

UNIVERSITY OF SWAZILANDDEPARTMENT OF LAWFINAL EXAMINATION PAPER, 2005 (SUPPLEMENTARY)

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 case law differentiate between a contract of service and a contract for services.

[10 marks]

b) Define the term “redundancy” and outline the procedural requirements for redundancy and the benefits due to a redundant employee in Swaziland.

[15 marks]

QUESTION TWO

Bongani is an employee of ABC (Pty) Ltd. He has been found by a disciplinary committee to have been drunk on duty and the Committee has decided to suspend Bongani from duty. Themba, the newly hired Human Resource Manager for ABC (Pty) Ltd has approached you for clarification with regards to the law, specifically:

- a) the circumstances under which an employee may be suspended;
- b) the duration of the suspension;
- c) whether the employee is entitled to remuneration during the period of suspension.

Advise Themba on the above issues.

[25 marks]

QUESTION THREE

Mr. Smith has been sent to Swaziland by the International Bar Association to conduct a study on the role of the Conciliation, Mediation and Arbitration Commission (CMAC). He is desirous of getting an independent perspective on the Commission and decides to drive to Kwaluseni to talk to some people. He is referred to you by your colleagues who think you showed great knowledge on the subject during class discussions.

Write a paper describing CMAC and critically analyzing its role in the settlement of labour disputes.

[25 marks]

QUESTION FOUR

Mbongeni is an employee of Siza (Pty) Ltd, a company engaged in the business of transporting school children to and from school. Mbongeni is employed as a driver. One afternoon after Mbongeni had had a particularly bad day, as he was dropping a child he drove off while the child still had one foot on the vehicle and was holding on to the seat. As a result the said child was dragged for a few meters until Mbongeni, alerted by the screams stopped the vehicle.

The parents of the child now want to sue Siza (Pty) Ltd for medical expenses incurred as a result of the incident. The Company has denied liability and has advised the parents to go directly after Mbongeni. They have now come to you for advice on whether they should proceed after the company, or Mbongeni, or both.

[25 marks]

QUESTION FIVE

Section 86 of the Industrial Relations Act provides that

“...if there is a dispute which has been certified as an ‘unresolved dispute’ within the meaning of section 85 (1), either party may take lawful action by way of lock-out or strike...”.

Discuss the procedural requirements for a protected strike and the consequences of both protected and unprotected strikes.

[25 marks]

QUESTION SIX

Distinguish between:

- a) re-instatement and re-engagement [5 marks]
- b) dispute of rights and dispute of interest [10 marks]
- c) dismissal for incapacity and dismissal for redundancy [10 marks]