Botswana College of Distance And Open Learning

In Collaboration With

Zimbabwe Open University

Employment Law

Sessional Examination, 2009

Duration 3 Hours **Marks = 100**

Instructions to Learners

1. Write your name, centre and candidate numbers on the answer booklet.
2. This paper consists of four (4) Sections A, B, C and D.
3. Answer **all** questions as instructed under each section.
4. Answers should be written in the booklet provided.
5. Start an answer to each section on a separate answer sheet.

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Section A [10 marks]

Answer **True/ False** to the questions that follow.

1. Employees earmarked for retrenchment should be consulted on the procedures to be followed. **True/False**

2. Customs are a source of employment law. **True/False**

3. Contracts in restraint of trade are enforceable even where they are shown to inhibit competition. **True/False**

4. Public servants are free to join any political party of their choice and to express freely their political alignment like all citizens. **True/False**

5. The Public Service Act of 2008 applies to all employees not necessarily public servants. **True/False**

6. A contract of employment with a probation period should be in writing. **True/False**

7. Mediation and Arbitration are examples of alternative dispute resolution procedures employed in Botswana to resolve industrial disputes. **True/False**

8. Nurses and other essential services providers are free to go on industrial action like all other employees. **True /False**

9. Some foreigners employed by BOCODOL and University of Botswana, for example, are exempted from having work permits. **True /False**

10. The lack of substantive law on HIV- AIDS in the country explains the many problems associated with the HIV- AIDS epidemic in the work place. **True /False**

Section B: Multiple Choices

Choose the most appropriate answers to the questions below.

1. Employment discrimination can be based on _____
   a) Gender , sexual orientation and the clothes one puts on
   b) Age, sex, colour, tribe or political opinion.
   c) The national origin of the wives of the employees
   d) None of the above

2. _____ is an example of positive discrimination
   a) Affirmative action in schools to allow ladies to do certain courses with lower points than their male counterparts.
   b) Discrimination based on tribe.
   c) Discrimination based on one's HIV status.
   d) None of the above

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3. _____ is not a source of employment law in Botswana.
   a) Statutes
   b) Judicial precedents
   c) Collective bargaining agreements
   d) Common law
   e) Students' assignments on employment law.

4. Collective bargaining agreements have to be registered with the
   a) Commissioner for them to take legal effect.
   b) Court
   c) Trade Union concerned
   d) None of the above

5. Contracts with a probationary period should_____
   a) be in writing
   b) be witnessed and consented to by the Commissioner
   c) be signed by both parties 48 hours prior to the employee taking employment
   d) all of the above

6. Termination of a contract of employment
   a) can be by consent of the parties
   b) has to be authorised by the Commissioner
   c) has to be registered with the registrar of the High Court
   d) none of the above

7. **ILO** Conventions
   a) have no relevance in employment law in Botswana
   b) are a source of employment law in Botswana
   c) are only relevant in International matters
   d) none of the above

8. An appeal from the Industrial Court goes to the
   a) Kgotla
   b) High Court
   c) Court of Appeal
   d) any of the above

9. _____ and _____ are examples of alternative dispute resolution procedures.
   a) Mediation and arbitration
   b) Negotiation and litigation
   c) Conveyancing and notarial work
   d) All of the above

10. _____ are examples of essential services.

   a) Health services
   b) Teaching services
   c) Sporting
   d) All of the above

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Section C: Short answers [50 Marks]

Answer **all** questions in this section.

Question 1

The following are some of the duties of the employee in a contract of employment

- Duty to provide services
- Duty of care and to avoid negligence generally
- Duty to perform the employer's work competently
- Honest and duty to act in good faith.

Discuss each of the above duties.

Question 2

List and explain the remedies of an Employer should the employee breach any of his duties under a contract of employment.

Question 3

Identify any **five** grounds upon which a contract of employment can be terminated and briefly explain them.

Question 4

Write short notes on the following

a) How Botswana acquired the **Roman-Dutch Common Law.**
b) The protectorate status
c) Collective bargaining agreements
d) Judgments of the industrial court as a source of labour law
e) Summary dismissal

Question 5

a) The employment contract need not necessarily be in writing. Discuss the circumstances under which the **Employment Act** requires such a contract to be in writing.
b) The employment contract can be terminated either on notice or without notice. Explain

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Section D: [50 Marks]

Choose any **two** questions from the questions below. All questions carry equal marks.

Question 1

Gaone is employed as a driver by **Pula Pvt Ltd;** He has been with the company since its formation 15 years ago. He has a clean record and is one of the most reliable and trusted drivers at the company. On one of his routine duties, **Gaone** is sent to Lobatse to deliver bread in one of the company's outlets there. **Gaone** wishes to take this opportunity to dash to Molepolole to see his girl friend **Gafaone** who will be leaving for the UK the next day. He drives the company vehicle to Molepolole .Since he wants to go to Lobatse after the Molepolole visit he was over speeding so that his supervisors would not notice any delays. On the way **Gaone** is involved in an accident. He knocked and seriously injured **Bafana** who was crossing the road with his girl friend from a near by picnic site. **Gaone** was arrested by the police and he admitted to negligent driving. **Bafana** is considering recovering damages for the injuries he suffered. Discuss the possibility of recovering such damages from **Gaone's** employer. If he decides to sue **Gaone's** employer, under what ground can **Bafana** recover damages. ***(25 marks)***

Question 2

The law requires that before dismissing an employee the Employer has to comply with both procedural considerations as well as substantive considerations. Explain what this means detailing in the process the grounds upon which one can be dismissed from employment. ***(25 marks)***

Question 3

You are employed as a Human Resources Manager at **Matlogelwa Pvt Ltd**. You are in charge of the internal training programmes for all employees. You have identified a training gap regarding the issue of your workers 'understanding of the **Employment Act Cap 47:01.** You have organised an internal training programme to discuss about the key features of the **Employment Act**. Outline the key issues which you will cover during the training programme. ***(25 marks)***

Question 4

a) Outline the duties of the employer in an employment contract. ***(15 marks)***
b) What are the remedies of the employee should the employer breach any of his duties? ***(10 marks)***

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Mock Examination, 2009

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Section A: [10 Marks]

Answer **true** or **false** to the questions that follow.

1. The contract of employment is a special kind of contract which should be written down in all cases. **True /false**

2. Employment law in Botswana relies to a large extent on **ILO** conventions. **True/ false**

3. Judges of the Industrial Court are appointed by the Judiciary Service Commission. **True/ false**

4. One should be dismissed from employment automatically when they contract HIV-AIDS. **True/false**

5. In dismissing an employee it is only necessary to ensure procedural fairness as opposed to substantive fairness. **True/false**

6. An employee has a duty to take reasonable care when handling an employer's property. **True/false**

7. Female employees who comply with all the requirements of the **Employment Act** should not be allowed to go on maternity leave unless it is their first or second pregnancy. **True/false**

8. Botswana employment laws prohibit discrimination against females in some designated disciplines such as the army. **True/false**

9. Collective bargaining agreements are a source of employment law in only some industries in Botswana. **True/false**

10. The contract of employment can be terminated on grounds of unlawful disobedience to superior orders. **True/false**

Section B: Multiple Choice [10 Marks]

Choose the most appropriate answer on the questions below.

1. _____ is a source of employment law in Botswana.
   a) Judicial precedents
   b) Judgments of the magistrates courts
   c) The United Nations
   d) None of the above

2. The Industrial court is established in terms of the
   a) Industrial Court Act
   b) Employment of Non Citizens Act
   c) Trade Disputes Act
   d) Factories Act

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3. The following is a duty of the employer in a contract of employment
   a) Duty to provide a motor vehicle for use by employees
   b) Duty to pay rentals for the employee
   c) Duty to provide a safe working environment for all the employees
   d) All of the above.

4. _____ is a remedy of the employer where an employee breaches his/her duties under a contract of employment.
   a) Beating the employee up to revenge for the wrong done
   b) Holding on to the employee's assets including refusal to pay the employee his /her salary.
   c) Taking disciplinary action against the employee
   d) All of the above

5. An employer is vicariously liable for delicts committed by his employees
   a) in the course and scope of their employment.
   b) only at the employer's premises.
   c) only where the employee was not drunk and negligent.
   d) none of the above.

6. Contracts in Restraint of Trade can be enforceable where
   a) they are reduced to writing.
   b) they are shown to be reasonable in terms of time, geographical area and subject matter.
   c) they are not contrary to the laws of Botswana.
   d) all of the above.

7. The main legislation applicable to the Public Service is the
   a) Employment Act
   b) Trade Unions and Employer's Organisations Act
   c) Trade Disputes Act
   d) Public Service Act

8. The case of ***Unity Dow v Attorney General***
   a) Is important for clarifying the issue of equal rights between employees
   a. Is important for prohibiting discrimination between females and males in terms of passage of citizenship to their children
   b) Clarifies the procedures for the appointment of judges
   c) All of the above

9. Before an employee can be dismissed from his job
   a) There has to be both procedural and substantive fairness
   b) The employee should first admit his/her guilt
   c) The employer should first give the employee a chance to cross examine witnesses called by management
   d) None of the above.

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10. Employment law covers
    a) commercial contracts
    b) social arrangements between employers and employees
    c) contracts between employers and employees in which one person provides services in return of remuneration paid by the employer.
    d) all of the above.

Section C: Short Answers [50 marks]

Answer **all** the questions under this section.

Question 1

a) The constitution of Botswana prohibits discrimination in all its forms. What is discrimination?
b) What are the grounds upon which discrimination can be based?
c) Using two case authorities illustrate how the Botswana courts have handled the issue of discrimination before.

Question 2

a) With the aid of a simple diagram discuss the structure of the courts in Botswana.
b) The Industrial Court is a court with special jurisdiction to handle all employment matters. Explain the functions and powers of this court in terms of the Trade Dispute Act.

Question 3

Briefly summarise the main purposes of the following Acts.
a) The Employment of Non Citizens Act
b) The Workers Compensation Act
c) Trade Unions and Employer's Organisations Act

Question 4

For the employer to be vicariously liable for the delicts of his employee, the employee should have committed the delict during the ***course and scope of his employment with the employer.*** He/she should not have been on a ***frolic of his own.*** Fully explain this statement.

Question 5

Write short notes about the following

a) Employment of children and young persons
b) Minimum wages
c) Substantive and procedural fairness.

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Section D: [50 marks]

Choose any **two** questions from the questions below; all questions carry equal marks.

Question 1

The following are some of the major sources of employment law in Botswana

a) Collective bargaining agreements. ***(5 marks)***
b) Statutes ***(8 marks)***
c) Commonl Law ***(6 marks)***
d) Judgments of the Industrial Court. ***(6 marks)***

Discuss each of the above explaining how it is a source of employment law in Botswana.

Question 2

Boipuso is employed by **Matshidiso Pvt Ltd** as a general hand. He has been so employed for the past 10 years. He received a letter from the Human Resources Manager advising him that due to the current global recession the company will be retrenching not less than **600 employees**. As one of the people who might be affected by the exercise he was notified by the company in advance. **Boipuso** and the other employees who are likely going to be affected by the exercise are confused as to how they could approach this problem. Firstly they are worried about what the whole process means to them. Some of them are foreigners with families at the said company. The workers are worried about their rights and they want someone to clearly explain their rights. They want someone who can clearly clarify the procedures to be followed in a retrenchment exercise. They approach you as a student of employment law in Botswana to clarify their rights and explain the **redundancy procedure**. Detail your advice. ***(25 marks)***

Question 3

HIV/AIDS is a major problem affecting many companies. The problem is compounded by the fact that there is no direct legislation on **HIV/AIDS** except the exemption that foreigners need not undergo any Pre-Employment testing as of now. This problem is a source of industrial disharmony in that in most cases the employees' interests and or rights are competing with the rights of the employers. You have been tasked by the Human Resources officer of your company to address workers on these issues. Specifically you have been requested to focus on the following topic "**HIV/AIDS and Industrial Relations in Botswana. The law and practice**. Outline the major issues that you will cover. Give suggestions on how you think the issue of HIV Aids can be efficiently dealt with to create a conducive environment in the work place which carters for both the interests of the employees and those of the employers. ***(25 marks)***

Question 4

a) What are contracts in restraint of Trade? ***(10 marks)***
b) Discuss the circumstances under which such contracts will be enforceable and those circumstances under which they will not. ***(10 marks)***
c) Do you think such contracts are necessary in a competitive market environment? ***(5 marks)***

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Botswana College of distance and open learning

In collaboration with

Zimbabwe Open University

Diploma in Human Recourses Management

Employment Law

Course Code: D-EL 01

Sessional Examination, 2010

Time: 3 Hours

Total Marks: 100

Instructions to candidates

1. Answer **all** questions in section A and B.
2. Write legibly.
3. Candidates attempting to gain unfair advantage through cheating will be disqualified.

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Section A

[10 Marks]

Answer True or False

1. Implied terms of a contract are expressed in words whether written or spoken. T

2. Individual labour law deals with the employment contract and other legal sources that regulates the relationship between an employee and an employer individually. T

3. The doctrine of judicial precedence means that, in their work of settling disputes, Judges are guided by the decisions of Judges in earlier similar cases. T

4. Minor misconduct can lead to the dismissal of an employee without following the procedural disciplinary action F

5. The general rule is that all contracts in restraint of trade are void on account of the fact that they are contrary to public policy. T

6. The control test is used to distinguish between independent contractors and employees. T

7. Any public officer who uses his private vehicle for official duty is entitled to kilometre allowance. T

8. The purpose of a disciplinary action is to punish employees so that they can leave employment on their own. F

9. In the case of permanent total incapacity the compensation shall be a sum of equal to sixty times the monthly salary of the worker with a minimum of P16 000 and a maximum of P250 000. T

10. A worker who is deceased is compensated less than a worker who suffers permanent incapacity. T

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Section B [50 Marks]

Answer **all** questions.

1. Outline the duties of the following parties to employment contract.
   (i) The employer
   (ii) The employee (10 marks)

2. Describe the qualities of lawful and valid disciplinary rules. (10 marks)

3. Whilst public officers may vote at an election if they are eligible to do so, they are prohibited by law to be actively involved in political issues unless it is their line of duty. Outline some of the political activities that public officers are not allowed to do. (10 marks)

4. You have been advised to prepare for a thirty minutes presentation in which you will clarify the benefits of joining a Trade Union to newly recruited employees. Provide short notes in which you elaborate the advantages of being a member of a Trade Union. (10 marks)

5. Outline the powers of the Industrial Court. (10 marks)

Section C [40 Marks]

Answer **any two** questions.

1. Elaborate on the contents of Section 26 of the Employment Act in defining the term "serious misconduct". (20 marks)

2. Section 80 (1) of the Employment Act allows deductions from an employee's wages or any other payments. Describe other deductions other than for tax purposes that the employer is allowed to make from an employee's salary/wages. (20 marks)

3. One of the duties of an employer is to keep records of employees. Outline the information, which employers should keep about their employees. (20 marks)

4. Use a relevant case authority to discuss the requirements for a fair disciplinary enquiry. (20 marks)

End of Paper

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Diploma in Human Resources Management

EMPLOYMENT LAW

D – EL 01

SESSIONAL EXAMINATION

Marks – 100

Time Allowed **3 Hours**

Instructions to candidates

1. This examination contains three sections(A,B and C). Answer **all questions** in Section A and Section B, and **any 2 questions** in Section C
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3. Start a question on a new page
4. Write legibly in grammatical English.
5. Use examples where possible to support your explanations

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SECTION A **(20 MARKS)**

MULTIPLE CHOICE QUESTIONS

Each question carries 1 mark

1. The maxim audi alteram partem gives the employee facing a disciplinary hearing _____.

   A. the right to be heard
   B. the right to legal representation
   C. the right to have a friend on the disciplinary panel
   D. the right to choose where the disciplinary hearing will take place

2. The highest court in Botswana is _____.

   A. the High Court
   B. The village magistrate's court
   C. the Appeals court
   D. the price and the article of sale have been agreed to

3. The maximum punishment that a magistrate can impose is. her. This contract is unenforceable as _____.

   A. 5 years imprisonment or a fine of P7, 000.00
   B. life imprisonment or a fine of P100, 000. 00
   C. 10 years imprisonment or a fine of P20, 000. 00
   D. 15 years imprisonment or a fine of P40, 000. 00

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4. A source of law in Botswana is _____.

   A. delict
   B. the constitution
   C. the vice- president
   D. all of the above

5. The industrial court has the status of a _____.

   A. specialized High court
   B. appeal court
   C. magistrates court
   D. labour commissioner

6. There are several sources of law in Botswana, examples of which are _____.

   A. legislation, constitution, common law, customary law
   B. constitution, the President, customary law, legislation
   C. civil law, contract, customary law, Penal code
   D. parliament, house of chiefs, common law, Penal code

7. The monetary limit for a regional magistrate' court is _____.

   A. P70000. 00
   B. P40000. 00
   C. P10000. 00
   D. P30000. 00

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8. Judicial precedent is a way in which law is made _____.
   A. parliament
   B. The President
   C. judges
   D. citizens

9. The president is head of which branch of government?
   A. Legislative branch
   B. Executive branch
   C. Judiciary
   D. State

10. A form of gross misconduct which can lead to summary dismissal is _____.
    A. theft
    B. a single episode of late coming
    C. leaving work late
    D. asking for leave too often

11. The power to discipline public officers in the executive branch of government is delegated from _____.
    A. prime minister
    B. Vice - president
    C. Permanent secretary in the office of the President
    D. Director of the DPSM

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12. Which of the following public servants can be directly disciplined by the president are _____.

A. vice – president
B. ambassadors
C. director of public prosecutions
D. an accounts clerk at the DPSM

13. The highest court of first instance in Botswana is _____.

A. the Appeals court
B. Village Magistrates court
C. High Court
D. Customary court

14. The maximum amount of overtime an employee may work regardless of working hours is _____.

A. 20 hours
B. 12 hours
C. 16 hours
D. 14 hours

15. An example of a superior court performance

A. customary court
B. magistrate's court
C. industrial court
D. small claims court

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16. The Act that regulates the employment and working environment of civil servants is called the _____.
    A. Trade Unions and Employer organizations Act
    B. Public Service Act
    C. Employment Act
    D. Trade Disputes Act

17. The maxim nemo iudex in sua causa means _____.
    A. no one can hear this matter as it is too complex
    B. an employee has the right to legal representation
    C. a party with an interest in a matter from a judge or sit in a committee hearing the matter
    D. only senior management may be part of this hearing

18. A payment made to an employee who is being dismissed, worth one month wages instead of a notice of termination is called _____.
    A. breach of contract
    B. payment in lieu of notice
    C. repudiation
    D. valid dismissal

19. Which of the following cases can be best heard by a magistrates court?
    A. A claim for breach for contract worth P5, 000, 000. 00
    B. an appeal for a charge of murder
    C. motor vehicle accident claim for P15, 000. 00 in damages to a Rolls Royce
    D. a divorce matter

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20. The highest grade of magistrate in Botswana is _____.

A. Magistrate Grade III

B. Regional Magistrate

C. Principal Magistrate

D. Senior magistrate

SECTION B **30 MARKS**

SHORT ANSWER QUESTIONS

1) Give 6 examples of what may constitute gross indecency.

(6 marks)

2) Briefly describe 3 means of disciplinary sanction or punishment available to an employer.

(6 marks)

3) What is an appointing authority, who may be an appointing authority? Give three examples of what amounts to an appointment by an appointing authority?

(6 marks)

4) What need a pregnant employee do in order to obtain maternity leave?

(6 marks)

5) Mention and briefly explain three forms of dismissal

(6 marks)

SECTION C **50 MARKS**

ANSWER ANY TWO QUESTIONS IN THIS SECTION.

QUESTION 1 **25 MARKS**

What must be taken into account and applied by the employer when convening and conducting a disciplinary hearing for an employee accused of misconduct? **(25 marks)**

QUESTION 2 **25 MARKS**

Outline briefly explain the duties that a contract of employment gives an employer.

To provide work
To remuneration
To provide safe work condition
To provide legislative rights

(25 marks)

QUESTION 3 **25 MARKS**

Briefly mention and explain the sources of employment law in Botswana. **(25 marks)**

Judicial
Trade dispute act
compensation act
Non citizen employment act
employment
union act - ...

Intro - place & time
- charge place against him.
- legal representative
- side of the story
- call witness
- fact of cases/law
- if guilty mitigation
- rights of appeal

Collective bargain Agree
Statute law
case law
Common law
Labour convention

Cause

Occase

land-

BOTSWANA COLLEGE OF DISTANCE AND OPEN LEARNING

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ZIMBABWE OPEN UNIVERSITY

Diploma in Human Resources Management

EMPLOYMENT LAW

EL101

SESSIONAL EXAMINATION

Marks – 100

Time Allowed: **3 Hours**

Instructions to candidates

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SECTION A **(10 MARKS)**

MULTIPLE CHOICE QUESTIONS

Each question carries 1 mark

1. Which of the following is not a source of law?
   A. Law reports
   B. Administrative law
   C. Books of law
   D. Statutes

2. Which Act of parliament creates the industrial court?
   A. Industrial court Act
   B. Trade disputes Act
   C. High court Act
   D. Employment Act

3. The abbreviation 'ILO' stands for _____.
   A. Industrial labour organization
   B. International labour organization
   C. Industrial laws organ
   D. Industry and labour organization

4. Trade unions in Botswana are registered by _____.
   A. Registrar of trade unions and employers organization
   B. Registrar of societies
   C. Registrar of societies and trade unions
   D. Registrar of companies

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5. Which of the following is not an Act of parliament of Botswana?
   A. Employment Act
   B. Pensions Act
   C. The factories Act
   D. Labour relations Act

6. Which of the following explains the unique system of Botswana law?
   A. it operates side by side with the received law
   B. it is does not require support from any foreign law
   C. only customary law was the source of it
   D. All the cases were based on judgments from South Africa

7. The new alien legal system was introduced in Botswana in _____.
   A. 1981
   B. 1891
   C. 1966
   D. 1900

8. The word 'discrimination', when stripped of all technicality, means nothing other than _____.
   A. Showing favor to one employee or a group of employees
   B. Showing favour to no one
   C. Recussing yourself from your friends disciplinary hearing
   D. Being able to decide a matter fairly.

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9. Which of the following is not considered discriminative?
   A. Targeting HIV positive employees for retirement
   B. Refusing to give an HIV positive employee soft loan for fear that s/he will die soon
   C. Making bad remarks about ones race, HIV status, religion or colour
   D. Promoting a married person because s/he is the only one fit for promotion

10. An insolvent person is one whose _____.
   A. assets are far much less than liabilities
   B. liabilities are less than assets
   C. liabilities are equal to assets
   D. whose debts are manageable

SECTION B **30 MARKS**

SHORT ANSWER QUESTIONS

1. List any 5 rights of an employer towards disciplinary proceedings. **(5 marks)**
2. Identify 5 functions of law **(5 marks)**
3. Explain the law relating to Sexual harassment. **(10 marks)**
4. Outline the main types of public service contracts of employment. **(10 marks)**

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SECTION C **60 MARKS**

ANSWER ANY THREE QUESTIONS IN THIS SECTION.

QUESTION 1 **20 MARKS**

1. Explain any 5 main sources of law of Botswana. **(20 marks)**

Constitution, Common law, Legislation, Customary, Judicial precedent

QUESTION 2 **20 MARKS**

2. With the help of reported cases, Write argumentative notes on contracts in restraint of trade **(20 marks)**

QUESTION 3 **20 MARKS**

3. Identify and explain the different types of public service misconduct **(20 marks)**

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QUESTION 4 **20 MARKS**

4. Give an explanation on legal tests for determining employment status. Use case law to support your argument. **(20 marks)**

Dominant,

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ZIMBABWE OPEN UNIVERSITY

Diploma in Human Resources Management

EMPLOYMENT LAW

EL101

SESSIONAL EXAMINATION

Marks – 100

Time Allowed: **3 Hours**

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   C. Registrar of societies and trade unions
   D. Registrar of companies

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6. Which of the following explains the unique system of Botswana law?
   A. it operates side by side with the received law
   B. it is does not require support from any foreign law
   C. only customary law was the source of it
   D. All the cases were based on judgments from South Africa.

7. The new alien legal system was introduced in Botswana in _____.
   A. 1981
   B. 1891
   C. 1966
   D. 1900

8. The word 'discrimination', when stripped of all technicality, means nothing other than _____.
   A. Showing favor to one employee or a group of employees
   B. Showing favour to no one
   C. Recussing yourself from your friends disciplinary hearing
   D. Being able to decide a matter fairly.

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9. Which of the following is not considered discriminative?
   A. Targeting HIV positive employees for retirement
   B. Refusing to give an HIV positive employee soft loan for fear that s/he will die soon
   C. Making bad remarks about ones race, HIV status, religion or colour
   D. Promoting a married person because s/he is the only one fit for promotion

10. An insolvent person is one whose _____.
   A. assets are far much less than liabilities
   B. liabilities are less than assets
   C. liabilities are equal to assets
   D. whose debts are manageable

SECTION B **30 MARKS**

SHORT ANSWER QUESTIONS

1. List any 5 rights of an employer towards disciplinary proceedings. **(5 marks)**
2. Identify 5 functions of law **(5 marks)**
3. Explain the law relating to Sexual harassment. **(10 marks)**
4. Outline the main types of public service contracts of employment. **(10 marks)**

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SECTION C **60 MARKS**

ANSWER ANY THREE QUESTIONS IN THIS SECTION.

QUESTION 1 **20 MARKS**

1. Explain any 5 main sources of law of Botswana. **(20 marks)**

QUESTION 2 **20 MARKS**

2. With the help of reported cases, Write argumentative notes on contracts in restraint of trade **(20 marks)**

QUESTION 3 **20 MARKS**

3. Identify and explain the different types of public service misconduct **(20 marks)**

QUESTION 4 **20 MARKS**

4. Give an explanation on legal tests for determining employment status. Use case law to support your argument. **(20 marks)**

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BOTSWANA COLLEGE OF DISTANCE AND OPEN LEARNING

Diploma in

Human Resources Management

Employment Law

EL101

Special Examination

Marks: 100

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.

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SECTION A **[10 MARKS]**

MULTIPLE CHOICE QUESTIONS

Each question carries 1 mark

1. Received Law (Roman-Dutch and English Law) became applicable in Botswana in _____.

   A. 1791
   B. 1691
   C. 1961
   D. 1891

2. Botswana was a British Protectorate from _____.

   A. 1775 to 1936
   B. 1665 to 1966
   C. 1885 to 1966
   D. 1889 to 1965

3. Employment Law terms can be found in the following except for _____.

   A. Verbal Agreements
   B. In the Magistrate court.
   C. Written Contract
   D. Employee Handbook

4. Section 2 of the Employment Act seeks to protect wages in that wages shall not be _____.

   A. Overtime.
   B. The value of any house
   C. Severance benefit.
   D. Gift.

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5. _____ is not a function of Labour Law.
   A. Law protects the right to by household property only
   B. Law protects human rights
   C. Law regulates transactions
   D. Law maintains social order and justice

6. _____ is not a superior court.
   A. Court of appeal
   B. Industrial Court
   C. Customary court of appeal
   D. High Court

7. In which year did the signatory nations to the Treaty of Versailles create the International Labour Organisation (ILO)?
   A. 1818
   B. 1616
   C. 1919
   D. 1717

8. _____ is not the High Court's main jurisdiction.
   A. The unlimited original jurisdiction
   B. The divorce settlement jurisdiction
   C. The Supervisory jurisdiction
   D. The appellate jurisdiction

9. _____ is not a paid holiday for domestic workers.
   A. New year's day
   B. Good Friday

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C. Christmas day

D. Easter Monday

10. Which of the following is not a criminal offence in Employment?

A. AWOL – Away from work without official leave

B. Intention to defraud

C. False pretenses

D. Bribery

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. An employer is any person who has entered into a contract of employment to hire the labour of his family.
2. A contract of employment is a valid legally enforceable contract that starts with an offer that has to be accepted for it to be valid.
3. An Employer at common law has a right to employ and transfer his staff as he finds necessary unless the party agreed otherwise.
4. Terms of the contract of employment could be changed by the parties either by agreement or by employer after consulting the labour officer.
5. The duality of the Botswana legal system explained by its unique parallel application of common law and legislation.
6. One of the remedies available to the employer for breach of contract is Interdict
7. The Law of Botswana allows every employee to strike if they are not satisfied with their employment conditions.
8. Sexual harassment is recognized as unfair discrimination.
9. Misconduct is a legal term meaning a wrongful, improper or unlawful conduct.

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10. Mediation involves an attempt by the parties to resolve their dispute with the aid of a neutral third party.

SECTION C **[30 MARKS]**

SHORT ANSWER QUESTIONS

Answer ALL Questions

1. The state machinery of Botswana consists of three branches of the government, namely legislative, executive and judiciary. To which of these branches does the Public Service belong to and what are its major functions? **(5 marks)**
2. Define and Explain the importance of General Orders in the public service. **(5 marks)**
3. Name and explain five principles that guide Public Service Officers. **(5 marks)**
4. A contract officer is entitled to receive a gratuity on the satisfactory completion of each tour of 24 months of duty or more at the rates and under conditions laid down in the contract. Explain the rates at which gratuities are paid. **(5 marks)**
5. Explain the conditions of sick leave for contract leave in the public service. **(5 marks)**
6. What are the five main duties of Public Officers. **(5 marks)**

SECTION D **[50 MARKS]**

ANSWER ANY TWO QUESTIONS

QUESTION 1

Kolobetso runs a clothing and textile manufacturing firm, which employs 20 seamstresses. The company is going through financial difficulties. Kolobetso wrote a memo to her employees to inform them of her intention to reduce the workforce. The relevant part of the memo reads as follows:

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'I intend to reduce the size of the workforce as the firm is operating at a loss. I will terminate contracts of employment of 15 employees. The basis for termination shall be work performance. Those who have consistently failed to meet targets should look for work elsewhere. The decision is the sole prerogative of management and it is final. The
redundancies are immediate.'

Thabologo works as a seamstress for Kolobetso. She is Kolobetso's longest serving employee. She is one of 15 employees who have just received the redundancy memo. She wishes to challenge the redundancy and has come to you for advice.

Advise Thabologo on her chances of successfully challenging the redundancy.

(25 marks)

QUESTION 2

In relation to the Botswana legal system, explain the structure of the Botswana court system and outline the jurisdiction of the various courts. **(25 marks)**

QUESTION 3

In relation to the Botswana legal system, explain the main sources of Botswana law.

(25 marks)

QUESTION 4

In relation to employment law, discuss the common law duties of an employee under a contract of employment. **(25 marks)**

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