



UNIVERSITY
OF
LUSAKA

SCHOOL OF LAW

L213 – EMPLOYMENT LAW

FINAL EXAMINATION PAPER

TUESDAY, 14 JUNE 2022

09:00- 12:00 HOURS

TIME ALLOWED: 3 HOURS PLUS 5 MINUTES READING TIME

INSTRUCTIONS TO CANDIDATES

- 1 Check that you have the correct examination paper in front of you.
- 2 The paper consists of **SIX (6)** questions. Answer **QUESTION 1 WHICH IS COMPULSORY AND CARRIES 40 MARKS AND ANY OTHER THREE (3) QUESTIONS WHICH CARRY 20 MARKS EACH.**
- 3 All answers must be written in the answer booklets provided only.
- 4 Write down the number of questions attempted on the cover page.
- 5 Begin answering each question on a new page.
- 6 Candidates are permitted to bring into the examination room **clean and unmarked** copies of the **Employment Code Act No. 3 of 2019** and the **Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia (including unconsolidated amendments to the Act).**
- 7 There shall be no communication among students during the examination. Any attempt to make such communication will lead to disqualification.

DO NOT TURN THIS PAGE UNTIL TOLD TO DO SO BY THE INVIGILATOR

QUESTION 1 (COMPULSORY)

- a) The Zambian labour market operates on the assumption that there is a high likelihood of conflict between an employer and his or her employees at some point in the employer-employee relationship. However, thankfully, Zambian labour law appears to be prepared for such conflict by providing guidance on how these should be dealt with, whenever they arise.

Discuss, with reference to appropriate law. Your discussion should begin by highlighting what may lead to this assumed conflict.

[25 MARKS]

- b) Paxina is an administrative assistant who has been out of work for one (1) year and six months since she was retrenched by her former employers Abracadabra Limited which shut down operations for economic reasons, following the outbreak of the COVID19 pandemic.

Paxina's cousin Jasmine who is a personal assistant to the Director of Legal Affairs in Dig Out Mines Plc, a large mining company on the Copperbelt province managed to find employment with the company through an employment agency called Work Link Recruitment Limited. She has on several occasions encouraged Paxina to also register and try her luck in obtaining gainful employment with Dig Out Mines Plc.

Paxina has however, been reluctant to register with Work Link for fear of being duped out of her hard-earned savings. She is also unsure if companies offering recruitment services are legally recognized under Zambian law. All efforts by Jasmine to date, to convince her cousin to register with Work Link have fallen on deaf ears, leaving her with no choice but to refer her to you, an Employment Law guru, to assist Paxina answer following questions:

- i. What are the legal requirements to be met by Work Link Recruitment Limited in order for it to offer recruitment services? **Make reference to the appropriate law.** **[2 MARKS]**
- ii. Supposing that Paxina is convinced to register with Work Link Recruitment Limited in the hopes of in also obtaining gainful employment with Dig Out Mines Plc. What will each of these three (3) parties be called in such a relationship? **Make reference to the appropriate law.** **[3 MARKS]**
- iii. Explain what legal obligations are placed on Work Link Recruitment Limited law in terms of the formation and existence of a relationship

between Paxina and Work Link Recruitment Limited (if she is convinced to register with them). **Make reference to the appropriate law.** [5 MARKS]

- iv. List any five (5) elements of a valid employment contract. [5 MARKS]

[TOTAL: 40 MARKS]

QUESTION 2

The International Labour Organisation (ILO) Committee on Freedom of Association in its compilation of decisions stated the following:

"The Committee has always recognized the right to strike by workers and their organizations as a legitimate means of defending their economic and social interests.

The right to strike is an intrinsic consequence to the right to organize protected by ILO Convention No. 87.

Strikes are by nature disruptive and costly..."

The International Labour Organisation (ILO) has also recommended that the right to strike is one that may be limited by member states in certain justified circumstances and this must clearly be stipulated in national legislation.

With the aid of relevant legal authority, discuss how Zambian Labour Laws have responded to ILO's recommendations on limiting the right to strike for three (3) categories of employees. (Support your answer with relevant law). In your discussion, highlight the justification behind the limitations for each of the three (3) categories of employees. [20 marks]

QUESTION 3

a) Unlike its predecessor, the Employment Code Act No. 3 of 2019 now provides for a wide range of prominent basic statutory rights for employees regardless of the varying factors which distinguish them within a particular working environment. **State how comprehensive the Act is, in widening the scope of rights for the following categories of employees:**

i. The differently-abled;

[5 MARKS]

ii. Zambian citizens;

[5 MARKS]

b) Forced labour is prohibited in section 8 of the Employment Code Act No. 3 of 2019 which provides that:

"8. (1) A person shall not engage or subject another person to perform forced labour.

(2) A person who contravenes subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both."

However, neither the Act nor the above-cited provision defines forced labour. However, the solution, is to seek guidance from international standards (the International Labour Organisation-ILO). **Briefly explain the international test for forced labour by making reference to appropriate law.** [5 MARKS]

C) briefly distinguish compassionate leave from family responsibility leave.

[5 MARKS]

[TOTAL: 20 MARKS]

QUESTION 4

a) Mwenda J, the learned author of 'Employment Law in Zambia: Cases and Materials', opines that: ***"Unfair dismissal is a creature of statute whose roots may be traced back to England. That it evolved from laws enacted in the quest to promote fair labour practices by preventing employers from terminating contracts of employment except, on specified grounds..."***

Currently, both the Industrial and Labour Relations Act, CAP 269 and the Employment Code Act No. 3 of 2019, contain the grounds for unfair dismissal, with some grounds repeated in both Acts.

State the four (4) different grounds for unfair dismissal. Make reference to appropriate law.

[10 MARKS]

- b) Who is expected by law, to prove that a dismissal is fair and for a valid reason? Make reference to appropriate law. [2 MARKS]
- c) What action must an employee take if they are convinced that their dismissal is unfair? Make reference to appropriate law. [3 MARKS]
- d) Define a trade union. Make reference to appropriate law. [2 MARKS]
- e) What in your view are the benefits of trade union membership, for employees? [3 MARKS]

[TOTAL: 20 MARKS]

QUESTION 5

- a) List down any five (5) statutory grounds for summary dismissal. Make reference to appropriate law. [5 MARKS]
- b) In the case of *National Milling Co. v M. Vashee (2000) ZR 98* it was held that unlike a company, an unincorporated association is not a legal person and cannot sue or be sued... A trade union, being an incorporated association suffers from such and many other restrictions. **Highlight how the law enables a trade union to operate despite such restrictions.** Make reference to appropriate law. [15 MARKS]

[TOTAL: 20 MARKS]

QUESTION 5

Anna, Barbara and David who have been university buddies since their first year, are employees of Tick-Tick Financial Consultants Limited. They have been employed as financial consultants since April 2016.

Early last month, David applied for a salary advance of K2,000.00 and the application was approved by the Human Resource and Finance Departments, respectively. He agreed to pay back the whole sum of K2,000.00 this month and the two departments acted accordingly.

David who is a single father, is worried about this, as he promised his daughter Jelita that he would send her some pocket money for her upkeep in boarding school. He is now unable to meet this obligation because his salary is short by K2,000.00.

Yesterday, Anna who is married with three children aged 2 years to 8 years, received a distress call from her children's nanny that her youngest son Timmy had fallen from a tree and suffered injury to his right leg. She rushes home to attend to the situation and her son is later admitted to the children's ward at the Teaching Hospital. The doctor diagnoses him with a fractured leg and is to remain admitted in hospital for 10 days. She is given a medical certificate by her sons' doctor, however, Human resource refuses to allow her time off to attend to her sick son.

Barbara, is a recent victim of harassment, including sexual harassment within her working environment. She is a witness to another incident of sexual harassment within her work place. The culprit is Sam a departmental manager who has been sexually harassing Sally, one of the recently recruited graduates. Sam was summarily dismissed three months ago and has now sued his former employer for wrongful dismissal, on grounds that the disciplinary hearing was flawed, as he was not given an opportunity to question Sally, his accuser. Barbara testified against Sam as a key witness in the matter and has now been threatened by the Human Resource, with a transfer to a rural area, following her testimony in court. Human Resource in their view feel that Barbara is making it a habit to taint the image of the male employees and the company's business image as a whole, by reporting incidents of harassment within the work place and even jumping at any opportunity to testify as a witness in such matters. Barbara's new immediate supervisor Jaden has even begun to add more work load on Barbara as a way of "disciplining her" since she reported an incident of harassment suffered by her at the hands of her past immediate supervisor Tom.

David, Anna and David are in your office with the above story. David is wondering whether his employer is in line concerning the K2,000; Anna is wondering whether Human Resource is in line with their refusal to allow her some time off; and Barbara feels that her employer is being unreasonable over her actions to act as a witness in Sally's matter.

Advise the parties accordingly.

[20 MARKS]

END OF EXAMINATION PAPER