac.za)**

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**NUMBER OF PAGES: 3 PAGES**

**INSTRUCTIONS:**

- 1. PAY ATTENTION TO THE MARK ALLOCATION OF EACH QUESTION AND PLAN YOUR ANSWERS ACCORDINGLY. PLEASE SEE EXAM INTRUCTIONS ATTACHED: ANNEXURE A.**
- 2. ANSWER ALL THE QUESTIONS. READ ALL QUESTIONS CAREFULLY AND ANSWER COMPREHENSIVELY. REFER TO ANY RELEVANT AUTHORITY**

**MODULE:** ABR0021/ LLW41B0 (LABOUR LAW)

**QUESTION 1**

Ms North was employed as a secretary at Liberty Group Limited. She alleges that her manager, Mr West, harassed her on four separate occasions during 2021. This took the form of inappropriate comments and physical contact. During this time, she was also experiencing financial difficulties. She discussed this with Mr West. At this stage, she did not report the harassment as she feared that she might lose her job. However, the harassment continued and on 25 August 2021 she contacted Mr South, the human resources consultant, and disclosed the sexual harassment by Mr West. No steps were taken to investigate the claim and Ms North submitted her resignation. Ms North seeks your advice in respect of this matter.

Critically analyse the legal position of Ms North and advise her of any possible remedies that she may have under applicable labour legislation. **[15]**

**QUESTION 2**

A platinum mine operated by King Price Platinum Limited decided to retrench 103 of its employees. On 14 September 2020, the employees arrived at the mine to start their workday. They were unable to clock in for work. The access system did not allow them entry. A human resource assistant arrived and issued the employees with retrenchment notices, dated 1 September 2020.

There was a retrenchment agreement concluded between the majority trade union XYZ, and the employer. JKL, a minority trade union, representing approximately 11% of employees, was not consulted, as the union was excluded by a collective agreement. The members of JKL, and individual employees that did not belong to the above union were therefore not consulted with reference to the retrenchments. The reason for this is because the Labour Relations Act 66 of 1995 (LRA) and our

Labour Courts have given lawful authority to the following: a majority union, after concluding a collective agreement with an employer, enjoys the exclusive right to be consulted during the retrenchment process. The majority trade union can then conclude a further collective agreement which sets out the terms of the retrenchment. This agreement can then be extended to minority unions and non-unionised employees. The minority trade union, JKL and non-unionised employees seek your advice as they are arguing that the above process is not in line with the constitution, and specifically that section 23(1) of the constitution does not allow for such exclusions.

Kindly advise the parties as to the constitutionality of the above process. In your answer you must also critically evaluate section 189 and 189A of the LRA.

**[20]**

### **QUESTION 3**

"The rationale for the new amendments of section 21 of the LRA is an attempt to adopt a more holistic approach by broadening/adjusting the scope to grant organisational rights to unions that do not enjoy a majority at the workplace."

The amendments give effect to the principles of freedom of association in that employees have the right to choose their representation and that minority unions can approach the CCMA where they have not been granted organisational rights. (*Independent Municipal and Allied Trade Union v Commission for Conciliation, Mediation and Arbitration and others* [2017] 6 BLLR 613 (LC) para 10).

Consider the above statement and critically comment on the acquisition of organisational rights by registered trade unions that do not represent the majority.

**[10]**

#### **QUESTION 4**

“The right to strike is of historical and contemporaneous significance. In the first place, it is of importance for the dignity of workers who in our constitutional order may not be treated as coerced employees. Secondly, it is through industrial action that workers are able to assert bargaining power in industrial relations.” (*NUMSA v Bader Bop (Pty) Ltd* (2003) (2) BCLR (CC) para 13.)

Consider the above statement and evaluate and compare the following forms of industrial action as provided for by the LRA:

- (a) protest action;
- (b) picketing; and
- (c) secondary strikes.

[15]

**TOTAL MARKS: [60]**

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