

UNIVERSITY OF SWAZILAND
INSTITUTE OF DISTANCE EDUCATION
LABOUR LAW MAIN EXAM PAPER- SEMESTER I 2016

Programme of Study : **B.Com (OP) VI IDE**

Title of Paper : **Labour Law**

Course Code : **L304**

Time Allowed : **3 Hours**

Examiner : **Dr. M.N. Shongwe**

INSTRUCTIONS:

1. Answer any four (4) Questions
2. In answering any question, note that the quality of the content, use of case law, clarity of expression and legibility of handwriting are absolutely essential.
3. Begin each question on a new page.

THIS PAPER MUST NOT BE OPENED UNTIL PERMISSION HAS BEEN GRANTED BY INVIGILATOR(S).

QUESTION 1

(a) International Labour Standards are considered as a source of labour law. Are these applicable in Swaziland? If so, explain how they are applicable, referring to authority. [10 Marks]

(b) Discuss the statutory definitions of an employee in Swaziland labour law with reference to the case of *Percy Lokotfwako v STBC* IC Case No. 151/2007. [15 Marks]

[25 Marks]

QUESTION 2

With specific reference to the case of *SA Broadcasting Corporation v McKenzie* (1999) 20 ILJ 585 (LAC), discuss the differences between *locatio conductio operarum* and *locatio conductio operis*.

[25 Marks]

QUESTION 3

(a) Briefly describe the concept of a “tripartite” in labour law and give an example of how it works. [5]

(b) With reference to the facts of *Smit v Workmen’s Compensation Commissioner* 1979 (1) SA 51 (AD), discuss the tests applied by the court to distinguish between a contract of employment proper and other forms of contract. [20 Marks]

[25 Marks]

QUESTION 4

Mr. Green is employed by Swaziland Beverages as an accountant. He has developed the reputation of being unstable after tea breaks at work, such that on one occasion he insulted a client. After investigation it appears that he is a cannabis addict who practices his habit at work. Of more concern was the discovery that he obtained the cannabis from Rusty, a Rastafarian employee who sells it to other employees as well. Rusty was very cooperative during the investigation and explained that he had no religious objections to use it and that cannabis ‘cleanses the soul’. Mr. Green stated that the uptight managers need to discover the benefits of cannabis themselves. During a heated disciplinary hearing, the Executive Management of Swaziland Beverages decided to dismiss both employees on the spot. Advise Swaziland Beverages as to the legality of their executive decision.

[25 Marks]

QUESTION 5

Write an essay in which you describe the dispute resolution framework and procedure provided by part VIII of the Industrial Relations (Amendment) Act No. 11 of 2014. In your analysis, refer to the Code of Good Practice.

[25 Marks]

QUESTION 6

SMAWU, a registered trade union operating in the manufacturing industry wants to gain recognition at Sidwashini Timber Planks (Pty) Ltd. The union already has more than fifty (50) paid up members in a bargaining unit of seventy (70) employees in the company. Twenty five (25) days have already elapsed since the union has submitted its written application for recognition as the employee representative of certain categories of employees as are named in the application. Such recognition would enable the union to negotiate general conditions of employment. The company's Human Resources Manager is reluctant to respond to the application because he believes unions are by their very nature destructive and should be discouraged.

Write a legal opinion in which you advise both the company and the union on their respective rights and obligations under the Industrial Relations Act 2000 (as amended), and refer to case law.

[25 Marks]

END OF PAPER