

BOTSWANA COLLEGE OF DISTANCE
AND OPEN LEARNING

Diploma in Human Resources Management

Employment Law

EL122

Sessional Examination

Marks: 100

Time allowed: 3 hours

Instructions

1. The examination consists of four sections: A, B, C and D.
2. Begin each answer to a new question on a new page.
3. Answer questions according to instructions given in each section.
4. Write answers in the answer booklet provided.
5. Write in grammatical English.

SECTION A

[10 MARKS]

MULTIPLE CHOICE QUESTIONS

ANSWER ALL QUESTIONS

1. Which of these is not a test to determine whether someone is an employee or a contractor?
 - A. Control test
 - B. Integration test
 - C. Economic reality test
 - D. Employment test.

2. An employee works exclusively for a company, is a member of the company union, the employee pays his own taxes to the government, has to wear a uniform, must work the hours set for him, is paid monthly and has his own tools. Is this individual an employee or a contractor?
 - A. Employee
 - B. Contractor
 - C. Not possible to tell without further information
 - D. Is entitled to be either.

3. A self-employed taxi driver can choose his own working hours, uses a pool car, is paid a monthly salary after taxes, does not have to wear any particular uniform, is not joined to any union and can decide which jobs he wants to do. Is this individual an employee or a contractor?
 - A. Employee
 - B. Contractor
 - C. Not possible to tell without further information
 - D. Is entitled to be either

4. Which of these items do not have to be included in an employment contract?
 - A. Date of commencement of employment
 - B. Sick leave and sick pay
 - C. Disciplinary procedures
 - D. Health and safety issues applicable to the employee.

5. Which of these is true about employment contracts?
 - A. An employment contract can be written or oral
 - B. An employment contract can only be in writing
 - C. An employment contract can never be in an oral format
 - D. An employment contract can be implied

6. Which of these is true?
 - A. Employment contract must be issued within 2 months of the employee starting work.
 - B. Employment contract must be issued within 1 month of the employee starting work and must be in writing only.
 - C. Changes in contracts must be made in writing within 2 months.
 - D. Changes in contracts must be made in writing or orally within 1 month.

7. Which of these is not an acceptable way to terminate a contract of employment?
 - A. Termination by notice
 - B. Termination by agreement
 - C. Termination by frustration
 - D. Termination by acceptance.

8. Summary dismissal is when _____.
- A. An employer changes the main terms of the contract and the employee resigns, when the employer is willing to continue with the contract
 - B. An employee is dismissed without proper notice
 - C. An employee has made a serious breach
 - D. The employer provides a statement explaining the dismissal
9. Wrongful dismissal is when an _____.
- A. Employee has been drunk at work
 - B. Employer has not followed disciplinary procedures
 - C. Employee has been dishonest
 - D. Employer has made minor changes to a job description
10. Which of these situations are grounds for constructive dismissal?
- A. John has been given a 10% reduction in salary
 - B. John refused to work for a particular client as he felt that they were not an eco-friendly
 - C. John lied about the fact that he had completed a project when in fact he was still working on it
 - D. John arrived back from the pub at lunchtime very drunk.

SECTION B – TRUE/FALSE QUESTIONS [10 MARKS]

Answer ALL questions. Each question carries ONE (1) mark.

State whether each of the following statements is TRUE or FALSE.

1. Misconduct means a wrongful, improper and unlawful conduct.
2. The right not to take disciplinary actions against transgression of set standards is defined as negative discipline.



3. A young person is lawfully allowed to work for more than eight hours only with the approval of the Commissioner
4. It is mandatory for all employers, according to employment law, to pay severance package to employees who would have served a continuous period of 60 months and above only.
5. Public officers can belong to the opposition political as long as they work diligently for the current government.
6. Public officers are lawfully allowed to own and run a farm business as well as build houses and sell them at their own spare time.
7. The normal working hours for all civil servants is 7:30am to 4:30pm all the days of the week.
8. Mandamus is used to bring up to High Court the decisions of the lower court for investigation.
9. It is a common law requirement that every employee is competent in discharging their duties
10. The ultimate punishment in employment relationship is Dismissal.

SECTION C – SHORT ANSWER QUESTIONS

[30 MARKS]

Answer ALL questions in this section

1. A contract of employment is not permanent and can be terminated legally any time. Name and explain five legally justifiable reasons for termination of an employment contract. **(10 marks)**
2. Appraise any five remedies available to an employer for breach of contract by the employee. **(5 marks)**
3. Outline any five main sources of employment law in Botswana. **(5 marks)**
4. A manager at Miami Limited dismissed Susan without following proper procedures and wrongfully. List five factors the Labour court would take into consideration in determining the correct amount for her compensation. **(5 marks)**

5. The Employment of Non-Citizen Act regulates the employment of foreigners. Outline any five categories of employees categorised as non-citizens in the Employment of Non-Citizen Act. **(5 marks)**

SECTION D ESSAY QUESTIONS

[50 MARKS]

Answer any TWO questions from this section.

QUESTION 1

(25 marks)

Sarah, who was recently been appointed as Head of Human Resources (HR) in a small but growing business, reviewed the company HR policies and decided that they need updating. The company has existing documents covering Equal Opportunities, a Company Code of Conduct, Disciplinary Procedures and Grievance Procedures. Several members of staff did not know the difference between grievance and disciplinary procedures and were unaware that the company had policies on these matters.

Required:

Write an email to be sent to all members of staff explaining the difference between ‘grievance’ and ‘discipline’ and briefly describe the disciplinary process. **(25 marks)**

QUESTION 2

(25 marks)

Discuss how the major five legislative frameworks for the Employment Law module contribute to governing Employment Law in Botswana. **(25 marks)**

QUESTION 3

(25 marks)

Thato recently got a job at the Ministry of Lands after years of searching having graduated four years ago at Botswana University. She has been employed as a Human Resources Officer, she immediately applied for a loan to buy a car and a house and her Supervisor Laone advised her that she cannot get it until her probationary period is complete. Lone the lady she started work with has since been given a loan and she bought herself a new BMW car. Thato is shocked to hear about the probation and confronts her supervisor Laone who advises her to check her



appointment letter; it is then that she remembers signing it without even reading it. According to her letter her probation period is 2 years, and can be extended by a further one year. Thato is shocked she checks with her friend Lone who claims to have worked for the Ministry of Finance for three years, she informs her that her probationary period was only three months. Thato is convinced Laone hates her and she then comes to you for help on the following issues.

- a) What is the correct probationary period for a public service employee, why does hers differ with others and when will she be informed about her success or failure?

(5 marks)

- b) What is supposed to be happening during the probationary period, for example is she supposed to be having the same work load as the permanent employees or not?, Laone keeps coming and checking her work every week is that lawful since they are both Batswana working for the prosperity of their country? **(5 marks)**

- c) What can she look forward to at the end of her probationary period?

(5 marks)

- d) What is the importance of probationary period to both Thato and the Ministry of Lands (Thato's employer). **(10 marks)**