



**WINTER 2022 EXAMINATION**

Surname: \_\_\_\_\_

Name: \_\_\_\_\_

Student Number: \_\_\_\_\_

Percentage: \_\_\_\_\_

Q1/Sec 1	
Q2	
Q3	
Q1/Sec 2	
Q2	
Q3	
Q4	
Q5	
Q6	
Total	

**FACULTY:** : LAW

**DEPARTMENT** : PRACTICAL BUSINESS LAW

**MODULE:** : LLA41A1  
LABOUR LAW

**DURATION** : 2 HOURS

**SEMESTER:** : FIRST

**TOTAL MARKS** : 100

**EXAMINERS** : MS S NGCOBO

**MODERATOR** : MS L VAN DER MERWE

**NUMBER OF PAGES** : THIRTEEN (13) PAGES

**INSTRUCTIONS** :

1. Answer all questions.
2. No marks will be awarded if answers are not written in full sentences.
3. Write legibly.

**SECTION A – Short Questions**

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Question 1- Multiple Choice Questions

1.1. Which of the following statement is INCORRECT -?

- (a) Employees enjoy freedom of association to join a trade union.
- (b) Employees enjoy freedom of association to form a trade union.
- (c) The rights and interests of employers are protected by our labour laws.
- (d) Employers do not enjoy freedom of association.
- (e) All of the options are incorrect. (1)

1.2. Choose the INCORRECT option -

- (a) Differentiation is a precondition for discrimination.
- (b) Not all discrimination is necessarily unfair discrimination.
- (c) Only unfair discrimination is prohibited.
- (d) Both direct and indirect discrimination are prohibited.
- (e) Only direct discrimination is prohibited. (1)

1.3. Which of the following options is a possible defence for discrimination -

- (a) Affirmative action.
- (b) The normal/agreed retirement age.
- (c) Exclusion/preference based on an inherent requirement of the job.
- (d) None of the options are possible defences for discrimination.
- (e) All of the options are possible defences for discrimination. (1)

1.4. Which of the following criteria provided for by section 20(3) of the Employment Equity Act 55 of 1998, would most likely not apply, when determining whether a recent graduate is suitably qualified for an internship program:

- (a) Formal qualifications;
- (b) Relevant Experience;
- (c) Prior Learning;
- (d) The ability to acquire, within a reasonable time, the ability to do the job;
- (e) None of the criteria would be inapplicable. (1)

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1.5. Choose the CORRECT option - If unfair discrimination is alleged on an arbitrary ground, the complainant must prove, on a balance of probabilities, that:

- (a) The conduct complained of is not rational;
- (b) The conduct complained of does not amount to discrimination;
- (c) The discrimination is fair;
- (d) All of the options are correct;
- (e) None of the options are correct. (1)

1.6. Which of the following statements is CORRECT -?

- (a) A closed shop agreement is a type of collective agreement.
- (b) A closed shop agreement is concluded between a majority trade union and an employer.
- (c) A closed shop agreement will be valid, only if a ballot has been held regarding the employees to be covered by that agreement.
- (d) The parties to the agency shop agreement, are all bound by such agreement.
- (e) All of the options are correct. (1)

1.7. Choose the CORRECT option - When a union can exercise the right to disclosure of information, an employer must disclose all information that is necessary for a union to engage effectively in consultation or collective bargaining. However, an employer must not disclose any information that:

- (a) Is legally privileged.
- (b) The employer is by law or court order not allowed to disclose.
- (c) Is confidential and, if disclosed, may cause substantial harm to an employee or the employer.
- (d) Pertains to the HIV status of an employee unless that employee consents to the disclosure.
- (e) All of the options are correct. (1)

1.8. Choose the CORRECT option – A bargaining council:

- (a) Is a voluntary body.
- (b) Is established by registered trade unions and registered employers' organisations.
- (c) May only be established by parties who have achieved a threshold of representivity within a defined sector.
- (d) Serves as a forum for the negotiation of terms and conditions of employment within a specific sector.
- (e) All of the options are correct. (1)

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1.9. Choose the INCORRECT option - a collective agreement:

- (a) Is a written or verbal agreement.
- (b) Is an agreement, concerning terms and conditions of employment or other matters of mutual interest.
- (c) Is concluded between, a registered trade union and one or more employers and/or one or more employer's organisations
- (d) Is a binding agreement.
- (e) All the options are incorrect. (1)

1.10. Choose the INCORRECT option – The following consequences are applicable to protected strikes:

- (a) Involvement in a protected strike, does not constitute a delict.
- (b) An employer does not have to remunerate striking employees.
- (c) Employees may not be dismissed for misconduct during a strike.
- (d) Civil proceedings may not be instituted against a person for his involvement in a protected strike.
- (e) All of the options are incorrect. (1)

1.11. Choose the INCORRECT option –A secondary Strike is protected if:

- (a) The primary strike is protected.
- (b) The secondary strikers gave their own employer at least 7 days written notice.
- (c) The harm caused by the secondary strike is reasonable in proportion to the primary strike.
- (d) The primary strikers have agreed to support the secondary strikers in the same manner, should they strike within the next 36 months.
- (e) None of the options are incorrect. (1)

1.12. Choose the INCORRECT option – According 6(1) of the Employment Equity Act 55 of 1998, no person may unfairly discriminate, directly or indirectly, against an employee, in any employment policy or practice, on one or more grounds, including:

- (a) Pregnancy.
- (b) Ethnic Origin.
- (c) Family responsibility.
- (d) Illness.
- (e) HIV Status. (1)

**[12 marks]**

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### Question 2 – True or False Questions

2. In light of your knowledge of the various labour legislation and case law, indicate whether the following statements are true or false:
  - 2.1. An employee may work for a maximum of 12 hours per day.
  - 2.2. Overtime may only be worked by agreement.
  - 2.3. Work that is conducted on a Sunday is always categorised as overtime work.
  - 2.4. The Occupational Health and Safety Act, 85 of 1993 does not apply to the mining sector.
  - 2.5. There is no obligation on the part of employers to provide employees, with masks and other protective gear that may be relevant within their line of work, to reduce the employee's risk of contracting Covid-19.
  - 2.6. An employee may not be granted sick leave if they're unable to work for 14 days after being diagnosed with Covid-19.
  - 2.7. Once an employee is a member of a trade union, the employee must undergo a probationary period of six months, before they can acquire the right to participate in all the lawful activities of that trade union.
  - 2.8. A closed shop agreement forces an employee to pay an agency fee to a trade union.
  - 2.9. The number of trade union representatives that may be elected within a particular workplace, depends on the number of union members employed in that workplace.
  - 2.10. The constitution of a bargaining council must make provision for the admission of additional registered trade unions and registered employers organisations as parties to the bargaining council.
  - 2.11. Statutory councils may be established in sectors, where there is a bargaining council.
  - 2.12. A Lock-out involves the exclusion by an employer of employees from the employer's workplace.

**[12 marks]**

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### Question 3 – Multiple Answer

Determine, whether the following scenarios constitute an unfair labour practice and select the most appropriate reason to support your answer:

**NB: You must select the two correct options.**

- 3.1. An employee's probationary period is extended following poor work performance, on the part of the said employee. During the initial probationary period no assessment, reasonable evaluation, instruction, training, guidance, or counselling was conducted. (2)

- A) This is an unfair labour practice,
- B) This is not an unfair labour practice.
- C) The extension of the probationary period without conducting an assessment, reasonable evaluation, instruction, training, guidance or counselling amounts to an unfair labour practice.
- D) Conducting an assessment, reasonable evaluation, instruction, training, guidance, or counselling is not a prerequisite to extend the probationary period.
- E) An employer is not allowed to extend an employee's probationary period. Once the probationary period is over, the employer must either offer the employee a permanent position or dismiss the employee.

- 3.2. Instead of dismissing an employee who is found guilty of misconduct, an employer suspends the employee without pay. (2)

- A) This is an unfair labour practice
- B) This is not an unfair labour practice
- C) Suspension with or without pay does not amount to an unfair labour practice.
- D) Suspension without pay amounts to an unfair labour practice.
- E) Where suspension is used to discipline an employee found guilty of misconduct it does not amount to an unfair labour practice.

- 3.3. Natasha is a senior administrative clerk at her local public hospital. She applies for the position of Head of Administration, within the very same hospital. She is

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shortlisted together with four (4) external candidates. Despite being the best-qualified candidate for the position, she is not appointed. It turns out that the successful candidate, who is not even qualified for the position is the nephew of the hospital's chief operations officer. Natasha is of the view that the decision not to appoint her, equates to non-promotion.

- A) This is an unfair labour practice.
- B) This is not an unfair labour practice.
- C) Natasha will have to prove that the decision to not to promote her was substantively unfair.
- D) If the employee applies for a higher position that the employer advertises externally, the non-appointment of the internal applicants does not amount to a non-promotion.
- E) Non-promotion does not amount to an unfair labour practice.

[6 marks]

**SECTION A TOTAL [ 30 marks ]**

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**SECTION B – LONG QUESTIONS**

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**SECTION B1: INTRODUCTION, EMPLOYMENT CONTRACTS & BASIC CONDITIONS OF EMPLOYMENT**

**Question 1**

1. Tina is a social media analyst at Big Apple Data (BAD). She has been working for BAD, since 3 January 2022. Her employment contract stipulates that she must work from Monday to Friday, and she is not required to work over weekends. Answer the following questions:
  - 1.1. Assume that Tina falls ill on 7 September 2022. Her doctor informs her that she is suffering from a severe case of bronchitis and instructs her to stay home to recover for the rest of the week. Discuss her entitlement to sick leave. (3)
  - 1.2. On 5 December 2022, Tina finds out that she is 6 weeks pregnant.
    - 1.2.1. Advise Tina of the amount of maternity leave that she is entitled to in terms of the BCEA. (1)
    - 1.2.2. Tina is supposed to go on maternity leave a month prior to the birth of her baby. Under what circumstances, would Tina be allowed to start her maternity leave at an earlier date? (2)
    - 1.2.3. Unfortunately, Tina suffers a miscarriage during the seventh month of her pregnancy. Her employer informs her that she must return to work within three days of the miscarriage. Relying on the provisions of the BCEA, determine whether Tina is obligated to return to work as instructed by her employer. (2)
  - 1.3. Assume that Tina's contract contains a 'restraint of trade clause'. Discuss the approach that needs to be adopted by a court, when deciding whether a restraint of trade clause is lawful and reasonable. Your answer should include the name of any case that has been decided by our courts, that deals with the enforcement of a restraint of trade clause. (4)

**[12 marks]**

**SECTION B2: COLLECTIVE BARGAINING AND INDUSTRIAL ACTION**

**Question 2**

2. Mr Adenuga is the owner and chief executive officer (CEO) of Daily Bread Bakery. His employees approach him to extend the 60 - minute lunch break to 90 minutes. After negotiations, Mr Adenuga makes an offer to extend the lunch break to 75 minutes. The employees reject the offer. The next day the employees' hand over a letter of grievance regarding lunch breaks, and the day after that all the employees go on strike. Mr Adenuga issues an ultimatum for the employees to return to work. The employees decide not to return to work and carry on striking. They inform Mr Adenuga that by forcing them to return to work, he is infringing upon their right to freedom of association, which gives effect to their right to strike. Mr Adenuga approaches you for advice.

Answer the following questions:

- 2.1. Do the striking employees enjoy protection? Explain. (2)
- 2.2. Discuss the consequences of the employees' strike. (3)
- 2.3. Assume that Mr Adenuga decides to terminate the employees', employment contracts. Would such termination amount to an automatically unfair dismissal? Give a reason for your answer. (2)
- 2.4. Assume that the employees' issue Mr Adenuga with the grievance letter and carry on working. The next day Mr Adenuga shuts down the bakery and prevents employees from entering the premises. He informs the employees that they can only access the bakery if they accept his offer.
- Identify the type of industrial action, which best describes Mr Adenuga's conduct. (2)
- 2.5. Define the concept of an 'agency shop agreement'. (3)
- 2.6. Define the term 'employer's organisation'. (2)
- 2.7. Identify any organisational right, which **may not** be exercised by a union that is sufficiently representative. (1)

**[15 marks]**

**SECTION B3: EMPLOYMENT EQUITY**

**Question 3**

3. Mexican Fiesta (Pty) Ltd is a Mexican fast-food outlet, with 45 outlets across the country. Zodwa decides to open a Mexican Fiesta outlet in Umlazi, a township located in the South of Durban. Zodwa puts out an advertisement for various positions within her newly acquired business. According to the advertisement, she intends to hire three (3) cashiers, three kitchen staff members and a manager who will oversee the entire outlet. The manager will mostly work from the office, situated at the back of the outlet, away from the customers. The manager must also deal with queries, from customers.

Several candidates apply for the manager position and eventually Amahle, a black woman is appointed. She has no experience working as manager of a food outlet, or any experience working within a food outlet or retail environment, for that matter. She has a diploma in nursing.

Robert also applied for the manager position. He made it to the interview stage but was not appointed to the position since Amahle was appointed instead. Robert has a BCom degree in business management. He also has extensive experience working as a manager within other food outlets, in and around Durban. Although he's not fluent in isiZulu, Robert has a basic understanding of the language and in the past, he has relied on colleagues to interpret for him, to resolve queries from Zulu speaking customers who do not speak English. Upon finding out about Amahle's appointment, Robert is extremely unhappy, he is of the view that he has been unfairly discriminated against on the basis of language and race.

Upon enquiring with Zodwa, Robert is informed that he was the best candidate for the position considering his qualifications and experience. He is further informed that Amahle had to be appointed instead of him because Umlazi is a predominantly Zulu speaking area. The location warranted the appointment of a Zulu speaking manager, in addition to the cashiers and kitchen staff, who are all Zulu speaking.

- 3.1. Determine whether Robert has been unfairly discriminated based on language and race. Your answer should focus on the establishment of unfair discrimination. (4)

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- 3.2. How would your answer to 3.1 above differ if Robert was not appointed because he suffers from Vitiligo (A disease that causes the loss of skin colour in blotches) and Zodwa felt that Robert's uneven skin colour is not good for the image of her takeaway outlet. (3)
- 3.3. Is Zodwa's claim that she had to appoint a Zulu speaking manager valid? Give a reason for your answer. (2)

**[9 marks]**

### **SECTION B4: DISMISSALS AND UNFAIR LABOUR PRACTICES**

#### **Question 4**

4. Jomo is employed as a marketing manager at Big Brand Solutions (BBS), an advertising agency. Jomo has worked for BBS in this capacity, for the past 3 years. His track record is rather impressive. He has headed several marketing campaigns for the company and in each instance, he conducted himself with the utmost level of professionalism. The clients always have good feedback to give when it comes to Jomo. He always abides by the company's code of conduct and has never been found guilty of any wrongdoing.

On a particular Wednesday morning, Jomo is called into an urgent meeting with BBS's managing director. Jomo is informed that the company's financial records, reveal that he fraudulently transferred one million rands (R1 000 000) from the company's bank account into his private bank account. Jomo does not deny the allegations, as he knows very well that he did transfer the said amount of money, to his personal bank account. The managing director informs Jomo, that his employment with BBS, is terminated with immediate effect. He is told to pack up his personal belongings and leave the premises. Answer the following questions:

- 4.1. Fully discuss whether Jomo has been unfairly dismissed. (6)
- 4.2. Assume that Jomo's employer suspects that Jomo is using the company credit card to take his girlfriend out on lunch and dinner dates. Would this 'suspicion' be a valid ground for dismissal? Provide a reason for your answer. (2)
- 4.3. Assume that Jomo's colleague Martin, was also found guilty of stealing one million rand (R1000 000) from the company. Martin was not dismissed; he was suspended without pay for one month and ordered to pay back the money. Discuss how the fact that Martin was not dismissed, affects Jomo's case. (2)

**[10 marks]**

**Question 5**

5. Mzansi Wethu, is a logistics company headquartered in Durban. The company has contracts to transport various goods across the country. For the past three years, Jabu has been working as driver for Mzansi Wethu. One day Jabu decides to come to work extra early. Upon setting foot in the business premises, he finds his co-workers packaging cocaine, which is later transported using one of the company's vehicles. The Chief Executive Officer (CEO) tells Jabu to keep this information to himself.

Jabu decides to bring this information to the attention of Minister of Police. Unknown to Jabu, the Minister is friends with Mzansi Wethu's CEO. The Minister tells the CEO about his meeting with Jabu. The CEO subsequently takes a decision to suspend Jabu, without pay, till further notice.

Answer the following questions:

- 5.1. Jabu strongly believes that he is being punished for doing the right thing and wishes to challenge his suspension. He approaches you for legal advice, advise him accordingly. (8)
- 5.2. How would your answer to 5.1 above differ, if the CEO merely threatened to move Jabu to a position of lower ranking if he "doesn't mind his own business"? (2)

**[10 marks]**

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### Question 6

- 6.1. Indicate how the *audi alteram partem* principle, applies within the context of dismissals for incapacity. (2)
- 6.2. Distinguish between 'reinstatement' and 're-employment'. (2)
- 6.3. Discuss the test for substantive fairness that applies when dealing with dismissals for incapacity based on poor performance. (4)
- 6.4. Provide two (2) examples of occupational detriments as provided for in the Protected Disclosures Act 26 of 2000 (PDA). (2)
- 6.5. An employer is required to consult with employees or their representatives prior to embarking on mass dismissals for operational requirements. Identify four (4) issues that consulting parties must reach consensus on during the consultation process. (4)

[14 marks]

**SECTION B TOTAL [ 70 marks]**

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**GRAND TOTAL**

**[100 MARKS]**

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