

UNIVERSITY OF ESWATINI
FACULTY OF SOCIAL SCIENCES
DEPARTMENT OF LAW
FINAL EXAMINATION - DECEMBER 2018

TITLE OF PAPER: LABOUR LAW

COURSE CODE: L304

TIME ALLOWED: 3 HOURS

INSTRUCTIONS:-

1. Question 1 is compulsory. Answer any other three (3) 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.

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QUESTION 1 -COMPULSORY

Consider the facts below and indicate how you would determine if Ms. Owenkhosi Dlamini is an employee or an independent contractor. Make reference to case law.

Ms. Owenkhosi Dlamini works as a taxi driver. The taxi is owned by Mr. Dumsani Dlamini. Ms. Owenkhosi Dlamini is required to collect the taxi from Mr. Dumsani Dlamini's home before 7:30 am each day, as Mr. Dumsani Dlamini locks up his premises at 7:30 am, when he goes to work at his surveying firm. Ms. Owenkhosi Dlamini is required to pay Mr. Dumsani Dlamini 60% of the income derived from transporting passengers in the taxi at the end of each week. Ms. Owenkhosi Dlamini keeps the remaining 40% of the income for herself. At the weekly meetings during which the weekly income is shared out, Ms. Owenkhosi Dlamini is also required to give a report on the vehicle's condition. Mr. Dumsani Dlamini then inspects the vehicle. Routine maintenance of the vehicle is paid for in full by Mr. Dumsani Dlamini.

Mr. Dumsani Dlamini has a BP Card which he allows Ms. Owenkhosi Dlamini to use to fuel the vehicle. However, when the bill for petrol comes each month, Ms. Owenkhosi Dlamini is required to pay it in full. The vehicle is fully insured, and Mr. Dumsani Dlamini pays the insurance premiums each month. On one occasion the vehicle was involved in a minor accident which was the fault of Ms. Owenkhosi Dlamini. Although Mr. Dumsani Dlamini claimed from the insurance, Ms. Owenkhosi Dlamini was required to pay the excess which the insurance company would not pay. This she did with no complaint.

One day at their weekly meeting Mr. Dumsani Dlamini told Ms. Owenkhosi Dlamini that he had bad news for her. He said his brother needed a job and that he had offered his brother the job of taxi driver in Ms. Owenkhosi Dlamini's place. He told Ms. Owenkhosi Dlamini that he need not report for work at the beginning of the next week, because his brother would take over with immediate effect.

[25 marks]

QUESTION 2

Trengove AJ in *Mafomane vs. Rustenburg Platinum Mines Ltd* [2003] 10 BLLR (LC) stated that:

“The requirement that the employee prove that his or her continued employment had become intolerable, has the following implications:

The test is an objective one. It means that the employee must prove at least two things. The first is that the circumstances had become so unbearable that the employee could no longer reasonably be expected to endure them. The second is that there was no reasonable alternative to escape those unbearable circumstances, than to resign.

Critically analyze the above statement, with particular emphasis on the scope of the employment relationship in the case of constructive dismissal. Motivate your answer with reference to relevant statutory and case law.

[25 marks]

QUESTION 3

Set out the time limit applicable to lodging an unfair dismissal claim CMAC. If an employee wishes to bring an unfair dismissal case but is outside of the time limit (ie: late) what should he do? Explain how the CMAC will decide whether to condone his late application or not, with reference to case law.

[25 marks]

QUESTION 4

Mary Jane was employed as a supervisor at the Delicious Delight Supermarket. She was dismissed after having been found guilty of breach of company procedure and consuming the company's product without proper authority. She was captured on video on three separate occasions (between September and December 2017) eating slices of bread inside the Supermarket with the door closed. The bread in question was left on the outer counter, to be disposed of later as it was broken or damaged and could not be sold to customers. It was often given away for free to local farmers.

It is the company's policy that no employee may consume food whilst in the Supermarket. All staff are required to only eat in the staff canteen. In mitigation, she had argued that she had 15 years' service, and had never been found guilty of an offence previously. She therefore pleaded

with the employer to give her a final warning as the bread had no value to the company. Delicious Delight Supermarket dismissed her despite her plea in mitigation. She wishes to challenge the dismissal on the basis that the sanction of dismissal is too harsh in the circumstances.

Give full advice, with reference to case law.

[25 marks]

QUESTION 5

10 000 employees (textile workers) at Zhong Yeng textile Factory, Nhlngano have entered into wage negotiations with the management. They are represented by the Textile Trade Union (TTU) who generally enjoys a very good relationship with management. After three wage negotiation meetings, the parties are nowhere near reaching settlement. This is largely due to the fact that the factory is facing a financial crisis because of mismanagement of funds, and has very limited finances available for the employees annual wage increase. The factory has dismissed those who were responsible for the mismanagement of funds and are discussing retrenching another 100 employees. The employees demand is for a 20% wage increase, and the inflation rate is accepted by all parties to be at 6.5%. The employees' wages are all higher than most employees employed in comparable institutions.

The employees have announced that they are engaging on a strike without following the due process. They have abandoned their work and gather at the factory's gates where they sit in the shade, stating that they will not return to work unless they are given at least a 20% wage increase.

Management phones you in a panic — wanting to know what he can /should do to deal with the conduct of the employees. Provide him with detailed advice.

[25 marks]

QUESTION 6

Fully discuss the following, making reference to relevant authority:

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

(25 marks)