

UNIVERSITY OF SWAZILAND

DEPARTMENT OF LAW

FINAL EXAMINATION PAPER, 2008 (SUPPLEMENTARY)

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 ONE

According to section 42 (2) (b) of the Employment Act, 1980 provides that:

“The services of an employee shall not be considered as having been fairly terminated unless the employer proves-

- (a) that the reason for the termination was one permitted by section 36; and*
- (b) that, taking into account all the circumstances of the case, it was reasonable to terminate the service of the employee.*

Critically analyse the above provision of the Employment Act.

(25 Marks)

QUESTION TWO

Linda Dlamini was employed by Thoba 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,
- d) given use of an office within the company, along with office equipment and stationery,
- e) required to submit periodic reports on all clients acquired by him on behalf of the company, and
- f) submit an account of all amounts collected by him on behalf of the company.

In addition, Dlamini’s contract provided that he was in fact an independent contractor.

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 Thoba 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 THREE

The employment relationship gives rise to certain duties between the parties to it. Critically analyse EITHER the employer's duties to his/her employee OR the employee's duties to his/her employer.

(25 marks)

QUESTION FOUR

Zakithi Zwane is an employee of ABC (Pty) Ltd. Even though Zwane is at work and at her desk on time every working day, she often finds herself with nothing to do despite her best efforts to find something to work on. Zwane has on a few occasions expressed her concerns to her employer about her enforced idleness but her employer continues to fail/neglect to give her any work even though her salary is paid to her as normal.

Taking advantage of all her free time she started doing some freelance work for another company which does the same business as her employer. The company has recently been made of this fact and has written a letter to Zwane demanding that she stop doing such free lance work as this was unlawful. Zwane has responded, also in writing, stating that she was not prepared to stop as she was bored sitting around and doing nothing all day.

Discuss all the legal issues that arise in this matter.

(25 marks)

QUESTION 5

SWSU, a recently formed union operating in the water supply sector has 432 members out of a possible 1103 employees in this sector. The union is desirous of applying for recognition and has sought your legal opinion on the procedures to follow and their chances for success.

(25 Marks)

QUESTION 6

Sifiso Phakathi was employed by ABC (Pty) Ltd as a cleaner in 1978. Since then the company has expanded and has opened other branches within the country. Mr. Phakathi has continued to work in the main branch of the company but is required from time to time to fill in for cleaners in the other branches when they are not at work, as they are required to fill in for him when he is on leave. Sometime during 2004, Mr. Phakathi's supervisor was called by one of the other managers in the company for a meeting. At this meeting the manager told Mr. Phakathi's supervisor that she had noted with concern that Mr. Phakathi's work had deteriorated, and that some of the other staff members had complained that Mr. Phakathi had become very rude and insolent towards them. She went on to state that everyone in the company had noticed that the premises are so much cleaner when Mr. Phakathi is away on leave and one of the other cleaners are filling in for him. The manager stated that it had been resolved at the last managers' meeting that Mr. Phakathi ought to be fired, and indeed a letter had been written and handed over to Mr. Phakathi informing him of the decision to terminate his services with immediate effect. Mr. Phakathi has approached you for advice.

(25 Marks)