

UNIVERSITY OF SWAZILAND

FACULTY OF SOCIAL SCIENCE

DEPARTMENT OF LAW

FINAL EXAMINATION PAPER, JULY 2013 (SUPPLEMENTARY)

TITLE OF PAPER : LABOUR LAW
COURSE CODE : L304
TIME ALLOWED : THREE (3) HOURS
INSTRUCTIONS : ANSWER FOUR (4) QUESTIONS
ALL QUESTIONS CARRY EQUAL MARKS

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QUESTION 1

Making reference to relevant authorities, discuss the relationship between section 36 and section 42 (2) of the Employment Act no. 5 of 1980.

(25 Marks)

QUESTION 2

Nokwanda Zwane has been employed by Sibeko Holdings (Pty) Ltd since December, 2001. In October 2012 Ms. Zwane's services were terminated by the company following a hearing in which she was found guilty of an offence under section 36 (a) of the Employment Act of 1980. Ms Zwane has instructed you that she was employed by the company as a secretary in the Finance Department in 2001. In July, 2012, the Junior Accounts Clerk of the Company resigned after having received a scholarship to further her studies in finance. Ms. Zwane was called by the Chief Financial Officer who told her that since the junior clerk had resigned, it had been decided that she be given a chance to progress within the company and therefore she was being offered the position which had recently become vacant. Ms. Zwane was elated and in her excitement profusely thanked the Chief Financial Officer, informing him that she had no doubt that she could do the job and went ahead to furnish him with certificates in accounting. According to the Certificates, Ms. Zwane had just successfully completed AAT Level 3, whereas the job required a minimum of AAT Level 2. The Chief Financial Officer was very impressed, and expressed relief that Ms. Zwane would be able to 'jump right in' without any need for additional training, and said as much to Ms. Zwane.

Ms. Zwane took up her new post at the beginning of August 2012. As time progressed, it became obvious that Ms. Zwane was struggling, and in September she was charged for incompetence. A hearing was held and she was found guilty by the Chairperson of the hearing and her services were terminated as a result.

Ms. Zwane claims that the termination of her services is unfair because she was not given an opportunity to improve her performance by the company.

Referring to relevant authority, outline her chances for success in a claim for unfair dismissal.

(25 Marks)

QUESTION 3

What are the differences, if any, between a protected and an unprotected strike action? In your answer outline the circumstances under which dismissal for participation in an unprotected strike may be justified.

(25 Marks)

QUESTION 4

- a) Freedom of association not only entails the right to join a union, but also the right not to join a union. The agency shop agreement has been seen as a contravention of the right to freedom of association. Discuss in full.

(13 Marks)

- b) The Industrial Relations Act of 2005 allows a distinction between employees and staff for purposes of determining who is eligible, within a particular establishment, to become and participate in the activities of a trade union. Discuss in full.

(12 Marks)

QUESTION 5

Pursuant to financial difficulties stemming from the economic downturn in the country, Sibeko Holdings (Pty) Ltd has resolved that in order to save the company, it is necessary to reduce its employees. It has accordingly served 17 of its employees with termination notices, stating within those notices that it has become necessary to terminate their services because of the financial problems faced by the company. The Union has written to the management of the company condemning its act of dealing directly with its members, and also of flouting the procedures laid down by the law for carrying out retrenchments. The Union has also stated that the employer had no right to bypass it, as the employee representative and deal directly with its members.

The employer has responded to this correspondence, stating that the collective agreement governing its relations with the union has expired, and as a result the company no longer recognizes the union as the employee representative. It went on to say that it was perfectly within the law in issuing termination notices to the employees as it had done.

Referring to relevant authorities, discuss the legal issues that arise in this matter.

(25 Marks)