

UNIVERSITY OF SWAZILAND

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DEPARTMENT OF LAW

FINAL EXAMINATION PAPER, JULY 2014 (SUPPLEMENTARY)

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

Duduzile Magagula is a graduate of the University of Swaziland. Magagula completed her LLB degree in 2007, obtaining a 2:2. Shortly after receiving her results, Magagula created her CV and sent it out to several law firms, in application for employment. 164

On or about September, 2007 she received a letter from Molapo Attorneys, a Manzini based law firm, asking her to come in for an interview. Having successfully gone through the interview process, Magagula was offered a contract of articleship by Molapo Attorneys.

Having worked at this firm for three years, during which time Magagula was able to successfully petition for admission to the Swaziland Bar, she again sat down to work on her CV and started sending it out to several insurance companies, applying for employment. She felt strongly that it was not time to move on and decided she would try the insurance industry first. In her CV, Magagula stated that she had gained extensive experience in dealing with a plethora of legal problems and had sharpened her skills to research legal issues and analyse legal problems. She also claimed to have mastered the legislation dealing with insurance and insurance related issues in the country, as well as competence in drafting legal documents.

Swaziland Royal Insurance Corporation (SRIC) was very impressed with Magagula's application cover letter and CV, and happened to have an opening in its legal department for just the person Magagula described herself to be. They promptly invited her for an interview and shortly thereafter offered her the position of legal officer, reporting to the Director-Legal Affairs. She was to serve three months' probation after which she would be confirmed in her employment and given a 10% increase in salary.

Magagula started working for SRIC in December 2010. She was very excited about her new job, and was even more excited about the increase in the salary which was almost ten times the amount she was earning at her previous employment, not to mention other benefits like car and housing allowance, medical aid as well as membership in a lucrative pension scheme. By the end of the second month she had bought herself a new car and had moved into a nice new flat in Mbabane.

In the middle of the third month of her employment in her new job, Magagula was called into the Director-Legal Affairs' office where she was told that her work was not satisfactory. In fact, the Director said that it appeared to him that Magagula did not do any work at all and appeared to spend all her time chatting on the cellular telephone or on social networking sites on the internet. He let her know that he was having trouble making a recommendation for the confirmation of her contract of employment on those grounds.

Magagula simply sat there and wept, leaving her superior befuddled as to what brought on such a reaction from Magagula. He then told her that he would talk to her again the following day, when she was calmer. However, attempts to talk to Magagula elicited a similar response from her.

A week later, Magagula received a letter informing her that the company had no choice but to terminate her services with immediate effect. Magagula reported a dispute to CMAC which remained unresolved

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after efforts to resolve it through conciliation. At conciliation, SRIC was represented by an attorney while Magagula represented herself. When Magagula objected to this she was told that the company was only balancing the scales as she was also an attorney.

Discuss all the issues that arise herein.

(25 Marks)

QUESTION TWO

Fully discuss the following, making reference to relevant authority:

- a) Procedural Fairness (12 marks)
- b) Substantive Fairness (13 marks)

(25 marks)

QUESTION THREE

You have been approached by a newly formed, but unregistered trade union to advise them on the legal requirements they need to fulfil in order to get to a point where they would be able to represent their member's interests at their workplace.

(25 Marks)

QUESTION FOUR

One of the important tools that employees have to promote their interests is strike action. This is even recognised by the ILO as well as local legislation. Discuss the difference between protected and unprotected strike action.

(25 marks)

QUESTION FIVE

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)