

UNIVERSITY OF SWAZILAND

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DEPARTMENT OF LAW

FINAL EXAMINATION PAPER, DECEMBER 2013 (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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Mafikizolo Fakudze in December, 2007 completed his studies at the Swaziland College of Technology 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 commenced 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 stated also 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. 161

Discuss all legal issues that arise herein.

(25 Marks)

QUESTION TWO

Zanele Dlamini is an employee of Kraft Foods under your section. Ms. Dlamini has been employed by the company since 2005. Ms. Dlamini has several warnings in her file for a variety of offences including late coming (first written warning); absenteeism (final written warning); failure to follow instructions (first written warning). All warnings are from the past six 6 months.

On the 26th Sept 2013, Ms. Dlamini's services were terminated by letter dated the same day, and the reason stated for the dismissal was drunk and disorderly conduct within the work premises. There were no formalities prior to the termination of Ms. Dlamini's services.

Ms. Dlamini has come to you for legal advice.

(25 Marks)

QUESTION THREE

ILO standards have had a profound impact on the development of Labour Law in Swaziland.

Discuss the accuracy of this statement making particular reference to legal provisions and case law.

(25 Marks)

QUESTION FOUR

Write short notes on the following:

- a) The sources of labour law; (5 marks)
- b) Labour law and the Constitution; (7 marks)
- c) Automatically unfair dismissals; (8 marks)
- d) Disciplinary sanctions. (5 marks)

QUESTION FIVE

The difference between the *conduction location operis* and the *conductio location operarum* is a very important one. Discuss, making reference to relevant legal authority, the various tests that have been devised by the courts to determine whether a contract can be said to be one of employment.

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(25 marks)