

LLW2602
LLW202T

(488681)

May/June 2011

(497829)

COLLECTIVE LABOUR LAW (LABOUR LAW)

Duration 2 Hours

80 Marks

EXAMINERS :
FIRST
SECONDDR M BUDELI
PROF ME MANAMELA

This paper consists of 18 pages plus instructions for completing a mark reading sheet.

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

INSTRUCTIONS:

1. This paper consists of 18 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 a collective agreement (4)

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(b) Draw a distinction between a closed shop agreement and an agency shop agreement. (4)

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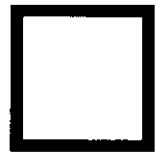
(d) Name five instances in which the Labour Relations Act, 1995, prohibits strike action. (5)

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TOTAL QUESTION 1: [20]



QUESTION 2

- (a) Bert works for MM Construction and has just been promoted to a manager's position. Bert has been a member and shop steward of the Construction Workers' Union for many years. After his promotion Bert was told that, now that he was a manager, he had to resign from the union.

Discuss whether MM Construction can force Bert to terminate his membership of the union. (6)

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(c) Name four different ways in which trade unions may acquire organisational rights (4)

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(d) Draw a distinction between a strike, a picket and protest action.

(6)

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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 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

One of the objectives of the LRA as set out in section 1 is to.

1. regulate the relationship between employees and employers or employers' organization.
2. promote employees' and employers' participation in decision making.
3. provide a framework within which employees and their trade unions, and employers' formulate industrial policy.
4. promote the interests of all employees in the workplace, whether or not they are trade union members. (2)

QUESTION 2

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 3

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

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

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QUESTION 4

A trade union representative is employed by

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

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QUESTION 5

With regard to the right to disclosure of information, which **ONE** of the following statements is **CORRECT**?

- 1. The employer is required to disclose all relevant information to a registered majority trade union.
- 2. The employer is required to disclose all information to a registered trade union
- 3. The employer is required to disclose only relevant information to a trade union
- 4. The employer is required to disclose all relevant information to a majority trade union. (2)

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QUESTION 6

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 7

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

- 1. An essential service is the service the interruption of which has the effect of material physical destruction of a working area, plant or machinery.
- 2. 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.
- 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 8

Which **ONE** of the following statements regarding circumstances in which procedural requirements need not be complied with for a strike to be protected is **CORRECT**?

- 1. Where parties to the dispute are members of a bargaining council and the dispute is dealt with by that council in accordance with its constitution the procedure prescribed by the LRA must be complied with
- 2. Where an employer embarks on a lock-out which is not protected in terms of the LRA, its employees will be able to strike in response to that lock-out without complying with the procedure prescribed by the LRA.
- 3. A strike which takes place after the employer has acted unilaterally in contravention of section 64(4) and (5) of the LRA, must follow the procedure set out by the LRA in order to be protected.
- 4. Parties which enter into collective agreements in terms of which they set procedures that have to be followed prior to embarking on a protected strike must comply with the procedure prescribed by the LRA (2)

QUESTION 9

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)

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QUESTION 10

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)

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QUESTION 11

The RSA Constitution, 1996 contains a number of rights which impact directly on collective labour law.

Which **ONE** of the following is **NOT** found in the RSA Constitution, 1996?

- 1 the right of every worker to strike.
- 2. the right of trade unions to organize.
- 3. the right of employers, employers' organisations and trade unions to engage in collective bargaining.
- 4. the right of trade unions to participative management. (2)

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QUESTION 12

Section 145 of the LRA provides for the review of arbitration awards made by the CCMA.

In which **ONE** of the following cases will the Labour Court **NOT** be entitled to review and set aside such an award?

- 1. Where the commissioner committed misconduct in relation to the duties of a commissioner as an arbitrator.
- 2. Where the commissioner commits a gross irregularity in the conduct of arbitration proceedings.
- 3. Where the Court feels that, given the facts and the state of the law, it would have come to a different conclusion than the commissioner.
- 4. Where the commissioner exceeds his or her powers granted in terms of the LRA. (2)

QUESTION 13

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 14

Which **ONE** of the following is **INCORRECT**?

An employer who institutes an offensive, yet protected, lock-out.

- 1. may not dismiss the employees and offer to re-engage them if they accede to the employer's demand.
- 2. may dismiss employees who are not locked-out who refuse to do the work of the employees who are locked-out.
- 3. may not take on replacement labour during the lock-out.
- 4. has to continue providing the locked-out employees with accommodation the employer provided prior to the lock-out. (2)

QUESTION 15

A collective agreement between Employer A and Trade Union X, which represents the majority of unskilled workers employed by Employer A, reads as follows-

"All unskilled employees employed by Employer A shall become members of Trade Union X within 30 days after commencing employment with Employer A "

How would you classify the above agreement?

- 1. An agency shop agreement
- 2. A pre-entry closed shop agreement.
- 3. A discriminatory collective agreement
- 4. A post-entry closed shop agreement. (2)

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QUESTION 16

In terms of section 5 of the LRA, the right to freedom of association of employees is protected.

Which **ONE** of the following actions by an employer would **NOT** be an infringement of this section?

- 1. An employer dismisses an employee because the employee decided to join a trade union.
- 2. An employer decides to withhold the annual bonus of a trade union representative because the representative had been too successful in defending trade union members at disciplinary enquiries.
- 3. An employer requires all new employees to become members of a specific trade union in the absence of a valid closed shop agreement.
- 4. An employer settles a dispute about an unfair dismissal on the basis that the employer pays the ex-employee an amount of money, but that the employee will have no further claims arising from the dispute against the employer. (2)

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QUESTION 17

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

Which 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)

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QUESTION 18

Which **ONE** of the following is **NOT** a requirement for collective action by employees to constitute a "strike" as defined in the LRA?

1. There must be some action on the part of employees, which may constitute a refusal to work, a retardation of work or an obstruction of work.
 2. The action taken must be concerted, ie at least two or more employees must act together for a common purpose.
 3. Collective action will only constitute a strike if it is called by a registered trade union.
 4. The collective action must have the purpose of remedying a grievance or resolving a dispute of mutual interest between employer and employees. (2)
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QUESTION 19

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

1. A trade union approaches an employer and demands a wage increase of 20%, but the employer flatly refuses.
 2. A trade union approaches an employer and complains of the employer's failure to pay its members the transport allowance it had earlier agreed in writing with the union to do. The employer simply refuses to pay the allowance.
 3. A number of employees, who belong to a trade union with the name of WATU, are unhappy because they have been acting in higher posts and the employer is refusing to pay them an allowance for their work in the higher positions. There is no provision in the contract of employment or a collective agreement providing for the payment of acting allowances.
 4. A trade union approaches an employer and demands that the employer recognises it for purposes of collective bargaining and that the employer concludes a closed shop agreement with the trade union, but the employer refuses. (2)
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QUESTION 20

The LRA specifically provides for five organizational rights, namely trade union access to the workplace, deduction of trade union dues, the election of trade union representatives, leave for trade union activities and the disclosure of information.

Which of these rights are, in principle, available to registered trade unions, which represent the majority of employees in the workplace in respect of which the trade union seeks to exercise these rights?

1. All of the five rights mentioned in the LRA.
2. Only leave for trade union activities and disclosure of information.
3. Only trade union access, deduction of trade union dues and the election of trade union representatives.
4. All of these rights, except disclosure of information. (2)

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TOTAL FOR SECTION B: 40 MARKS

TOTAL: [80]

PART 1 (GENERAL/ALGEMEEN) DEEL 1

STUDY UNIT e.g. PSY100-X STUDIE EENHEID by PSY100-X		INITIALS AND SURNAME VOORLETTERS EN VAN	
1		3	
PAPER NUMBER VRAESTELNOMMER		DATE OF EXAMINATION DATUM VAN EKSAMEN	
2		4	
STUDENT NUMBER STUDENTENOMMER		EXAMINATION CENTRE (E.G. PRETORIA) EKSAMENSENTRUM (BY PRETORIA)	
6		5	
7		8	
9		9	

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
- 5 CHECK THAT YOUR STUDENT NUMBER HAS BEEN FILLED IN CORRECTLY
- 6 CHECK THAT THE UNIQUE NUMBER HAS BEEN FILLED IN CORRECTLY
- 7 CHECK THAT ONLY ONE ANSWER PER QUESTION HAS BEEN MARKED
- 8 DO NOT FOLD

BELANGRIK

- 1 GEBRUIK SLEGS N HB POTLOOD OM HIERDIE BLAD TE VOLTOOI
- 2 MERK AS VOLG
- 3 KONTROLEER DAT U VOORLETTERS EN VAN REG INGEVUL IS
- 4 VUL U STUDENTENOMMER VAN LINKS NA REGS IN
- 5 KONTROLEER DAT U DIE KORREKTE STUDENTENOMMER VERSTREK HET
- 6 KONTROLEER DAT DIE UNIEKE NOMMER REG INGEVUL IS
- 7 MAAK SEKER DAT NET EEN ALTERNATIEF PER VRAAG GEMERK IS
- 8 MOENIE VOU NIE

PART 2 (ANSWERS/ANTWOORDE) DEEL 2

1	11	21	31	41	51	61	71	81	91	101	111	121	131	141	151
2	12	22	32	42	52	62	72	82	92	102	112	122	132	142	152
3	13	23	33	43	53	63	73	83	93	103	113	123	133	143	153
4	14	24	34	44	54	64	74	84	94	104	114	124	134	144	154
5	15	25	35	45	55	65	75	85	95	105	115	125	135	145	155
6	16	26	36	46	56	66	76	86	96	106	116	126	136	146	156
7	17	27	37	47	57	67	77	87	97	107	117	127	137	147	157
8	18	28	38	48	58	68	78	88	98	108	118	128	138	148	158
9	19	29	39	49	59	69	79	89	99	109	119	129	139	149	159
10	20	30	40	50	60	70	80	90	100	110	120	130	140	150	160

Specimen only