



**UNIVERSITY OF ESWATINI  
INSTITUTE OF DISTANCE EDUCATION  
BACHELOR OF LAWS  
RE-SIT EXAMINATION PAPER JANUARY 2020**

<b>Programme of Study</b>	<b>:</b>	<b>LLB</b>
<b>Title of Paper</b>	<b>:</b>	<b>Employment Law</b>
<b>Course Code</b>	<b>:</b>	<b>LAW309</b>
<b>Time Allowed</b>	<b>:</b>	<b>3 Hours</b>

**INSTRUCTIONS**

1. Answer any 4 questions. There are 6 questions in this exam.
2. Each question has 25 marks. Please pay attention to the number structure of each question so that you can understand how much time you should allocate to each question.
3. Ensure to underline your cases, references and vernacular terms.
4. Total marks = 100.

**DO NOT OPEN THE PAPER UNTIL PERMISSION HAS BEEN GIVEN.**

**QUESTION 1**

Wandile is a 25 year old male. He applied of a job at Nedbank as a Teller. Wandile was interviewed for the position of teller. On 24 August 2017, Nedbank offered Wandile the position in writing and with effect from 1 September 2017. On 27 August 2017, Wandile accepted the offer in writing and personally delivered the written acceptance to Nedbank. During the interview for this position, Wandile did not disclose to Nedbank that he was undergoing a gender reassignment process. On 29 August 2019, Wandile informed Nedbank that he was in the process of undergoing a gender reassignment process that would change his gender from male to female.

On the 31 August 2017, less than 24 hours before Wandile was due to commence work at Nedbank, he received a letter to the following:-

*“We refer to our letter of employment dated 24th August 2017 and your subsequent acceptance of this offer on the 27<sup>th</sup> August 2017. During the interview held of the 27<sup>th</sup> July 2017, the job specification and requirement, working environment, client profile, etc were discussed with you and you in turn presented us with details regarding your experience and qualifications. At no time during the interview did you divulge to us that you were in the process of gender –reclassification. We fail to understand why you had thought that this information was important enough to disclose only after accepting the offer, but not to mention it during the interview. We regard this omission as a crucial case of misrepresentation which constitutes dishonesty. We hereby confirm that your services will no longer be required.*

Wandile is of the opinion that he was unfairly discriminated against because of his sexual orientation / gender / sex and wants to take legal action against Nedbank and approaches you for advice.

In light of the above facts, prepare a critical legal opinion including possible cause of action, relief and prospects of success. In your answer refer to applicable authority including legislations and case law.

**(25 MARKS)**

**QUESTION 2**

Thando Dlamini was employed as a Legal Manager by DOH (Pty) Ltd on the 1<sup>st</sup> October 2014, on a one year fixed-term contract which was to expire on the 31<sup>st</sup> October 2015. On the 1<sup>st</sup> December 2015, Mr. Dumsani Dlamini, the Managing director of DOH (Pty) Ltd, invited her to his office where he advised her that the company had decided to extend her contract for another period of a year. Thando Dlamini duly performed her duties and made her services available at the behest of the Employer. Due to her impressive performance, her contract was further renewed for a further two year period which expired on the 31<sup>st</sup> October 2018. On the 31<sup>st</sup> December 2018, Thando was informed that the contract had come to an end and the company will no longer be needing her services. This was alleged to be based on the fact that this role would be performed by an external consultant.

Thando has approached you and alleges that she was unfairly dismissed as she had a legitimate expectation that her contract would be renewed based on the work capacity of the company. With reference to relevant case law, discuss the principle of legitimate expectation.

**(25 MARKS)**

**QUESTION 3**

Critically discuss a fair disciplinary procedure. Reference should be made to decided case law.

**(25 MARKS)**

**QUESTION 4**

Critically discuss dismissal for operational reasons. Reference should be made to decided case law.

**(25 MARKS)**

**QUESTION 5**

The first question to be asked when seeking to resolve any labour law problem is whether the parties are indeed employees and employers within the meaning of the applicable statute and or the common law. Certain tests and principles are applied to determine whether a party to a labour claim or dispute is an employee and independent contract

Critically discuss how the Courts have pronounced the determination of an employee vis-a-viz an independent contractor.

**(25 MARKS)**

**QUESTION 6**

Section 33 *bis* (1) (a) (b) of the Employment Act 1980 (As Amended) states as follows:-

*“(1) An employer shall not:-*

*(a) Sell his business to another person: or*

*(b) Allow a takeover of his business by another person unless he first pays all the benefits accruing and or due for payment to the employees at the time of such sale or takeover”*

With reference to case law, analyze how the Courts have interpreted this provision.

**(25 MARKS)**