

MRL303-P

October/November 2007

MERCANTILE LAW 303

Duration : 2 Hours

100 Marks

EXAMINERS :

FIRST : PROF ME MANAMELA

SECOND : MR EM MALEKA

This paper consists of 4 pages.

SECTION A: TAX LAW

QUESTION 1

- (a) Name four different taxes levied under the Income Tax Act 58 of 1962. (4)
- (b) "Over the years the courts have provided guidelines or tests which, depending on the circumstances, can be used to establish the source of a particular income". Briefly explain this statement. (4)
- [8]

QUESTION 2

Mr Slaghuis, his wife Martina and their 12 year old son, Michael relocated to South Africa in 2002 from, Munich, Germany. On their arrival, Mr Slaghuis bought a house in Klerksdorp for R250 000. Every year they spend a month in their hometown, Munich, to visit their relatives. Mr Slaghuis runs a butchery store in Ventersdorp from which he earns an income of R400 000 per annum. He also owns two trucks he bought at an auction which he uses for meat deliveries. On 1 July 2005 he sold his Klerksdorp house for R300 000 in order to move to a new development in Ventersdorp and to be closer to his business. On 25 August 2006 Mr Slaghuis deposited R30 000 into Michael's investment account as a gift. The amount has accrued an interest of R300.

With reference to relevant aspects of the Income Tax Act 58 of 1962 and applicable case law, for 2006/2007 year of assessment, answer the following questions:

- (a) Is Mr Slaghuis a resident of South Africa? (5)
- (b) Explain whether or not the proceeds from the sale of the house should be included in Mr Slaghuis' gross income. (8)

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- (c) What are the tax consequences of the donation made to Michael by Mr Slaghuis? (4)
[17]

QUESTION 3

Mr Khumalo, a sole proprietor, is an estate agent who was also admitted as an attorney during 2005. After his admission, he decided to start his own law firm. As a result he acquired premises during December 2005 which he would rent at an amount of R20 000 per month. The lease contract would come into effect on 1 March 2006. Mr Khumalo decided to appoint the following personnel to assist in the managing of the law firm: a secretary at a salary of R10 000 per month, a messenger at R1 000 per month and a domestic worker at R800 per month, all of whom would commence their employment on 1 March 2006. He established a library, which cost him a total of R80 000 and purchased a motorcycle for R45 000 which was to be used by the messenger for deliveries. During the 2006/2007 year of assessment Mr Khumalo earned a gross income of R200 000 from the law firm, and also R500 000 in commission for the sale of properties which he did during his spare time.

Mr Khumalo approaches you for advice. Answer the following questions in relation to the 2006/2007 year of assessment. You are required to refer to sections in the Income Tax Act 58 of 1962 and relevant case law.

- (a) Will Mr Khumalo be able to deduct all the expenses he incurred, from the income he earned at the law firm? Motivate your answer. (8)
- (b) Did the law firm suffer an assessed loss? If so, briefly explain how Mr Khumalo should treat this loss in terms of the Income Tax Act 58 of 1962? (3)
- (c) Mr Khumalo decides to deposit R50 000 from his commission into a separate bank account in order to cover any possible losses that he might suffer in the 2007/2008 year of assessment in the operation of the law firm. Can he deduct this amount from his income? (4)
- (d) Mr Khumalo is considering appointing a partner in his law firm. Briefly explain how a partnership will be taxed. (3)
- [18]

QUESTION 4

Discuss the decision in *SIR v Watermeyer* 1965 (4) SA 431 (A) with reference to the relevant facts, question in law, decision of the court and the reasons therefore. [7]

TOTAL SECTION A: [50]

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SECTION B: LABOUR LAW

QUESTION 5

- (a) Discuss the employee's duty to obey the lawful and reasonable instructions of the employer. (5)
- (b) Name the requirements to be met for an employer to be held vicariously liable for the acts of an employee. (5)
- (c) Name the five different ways in which an employment contract can be terminated. (5)
- [15]

QUESTION 6

- (a) Discuss, for purposes of determining whether there has been a termination of employment, whether employment starts when the contract is concluded or at the point when the employee actually starts working. (5)
- (b) What are the factors which must be considered to determine whether dismissal is an appropriate sanction in cases of misconduct? (5)
- (c) Section 2(b) of the Employment Equity Act, 1998, provides that the goal of affirmative action is to ensure "equitable representation" of certain groups in all occupational categories in the workplace. How is "equitable representation" determined? (2)
- (d) Which categories of employees are excluded from the provisions of Chapter 2 (regulating working time) of the Basic Conditions of Employment Act, 1997? (3)

[15J]

QUESTION 7

- (a) Nice Hair Salon which operates in Soshanguve Zone 2, has employed Zodwa as a hair stylist. Zodwa's contract of employment contains a clause which provides that if she leaves the Salon, she cannot start her own salon within 10 km from Nice Hair Salon and for a period of 10 years. Zodwa wants to resign from Nice Hair Salon in order to open her own salon in Soshanguve Zone 3, about 4 km from Nice Hair Salon. Nice Hair Salon threatens Zodwa with legal action. Zodwa thinks the restraint clause in her contract of employment is unreasonable.

Advise Zodwa on the nature of a restraint of trade clause and on the possibilities of

successfully
opposing the legal action. (10)

- (b) Discuss whether an employer who dismisses employees for reasons based on operational requirements has an obligation to pay such employees severance pay. (5)
[15]

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QUESTIONS

Indicate whether the following statements are TRUE or FALSE. Do not give reasons for your answers:

- (a) Medical testing of an employee will only be allowed with the permission of the Labour Court. (0)
- (b) When a small employer retrenches two employees, the Commission for Conciliation Mediation and Arbitration (CCMA) must appoint a facilitator. (1)
- (c) All employees are entitled to at least 21 consecutive days' annual leave with full remuneration. (!)
- (d) The definition of "operational requirements" in the Labour Relations Act, 1995 includes only the "economic, structural or similar needs" of the employer. (1)
- (e) Suspension of an employee without pay, pending a disciplinary enquiry, will amount to an unfair labour practice. (1)

[51]
SUBTOTAL SECTION B: [50]

TOTAL: [100]

