

DEPARTMENT OF LAW

FINAL EXAMINATION PAPER, 2011 (MAIN)

TITLE OF PAPER : LABOUR LAW

COURSE CODE : L304

TIME ALLOWED : THREE (3) HOURS

INSTRUCTIONS : ANSWER QUESTION 1 **AND** ANY OTHER
THREE (3) QUESTIONS.

ALL QUESTIONS CARRY EQUAL MARKS.

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

QUESTION 1

Mafikizolo Fakudze completed his studies at the Swaziland College of Technology in December, 2007 and was fortunate to be hired, almost immediately, by Jet Stores as Manager for the Manzini branch. The company was extremely impressed by his CV in which Fakudze stated that he was at the top of his class and had spent all holidays working at different companies as assistant stock/merchandise clerk, and as a result of his practical experience, Fakudze stated, he was highly qualified in stock control. Fakudze assumed duties on the 1st of February 2007.

In August, six months after he was employed, it transpired that there was more stock going missing at the store than before he was hired. The company wrote him a letter, in which Fakudze was told that his performance was not up to standard and he was warned to improve. In addition, he was called and his duties were again explained to him. He stated at this time that he had a strategy in place and gave assurances that things would improve in the following 2-3 months.

Four months later, upon realising that the situation had not improved, management gave Fakudze a first written warning for poor work performance. This was followed a few days later with a letter transferring Fakudze to the Mbabane branch of Jet Stores. Fakudze forthwith commenced work at his new duty station. Two months following his transfer, Fakudze received a final written warning for poor work performance. In May 2008, Fakudze was suspended and charged with poor work performance, and was invited to a disciplinary hearing to be held seven days from the date of the letter containing the charges.

Following the disciplinary hearing, he was dismissed summarily. He reported a dispute for unfair dismissal at CMAC but the dispute remained unresolved. He proceeded to apply to the Industrial court for relief. He gave evidence that his dismissal was unfair because he did not steal the missing stock and in any

event it was the fault of the security guard that stock was missing because this was a clear indication that he was not doing his job. He also alleged that in March 2008, the store keys were removed from his possession and given to his Assistant who would sometimes enter the store in his absence. He further stated that he had requested for training regarding stock control but he was never given training.

Under cross examination, he confirmed that when he applied for the job he submitted a CV which showed that he was qualified in stock accounting including controls to prevent stock theft and loss, and also that he had some experience in this field. He did not challenge the allegation that during the period he was employed by the company, stock amounting to E29, 500 went missing.

The respondent, through its Regional Manager who was its sole witness, gave evidence that Fakudze had never been able to achieve that company's standards. He said that such standards were explained to the applicant at the time of employment and that these were reasonable and achievable. To illustrate this, he gave evidence that after the applicant was transferred from Manzini, the person who took over from him was able to reduce stock shortages by 95%. And that since his suspension, the Assistant manager for the Mbabane branch had achieved similar results, managing to bring down shortages by over 75% in 8 months. He did not, however, dispute the fact that there was no appeal hearing held despite the fact that the applicant appealed. Instead, the appeal was dismissed without a formal hearing being held.

Discuss all the issues that arise herein, making reference to relevant authority.

(25 Marks)

QUESTION 2

Thabile Simelane was employed by Sibekosabo (Pty) Ltd in September 2005 as a painter. In July, 2006 Ms. Simelane was called into her manager's Office where she was given a document titled "Fixed Term Contract – Ms. T. Simelane". The contract provides, *inter alia*, that it was for a period of one year from the date of signature and may be renewable by the employer upon request for renewal by the employee. She was asked to sign this contract and was told that her continued employment was dependent on her signing the said contract. Ms. Simelane asked to be given some time to look over the contract. She has approached you for advice on the legality of such document and the options open to her.

Discuss and advise her.

(25 Marks)

QUESTION 3

It has been alleged in legal circles that some provisions of the Constitution of Swaziland have a bearing on the labour laws in the country.

You have been requested by the International Bar Association to submit a written analysis on the accuracy of this statement.

(25 Marks)

QUESTION 4

The employees of Petson (Pty) Ltd entered into a recognition agreement with the Company in May 2010. In March 2011, the parties reached an impasse in

respect of certain demands advanced by the employees, pursuant to which a dispute was reported at the Conciliation, Mediation and Arbitration Commission (CMAC). The matter could not be resolved through conciliation and a Certificate of Unresolved Dispute was issued.

The union has resolved to embark on a strike action and has come to you for advice on the steps to follow to make sure that they remain protected by the law, as well as to seek explanation on what such 'protection' entails.

(25 Marks)

QUESTION 5

Gagu (Pty) Ltd is a company with its main place of business at the Matsapha Industrial Area. At a meeting of its Board of Directors held at the Company premises on 20th November 2011, it was resolved that owing to the current economic climate in the country, the Company needed to reduce its workforce of 278 employees.

Advise the Company on the procedures to be followed to avoid infringing the law.

(25 Marks)