



<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>	: 10 NOVEMBER 2018

<u>DATE</u>	: 10 NOVEMBER 2018	<u>SESSION</u>	1 ST SESSION:
<u>ASSESSOR(S)</u>	: DR ES FOURIE PROF MM BOTHA		
<u>MODERATOR</u>	: (UP)		
<u>DURATION</u>	: 180 MINUTES	<u>MARKS</u>	: 80

NUMBER OF PAGES: 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

Mr Simmers, a 48-year-old installation manager employed by Campbell Scientific Africa (Pty) Ltd. His colleague Mr Frederick le Roux, also an employee of the company and Ms Markides were staying at a lodge near Serowe in Botswana. They were contracted to survey a site for the installation of equipment for the Botswana Power Corporation. On their last night at the lodge, the three had dinner together. While Mr Le Roux settled the bill, Mr Simmers and Ms Markides walked to the parking area to wait for him. Ms Markides in her evidence, tendered via telephone from Australia, said that while waiting for Mr Le Roux, Mr Simmers told her he felt lonely, made advances towards her and asked her to come to his room, an invitation which she said he “*reiterated a number of times*” to the point that she felt “*quite uncomfortable*”. He also asked her if she had a boyfriend, causing her to respond that she did, that she was in contact with him and that it was a serious relationship. Mr Simmers then invited her to phone him in the middle of the night if she changed her mind.

Ms Markides said she felt threatened, that his advances to her were “*not welcome at all*”. She programmed Mr Le Roux’s number into her cellphone so that he was “*one button away from a call just in case anything happened*”.

Ms Markides seeks your advice in respect of this matter. She is not sure whether a single incident can constitute harassment in terms of labour legislation. Critically analyse her legal position 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.

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QUESTION 2

SAA provides air transport in this country, throughout Africa and in other countries across the world. In the year 2008 it took a decision to outsource certain of its non-core business in order to reduce its maintenance costs which were in excess of R130 million per annum. The decision was in line with the strategy of turning SAA into a profitable entity. To this end, SAA put its facilities management operations out to tender. The tender was awarded to LGM.

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Following the award, LGM and SAA concluded an outsourcing agreement in terms of which the facilities management operations were transferred from SAA to LGM. The duration of the agreement was to be ten years, commencing on 1 April 2009 and terminating on 31 March 2019. However, SAA retained the option to renew it for a further five years.

The material terms of the agreement were the following: the parties agreed that LGM would provide the services for a fee; the assets and inventory relating to these services were sold to LGM, but on termination of the agreement SAA would be entitled to repurchase them; LGM would be afforded the use of the office space, workshops, airport aprons, computers and the SAA network at all designated airports; upon termination of the agreement SAA would be entitled to have the services transferred back to it or to a third party and obtain assignment of all third party contracts from LGM.

SAA's employees who were engaged in the performance of the services concerned were automatically transferred with the services to LGM, as contemplated in section 197 of the LRA.

In June 2018, SAA terminated the agreement with effect from 30 August 2018. This was due to a breach committed by LGM. In August 2018, SAA put out to tender certain of the services performed by LGM. Three of those services were excluded from the tender. These were services performed in relation to aircraft movement, trolley maintenance and the manufacture, repair and maintenance of Utility Loading Devices.

LGM requested SAA to delay the termination of the outsourcing agreement until January 2019 on condition that tenders were not published. SAA did not accept this conditional offer to extend the termination. When it became clear to LGM that SAA would not delay the termination date, it contemplated retrenching the employees who were engaged in providing services under the agreement. According to LGM these employees were going to be redundant. In August 2018, LGM invited the applicants to a consultation about the possible retrenchment of its members. A consultation is required, as a preliminary step, by section 189 of the LRA.

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While the consultation process between LGM and the applicants was underway, the unions were concerned that their members would lose their jobs. On 14 August 2018, Aviation Union sought an assurance from SAA that upon termination of the outsourcing agreement on 30 August 2018, LGM's employees would be transferred back to SAA. SAA's stance was, however, that there is no legal obligation requiring it to take the workers back.

Aviation Union also sought an undertaking from LGM that it would not terminate the employment of its members, following the termination of the outsourcing agreement. The letter to LGM elicited no response. Faced with the uncertainty over the employment of its members, Aviation Union launched an application in the Labour Court for certain declaratory and interdictory relief against SAA and LGM.

Kindly develop an advisory document for Aviation Union as to the prospects of success with reference to the above application.

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QUESTION 3

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 refer to relevant authority.

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QUESTION 4

"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)

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.

[15]

TOTAL: [80]