

UNIVERSITY OF SWAZILAND

80

INSTITUTE OF DISTANCE EDUCATION

DEPARTMENT OF LAW

MAIN EXAMINATION PAPER MAY, 2012

TITLE OF PAPER : INTRODUCTION TO LABOUR LAW
COURSE CODE : DL 034
TIME ALLOWED : THREE (3) HOURS
INSTRUCTIONS : (1) ANSWER FOUR QUESTIONS.
(2) QUESTION ONE IS COMPULSORY

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INVIGILATOR

QUESTION 1 – COMPULSORY

Discuss the case of **SMIT v WORKMEN'S COMPENSATION COMMISSIONER** in relation to the common law contract of employment and include in your discussion:

- (i) The facts; (5 Marks)
- (ii) The characteristics of the *locatio conductio operarum* and *locatio conductio operis*; and (10 Marks)
- (iii) A discussion of the tests enunciated by the courts in determining an employee; (5 Marks)

In this discussion, you are required to make reference to **Swazi cases** on the subject. (5 Marks)

Total 25 Marks

QUESTION 2

Discuss **Legislation** as a source of Labour Law in Swaziland. In this discussion you are expected to discuss **five** pieces of legislation which must be correctly cited.

(25 Marks)

QUESTION 3

"Employers have a right, indeed a duty, to maintain discipline at the workplace" – per Grogan J in Workplace Law.

Discuss this concept of workplace discipline focusing on the **rationale** for discipline at the workplace, **workplace rules, standards** and the **sanctions** that may be meted out to an offending employee.

(25 Marks)

QUESTION 4

Referring to relevant legislation and case law, discuss the concept of **constructive dismissal** in Swaziland. On whom does the onus of proof lie?

(25 Marks)

QUESTION 5

SMAWU, a registered trade union operating in the manufacturing industry wants to gain **recognition** at Sidwashini Timber & Planks (Pty) Ltd. The union already boasts of more than forty (40) paid up members in a bargaining unit of seventy (70) employees in the company. After a period of twenty five (25) days from the date of application the employer has still not replied to the application for recognition by the union. Such recognition would enable the union to negotiate general terms and conditions of employment. The company's Human Resources Manager is reluctant to respond to the application because he believes unions are by their very nature destructive and should be discouraged.

Advise both the company and the union on their respective rights, options and obligations under the Industrial Relations Act 2000 (as amended).

(25 Marks)

QUESTION 6

Referring to relevant cases, discuss and comment on section 40 of the Industrial Relations Act No.1/2000 (as amended).

(25 Marks)

QUESTION 7

CMAC (Conciliation Mediation and Arbitration Commission) has as one of its mandates to conciliate disputes that are reported to it. Discuss this concept of **Conciliation**, citing the statutory authority of CMAC to conciliate and the various stages of conciliation process including what happens at the end of both a successful and unsuccessful conciliation process.

(25 Marks)