

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCES
DEPARTMENT OF LAW

SUPPLEMENTARY EXAMINATION PAPER, JULY 2009

TITLE OF PAPER : **LABOUR LAW**

COURSE CODE : **L 304/L 607**

TIME ALLOWED : **THREE (3) HOURS**

INSTRUCTIONS : **1. ANSWER ANY FOUR QUESTIONS.**
2. ALL QUESTIONS CARRY EQUAL MARKS.

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

QUESTION ONE

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 TWO

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 THREE

Sibusani Ndlela works for Newlands 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.

On his way to work on November 29th, 2008, Ndlela 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 Ndlela 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 Ndlela is an employee entitled to claim under the Act.

(25 marks)

QUESTION FOUR

“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)

QUESTION FIVE

Zendoda (Pty) Ltd is a newly established catering company situated in Mbabane. The company has been in business for the past five months. The employees of the company have determined that they want to come together so that they are able to bargain with the company collectively. Advise them on the various options open to them, on the procedures to be followed for each of these options, and on which of the options is the best.

(25 Marks)

QUESTION SIX

“After the completion of his probation, an employee should not be dismissed on the grounds of poor work performance, unless after an enquiry certain requirements have been met”. Discuss this statement fully, making reference to decided cases.

(25 Marks)