



**MERCANTILE LAW DEPARTMENT
ADVANCED LABOUR LAW
LML403Q**

TUTORIAL LETTER 201/3/2010

Dear Student

This tutorial letter deals with the following:

- A** Commentary on Assignment 01
- B** Commentary on Assignment 02
- E** The May/June 2009 Exam paper

A COMMENTARY ON ASSIGNMENT 01

The purpose of the assignment was to introduce students to a whole range of labour law principles that become relevant when a set of fact is analyzed. It is necessary to study the text book in order to answer the questions adequately.

LML 403Q Commentary on Assignment 1 2010

Question 1

It is not necessary for a contract of employment to be in writing in order for it to be valid. It can also be an oral or even a tacit agreement. All the other factors listed are essential for the validity of any contract including a contract of employment. Therefore b is not a requirement for a valid contract of employment. (see *Essential Labour Law* Fifth Edition p.39-40)

The correct answer is 2

Question 2

Statement a) is incorrect. The BCEA only provides for unpaid maternity leave. (see *Essential Labour Law* Fifth Edition p.69-70)

Statement b) is incorrect. Employers need not pay double for work on Sundays if the employees normally work on a Sunday. (see *Essential Labour Law* Fifth Edition p.67)

Statement c) is incorrect. There are circumstances where the provisions of the BCEA can indeed be varied. (see *Essential Labour Law* Fifth Edition p.74-75)

Statement d) is correct. (see *Essential Labour Law* Fifth Edition p.279)

Statement e) is correct. (see *Essential Labour Law* Fifth Edition p.365)

Therefore the correct answer is 5.

Question 3

Statement a) is incorrect. Incompetence is not a form of misconduct. (see *Essential Labour Law* Fifth Edition p. 135)

Statement b) is correct. (see *Essential Labour Law* Fifth Edition p.135 and p. 151)

Statement c) is correct. (see *Essential Labour Law* Fifth Edition p.208-209)

Statement d) is incorrect. (see *Essential Labour Law* Fifth Edition p.138)

Statement e) is correct. (see *Essential Labour Law* Fifth Edition p 139)

Therefore the correct answer is 1.

Question 4

Statement a) is correct (see *Essential Labour Law* Fifth Edition p.163)

Statement b) is correct (see *Essential Labour Law* Fifth Edition p.169).

Statement c) is incorrect (see *Essential Labour Law* Fifth Edition p.156).

Statement d) is incorrect (see *Essential Labour Law* Fifth Edition p.164-165).

Statement e) is incorrect (see *Essential Labour Law* Fifth Edition p.175).

Therefore the correct answer is 4

Question 5

Statement a) is correct (see section 192 of the LRA).

Statement b) is correct (see *Essential Labour Law* Fifth Edition p.212).

Statement c) is correct (see *Essential Labour Law* Fifth Edition p.359-360).

Statement d) is incorrect (see *Essential Labour Law* Fifth Edition p.361-363).

Statement e) is incorrect. Arbitration awards are final and binding and can only be taken on review not appeal (see *Essential Labour Law* Fifth Edition p.370).

Therefore the correct answer is 5

B COMMENTARY ON ASSIGNMENT 02

Question 1

All the statements are incorrect except for statement 3(see *Essential Labour Law* 5th Edition p.307;318-321) . Statement 3 is correct (see *Essential Labour Law* 5th Edition p.335).

The correct answer is 3.

Question 2

A matter of mutual interest includes terms and conditions of employment as well as matters of direct relevance to the workplace and job security of employees (see *Essential Labour Law* 5th Edition p.310). Therefore only B and D qualify as matters of mutual interest.

The correct answer is 5.

Question 3

Only 4 does not constitute an infringement of the right to freedom of association employees (see *Essential Labour Law* 5th Edition p.252-253).

The correct answer is 4.

Question 4

All the statements except statement 5 are correct (see *Essential Labour Law* 5th Edition p.288-289).

The correct answer is 5.

Question 5

A trade union representative is also an employee of the employer and it is his/her duty to represent the interests of the employees. Time off is subject to reasonable conditions set by the employer (see *Essential Labour Law* 5th Edition p.263).

The correct answer is 5

C MAY/JUNE 2010 EXAM PAPER

In order to give an indication of the type of questions that you can expect and to help you with revision for the forthcoming exam, we have included May/June 2009 exam paper as an example. Please bear in mind that there may possibly in the meantime have been amendments to the underlying legal principles.

EXAM PAPER

This paper consists of 3 pages.

This examination paper remains the property of the University of South Africa
and may not be removed from the examination room.

ANSWER ALL THE QUESTIONS

QUESTION 1

- (a) Name the common law duties of the employer in terms of the contract of employment. (5)
- (b) What is meant by 'progressive discipline'? (5)
- (c) What are 'affirmative action measures'? Discuss. (5)
- (d) An employee enjoys employment protection if a 'protected disclosure' has been made. Explain this concept and the contents of the available protection. (5)
- (e) List the three ways in which a trade union can acquire organisational rights. (3)
- (f) Under what circumstances can an employer dismiss employees during a protected strike? (2)

- (g) Explain the level of trade union representivity required for obtaining the different organisational rights as prescribed by the Labour Relations Act 66 of 1995. (5)
- (h) What is the difference between a closed shop agreement and an agency shop agreement? Explain. (5)
- (i) Discuss the circumstances in which the prescribed procedures for a strike to be protected **need not** be followed. (5)
- (j) Briefly discuss the circumstances in which replacement labour may be used during a strike. (5)

[45]

QUESTION 2

Ms Lindiwe Sono is an accountant who has a contract to work for Accounting Consultants CC. Her contract states that she will act as a tax consultant to the clients of Accounting Consultants CC. She belongs to the corporation's pension and medical aid funds and is paid on a monthly basis. She devotes all her working time to the corporation. For tax purposes, her contract stated that she is an independent contractor. After working for the corporation for two years, Ms Sono believes she is being discriminated against on the basis of both her race and sex because she is given only small firms as clients and her earnings have not improved in the two years she has been with the corporation. The two other white male consultants who were employed at the same time and on the same basis, have increased their earnings by 50% and both have been given large firms as clients. When Ms Sono approaches a senior member of the corporation, he observes that some clients have not been satisfied with her performance. She resigns and comes to you for advice.

Advise Ms Sono by critically discussing the following possible issues with reference to **applicable case law**:

- (a) Whether labour legislation applies to Ms Sono's employment and the importance of legislation in this regard. (5)
- (b) Ms Sono's position in respect of a dismissal. (5)
- (c) The fairness of the dismissal. (5)
- (d) The consequences of discrimination on the dismissal, if applicable. (5)

[20]

QUESTION 3**Critically discuss the following cases:**

- (a) *Le Monde Luggage CCt/a Pakwells Petje v Commissioner Dunn & Others* (2007) 28 ILJ 28 2238 (LAC) (5)
- (b) *'Kylie' and van Zyl t/a Briggs* (2007) 28 ILJ 470 (CCMA) (5)

Students writing the supplementary examination discuss:

- (c) *Automotive Tooling Systems (Pty) Ltd v Wilkens & others* (2007) 2 SA 271 (SCA) (5)
- (d) *Willemse v Patelia NO & others* [2007] 2 BLLR 164 (LC) (5)
- [10]**

QUESTION 4

The administrative staff at Company A work a 46 hour week. Trade Union X which represents the staff at Company A demanded a 45 hour week on behalf of the administrative staff. Negotiations reached deadlock whereupon the matter was referred to the CCMA for conciliation. Conciliation was unsuccessful. On Monday 19 March, Trade Union X gave notice to Company A that its members intended embarking on strike action on Thursday 22 March. Nevertheless, the administrative staff duly arrived for work as usual on 22 March for the ensuing days.

However, after a week the employer realised that there was a backlog in the administrative work, which resulted in orders not being processed, sufficient supplies not being available for production etc. This in turn resulted in a backlog in the entire factory with factory workers standing idle because of a lack of orders as well as a shortage of supplies.

In sympathy with the administrative staff at Company A employees at Company B, a major supplier of Company A, refused to work overtime. Company B insisted that the employees work overtime and accept a drop in wages. The matter was referred to the CCMA for conciliation without success. After 30 days had elapsed, employer B gave the trade union 48 hours written notice of its intention to dismiss workers who refuse to work overtime. After the expiry of the deadline the employer dismissed the workers who refused to work overtime. Answer the following questions:

- (a) Do the various actions of the employees at Company A and Company B amount to strike action(s)? (10)
- (b) Discuss whether the action of the employees at Company B is protected. (5)

- (c) Discuss the fairness of the dismissals and the possible remedies, if any, at the employees' disposal.

(10)

[25]

TOTAL: [100]

Good luck with your preparation for the exam. We wish you every success.

THE LECTURERS