

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW

FINAL EXAMINATION PAPER, 2016/2017 (MAIN)

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 ONE

Section 36 (a) of the Employment Act of 1980 and the Code of Good Practice : Termination of Employment drafted under section 109 of the Industrial Relations Act govern the dismissal of employees for poor work performance. Making reference to relevant case law, discuss the requirements for dismissal for poor work performance.

(25 Marks)

QUESTION TWO

In the past, courts were reluctant to grant the remedy of specific performance.

Making reference to relevant case law, discuss the historical development of the remedy of specific performance, and whether we should retain this remedy in our law.

(25 Marks)

QUESTION THREE

Although in principle legal representation, or representation by an attorney, is not allowed in internal disciplinary proceedings, there are certain circumstances when courts have determined that it ought to be allowed.

Making reference to relevant case law discuss the circumstances under which legal representation should be allowed.

(25 Marks)

QUESTION FOUR

Zenzozethu (Pty) Ltd is a company registered in terms of company laws of Swaziland and carrying out business at Matsapha. The company employs 356 employees and is an equal opportunities employer, taking care to be non-discriminatory in its recruitment processes.

In July 1999, two years after the company commenced business, it was approached by the Swaziland Manufacturing and Allied Workers' Union for recognition as the trade union representative of the company's employees. Having been satisfied that the Union met all the legal requirements for recognition, the company duly recognised the trade union and from then on dealt with its employees through the Union as the employees' representative.

In August 2015, the Union and the company, following negotiations on the matter entered into an agency shop agreement in respect of 35 unionisable employees who were not members of the union. It was one of the terms of the agreement that since the date of the agreement fell before the company payroll was closed, deductions on the salaries of the affected employees would commence in August.

On receipt of their August payslips, the employees realised that the agency fee had been deducted from their pay. The employees immediately sought the services of an attorney and gave her instructions to approach the court to seek an order

- a) declaring the agency shop agreement unconstitutional.
- b) interdicting the employer from effecting further deductions on their salaries in respect of the agency shop agreement,
- c) compelling the return of the monies already deducted from their salaries and paid to the Unions,
- d) declaring that the agency shop agreement itself was not in compliance with the law.

The 35 affected employees have approached you for advice in the matter.

(25 Marks)

QUESTION FIVE

Romancia Dlamini is an employee of Chisveto Holdings (Pty) Ltd, a company duly registered in Swaziland and having its offices in Matsapha. Ms. Dlamini is an admitted attorney having being admitted to the Swaziland Bar in 2013. She has been working for the company since January 2014 in its legal department as a legal Officer reporting to the Manager, Legal Affairs.

At a management meeting, it was noted that the company has a lot of outstanding debts that it was having difficulty collecting. It was noted further that the law firms that they had appointed to pursue their debtors were not having much success as they were failing to appreciate the

intricacies attendant to the business of the company. At that meeting, it was suggested by the Manager, Finance that perhaps Ms. Dlamini should be requested, through a legal firm in which she was a partner, to perform the debt collection on behalf of the company. It was also resolved that Mr. Dlamini would continue to work for the company, and all debt collection matters would be referred to her law firm by the Manager, Legal Affairs. In the weeks that followed, Ms. Dlamini's law firm was contracted to do the work.

The company's Board of Directors caught wind of this arrangement and immediately sought answers from the General Manager of the company, noting that they thought there was a lot wrong with this arrangement, and that perhaps Ms. Dlamini should be asked to resign and continue to provide debt collection services for the company. Alternatively, that the contract with Ms. Dlamini's firm should be cancelled and she continues to be employed by the company.

The General Manager was baffled. He honestly found nothing wrong with the arrangement, especially since Ms. Dlamini had assured management that she only did the firm's work after hours and during weekends and holidays. The General Manager decided to approach you for advice on the position of the law in such matters. Advise him accordingly.

(25 Marks)