

UNIVERSITY OF FORT HARE
NELSON R MANDELA SCHOOL OF LAW
(EAST LONDON CAMPUS)

INDIVIDUAL LABOUR LAW
LEL313E

JUNE EXAMINATIONS 2023
MAIN EXAMINATION PAPER

Time: 3 HOURS
Subject: INDIVIDUAL LABOUR LAW
Code: LEL313E
Marks: 100

INTERNAL EXAMINERS:

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Miss Mbolambi

INSTRUCTIONS

1. Answer ALL questions.
2. Substantiate your answer by reference to applicable law and case law.
3. Pay attention to marks allocation.
4. This question paper consists of FOUR pages including the cover page. Please ensure that you have all the papers.
5. This question paper consists of TWO sections, **SECTION A** (Question 1(a) and 1(b)) and **SECTION B** (Questions 2, 3 and 4)

SECTION A

QUESTION 1(a)

Indicate whether each of the following statement is true or false [20].

1. The BCEA does not apply to members of the South African Secret Service. [1]
2. In *Blue IQ Investment Holdings v Southgate (2014) 35 LIJ 3326 (LAC)*, it was held that the employer may be 'estopped' from denying the representative's authority to sign a contract of employment, unless the employee was aware that the representative was not empowered to conclude the contract. [1]
3. An individual contract of employment can override any core rights in the Basic Conditions of Employment Act (BCEA), if it contains a favourable provisions. [1]
4. The bargaining council agreement may reduce the BCEA leave days to less than two weeks. [1]
5. An employer may not deduct any money from a worker's pay that worker agrees in writing, or the deduction is required or permitted in terms of a law, collective agreement, court order or arbitration award, except for overpayment. [1]
6. The common law contract of employment is derived from *locatio conductio operis*. [1]
7. The BCEA does not apply to members of the South African National Defence Force.[1]
8. The arbitrator cannot impose a candidate in promotion cases, they can only interfere if the employee acted in a procedurally unfair manner or in bad faith. [1]
9. The bargaining council agreement is not allowed to reduce leave day to less than two week. [1]
10. In *Sithole v Nogwaza NO and Others (1999) 20 ILJ 2710 (LC)*, the Labour Court (LC), the court held that only persons who are already in an employment relationship enjoy the protection against unfair labour practices. [1]
11. Senior managers are excluded from the BCEA provision which provides for work time limits unless the individual contract of employment provides for such favourable provisions, e.g. like payment for overtime worked. [1]
12. Section 213 (1) (b) of the LRA also applies to independent contractors. [1]
13. In terms of the BCEA an employee who unreasonably refuses demotion without justification is entitled to a severance pay. [1]

13. Large scale dismissals in terms of operational requirements is regulated in terms of sections 189 and 189 A of the LRA, 1995. [1]
14. An employee who unreasonably refuses to accept the employer's offer of alternative employment with that employer or any other employer, is not entitled to severance pay . [1]
15. Section 186(1)(b)) expressly provides that termination of a fix-term contract constitutes a dismissal, if the renewal is of less favourable terms. [1]
16. In *SABC v Mckenzie (1999) 20 ILJ 585 (LAC)*, the court restored the previous legal position and stated clearly that an employment relationship is by its very nature dependent on a contractual working arrangement (i.e. 'the dominant impression test' is still relevant). [1]
17. Section 213 of the LRA is equivalent to section 83A of the BCEA. [1]
18. An employer may not reduce the employee's salary without consent following a demotion for disciplinary reasons. [1]
19. Termination of employment as a result of voluntary liquidation constitutes a dismissal for the purpose of LRA. [1]
20. An employee whose security clearance was not renewed can be fairly dismissed since this is a precondition for continued employment. [1]

QUESTION 1(b)

Write notes on the Vicarious liability of an employer for acts committed by an employee. [5]

[25 Marks]

SECTION B

QUESTION 2

Discuss in detail how to determine whether a person is an “employee” or “independent contractor, with specific reference to the *Universal Church of the Kingdom of God v Myeni (2015) 9 BLLR 918 (LAC) judgement*”. In your answer refer to applicable law and other case law.

[25 Marks]

QUESTION 3

X (“employee”) a supervisor at the Trident Steel Pty Ltd Company (“Employer”), was demoted without consent. X’s employer had to retrench a number of employees due to distress in the steel sector, but retained X together with other employees. However, X was not consulted about the demotion, he was told that he no longer has staff under him, together with his subordinates they all report to the General Manager and his salary had been reduced.

Provide a legal opinion to advise X whether his demotion is fair or it constitutes an unfair labour practice. In your answer refer to applicable law and precedent, and also state what legal remedies are available to X.

[25 Marks]

QUESTION 4

Digital tech companies have made profits during the COVID-19 pandemic and hired more staff. However, post the pandemic they have been experiencing losses. Golden Tech (Pty) Ltd has more than 500 employees, 100 of these are tech employees, 60 of these are based in its headquarters in Johannesburg. Golden Tech (Pty) Ltd plans to retrench 40 of its tech employees in its headquarters. Golden Tech (Pty) Ltd also has other branches in Cape Town and East London. The business in the East London office is booming and requires 10 more permanent tech employees.

You are a Legal Risk Strategist working for Golden Tech (Pty) Ltd, you have been asked to provide a legal opinion on Golden Tech (Pty) Ltd’ s retrenchment strategy. In your answer provide the applicable law relating to retrenchment of the 40 employees.

[25 Marks]

[Total for this paper: 100 marks]

-END OF EXAMINATION PAPER-