



<u>FACULTY</u>	: LAW
<u>DEPARTMENT</u>	: PUBLIC LAW
<u>CAMPUS</u>	: APK
<u>MODULE</u>	: ABR0021/ LLW41B0 LABOUR LAW
<u>SEMESTER</u>	: SECOND SEMESTER
<u>EXAM</u>	: 21 NOVEMBER 2019

<u>DATE</u>	: 10 NOVEMBER 2019	<u>SESSION</u>	2nd SESSION
<u>ASSESSOR(S)</u>	: DR ES FOURIE (UJ)		
<u>MODERATOR</u>	: PROF MM BOTHA (UP)		
<u>DURATION</u>	: 120 MINUTES PLUS 15 MINUTES READING TIME		
<u>MARKS</u>	: 60		

NUMBER OF PAGES: 3 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

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 2019. 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 2019 she contacted Mr Soller, 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. In your answer you must also consider the concepts of discrimination, harassment and the onus of proof in this dispute. **[20]**

QUESTION 2

Cleopatra Country Estate (Pty) Ltd is a company that offers conference and leisure facilities to its clients. It has 200 employees, one of whom is Ms Katie Masilo. Ms Katie Masilo wilfully absented herself from work, after the employer refused to grant her leave for an extended period to attend a training course to be trained as a traditional healer. Ms Katie Masilo informed the employer that she was "disturbed in her spirits" and that her condition was serious. She provided the employer with a letter from her traditional healer.

The employer feels that the letter was invalid 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 Ms Masilo for misconduct under the company's workplace rules and seeks your advice as to the fairness of such dismissal. In your answer you must also evaluate the concept of employee with reference to dismissal protection, appropriate remedies, burden of proof and the dispute resolution framework in this case. **[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."

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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)

Write an essay in which you critically reflect on the principle of majoritarianism and debate whether minority trade unions should be granted organisational rights in terms of the Labour Relations Act 66 of 1995. **[10]**

QUESTION 4

Critically analyse the substantive limitation on the right to strike with reference to essential, maintenance and minimum services within the South African labour law framework. **[5]**

QUESTION 5

Evaluate the meaning of *operational requirements* with reference to a dismissal in terms of section 189 of the Labour Relations Act 66 of 1995. **[5]**

TOTAL: [60]