

DEPARTMENT OF LAW

FINAL EXAMINATION PAPER, 2012 (SUPPLEMENTARY)

TITLE OF PAPER : LABOUR LAW

COURSE CODE : L304

TIME ALLOWED : THREE (3) HOURS

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

ALL QUESTIONS CARRY EQUAL MARKS.

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

QUESTION 1

Zakhe Mhlongo is one of the consultants doing work for Sento (Pty) Ltd. He, together with all the other consultants, receives no fixed salary but is remunerated by way of commission earned and his working hours are left to his discretion. Mhlongo is provided with a company vehicle, which he is allowed to use outside of working hours, for carrying out his duties. In terms of his contract with the company, Mhlongo is required to devote all his working time to his work with the company and to carry out such functions and duties as are from time to time assigned to him by the company. He has regular meetings with the Operations Manager of the company at which meetings he gives updates on work progress and presents his work plan for each week. His contract goes on to state that all consultants are to join the company's pension and medical aid schemes. When he is unable to come to work, Mhlongo is expected to make sure that some other person approved by the Operations Manager in writing, attends to his duties.

You have recently been appointed as Human Resources Manager for the company and have been asked to appraise the consultants' contracts. In an interview with Mhlongo you gather that he considers himself an employee of the company. You talk to the Managing Director as well as the Operations Manager about this and they both tell you that Mhlongo is mistaken, and that he is in fact an independent contractor. Draft a brief stating the true legal position in this situation.

(25 Marks)

QUESTION 2

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, critically analyse this remedy of the employee.

(25 Marks)

QUESTION 3

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 4

Melanie Speaks is employed by Thandabantu Insurance Brokers in Mbabane. She fell sick on the 25th of May 2011 and as a result was unable to go to work. She asked her brother to take her to the hospital where she was given 2 weeks bed rest. Melanie asked her brother to take the sick sheet to her employer on the very same day. While driving to Mbabane from Manzini, Melanie's brother was called by his girlfriend who asked him to pass by her place of work at the Gables since she was due for her lunch break in a few minutes. The young man seized the opportunity to see his beautiful girlfriend and spent the hour having lunch with her at one of the restaurants located at the shopping centre. Just as he was getting into the car, two of his friends came along and he started talking to them. Before he knew it, it was 16.30pm and he went home to see if his sister needed anything.

A week later, one of the drivers employed by Thandabantu Insurance Brokers delivered a letter to Melanie at her home. By this letter, the company informed Melanie that due to the fact that she had been absent from work for more

than three days without either the authority of the employer, or any explanation for such absence, her services were thereby terminated with immediate effect. It transpired that her brother had completely forgotten to take Melanie's sick sheet to her place of work as requested.

Advise Melanie on any rights she has in the circumstances.

(25 Marks)

QUESTION 5

Section 5 of the Employment Act, 1980 as well as section 3 of the Industrial Relations Act of 2000 limits the application of those Acts by excluding persons employed by the Umbutfo Swaziland Defence Force, The Royal Swaziland Police and His Majesty's Correctional Services.

Discuss fully.

(25 Marks)