

UNIVERSITY OF SWAZILAND

DEPARTMENT OF LAW

FINAL EXAMINATION PAPER, 2008 (MAIN)

TITLE OF PAPER : LABOUR LAW

COURSE CODE : L304/L607

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 1

Zibonele Dlodlu is one of the consultants doing work for ABC (Pty) Ltd. He, together with all the other consultants receives no fixed salary but is remunerated by way of commission earned and his working hours are left to his discretion. Dlodlu is further required to provide his own vehicle for carrying out his duties. In terms of his contract with the company, Dlodlu is required to devote all his working time to his work with the company and to carry out such functions and duties as are from time to time assigned to him by the company. His contract goes on to state that all consultants are to join the company's pension and medical aid schemes. You have recently been appointed as human resources manager for the company and have been asked to appraise the consultants' contracts. In an interview with Dlodlu you gather that he considers himself an employee of the company. You talk to the Managing director about this and he tells you that he thinks Dlodlu is mistaken, and that he is in fact an independent contractor. Draft a brief stating the true legal position in this situation.

(25 marks)

QUESTION 2

Nomvuyo Mkhathshwa, having seen an advertisement in the local press for the permanent position of Assistant Manager, Human Resources at a local parastatal company sent in her application for consideration. About four weeks later she was called in for an interview and the interviewing panel was impressed by her confidence and qualifications, as well as all her ideas for the job. About a month after the interview Nomvuyo received a telephone call from the company, and was informed that she had been selected for the position and that she was to come to the company to collect a contract which he was allowed to take home to read. She was given five working days to go over the contract and in the event that she decided to accept the company's offer, she was to sign the contract and return it to the company on or before the fifth day. Nomvuyo duly went through the contract, signed and returned it to the company on the third day.

Owing to the fact that the company had just moved to new premises, it was a condition of the contract that Nomvuyo was to start work two calendar months from the date of the signing of the contract. Three weeks after Nomvuyo submitted the signed contract to the company she received another telephone call from the company, asking her to come in and pick up some medical forms. She was asked to go to a medical doctor chosen by the company for a medical check up, as was required of all employees of the company before they resumed their duties. The doctor examined Nomvuyo and informed her that she was three months pregnant. Nomvuyo was overjoyed as she had been trying to have a baby for a long time. She even commented to her friends that all her prayers were being answered at the same time. Two days after having submitted the doctor's report to the company, Nomvuyo was called in to the company. On her arrival at the company she was told that pursuant to the doctor's report, the company found itself unable to let her resume work under the contract as previously agreed and was duly cancelling the contract. Nomvuyo has approached you to request you to assist her in instituting a case against the company for unfair dismissal. Advise her on her chances for success.

(25 marks)

QUESTION 3

Sibusiso Lukhele is an electrical engineer employed by an aviation company, Inyoni Aviation (Pty) Ltd. It is a term of his contract that the company should provide him with protective clothing for him to wear when carrying out his duties. Lukhele has only been supplied with one set of such protective clothing and even though he expressed to his superior that it was inconvenient for him to have only one set of protective clothing; he has been doing his best to cope. Despite his best efforts, Lukhele has noticed that his work clothes are now worn out and his company has done nothing to replace them regardless of his repeated written and oral requests that the company supply him with a new set. Noticing that his company was not responding to his requests, Lukhele has since written to the company informing them of his decision to refrain from his normal duties until he is supplied with the appropriate clothing. The company has responded to

Lukhele's letter, stating *inter alia* that they viewed his act of refusing to work as a breach of his contract. Lukhele has come to you for advice regarding his position.

(25 marks)

QUESTION 4

Henry Smith is the managing director of H. Smith (Pty) Ltd, a company registered and operating in Swaziland. One day he got to the company premises to find two of his employees fighting. Having recently acquired a copy of the both the Industrial Relations Act, 2000 and the Employment Act, 1980 he terminated the services of both employees immediately. He told them that on the basis of section 36 of the Employment Act, he was entitled to terminate their services summarily because they were fighting on the company premises. A week later he received a copy of a report of dispute by both his employees to the Conciliation, Mediation and Arbitration Commission (CMAC) together with an invitation to attend a conciliation hearing. Smith was confused because he thought he had followed the law to the letter and decides to come to you for advice on the matter.

(25 marks)

QUESTION 5

Zakithi (Pty) Ltd is a company having its principal place of business at the Matsapha industrial site. The company is engaged in the business of manufacturing widgets. Its financial year runs from April to March of the following year. In the financial year 2007/2008 the management and the workers entered into negotiations for a salary increment in the month of January as is customary within the company. The workers sought a wage increase of seven (7) percent, in line with the prevailing rates of inflation. Management on the other hand is offering only three (3) percent and has stated that a higher increase in wages would necessitate a reduction of the workforce. Despite lengthy negotiations between the parties, no agreement has been reached on the matter. The

workers have told their representatives that they want to go on a strike to compel the company to give them what they want, especially since management has failed to produce proof that the company does not have the money for the increase sought by the workers.

Advise the parties on any rights and obligations that they have in this matter.

(25 Marks)

QUESTION 6

Triple P (Pty) Ltd is a company incorporated in Swaziland. It has operated in the country since 2001. The company sells its products primarily to the United States of America. However, recently the United States has been sourcing the product previously purchased from Triple P from a company in Mozambique and as a result the local company has been experiencing financial difficulties. At the latest board meeting of the company it was resolved that the best course to take is to reduce the number of staff members as it was now impossible to pay all of them, despite which they were not needed as the company now only needed to produce lower numbers of its product. Advise the company on the procedures to follow.

(25 Marks)