

LLW2602

(491611)

October/November 2011

COLLECTIVE LABOUR LAW (LABOUR LAW)

80 Marks

Duration 2 Hours

EXAMINERS :
FIRST
SECOND

PROF M BUDELI
PROF ME MANAMELA

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This paper consists of 15 pages plus instructions for completing a mark reading sheet.

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INSTRUCTIONS.

1. This paper consists of 15 pages and you have to answer *ALL* the questions.
2. The paper is divided into 2 sections.
SECTION A consists of 2 questions (with subdivisions) and has to be completed in the space provided on the *examination paper* itself.
SECTION B consists of 20 multiple choice questions counting 2 marks each. The answers to the multiple choice questions have to be filled in on the *mark reading sheet* provided to you.
3. At the end of the examination you have to hand in both this examination paper as well as the mark reading sheet containing your answers to the multiple choice questions
4. GOOD LUCK! We hope that you will do well.

SECTION A

The **Labour Relations Act, 1995**, is referred to throughout as the “**LRA**”.

QUESTION 1

- (a) Define collective labour law (4)

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- (b) Name five organizational rights and the level of representation required in order for a trade union to acquire each of them, as provided by the LRA of 1995. (10)

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- (c) Discuss the right of trade unions to conclude closed shop and agency shop agreements and the right of employees to freedom of association. (6)

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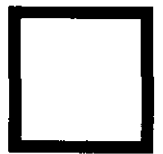
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(d) What are the requirements that must be met for a secondary strike to be protected? (5)

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TOTAL QUESTION 1: [25]



QUESTION 2

- (a) AA Union a representative union at UNISA approaches UNISA management about a 10% increase in the wages of its members. UNISA management offers the union only 7.5%. The parties fail to reach an agreement and the dispute is referred to the CCMA for conciliation. Within two weeks of the referral on a Monday morning the union informs the University management that because the University is not prepared to meet their demand its members will embark on a strike as from Tuesday morning
 - (i) Discuss whether the strike by members of AA Union will be protected. (5)

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- (ii) Assuming that the strike was unprotected, discuss the procedural requirements which must be met before employees who are engaged in such a strike may be dismissed. (5)

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(iii) What are the legal consequences of participating in an unprotected strike? (3)

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(b) Name two issues which may be considered as matters of mutual interest between employees and an employer. (2)

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TOTAL FOR SECTION A: 40 MARKS

SECTION B

INSTRUCTIONS:

1. Answer all the questions by filling in the answers on the mark-reading sheet provided to you.
2. Use a soft pencil.
3. Please ensure that you fill in your student number on the mark-reading sheet. All student numbers contain eight digits. In some cases this includes a "0" at the beginning.
4. This Section consists of 20 multiple choice questions each counting 2 marks. No marks will be deducted for incorrect answers. The section therefore counts out of 40 marks.

QUESTION 1

With regard to organisational rights in general, which **ONE** of the following statements is **CORRECT**?

- 1 Registration is not an absolute requirement for a trade union to obtain organisational rights in terms of the LRA.
- 2 Only registered trade unions, which are at least sufficiently representative in a workplace, can use section 21 of the LRA to obtain organisational rights.
- 3 A trade union, which is party to a bargaining council, is automatically entitled to all the organisational rights provided for in the LRA in respect of all workplaces within the jurisdiction of that bargaining council.
- 4 A registered trade union, which is sufficiently representative in a workplace, may conclude an agreement with an employer to set the threshold of representativeness required for other trade unions to acquire organisational rights in respect of that workplace. (2)

QUESTION 2

In certain circumstances, it is not necessary for employees who wish to embark on a strike to meet the procedural requirements laid down in the LRA before that strike will be protected.

In which **ONE** of the following cases will employees still be obliged to meet the procedural requirements laid down in the LRA?

- 1 The parties to the issue in dispute are members of a bargaining council and the issue in dispute has been dealt with by the council in accordance with its constitution.
- 2 The parties have earlier concluded a collective agreement, which spells out the requirements that must be met for strike action, and these requirements have, in fact, been met
- 3 The employer acted first by locking out its employees without meeting the procedural requirements laid down in the LRA.
- 4 The strike is about organisational rights, the trade union has more than 75% of the employers' workforce as its members and the union chooses not to use arbitration. (2)

QUESTION 3

With regard to the consequences of protected strike action, which **ONE** of the following statements is **INCORRECT**?

- 1 In principle, the dismissal of an employee for participation in a protected strike will constitute an automatically unfair dismissal.
- 2 An employee, who participates in a protected strike, may be dismissed for reasons relating to conduct during the strike or for reasons based on the employer's operational requirements.
- 3 Although the "no work-no pay" rule also applies to protected strikes, employers have to continue to provide accommodation and food during a protected strike if the employees request that it continues.
- 4 If a protected strike proves to be unsuccessful, the employer may thereafter sue the trade union for the damages it suffered as a result of the strike action. (2)

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QUESTION 4

With regard to agency shop agreements, which **ONE** of the following statements is **INCORRECT**?

- 1 Agency shop agreements constitute much less of an infringement on an employee's right to freedom of association than a closed shop agreement.
- 2 Only a registered trade union, or two or more registered trade unions acting jointly, which represent the majority of employees in a workplace can conclude a binding agency shop agreement in respect of that workplace.
- 3 A binding agency shop agreement can only be concluded if a ballot was conducted of all employees likely to be affected by the agreement and two thirds of the employees who voted, voted in favour of the agreement.
- 4 The agency fee may not be more than the subscriptions paid by the members of the trade union, which is party to the agency shop agreement. (2)

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QUESTION 5

With regard to lock-outs in general, which **ONE** of the following statements is **INCORRECT**?

- 1 It is possible in law to exclude one employee from the workplace where that employee deliberately works at a slow pace in order to force the employer to pay him a higher commission on sales achieved.
- 2 In case of an offensive lock-out, an employer may not employ replacement labour.
- 3 A lock-out in response to an unprotected strike will be protected.
- 4 In order to constitute a lock-out as defined by the LRA, the exclusion of employees from the workplace by the employer must be accompanied by a demand concerning a matter of mutual interest. (2)

QUESTION 6

Read the following set of facts.

After deadlock in wage negotiations, Trade Union A declares a dispute and refers the matter for conciliation to the CCMA. During conciliation, the CCMA commissioner realises that the dispute should have been referred to the bargaining council with jurisdiction. The commissioner nevertheless decides to continue with the conciliation, which proves to be unsuccessful. The commissioner issues a certificate to this effect; the trade union conducts a ballot of its members and thereafter gives the employer the required notice of the commencement of the strike. The strike takes the form of a go-slow and the trade union demands that its members be paid for the work that they do perform, even though less than normal. The employer decides that this is unacceptable and, after giving the employees notice, locks out the striking employees and hires replacement labour.

With regard to this set of facts, which **ONE** of the following statements is **CORRECT**?

- 1 The strike cannot be protected, because the referral to the CCMA was not in compliance with the procedural requirements laid down in the LRA.
- 2 Striking in the form of a go-slow does not fall in the definition of a 'strike' in the LRA and, accordingly, the employees are breaching their contracts of employment.
- 3 Because the lock-out is a defensive lock-out, the employer is entitled to bring in replacement labour.
- 4 The strike cannot be protected, because, prior to striking, the issue in dispute should have been referred to advisory arbitration. (2)

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QUESTION 7

With regard to arbitration at the CCMA, which **ONE** of the following statements is **CORRECT**?

- 1 As long as the commissioner acts fairly, the commissioner has the ultimate discretion to determine how a case should proceed.
- 2 Parties to arbitration proceedings may, unless the commissioner and the other party consent not use the services of a lawyer to represent them at arbitration.
- 3 Once conciliation proves to be unsuccessful and one of the parties refers the matter for arbitration, there is no longer any possibility to actually settle the matter (i.e. reach agreement on how to end the case).
- 4 In a case of unfair dismissal for misconduct, only a director or an employee of that employer may represent the employer (2)

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QUESTION 8

Which **ONE** of the following is **NOT** a ground for the review of a CCMA arbitration award?

- 1 The commissioner exceeded his or her powers.
- 2 The commissioner misconducts him- or herself during proceedings.
- 3 The commissioner's evaluation of the facts was such that another court would have reached a different conclusion.
- 4 There was a gross irregularity during arbitration proceedings. (2)

QUESTION 9

Which **ONE** of the following is a dispute of interest (as opposed to a dispute of right)?

- 1 During consultations about a retrenchment, the employer refuses to provide the trade union, with which it is consulting, certain information on the basis that the information is confidential and, if disclosed, could cause substantial harm
- 2 During a strike, an employer offers to pay a bonus to all those employees who are out on strike who decide to return to work.
- 3 A registered trade union, which has more than 40% of the employer's workforce as its members, approaches the employer and demands the rights to access to the workplace and the deduction of union dues.
- 4 An employer who is going through a difficult time approaches the trade union active in the workplace and informs it that although employees are still entitled to their housing allowances, the employer is obliged to reduce these allowances by 50% for the next 6 months. The trade union informs the employer to try it and "see what happens". (2)

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QUESTION 10

Even though a trade union may have the right to disclosure of information in order to engage effectively in collective bargaining, an employer is not required to disclose all types of information. Below you will find a list of examples.

Select the **OPTION** where the employer in all likelihood will have to disclose the information

- 1 A trade union, which has embarked on a strike, insists it be given a copy of the memorandum of a meeting between the employer and its (the employer's) lawyers where the decision was taken to apply for an interdict against the strike.
- 2 A trade union insists that the employer make available the salary and tax details of its directors by name in order to illustrate the large difference in wages between directors and other employees. The contracts of service between the employer and all employees contain a confidentiality clause.
- 3 In order to negotiate changes to a medical benefit scheme, the trade union insists on information showing how many employees have contracted serious infectious diseases over the past two years.
- 4 In order to broaden its membership base, a trade union requests an employer to provide it with the personal details of all employees who are not members of the trade union (2)

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QUESTION 11

Which **ONE** of the following demands is likely to be accepted by the Labour Court as a matter of mutual interest to employers and employees and thus suitable topic for collective bargaining?

- 1 a demand that the employer limit the amount of overtime worked at the plant.
- 2 a demand that the pay as you earn taxes are reduced for certain workers.
- 3 a demand that the employer support the bond repayment boycott by the employees
- 4 a demand that the employer ensure that school fees are subsidised by the State. (2)

QUESTION 12

With regard to agency shop agreements, which **ONE** of the following statements is **CORRECT**?

- 1 The trade union, which enters into the agency shop agreement, need not be registered in terms of the LRA.
- 2 The trade union, or the two or more trade unions acting together, wishing to enter into an agency shop agreement, must represent 30 per cent of employees in the workplace.
- 3 The agency fees paid to the trade union may be used for any purpose, such as a financial contribution to a political party.
- 4 The agency fee may not be more than the dues paid by union members to their trade union. (2)

QUESTION 13

How many month/s notice is an employee required to give in order to revoke authorization for trade union subscription deduction?

- 1 Two months' notice if an employee is employed in the private sector and one month if employed in the public sector.
- 2 One month's notice if an employee is employed in the private sector and three months if employed in the public sector.
- 3 Three months' notice if an employee is employed in the private sector and two months if employed in the public sector.
- 4 Four months' notice if an employee is employed in the private sector and two months if employed in the public sector. (2)

QUESTION 14

A trade union representative is employed by ...

- 1 an employers' organization.
- 2 a trade union and an employer.
- 3 a trade union
- 4 an employer. (2)

QUESTION 15

Which **ONE** of the following statements regarding the definition of a 'strike' is **CORRECT**?

- 1. A single employee can embark on a strike since the RSA Constitution, 1996, extends the right to strike to individual workers.
- 2 The action by employees who perform some of their duties, but refuse to perform all of them will not constitute a strike.
- 3 The action will constitute a strike if it is for the purpose of resolving a dispute regarding any matter of mutual interest between an employer and employees.
- 4 The word 'work' in the definition of strike only refers to overtime work which an employee is contractually obliged to do (2)

QUESTION 16

Which **ONE** of the following statements regarding essential services is **CORRECT**?

- 1 Parties involved in the provision of essential services can embark on a strike if there is an agreement on certain minimum services to be provided during a strike.
- 2 An essential service is the service the interruption of which has the effect of material physical destruction of a working area, plant or machinery.
- 3 A dispute regarding the terms and conditions of employment of employees who provide minimum services will be subject to arbitration.
- 4 Employees who are engaged in the provision of essential services may under no circumstance embark on a strike. (2)

QUESTION 17

Which **ONE** of the following statements regarding secondary strikes is **CORRECT**?

- 1 A secondary strike will be protected even though the primary strike is not protected.
- 2 Employees of a secondary employer must also be in dispute with their employer in order for a secondary strike to be protected.
- 3 The secondary employer must have received 48 hours prior written notice of the secondary strike in order for the secondary strike to be protected.
- 4 The nature and extent of the secondary strike must be reasonable in relation to the possible effect on the business of the primary employer. (2)

QUESTION 18

Which **ONE** of the following statements regarding a picket is **CORRECT**?

- 1 An employer may institute civil action against picketing employees.
- 2 A picket which is accompanied by intimidation will not be protected.
- 3 An unregistered trade union may call a protected picket by its members
- 4 A picket in support of any strike or in opposition of any lock-out will be protected. (2)

QUESTION 19

An employer faced with a protected strike can

- 1 dismiss the striking employees for participating in the strike.
- 2 dismiss employees who are not striking for refusing to do the jobs of the protected strikers.
- 3 promise to pay a bonus to all those strikers who decide to return to work.
- 4 dismiss the striking employees on the basis of operational requirements. (2)

QUESTION 20

In terms of section 32 of the LRA certain requirements must be met before a bargaining council's collective agreement can be extended.

Which **ONE** of the following statements does **NOT** represent such a requirement?

- 1 The requirement of the representativeness of the council is a strict requirement and, before granting an extension, the Minister of Labour must ensure that a clear majority support is evident.
- 2 The decision to request an extension must enjoy a majority support within the council.
- 3 The trade unions that are party to the council must have as members the majority of employees who are employed within the sector and area for which the council is registered.
- 4 Under no circumstances can the terms of the collective agreement that is to be extended be discriminatory in its nature, against non-parties. (2)

TOTAL FOR SECTION B: 40 MARKS

TOTAL: [80]

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For use by examination invigilator
Vir gebruik deur eksamenopsiener

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IMPORTANT

- 1 USE ONLY AN HB PENCIL TO COMPLETE THIS SHEET
- 2 MARK LIKE THIS ➡
- 3 CHECK THAT YOUR INITIALS AND SURNAME HAS BEEN FILLED IN CORRECTLY
- 4 ENTER YOUR STUDENT NUMBER FROM LEFT TO RIGHT
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- 7 CHECK THAT ONLY ONE ANSWER PER QUESTION HAS BEEN MARKED
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Specimen only