



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

<u>DATE</u>	:	<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: 4 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

Critically analyse the contextual framework of *unfair labour practices* as regulated in the South African legal framework. [15]

QUESTION 2

The deregulation of the wheat and milling industry after 2016 exposed the larger well established companies in this industry to increasing competition from foreign companies, as well as small and medium sized operations within South Africa. One of the largest companies affected by these developments was Premier Food Industries Ltd (PFI). By April, 2017 investors in PFI were unhappy with its financial performance and consultants were called in to increase its competitiveness. After a number of unsuccessful attempts to increase its competitiveness. PFI contemplated retrenching some 2000 employees and contacted the Food & Allied Workers Union (FAWU) in this regard.

Consider the above set of facts and answer the following questions.

2.1 Discuss the procedural requirements that the above retrenchment must meet in order to be fair. In your answer you must distinguish between large scale retrenchments and smaller retrenchments and indicate whether this dismissal will fall within the scope of section 213 of the *Labour Relations Act* (LRA) 66 of 1995.

(10)

2.2 FAWU, represents the majority of the workers, and now alleges that PFI did not comply with fair procedure as prescribed by the *LRA*. Please advise them if there are any remedies available in this instance.

(5)

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- 2.3 PFI seeks advice in respect of the selection of employees for retrenchment. Advise the company of fair selection criteria in this regard. (5)
- 2.4 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)

[25]

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.

The current wage agreement expired at the end of August 2018 and the parties are in dispute over wages for 2018/2019. 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. (5)

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- 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)

[15]

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 her spirits” and that his condition was serious. He provided the employer with a letter from his traditional healer.

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 M Mr James Mbele for misconduct under the company's workplace rules and seeks your advice as to the fairness of such dismissal. In you answer you must refer to relevant authority. Prepare an advisory document in which you evaluate the fairness of such a dismissal.

[25]

TOTAL MARKS: [80]