

UNIVERSITY OF SWAZILAND
DEPARTMENT OF LAW
FINAL EXAMINATION PAPER, DECEMBER 2015 (MAIN)

TITLE OF PAPER : LABOUR LAW

COURSE CODE :L304

TIME ALLOWED :THREE (3) HOURS

INSTRUCTIONS :ANSWER ANY FOUR QUESTIONS
ALL QUESTIONS CARRY EQUAL MARKS

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

Question one

The requirements for dismissal for redundancy include consultation, following of a fair criteria for selection of employees to be retrenched, that the retrenchment must be reasonable, bona fide and have a commercial rationale and that ways to minimize or avert the retrenchment were considered by the company before .

Referring to relevant case law, discuss fully.

(25 Marks)

Question two

Section 36 of the Employment Act 5/1980 provides fair reasons for the termination of the employment contract on the basis of misconduct. These include absenteeism, dishonesty, fraud and assault. With the aid of decided cases, discuss fully.

(25 Marks)

Question three

Xolani Mpila was employed by Scott (Pty) Ltd on 15 January 2010 as a glass cutter. He was dismissed on the 23rd October 2015 following a disciplinary hearing where he was found guilty of dishonesty in that he was found to be in possession of company property which he has taken without authority.

He had been approached by his immediate supervisor, Ingrid Mazibuko on the morning following his being found with company property to inform him, verbally, that a hearing would be held at 2.30pm that afternoon. Mr Mpila objected to the time of the hearing, contending that he needed time to prepare for the hearing and to ask his attorney to represent him at the hearing. He was told to raise this at the hearing, and when he did, he was told that this was the only time the Chairman had to listen to the matter.

The matter was finalized at 4.14 pm and he was told to come the following morning to hear the recommendation of the Chairman. At 8.15am he was given a letter termination his services with immediate effect and he was asked to leave the premises in the company of a security guard.

Mr. Mpila has approached you for advice. He says even though he can not figure out what it is, but something feels wrong about the way his services were terminated.

(25 Marks)

Question four

Having completed your studies at UNISWA, you joined ABX (Pty) Ltd as a permanent and pensionable employee. You have been approached by several of your colleague who have decried the absence of organised representation of the workers of the company and are desirous of forming a trade union. The have asked you to advise them of the legal requirements of not only forming a trade union but also what they would need to do, if anything, for the trade union to be able to be entitled represent them in matters affecting them in the workplace.

(25 Marks)

Question Five

Nokukhanya Makhanya has worked for SLX (Pty) Ltd since March 2005. In May 2015, the company's management changed. From that time Ms. Makhanya has had problems with her manager. Recently, Ms Makhanya was called into the manager's office. When she got there, her manager told her that her work was unsatisfactory, and that she was behaving like a lazy kaffir. Wanting to avoid a confrontation, Ms Makhanya stood up to leave, at which time the manager started shouting and throwing things at her in full view of her colleagues. Ms. Makhanya immediately went to report the matter to the local police station. She came back the following morning to submit her resignation letter, in which she stated that the manager's behaviour made it intolerable to continue working for the company.

She later reported a dispute at CMAC seeking compensation for unfair dismissal. The company has approached you to seek clarification of the matter as in their opinion, Ms Makhanya left of her own accord and was not fired.

(25 Marks)