



UNIVERSITY OF JOHANNESBURG

FACULTY OF LAW

EXAMINATION: NOVEMBER 2016

SUBJECT NAME: Labour Law

MODULE CODE: ABR0021

DURATION: 180 MINUTES

MARKS: 100

EXAMINER: 1) Mrs ES Fourie (UJ)

EXTERNAL EXAMINER: 2) Prof MM Botha (UP)

THIS PAPER RUNS TO 5 PAGES

INSTRUCTIONS:

1. PAY ATTENTION TO THE MARK ALLOCATION OF EACH QUESTION AND PLAN YOUR ANSWERS ACCORDINGLY.
 2. ANSWER ALL THE QUESTIONS. READ ALL QUESTIONS CAREFULLY AND ANSWER COMPREHENSIVELY. REFER TO ANY RELEVANT AUTHORITY.
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QUESTION 1

DUSWO, a registered trade union, seeks organisational rights. DUSWO only represents 18 out of 75 employees. It had represented 35, but due to the employer's restructuring, its membership had been reduced dramatically. DUSWO seeks organisational rights as a sufficiently representative trade union, however, the employer, Group 4 Falck (Pty) Ltd, refuses to grant DUSWO any organisational rights.

Consider the above facts and answer the following questions:

- 1.1 The *Labour Relations Act* 66 of 1995 (hereafter LRA) does not define "sufficiently representative". However, section 21(8) provides certain considerations. Discuss these considerations that the commissioner will take into account when considering the representivity of the above trade union DUSWO. (5)
- 1.2 Organisational rights are trade union rights and cannot be exercised by an individual employee. These rights enable the trade union to get a foot in the door of the workplace. Briefly discuss the acquisition of organisational rights by a trade union. (10)
- 1.3 Explain what constitutes a refusal to bargain in terms of the *LRA*. (5)
- 1.4 Discuss the trade union's most appropriate response to an employer's refusal to bargain. (3)

[23]

../2

QUESTION 2

The decision of the Constitutional Court in *South African Police Services v Solidarity obo Barnard* brings an end to a dispute that has been considered by 4 courts and 20 judges.

With reference to the above statement, answer the following questions:

2.1 No less than four separate judgments were given by members of the Constitutional Court. Discuss the three matters that were not at issue between the judges. (3)

2.2 Discuss the three requirements that affirmative action, envisaged in section 9 (2) of the Constitution, must meet. (4)

[7]

QUESTION 3

Big Enterprises (BE), a motor car manufacturer has concluded a recognition agreement with the National Union of Mineworkers (NUM). In terms of this agreement, NUM is recognised in respect of its members in a defined bargaining unit – all weekly paid employees. Sixty (60) per cent of the employees in the bargaining unit are members of the union; the other forty (40) per cent of the employees in the bargaining unit are either not represented by any union whatsoever or they are represented by Alternative Union of Mineworkers (AUW). Even so, the company always extends whatever wage increase it agrees with the union to all employees in the bargaining unit, irrespective of their union membership.

../3

The current wage agreement expired at the end of August 2016 and the parties are in dispute over wages for 2016/2017. The dispute has been referred to the CCMA by NUM and conciliation failed. A certificate of non-resolution of the dispute has been issued by the CCMA.

Consider the above and answer the following questions:

- 3.1 NUM intends to strike about the above issue. Advise the union of the substantive limitations in respect of a strike. (6)
- 3.2 Employees of Apollo Tyres, a tyre company, give seven days' notice of their intention to embark on industrial action in support of the employees of BE. The owner of Apollo Tyres wants to approach the Labour Court for an interdict prohibiting his employees from striking. Please advise him whether the proposed industrial action by his employees comply with the relevant legislative provisions. (6)
- 3.3 Distinguish between protest action and the right to picket. (4)
- [16]**

QUESTION 4

Dikholo (Pty) Ltd is a company that offers conference and leisure facilities to its clients. It has 200 employees, one of whom is Mr James Mbele. Mr James Mbele wilfully absented himself from work, after the employer refused to grant him leave for an extended period to attend a training course, to be trained as a traditional healer. Mr James Mbele informed the employer that he was "disturbed in his spirits" and that his condition was serious. He provided the employer with a letter from his traditional healer.

../4

The employer feels that the letter was misplaced because it was not a letter by a medical practitioner as required by the *Basic Conditions of Employment Act 75* of 1997.

The employer wants to dismiss Mr James Mbele for misconduct and seeks your advice as to the fairness of such dismissal. In your answer you must refer to relevant authority. [10]

QUESTION 5

Discuss the onus of proof in dismissal disputes. In your answer you must distinguish between dismissals as defined in section 186 of the *LRA* and dismissals for one of the reasons listed in section 187. [5]

QUESTION 6

Edcon Limited (Edcon) employs almost 40 000 sales, administrative and other staff in 1 300 retail outlets across South Africa. Edcon's business began to falter and it is contemplating retrenching 4 000 workers.

Consider the above facts and answer the following questions:

- 6.1 Discuss the procedural requirements that the above retrenchment must meet in order to be fair. In your answer you must also distinguish between large scale retrenchments and smaller retrenchments. (8)
- 6.2 OGAWWU, a trade union that represents the majority of the workers, now alleges that Edcon did not comply with fair procedure as prescribed by the *LRA*. Please advise them if there are any remedies available in this instance. (5)

../5

6.3 Edcon seeks advice in respect of the selection of employees for retrenchment. Advise Edcon of fair selection criteria in this regard. (5)

6.4 There is no general obligation to pay severance pay on termination of employment. However, the obligation arises when employees are dismissed for reasons related to the employer's operational requirements. Critically discuss the obligation to pay severance pay in these instances.

(5)

[23]

QUESTION 7

An occupational detriment is defined in relation to the employee's working environment. Provide any four examples of an occupational detriment in this context.

[4]

QUESTION 8

Ms West is an employee of Scientific Solutions (Pty) Ltd. During September 2016, she accompanied another employee, Mr Simmers, to Botswana, to survey a site in order to install some equipment for the Botswana Power Corporation. They stayed over at a lodge and had supper together. After supper, Mr Simmers asked Ms West whether she wanted a lover for the night. She refused and made it clear that she had a boyfriend. He did not pursue it. Ms West seeks your advice in respect of this matter as she felt uncomfortable with Mr Simmers's conduct.

Please advise Ms West on her legal rights (if any) and any possible remedies that she may have under applicable labour legislation.

[12]

TOTAL MARKS: 100