

DEPARTMENT OF LAW

FINAL EXAMINATION PAPER, 2011 (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

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“It is very important to ask oneself, when presented with a labour law problem, whether the parties are indeed “employer” and “employee” within the meaning of the law.”

(Grogan 2009:15)

Discuss the veracity or accuracy of this statement and the methods devised by the courts to make the determination of the status of the parties, making reference to relevant legal provisions and decided cases, if any.

(25 Marks)

### QUESTION TWO

Critically analyse the duties of either the employee or the employer.

(25 Marks)

### QUESTION THREE

Pursuant to successfully completing your law degree, you are requested by your new employer to outline the position of the law, making appropriate reference to decided cases, with regard to the *locus standi* of trade unions to apply to the court in its own name on behalf of a member and to represent its members in the absence of a recognition agreement.

(25 Marks)

#### **QUESTION FOUR**

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One of the remedies that the employee has is to request for specific performance of the contract by the employer. With reference to decided cases and relevant legislative provisions, trace the historical development and give a critical analysis of this remedy of the employee.

(25 Marks)

#### **QUESTION FIVE**

Zibonele (Pty) Ltd is a company specialising in manufacturing scholastic products and is located at the Matsapha industrial site. The company has a recognition agreement with SMAWU, which has consistently represented over 70% of the company's unionisable employees. Zibonele is affected by the recent economic crisis in that its sales are down about 30%. At a recent meeting of the board of directors, it was resolved that the company should find a way to decrease its overhead expenses. Management promptly held a meeting and decided the most effective way to accomplish this would be to reduce the number of employees. They requested the human resources manager to commence talks with individual employees earmarked for termination. The representative union, after hearing of these consultations with some of its members have a feeling that this might be against the law and have come to you for a full legal opinion.

(25 Marks)

#### **QUESTION SIX**

Sandile Dlamini was employed by Tetfu (Pty) Ltd until the 22<sup>nd</sup> of April 2010 when his contract was terminated. The events leading to his dismissal are that on the 18<sup>th</sup> of April, 2010 Sandile arrived at work in a questionable state of sobriety and went straight into his

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supervisor's office, closed the door behind him and proceeded to beat him senseless. He then left the office and the company premises, without talking to anyone or going to his work station. On the 21<sup>st</sup> April, the company driver was sent to Sandile's residence to deliver a letter terminating his services with effect from the 22<sup>nd</sup> April. The reasons for the termination as stated in the letter were drunkenness on duty, assaulting a fellow employee and absenting himself from duty without permission from the employer.

Sandile has come to you for advice on the matter.

(25 Marks)