

BOTSWANA COLLEGE OF DISTANCE AND OPEN LEARNING

In collaboration with

ZIMBABWE OPEN UNIVERSITY

Bachelor of Commerce Degree

Human Resources Management & Industrial Relations

LABOUR LAW

LL222

Sessional Examination

Marks: 100

Time allowed: 3 hours

Instructions

1. This 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 –MULTIPLE CHOICE QUESTIONS

[10 marks]

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

Choose the best alternative answer

1. The following are the duties of the employer EXCEPT _____
 - A. To receive the employee into service.
 - B. To ensure safe working conditions
 - C. To comply with statutory duties.
 - D. To warrant his competence and reasonable efficiency

2. Which authority is mandated with registration of Collective agreements?
 - A. Registrar of trade unions
 - B. Registrar of industrial court
 - C. Registrar of collective agreements
 - D. Commissioner of labour

3. A body that is constituted for an industry for the purpose of negotiating terms and conditions of employment for all employees in that industry is called _____.
 - A. Workplace level
 - B. Industry council
 - C. Joint Industrial Council
 - D. Recognition council

4. Constructive dismissal is best described as when _____
 - A. there is no more work for an employee
 - B. employee cannot do his/her job properly
 - C. the employee is dismissed without good reason
 - D. employees are forced to quit their job against their will because of the employer's conduct

5. Which statement best defines a trade dispute?
- A. Relationship between employer and employee
 - B. Any difference between an employer and employee
 - C. Any industrial action declared under the Dispute Act
 - D. Any difference between employees
6. The arbitrator shall attempt to settle a dispute referred to him within _____ days of the dispute being referred to him.
- A. 20 days
 - B. 28 days
 - C. 15 days
 - D. 30 days
7. Botswana Mining Workers Trade Union (BMWU), is an example of which type of trade union?
- A. Industrial unions
 - B. Public sector unions
 - C. Government unions
 - D. General unions
8. An employer faced with a protected strike can _____.
- A. dismiss the striking employees for participating in the strike
 - B. dismiss employees who are not striking for refusing to do the jobs of the protected strikers
 - C. dismiss the striking employees on the basis of operational requirements
 - D. approach the Labour Court for an interdict prohibiting the strike action
9. An agreement wherein an employer agrees to take cognisance of the union as the collective bargaining agent of workers is _____.
- A. Collective bargaining

- B. Recognition agreement
 - C. Organizational rights
 - D. Joint industrial council
10. When an industrial action takes place, the two parties _____.
- A. Fight each other
 - B. Accuse each other
 - C. Call lawyers
 - D. Engage each other

SECTION B –TRUE OR FALSE

[10 marks]

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

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

1. Employee participation worldwide is reflected in collective bargaining processes.
2. Mediation is the procedure whereby a third party brings the parties to the dispute together, encourages them to discuss their differences and assists them in developing their own proposed solutions.
3. An employee must be honest in all his dealings with the employer.
4. Misconduct constitutes breach of contract and may justify dismissal under the common law in certain circumstances.
5. Under the common law either party can terminate the contract of employment by giving notice.
6. Unions are not supposed to harness power resources that they come across.
7. Collective bargaining is aimed at reaching an unequitable settlement on issues of common interest.
8. An employee is not obliged to exercise reasonable care when using his employer's property.
9. Strike is the least common type of collective job action.
10. The doctrine of vicarious liability holds the employer responsible or liable to third parties for delicts committed by his employees within the scope of their employment.

SECTION C SHORT ANSWER QUESTIONS

[30 marks]

Answer ALL questions from this section.

- a) Briefly explain any three (3) common law duties of an employer. **(6 marks)**
- b) Give any three sources of industrial action **(6 marks)**
- c) Explain any three reasons for joining a trade union as an employee. **(6 marks)**
- d) Give any FOUR (4) types of information that the employer may not disclose to trade union representative even though that information is clearly relevant to the collective bargaining process? **(8 marks)**
- e) Give any two disadvantages of centralised bargaining process. **(4 marks)**

SECTION D ESSAY QUESTIONS

[50 MARKS]

Answer any TWO questions from this section.

QUESTION 1

[25 Marks]

- a) Discuss any five remedies available to the employees in case of breach of contract. **(20 marks)**
- b) With the aid of examples, explain the term vicarious liability. **(5 marks)**

QUESTION 2

[25 Marks]

Dambe is a truck driver at Van Vyke Trucking & Co. After realising that the employees of the company are not treated fairly, Dambe decides to start a new Trade Union, named "Van Vyke Truckers Union." Dambe also decides to try and unionise the employees of the company.

Dambe writes a letter requesting Van Vyke Trucking & Co to recognise the trade Union. The letter has the signature of 30 employees out of 40 employees in the company. It appears 25 of the employees who sign are truck drivers and 10 of the employees are office cleaners.

Van Vyke Trucking & Co responds to Dambe in writing stating that "We do not want to deal with Trade Unions. There is nothing wrong with one-on-one relations." They refuse for the

Employees to Unionise. They also write “you have not reached the thresh-hold required to unionise.”

Dambe is concerned about the response received, and approaches you for legal advice

- a) Advise Dambe on Van Vyk Truckers Union’s rights regarding Unionising, and whether they have reached the threshold required to Unionise. **(12 marks)**
- b) Advise Dambe of whether the Industrial Court has jurisdiction to hear the matter, and also if is the right place to bring this case to be heard. **(8 marks)**
- c) Give any five (5) rights of employees in the employment relationships? **(5 marks)**

QUESTION 3

[25 Marks]

ABC Union a representative union at BOCODOL approached management about a 10% increase in the wages of its members. BOCODOL management offers the union only 7.5%. The parties fail to reach an agreement and the dispute is referred to the industrial court for conciliation. Within two weeks of the referral on a Monday morning, the union informs the College management that because the College is not prepared to meet their demand its members will embark on a strike as from Tuesday morning.

- a) Discuss whether the strike by members of ABC Union will be protected. **(10 marks)**
- b) Assuming that the strike was unprotected, discuss the procedural requirements which must be met before employees who are engaged in such a strike may be dismissed. **(10 marks)**
- c) Define the term ‘unprotected strike’. **(1 mark)**
- d) Explain any two legal consequences of participating in an unprotected strike? **(4 marks)**