

# **Tutorial Letter 202/2/2015**

## **Collective Labour Law (LLW2602)**

### **Semester 2**

#### **Department of Mercantile Law**

**PLEASE NOTE:**

This tutorial letter contains important information  
about this module.

BAR CODE

Dear Student,

This is an important tutorial letter. It contains feedback **on Assignment 02** and **information on the examination**. Although the assignment consisted of multiple choice questions that were marked electronically, it is important that you understand why a certain (relevant) option is correct, and why the detractors (incorrect options) are incorrect.

## 1 FEEDBACK ON ASSIGNMENT 02

### QUESTION 1

**Option 3 is the correct answer, as it contains an incorrect statement regarding agency shop agreements.** It is not a requirement that a ballot must be held before the conclusion of an agency shop agreement. This requirement only applies to closed shop agreements. Options 1, 2, and 4 are all incorrect answers, as they all contain correct statements regarding agency shop agreements. Agency shop agreements infringe on an employee's right to freedom of association much less than closed shop agreements. In terms of the LRA only a registered trade union or two or more registered trade unions acting jointly, that represent the majority of employees in a workplace can conclude a binding agency shop agreement in respect of that workplace. The agency fee to be paid by employees may not be more than the subscriptions paid by the members of the trade union that is party to the agency shop agreement.

**[See pages 213 -214 of the prescribed textbook]**

### QUESTION 2

**Option 1 is the correct answer, as the statement is incorrect.** In terms of the definition of a lock-out the employer must exclude more than one employee from the workplace for the action to qualify as a lock-out. Options 2, 3 and 4 are (all) incorrect answers, as they all contain correct statements with regard to lock-outs. The employer may not use replacement labour in the case of an offensive lock-out. A lock-out in response to an unprotected strike will be protected. A lock-out as defined by the LRA must be the exclusion of employees from the workplace by the employer, accompanied by a demand concerning a matter of mutual interest between the employer and employees.

**[See pages 248-249, 251 and 259 of the prescribed textbook]**

### QUESTION 3

**Option 2 is the correct answer, because it contains a correct statement regarding a dispute of interest.** A dispute of interest is a dispute about the creation of a new right, while a dispute of right is usually about the interpretation or application of a right which already exists. Strikes can only occur in the case of disputes of interest. Options 1, 3 and 4 all deal with matters to which employees are entitled (have entitlements) (existing rights). They are therefore disputes of right

**[See paragraph 4.2.3 and page 245 of the prescribed textbook]**

**QUESTION 4**

**Option 2 is correct, as the definition of strike specifically includes overtime work.** Options 1, 3 and 4 all contain incorrect statements regarding the definition of (a) strike action. A strike includes a complete or partial stoppage of work. A go-slow qualifies as a strike. A work-to-rule amounts to a complete or partial stoppage of work.

**[See pages 246-248 of the prescribed textbook]**

**QUESTION 5**

**Option 1 is correct, as it deals with an issue that is likely to be accepted by the Labour Court as a matter of mutual interest.** It is an issue, which fairly and reasonably calculated, could be one which would promote the well-being of the trade concerned (the plant), and can therefore be resolved through collective bargaining. Options 2, 3 and 4 are incorrect, as they contain demands which are not likely to be accepted by the Labour Court as matters of mutual interest. A demand that the "pay as you earn"- taxes be reduced for certain workers, a demand that the employer supports the bond repayment boycott by the employees and a demand that the employer ensures that school fees are subsidised by the government, do not relate to matters of mutual interest between employers and employees.

**[See page 248 of the prescribed textbook]**

**QUESTION 6**

**Option 3 is correct with regards to the consequences of a strike, as employees participating in an unprotected strike may be dismissed if they fail to adhere to the employer's ultimatum.** Options 1, 2 and 3 are all incorrect statements regarding the consequences of a strike. Employees who take part in a protected strike can be fairly dismissed for misconduct and operational requirements. Employees can never be dismissed for their mere participation in a protected strike (action), as their dismissal will be automatically unfair. The 'no work, no pay'-rule applies to both protected and unprotected strike.

**[See pages 256 -263 of the prescribed textbook]**

**QUESTION 7**

**Option 1 is correct, as it correctly completes the sentence regarding the determination by the court.** Options 2, 3 and 4 are incorrect, as they all contain incorrect statements about the determination by the court.

**[See the decision of the court in *SAPS v POPCRU & another* (2010) 12 BLLR 1263(LAC)]**

**QUESTION 8**

**Option 3 is correct, as it contains a correct statement about the definition of a strike.** The purpose of a strike is to resolve a dispute regarding a matter of mutual interest between the employer and employees. Options 1, (;) 2 and 4 are incorrect statements regarding the definition of a strike. A single employee cannot embark on a strike. Although the right to strike is granted to individual employees, the right must be exercised collectively. The action by employees who perform some of their duties, but refuse to perform all of them, will constitute a strike. Overtime work in the definition of strike includes both voluntary and compulsory work.

**[See page 246 of the prescribed textbook]**

## QUESTION 9

**Option 2** is correct regarding the finding of the court in *FAWU v Rainbow Chicken Farms*. Options 1, 3 and 4, all contain incorrect statements regarding the facts of the case.

[See the decision of the court in *FAWU v Rainbow Chicken Farms (2000) 1 BLLR 70 (LC)*.

## QUESTION 10

**Option 4** is the correct answer, as it is one of the requirements (in order) for a secondary strike to be protected. Option 1 is incorrect, because a secondary strike will only be protected if the primary strike is protected. Option 2 is incorrect, because it is not a requirement for a secondary strike to be protected that the employees of the secondary employer must be in dispute with their employer. Option 3 is incorrect, because the secondary employer must have received 7 days' notice and not 48 hours' notice of the commencement of a secondary strike.

[See page 256 of the prescribed textbook]

## 2 INFORMATION ON THE EXAMINATION

The examination paper will consist of **20 multiple (-) choice questions** that count 2 marks each and **40 marks written questions**. The **examination mark** will contribute a total of **80%** towards your final mark.

All students who submitted the first compulsory assignment on time (on or before the due date) will be granted admission to the examination. Each of the two compulsory assignments will contribute **10%** (that is, **Assignment 01 (10%) + Assignment 02 (10%)**) towards the final mark.

You need to obtain at least **40%** in the examination before your marks for the assignments (semester mark) may be taken into account.

The duration of the examination is **two (2) hours**.

You have been provided with previous question papers on *myUnisa*. These papers, together with the assignment questions, should enable you to prepare thoroughly for the examination and should also give you an idea of the type of questions you can expect in the examination.

Please do not contact the lecturers for the answers to the question (papers) on *myUnisa*.

We wish you success with your studies and in the examination!

**The Lecturers  
UNISA**