

LLW2602

(471058)

October/November 2012

COLLECTIVE LABOUR LAW

Duration 2 Hours

80 Marks

EXAMINERS :

FIRST

PROF ME MANAMELA

SECOND

PROF M BUDELI

Closed book examination.

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This paper consists of 17 pages plus instructions for completing a mark reading sheet

INSTRUCTIONS:

- 1 This paper consists of 17 pages and you have to answer *ALL* the questions
- 2 The paper is divided into **2** sections
SECTION A consists of **one** question (with subdivisions) and has to be completed in the space provided on the *examination paper* itself
SECTION B consists of **30** 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

PLEASE NOTE

- The **Commission for Conciliation, Mediation and Arbitration** is referred to throughout as the '**CCMA**'
- The **Labour Relations Act, 1995**, is referred to throughout as the "**LRA**"
- The National Economic Development and Labour Council is referred to throughout as '**NEDLAC**'

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- (d) 2012 Lawn Mowers ('2012 LM') is a company that manufactures lawn mowers in Benoni and distributes them ZZ Motors ('ZZM') is a company in Brits that manufactures and distributes electric motors and that supplies 2012 LM with electric motors they need for the manufacturing of lawn mowers Machine Workers Union ('MWU') has members in the employ of both 2012 LM and ZZM MWU is involved in a dispute with 2012 LM regarding overtime work, which ends in a strike Members of MWU employed by ZZM want to go on strike in support of the demand by employees of 2012 LM

What is the type of action called on which the MWU members employed by ZZM wish to embark, and what requirements have to be met for this type of action to be protected? (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 **SECTION** consists of **30** multiple choice questions each counting **2** marks. No marks will be deducted for incorrect answers. The **SECTION** therefore counts out of a total of **60** marks.

QUESTION 1

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

- 1 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 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 Registration is not an absolute requirement for a trade union to obtain organisational rights in terms of the LRA. (2)

QUESTION 2

Which of the following types of information **DOES** an employer, notwithstanding a trade union's recognised right to disclosure of information, **NOT** have to provide to the trade union?

- 1 An employer, which contemplates retrenchment, approaches the trade union it has to consult in terms of section 189 of the LRA. The trade union reacts angrily to the proposal of the employer and threatens to strike the employer into the ground. The employer approaches its lawyers and, in anticipation of litigation about the fairness of the dismissal, requires a detailed report on how to proceed with the retrenchments in a fair manner. The trade union wants disclosure of the report.
- 2 Prior to a disciplinary enquiry concerning dishonesty in the workplace, the trade union requests information about how many employees have been disciplined for dishonesty in the workplace and, of those found guilty, how many have been dismissed.
- 3 For purposes of collective bargaining with a trade union an employer prepares a report about its financial situation, including sensitive information about possible price reductions it may be able to negotiate with its suppliers. This information is very sensitive, because if made public it could seriously affect the ability of the employer to negotiate those reductions and embarrass the standing of the employer with its suppliers. The employer offers disclosure on condition the union guarantees confidentiality, but the union refuses.
- 4 (1) and (3) (2)

[TURN OVER]

QUESTION 3

With regard to the procedural requirements that must be met before a strike will be protected, which **ONE** of the following statements is **INCORRECT**?

- 1 When referring the issue in dispute to a council for conciliation prior to a strike, it is not necessary to use the prescribed form as long as there has been substantial compliance with the requirement of referral
- 2 If the employer facing the strike is a member of an employers' organisation party to the dispute, notice of the strike must be given to the employers' organisation
- 3 Notice of the commencement of the strike must be served on the employer at least seven days' prior to the commencement of the strike, if the State is the employer
- 4 The notice of the strike must specify an exact time, expressed in hours, when the strike will commence (2)

QUESTION 4

The LRA prohibits employers and employees who provide essential services from embarking on a strike or a lock-out. However, employers and employees involved in the provision of these services can agree that certain minimum services will be provided in the course of a strike.

Which of the following statements regarding the provision of minimum services are correct?

- A The agreement to provide minimum services must be ratified by the Essential Services Committee in order to be effective
 - B A dispute regarding the terms and conditions of employment of the providers of minimum services will be subject to arbitration
 - C The providers of minimum services will now provide essential services and will not be able to embark on strike action
 - D The original workforce, now released from providing essential services, will be able to embark on a protected strike
- 1 A, B and C only
 - 2 A, C and D only
 - 3 B, C and D only
 - 4 A, B and D only (2)

QUESTION 5

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

- 1 Participation in an unprotected strike in principle constitutes misconduct on the part of employees so participating
- 2 If a strike is unprotected because the required notice was given 47 hours, instead of 48 hours, before the strike commenced, the employer will probably not be entitled to dismiss the employees
- 3 An employer who suffered loss as a result of an unprotected strike, may sue for the loss it suffered and the amount of compensation will always equal the actual loss it suffered
- 4 An employer faced by an unprotected strike may apply to the Labour Court for an interdict to stop the strike (2)

QUESTION 6

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

- 1 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
- 2 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
- 3 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
- 4 It is not necessary for an employer, once the agency shop agreement has been concluded, to obtain the written consent of affected employees before the employer deducts the agency fee from their salaries (2)

QUESTION 7

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 8

The right to picket is limited because section 69(1) and (2) of the LRA require 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 of the above are **CORRECT**?

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

QUESTION 9

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)

QUESTION 10

Which of the following is **NOT** an example of the ways through which the LRA tries to promote collective bargaining?

- 1 The protection of freedom of association
- 2 The granting of organisational rights to registered trade unions
- 3 The protection of the right of trade unions to engage in protest action
- 4 The establishment of bargaining councils (2)

QUESTION 11

Which of the following demands are likely to be accepted by the Labour Court as matters of mutual interest between employers and employees and thus suitable topics for collective bargaining?

- A a demand that the employer ensure that school fees are subsidised by the State
- B a demand that the employer provide crèche facilities at the factory
- C a demand that the employer support the bond repayment boycott by the employees
- D a demand that the employer limit the amount of overtime worked at the plant

- 1 A and B
- 2 B and C
- 3 B and D
- 4 A and C

(2)

QUESTION 12

Which of the following groups of employers and employees are **NOT** covered by the LRA?

- A Uniformed members of the National Defence Force
- B Members of the Public Service
- C Members of the National Intelligence Agency
- D Members of the agricultural sector
- E Members of the SA Secret Service

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

(2)

QUESTION 13

Which **ONE** of the following statements regarding the level of collective bargaining is **CORRECT**?

- 1 Collective bargaining can only take place at plant and sector levels
- 2 Collective bargaining can only take place at plant level.
- 3 Collective bargaining can only take place at sector level.
- 4 Collective bargaining takes place at bargaining council level.

(2)

QUESTION 14

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 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
- 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 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 (2)

QUESTION 15

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 2012, 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)

QUESTION 16

With regard to protest action, which **ONE** of the following statements is **INCORRECT**?

- 1 Protest action in support of a change to legislation governing the employment relationship is prohibited, because an individual employer cannot change legislation
- 2 The purpose of protest action must be to promote or defend the socio-economic interests of workers
- 3 The purpose of protest action cannot be to remedy a grievance or resolve a dispute about a matter of mutual interest between employers and employees
- 4 The protest action must be called by a registered trade union or trade union federation, which has to serve a notice on NEDLAC stating the reasons and nature of the protest action. (2)

QUESTION 17

In section 79 of the LRA, the general functions of workplace forums established in terms of the LRA are set out

Which **ONE** of the following is **NOT** a function listed in section 79?

- 1 To seek to promote the interests of all employees in the workplace, whether or not they are trade union members
- 2 To seek to enhance efficiency in the workplace
- 3 To replace collective bargaining
- 4 To consult with an employer with a view to reach consensus about certain matters listed in the LRA (2)

QUESTION 18

Section 86 of the LRA provides that, in the absence of a collective agreement providing otherwise, an employer is obliged to consult and reach consensus with workplace forums about certain matters.

Which **ONE** of the following is **NOT** included in the section 86 list of matters for joint decision-making?

- 1 Disciplinary codes and procedures
- 2 Workplace regulation, insofar as it applies to conduct which is not related to the work performance of employees
- 3 Restructuring the workplace, including the introduction of new technology
- 4 Measures designed to protect and advance persons disadvantaged by unfair discrimination. (2)

QUESTION 19

One of the primary objects of the LRA is to promote collective bargaining.

Which **ONE** of the following provisions of the LRA does **NOT** promote collective bargaining?

- 1 Section 4 of the LRA, which not only protects the right of employees to form and join a trade union but also extends certain rights to employees as members of a trade union
- 2 Section 77 of the LRA, which extends and protects the right to engage in protest action
- 3 Section 23(3) of the LRA, which provides that a collective agreement varies the individual contract of employment between employer and employee when both are bound by that collective agreement
- 4 Section 64(2) of the LRA, which provides that where the issue in dispute between an employer and trade union concerns a refusal to bargain by the employer, the matter must be referred to advisory arbitration before the trade union can strike about it (2)

QUESTION 20

Which **ONE** of the following statements 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, that is, at least two or more employees must act together
- 3 Collective action must be for the purpose of remedying a grievance or resolving a dispute of mutual interest between employer and employees
- 4 Collective action will only constitute a strike if it is called by a registered trade union. (2)

QUESTION 21

Consider the following set of facts

During June 2012, trade union ABC approaches employer XYZ with the demand that wages be increased by 15%. The employer refuses and deadlock is reached. On 1 September 2012 the dispute about the wages is referred to the CCMA. Nothing further is heard from the CCMA. On 10 October 2012, the trade union notifies the employer that as from the 08h00 shift on 13 October 2012, the trade union and its members will refuse to work overtime. On the morning of 13 October 2012 the overtime ban commences. It carries on for two days, after which the employer approaches the trade union with a revised offer of a 12% wage increase. The trade union accepts this offer and a collective agreement to this effect is concluded. The next day (15 October), members of the trade union still refuse to work. When informed that they should return to work by management, they simply dance around and shout "we won, we won"

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

- 1 The strike was unprotected all along because the CCMA never issued a certificate that the issue in dispute remained unresolved
- 2 The action taken by the trade union members did not constitute a strike, because an overtime ban is specifically excluded from the definition of a strike.
- 3 The strike was unprotected because the trade union did not give the employer sufficient notice of the impending strike action
- 4 The strike was protected until conclusion of the collective agreement, after which it lost its protected status (2)

QUESTION 22

When a commissioner of the CCMA has to make an award about organisational rights, and the making of the award depends on the representativeness of a trade union seeking these rights, the commissioner has to take a number of factors into account

These factors **DO NOT INCLUDE**

- 1 the minimisation of trade union proliferation
- 2 the representativeness of the trade union in the South African economy
- 3 the nature of the organisational rights the trade union seeks to exercise
- 4 the organisational history of that particular workplace (2)

QUESTION 23

Which of the following statements are **INCORRECT**?

- A A trade union representative is employed by the trade union.
 - B A trade union representative is employed by the employer
 - C A trade union representative's main function is to represent the interests of management
 - D A trade union representative is entitled to determine the amount of time that he requires to carry out his duties
 - E The trade union representative has a duty to monitor the employer's compliance with the workplace related provisions of the LRA
- 1 A, C and D only
 - 2 C, D and E only
 - 3 B, D and E only
 - 4 A, B and E only (2)

QUESTION 24

With regard to the protection of freedom of association in general, which **ONE** of the following statements is **INCORRECT**?

- 1 Freedom of association in the employment context is specifically protected by the Constitution, 1996
- 2 Closed shop agreements are not automatically unconstitutional and, consequently, the LRA provides for both the pre- and post entry closed shop agreement
- 3 Even though agency shop agreements as provided for by the LRA may be said to infringe on the right to freedom of association, such infringement is probably justifiable in terms of the Constitution, 1996
- 4 The LRA protects the right of both employers and employees to associate (2)

QUESTION 25

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 _____, or _____

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 (2)

QUESTION 26

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)

QUESTION 27

Which of the following statements regarding collective bargaining are **CORRECT**?

- A Collective bargaining plays an important role in dispute resolution
- B The purpose of collective bargaining is to remedy imbalance in the status and bargaining power between employer and employee.
- C Collective bargaining is aimed at nullifying the prerogative of management to manage the business
- D The purpose of collective bargaining is to transfer funds from the owners of the business to members of the trade union.

- 1 A and C only
- 2 C and D only
- 3 A and B only
- 4 B and C only
- 5 B and D only

(2)

QUESTION 28

Section 213 of the LRA defines collective agreements

Which of the following statements in regard to this definition are **CORRECT**?

- A Where a trade union wishes to enter into a collective agreement, the union must be registered in terms of the LRA.
- B A single employee can be a party to a collective agreement
- C A single employer can be a party to a collective agreement
- D Where a registered trade union enters into an agreement with an unregistered employers' organisation, the agreement will be a collective agreement.
- E A collective agreement must concern terms and conditions of employment or matters of mutual interest

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

(2)

QUESTION 29

An employee may be fairly dismissed if the employee refuses to become a member of the union which is party to the closed shop agreement

Which **ONE** of the following statements **MOST ACCURATELY** reflects an instance when such a dismissal would be fair?

- 1 Where the employee was already in the employer's employment at the time the closed shop agreement took effect
 - 2 Where the employee was employed after the closed shop agreement took effect
 - 3 Where the employee is unreasonably refused membership of the trade union which is party to the closed shop agreement
 - 4 Where the employee refuses to join the trade union on the grounds of conscientious objection
- (2)

QUESTION 30

Read the following set of facts

On 1 January 2012 the employees of employer ABC go out 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 statement 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
- (2)

TOTAL: SECTION B: [60]

TOTAL: SECTION A AND B: [80]

GRAND TOTAL: [80]

PART 1 (GENERAL/ALGEMEEN) DEEL 1

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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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PART 2 (ANSWERS/ANTWOORDE) DEEL 2

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21	c1) c2) c3) c4) c5)	56	c1) c2) c3) c4) c5)	91	c1) c2) c3) c4) c5)	126	c1) c2) c3) c4) c5)
22	c1) c2) c3) c4) c5)	57	c1) c2) c3) c4) c5)	92	c1) c2) c3) c4) c5)	127	c1) c2) c3) c4) c5)
23	c1) c2) c3) c4) c5)	58	c1) c2) c3) c4) c5)	93	c1) c2) c3) c4) c5)	128	c1) c2) c3) c4) c5)
24	c1) c2) c3) c4) c5)	59	c1) c2) c3) c4) c5)	94	c1) c2) c3) c4) c5)	129	c1) c2) c3) c4) c5)
25	c1) c2) c3) c4) c5)	60	c1) c2) c3) c4) c5)	95	c1) c2) c3) c4) c5)	130	c1) c2) c3) c4) c5)
26	c1) c2) c3) c4) c5)	61	c1) c2) c3) c4) c5)	96	c1) c2) c3) c4) c5)	131	c1) c2) c3) c4) c5)
27	c1) c2) c3) c4) c5)	62	c1) c2) c3) c4) c5)	97	c1) c2) c3) c4) c5)	132	c1) c2) c3) c4) c5)
28	c1) c2) c3) c4) c5)	63	c1) c2) c3) c4) c5)	98	c1) c2) c3) c4) c5)	133	c1) c2) c3) c4) c5)
29	c1) c2) c3) c4) c5)	64	c1) c2) c3) c4) c5)	99	c1) c2) c3) c4) c5)	134	c1) c2) c3) c4) c5)
30	c1) c2) c3) c4) c5)	65	c1) c2) c3) c4) c5)	100	c1) c2) c3) c4) c5)	135	c1) c2) c3) c4) c5)
31	c1) c2) c3) c4) c5)	66	c1) c2) c3) c4) c5)	101	c1) c2) c3) c4) c5)	136	c1) c2) c3) c4) c5)
32	c1) c2) c3) c4) c5)	67	c1) c2) c3) c4) c5)	102	c1) c2) c3) c4) c5)	137	c1) c2) c3) c4) c5)
33	c1) c2) c3) c4) c5)	68	c1) c2) c3) c4) c5)	103	c1) c2) c3) c4) c5)	138	c1) c2) c3) c4) c5)
34	c1) c2) c3) c4) c5)	69	c1) c2) c3) c4) c5)	104	c1) c2) c3) c4) c5)	139	c1) c2) c3) c4) c5)
35	c1) c2) c3) c4) c5)	70	c1) c2) c3) c4) c5)	105	c1) c2) c3) c4) c5)	140	c1) c2) c3) c4) c5)

Specimen only