

UNIVERSITY OF SWAZILAND

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DEPARTMENT OF LAW

FINAL EXAMINATION PAPER, 2005 (MAIN)

TITLE OF PAPER : LABOUR LAW

COURSE CODE : L304

TIME ALLOWED : THREE (3) HOURS

INSTRUCTIONS : ANSWER FOUR (4) QUESTIONS
ALL QUESTIONS CARRY EQUAL MARKS

**THIS PAPER IS NOT TO BE OPENED UNTIL PERMISSION HAS BEEN
GRANTED BY THE INVIGILATOR.**

QUESTION ONE

a) With reference to decided cases, clearly outline the procedures that have to be followed by employees in Swaziland before they may engage in a lawful (protected) strike.

[10 marks]

b) Discuss the rights of workers who engage in a protected strike in Swaziland.

[15 marks]

[25 marks]

QUESTION TWO

National Union of Financial and Allied Workers is an industry union duly registered under the Industrial Relations Act, 2000. On 24 November, 2003 the Union wrote to Insurance Brokers (Pty) Ltd, a firm of insurance brokers, seeking recognition as the exclusive collective employee representative for all categories of its employees including branch managers, accountants and supervisors. Having received no reply from the Brokers despite several reminders, the Union applied to the Industrial Court to have it declared the exclusive employee representative for all employees of Insurance Brokers (Pty) Ltd. The Brokers contend that:

- a) it is not a financial institution and does not fall within the industry within which the Union operates;
- b) in any event, the Union cannot represent branch managers, accountants and supervisors.

Discuss the legal issues involved having regard to decided cases and the provisions of the relevant legislation

[25 marks]

QUESTION THREE

Linda Dlamini was employed by Zonke Insurance Company as an insurance agent. By the terms of the agreement he was;

- a) remunerated by commission,
- b) prohibited from acting directly or indirectly for other insurance companies,
- c) not required to work full time and could do other work,
- d) given use of a company vehicle for official as well as private use but he had to pay for fuel and servicing of the vehicle, and
- e) not under strict supervision by the officials of the company although he worked in close collaboration.

On his way to work on November 29th, 2004, Dlamini sustained an accident in the company vehicle and suffered severe bodily injuries. He has now submitted a claim for compensation and payment of medical expenses to Zonke Insurance Company under the Workmen's compensation Act, 1983 of Swaziland for injuries arising out of and in the course of his employment.

Advise the Company on whether Dlamini is an employee entitled to claim under the Act.

[25 marks]

QUESTION FOUR

SESMAWU, a registered industry union operating in the Electricity Supply Industry, an essential service, wants to gain recognition from the Swaziland Electricity Board. The union already has, as members, 52 of the 107 employees who are within the bargaining unit in the organization. 44 days have already expired since the union tendered its written application for recognition to the company as the exclusive collective employee

representative for such categories as are named in the application, concerning all terms and conditions of employment including wages and hours of work. The General Manager – Human Resources for the company comes to you with the above facts and reminds you the Swaziland Electricity Board is an essential service in terms of section 93 (9) of the Industrial Relations Act, 2000. He further reminds you that employees in essential services are not allowed to engage in strike action and that SEB, as an essential service does not need to recognize a union.

Making reference to case law and the relevant sections of the law, advise your client about both his rights and the rights of the union.

[25 marks]

QUESTION FIVE

Costco (Pty) Ltd, makers of steel products has a labour force of 400. Owing to the reduction in sales of their products, the company has decided to cut down its labour force. At a meeting with the leaders of the representative trade union, the management of Costco outlined its plan and urged union leaders to inform the workers of the decision to reduce the workforce by 75 employees. Consequently, and in accordance with its discussion with the union leaders, the company terminated the services of Sisho, Qondile and Simangele who were among the first people to be employed at the inception of the company 25 years ago. These three believe that their termination cannot be justified under the law.

Advise them as to their legal rights. Would your answer be different if the three employees had been selected for termination on the basis that they were active members of the union?

[25 marks]

QUESTION SIX

“The adoption of a constitution is an essential requirement for the registration of any organization, be that of an industry union, staff association or employers’ association.”

Discuss.

[25 marks]