



UNIVERSITY OF ESWATINI

FIRST SEMESTER MAIN EXAMINATION PAPER, NOVEMBER 2019

FACULTY OF SOCIAL SCIENCES

DEPARTMENT OF LAW

COURSE CODE: LAW309

TITLE OF PAPER: EMPLOYMENT LAW

TIME ALLOWED: 3 HOURS

Instructions

1. Answer any FOUR questions.

Special Requirements

NONE

*Candidates may complete the front cover of their answer book when instructed by the Chief Invigilator and sign their examination attendance cards but must **NOT** write anything else until the start of the examination period is announced.*

No electronic devices capable of storing and retrieving text, including electronic dictionaries and any form of foreign material may be used while in the examination room.

DO NOT turn examination paper over until instructed to do so.

QUESTION ONE

Sinothando Fakudze instructs you that she was an employee of Mafukufuku (Pty) Ltd. She instructs you that she works as a sales representative and has done so for the past seven years. When she is unwell or needs time off for any reason, Ms. Fakudze requests Mvuselelo Mthimkhulu to attend to her duties on her behalf. Mr. Mthimkhulu's salary is paid by Ms. Fakudze. Ms. Fakudze is paid a certain percentage of all sales made by her. She has an office within Mafukufuku (Pty) Ltd and is provided with stationery. She also receives a petrol allowance and it required to wear the company uniform. Although she does not have any prescribed working hours, she is required to attend weekly staff meetings and is required to report to the Sales Manager on sales made at these weekly meeting. The company does not deduct either medical aid, pension fund or tax (pay as you earn) from her salary.

The reason she has come to you is that she has received communication from the company notifying her that her services are no longer required by the company, and she wants to institute proceedings against the company for unfair dismissal.

Advise your client on her chances for success.

(25 Marks)

QUESTION TWO

You have been asked by one of the senior partners at the law firm at which you are interning to write a brief on the sources of employment law in Eswatini.

(25 Marks)

QUESTION THREE

Courts have not always been willing to grant the remedy of specific performance of employment contracts.

Discuss fully, making reference to relevant legal provisions and decided cases.

(25 Marks)

QUESTION FOUR

Siboniso Dlamini was employed by Mafukufuku (Pty) Ltd on 15 January 2010 as a painter. He was dismissed on the 23rd October 2019 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, Scott Thomas 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 Dlamini objected to the time of the hearing, contending that he needed time to prepare for the hearing and to request his attorney to represent him at the hearing. He was told to raise this at the hearing, and when he did, he was told by the Chairman of the hearing that as this was an internal hearing, attorneys were not allowed.

The matter proceeded and 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. Dlamini has approached you for advice. He has instructed you that even though he can not figure out what it is, but something feels wrong about the way his services were terminated.

(25 Marks)

QUESTION FIVE

According to our law, dismissals not only have to be procedurally fair, but they also have to be substantially fair. Discuss the requirement of substantive fairness in relation to:

- (a) Dismissals for misconduct; and (12 Marks)
- (b) Dismissals for poor work performance. (13 Marks)