

LLW2602

(481022)

May/June 2015

COLLECTIVE LABOUR LAW

Duration 2 Hours

80 Marks

EXAMINERS :

FIRST

SECOND

PROF ME MANAMELA

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Closed book examination

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

This paper consists of 10 pages plus instructions for completing a mark reading sheet.

INSTRUCTIONS:

1. This paper consists of 10 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 answer books provided to you.

SECTION A counts 40 marks.

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.

SECTION B counts 40 marks.

THE EXAM PAPER COUNTS 80 MARKS.

3. At the end of the examination you have to hand in both the answer book and the mark reading sheet containing your answers to the multiple choice questions

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PLEASE NOTE

The Labour Relations Act is abbreviated as the "LRA".
The Basic Conditions of Employment Act is abbreviated as the "BCEA".

SECTION A**QUESTION 1**

- (a) XYZ is a mining company with 120 employees. On 1 October 2014 ABC, a workers' union with 70 members at XYZ's shaft, sends a notice to XYZ, informing XYZ that ABC intends to exercise organisational rights within the workplace. On 18 October 2014 negotiations take place between ABC and XYZ and a collective agreement is concluded in terms of which ABC is granted all organisational rights within the workplace.
- (i) In terms of section 21 of the LRA which information had to have been included in the notice sent to XYZ by ABC? What is the information that ABC was required to include in their notice to XYZ in terms of section 21 of the LRA? (4)
 - (ii) Discuss ABC's organisational right in terms of section 14 of the LRA, to elect shop stewards (5)
 - (iii) Suppose that ABC and XYZ could not reach an agreement regarding organisational rights. To which dispute resolution institution would the matter be referred? (1)
- (b) The LRA allows employees to strike during the bargaining process in an endeavour to convince the employer to bargain. What types of conduct by the employer constitute 'a refusal to bargain'? (5)
- (c) Section 28 of the LRA provides the powers and functions of a bargaining council. List any five of these powers. (5)

[20]

QUESTION 2

- (a) MISA (Pty) Ltd is a manufacturer and distributor of office furniture in Gauteng. MISA (Pty) Ltd has been negotiating salary increases with its employees for two months without any positive result. After following the procedures in the LRA, the employees of MISA (Pty) Ltd embark on strike action. Three weeks later the employees of LISA (Pty) Ltd, which supplies MISA (Pty) Ltd with wood, also embark on a strike action in support of the employees of MISA (Pty) Ltd.
- (i) Define a strike (5)
 - (ii) Identify the industrial action of the employees of LISA (Pty) Ltd (2)
 - (iii) What are the legal requirements for the protection of the action in (ii)? (3)
 - (iv) By virtue of participating in a protected strike, employees of both MISA (Pty) Ltd and LISA (Pty) Ltd are entitled to some protection. Discuss this protection. (4)

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- (b) List any six services that have been designated as essential services as defined in section 213 of the LRA (6)

[20]

TOTAL SECTION A: [40]

SECTION B

QUESTION 1

Which **ONE** of the following statements about organisational rights is **CORRECT**?

- 1 An unregistered trade union that represents 55% of the employees in the workplace is entitled to access to the workplace, to the deduction of membership fees from the wages of members, to the election of shop stewards, to time off for union activities for shop stewards and to the disclosure of information
- 2 A registered trade union that is merely sufficiently representative in a workplace is entitled to access to the workplace and to the deduction of membership fees from the wages of its members.
- 3 An unregistered trade union that is a member of a bargaining council is entitled to access to the workplace and to the deduction of membership fees from the wages of its members.
- 4 An unregistered minority trade union can obtain organisational rights by concluding a collective agreement with the employer. (2)

QUESTION 2

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

- 1 The difference between a strike and protest action is that a strike is aimed at resolving any issue of mutual interest between the employer and the employees, whereas protest action is aimed at socio economic issues
- 2 Because a dispute regarding organisational rights is a dispute of right, it has to be referred for arbitration and adjudication, and employees may not strike regarding such issue
- 3 Employees who wish to strike do not need to be members of a registered trade union.
- 4 An employer is not obliged to pay employees who are participating in a protected or unprotected strike (2)

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QUESTION 3

Consider the following types of information an employer has at its disposal:

- A private personal information of employees
- B information that is relevant to the issues under discussion
- C confidential information regarding the employer's business
- D information that is legally privileged

Which of the above types of information does the employer **NOT** have to disclose to the union during collective bargaining?

- 1 A, B, C and D
- 2 only C and D
- 3 only A, B and C
- 4 only A, C and D (2)

QUESTION 4

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

- 1 a demand that the employer limits 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 supports the bond repayment boycott by the employees
- 4 a demand that the employer ensures that school fees are subsidised by the government (2)

QUESTION 5

The members of which **ONE** of the following organisations are **NOT** excluded from the application of the LRA?

- 1 the National Defence Force
- 2 the National Intelligence Agency
- 3 the South African Social Security Agency
- 4 the South African Secret Service (2)

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QUESTION 6

Read the following set of facts.

On 1 January 2010 the employees of employer ABC go on a protected strike. One of the largest suppliers of raw materials to ABC is company XYZ. After the strike has been going on for a week, the striking employees realise that they are going nowhere. Therefore, they call on the employees of XYZ to also embark on a strike. The employees of XYZ decide to do so.

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

- 1 The employees of XYZ cannot go on a protected strike, because XYZ has nothing to do with the real dispute.
- 2 The employees of XYZ can go on a protected strike provided the requirements of the LRA are met.
- 3 If the employees of XYZ meet the requirements of the LRA and go on strike, they may not be dismissed for participation in the strike.
- 4 The relationship between ABC and XYZ is of such a nature that the employees of XYZ are, in principle, entitled to strike.
- 5 As long as the employees of XYZ give their employer 7 days' notice of the strike, the strike will be protected. (2)

QUESTION 7

Which of the following actions will constitute a "strike" as defined in the LRA?

- 1 One Monday morning, the employer is greeted out of the blue by half his workforce outside the gates. The workers refuse to start their shift on time. On closer enquiry, the employer is informed that the workers are unhappy because of ongoing violence at the taxi rank that the workers use on their way to work.
- 2 In order to ensure 24 hour production an employer seeks to introduce a staggered lunch break for its employees. This means that those employees who take their lunch hour after all the other employees, have to work 7 hours without a break, a situation in contravention of the Basic Conditions of Employment Act. The employees refuse to work until the employer reverts to the old system.
- 3 In June 2007, trade union ABC approaches employer XYZ and demands that the employer provide creche facilities at work. The employer refuses and the trade union calls on its members to institute a go slow, ie the employees do perform their jobs, but do so at a reduced rate.
- 4 In order to compel an employer to accede to the demand of the trade union for a wage increase of 10%, a trade union calls on its members to refuse to work between 15h30 and 17h00 in the afternoons. This is a very busy time for the employer as all the orders for the next day's deliveries are finalised in this period.
- 5 (3) and (4) (2)

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QUESTION 8

The right to picket is limited because section 69(1) and (2) of the LRA requires that a picket must be .

- A authorised by a registered trade union.
- B conducted peacefully.
- C conducted in opposition to any lock-out
- D conducted in support of any strike.

Which **ONE** of the above statements is **CORRECT**?

- 1 A, B and C
- 2 B, C and D
- 3 A, B and D
- 4 A, C and D
- 5 All of the above

(2)

QUESTION 9

Below you will find the definition of a 'collective agreement' with some of the key words missing. Select the combination of words and phrases which **CORRECTLY** reflect the missing words and phrases from the list below.

A collective agreement is .. concerning concluded by one or more on the one hand and, on the other hand - one or more .., one or more; or one or more . . . and one or more . . .

- 1 an agreement, terms and conditions of employment, trade unions; employers; employers' organisations; employers, employers organisations
- 2 an agreement, whether oral or in writing; terms and conditions of employment; trade unions; employers; employers' organisations, employers; employers organisations
- 3 a written agreement; terms and conditions of employment, registered trade unions; employers, employers' organisations; employers, employers' organisations
- 4 a written agreement, terms and conditions of employment or any matter of mutual interest, registered trade unions; employers, registered employers' organisations, employers, registered employers' organisations
- 5 a written agreement; terms and conditions of employment or any matter of mutual interest, any trade union, employers, registered employers' organisations; employers, registered employers' organisations

(2)

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QUESTION 10

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, i.e. 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)

QUESTION 11

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

- 1 A closed shop agreement can only be valid if a ballot was held in which at least two thirds of the employees to be affected by the closed shop voted in favour of the closed shop agreement
- 2 A closed shop agreement can only be entered into by a registered trade union, or two or more registered unions acting together, which represent(s) the majority of employees in that workplace.
- 3 The LRA only provides for the so-called post-entry closed shop.
- 4 An employee who is suspended from a trade union party to a closed shop agreement may fairly be dismissed.
- 5 An employee, who works for an employer before a closed shop agreement takes effect and thereafter still refuses to join the trade union party to the closed shop agreement, may not be dismissed (2)

QUESTION 12

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

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

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QUESTION 13

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

- 1 During consultations about 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 of access to the workplace and the deduction of union dues
- 4 For many years an employer has provided only its permanent employees with benefits. Recently, a large number of part-time employees, the large majority of whom are female, have joined the trade union active in the workplace. The union informs the employer that its benefits policy amounts to discrimination. The employer, however, flatly refuses to extend the benefits to part-time employees.
- 5 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)

QUESTION 14

Which **ONE** of the following statements regarding lock-outs in general, is **INCORRECT**?

- 1 It is possible in law to exclude one employee from the workplace.
- 2 In the 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 15

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

- 1 A strike is the complete, but not partial, stoppage of work
- 2 An overtime ban will constitute a work stoppage
- 3 A go-slow is not a strike.
- 4 A work-to-rule does not amount to a complete or partial stoppage of work (2)

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QUESTION 16

Which **ONE** of the following statements regarding access to the workplace as an organisational right is **CORRECT**?

- 1 Access to the workplace allows the union to hold meetings with employees at the workplace during working hours
- 2 Access to the workplace does not allow for the voting of union members at the employer's premises
- 3 Access to the workplace allows the union to recruit members and serve the interest of its members.
- 4 Access to the workplace does not allow the trade union to enter the workplace (2)

QUESTION 17

Which **ONE** of the following statements regarding a secondary strike 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 the 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 workplace forums is **CORRECT**?

- 1 A workplace forum is not a juristic body.
- 2 A workplace forum deals with wage-related issues
- 3 Senior managerial employees may be members of a forum
- 4 A workplace forum may be established in any workplace with more than 50 employees (2)

QUESTION 19

Which **ONE** of the following is not a function of a bargaining council in terms of section 28 of the LRA?

- 1 to conclude collective agreements
- 2 to enforce collective agreements
- 3 to review arbitration awards
- 4 to prevent and resolve labour disputes (2)

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QUESTION 20

Which **ONE** of the following statements regarding the requirements for protest action is **INCORRECT**?

- 1 NEDLAC *must have been given at least 7 days' notice of the intention to proceed with the protest action*
- 2 The protest action must be called by a registered trade union or federation of trade unions.
- 3 Employees participating in protest action must not act in breach of an order of the Labour court.
- 4 The matter giving rise to the protest action must have been considered by NEDLAC or any other appropriate forum (2)

TOTAL FOR SECTION B: [40]

GRAND TOTAL: [80]

PART 1 (GENERAL/ALGEMEEN) DEEL 1

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For use by examination invigilator
Vir gebruik deur eksamenopsiener

IMPORTANT

1. USE ONLY AN HB PENCIL TO COMPLETE THIS SHEET
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