

UNIVERSITY OF SWAZILAND

DEPARTMENT OF LAW

FINAL EXAMINATION PAPER, 2009 (MAIN)

TITLE OF PAPER : LABOUR LAW

COURSE CODE : L304

TIME ALLOWED :: THREE (3) HOURS

INSTRUCTIONS : ANSWER FOUR (4) QUESTIONS
ALL QUESTIONS CARRY EQUAL MARKS

**THIS PAPER IS NOT TO BE OPENED UNTIL PERMISSION HAS BEEN
GRANTED BY THE INVIGILATOR.**

QUESTION ONE

Kholwaphi Dlamini is an employee of Newlands (Pty) Ltd. She was employed by the company in 1998 as an Internal Auditor reporting to the Managing Director of the company. On or about May 2007, Wandile Ntshangase was employed by the company as its Legal Advisor. Ntshangase plays golf with the Managing Director. In July, just a few short months after Ntshangase joined the Company, Dlamini approached the Managing Director for assistance. It turned out Ntshangase had on several times when Dlamini was working late, gone into Dlamini's office and started touching her hair and telling her how beautiful she is. Prior to working together at the company, Dlamini and Ntshangase did not know each other, and even after they started working together they only met at meetings and around the office. When he heard Dlamini's story, the Managing Director told Dlamini that he knew Ntshangase personally and that Ntshangase was, in his opinion, incapable of such behaviour. He went on to say that Dlamini should "loosen up and stop taking herself so seriously".

Early in August, Dlamini again went to see her employer about Ntshangase's inappropriate behaviour towards her and was again told that she was probably reading too much into Ntshangase's actions.

Soon after Dlamini's went to her boss for the second time, Ntshangase came into her office. This time too he went after the other employees had left for the day and started shouting at Dlamini, saying that she should stop telling lies about him to the Managing Director.

The following morning, Dlamini handed in her letter of resignation. In it she stated that she was finding it impossible to continue working for the company because of Ntshangase's behaviour and her boss's lack of interest in addressing the issue. Dlamini has approached you for advice on the matter. Advise her accordingly.

(25 Marks)

QUESTION TWO

Zababa Maduna is an employee of ABC Investments (Pty) Ltd. Zababa is a cashier and is responsible for receiving monies from the different departments within the company and preparing that money for deposit in the company bank account. As part of the procedure for receiving monies, Zababa is required to issue receipts to the departments who bring whatever monies they have collected on behalf of the company. In issuing receipts, Zababa habitually misses a digit, for instance if the amount of E1500 is deposited he issues a receipt for E500; or when the amount of E500 is deposited he issues a receipt for E50. He then pockets the amount in excess of that receipted. Zababa got away with this for about four months until his supervisor asked to see the books, at which time she discovered the anomaly. Zababa's supervisor asked for a written explanation from Zababa who replied that he had nothing to say to his supervisor. His supervisor proceeded to report the issue to the company's Chief Executive Officer who immediately wrote a letter terminating Zababa's services. Zababa has approached you for advice.

(25 Marks)

QUESTION THREE

Sabelo Zwane is an employee of Zakithi (Pty) Ltd. Sabelo has just recently been hired by the company into a recently created post. Sabelo is supposed to report to the Finance Manager. At the time when Sabelo started working, it was nearing the end of the Financial year and as a result the Finance Manager was busy preparing for the upcoming meeting of the board and was unable to sit down with Sabelo to discuss with him his duties within the company. Consequently, Sabelo sits all day chatting to his friends on his cellular phone or alternately playing games on the computer.

On the fifth day of his employment Sabelo decided to stay home because, in any event he was not doing anything at the office. He did not offer an explanation to his employers as to why he was absent. He continued to stay away from the office until seven days later,

the company driver came to his house to deliver a letter terminating his services forthwith.

Discuss all the issues that arise herein.

(25 Marks)

QUESTION FOUR

Fakudze Tsabedze is a mechanic employed as such by his local city council. Because of the nature of his work Tsabedze is required to wear overalls, gloves and goggles when he is performing his duties. On several occasions, Tsabedze's supervisors have found Tsabedze working without either his gloves or goggles and have reminded him, both verbally and in writing to wear these. Although Tsabedze continued not to wear gloves or goggles, and did not respond to any of the letters written to him in this regard, he has said when talking to anyone who asks, including his supervisor that he does not find it necessary to wear gloves or goggles and that, the gloves especially make it difficult for him to work speedily.

One day while working with a particular machine, a certain liquid splashed onto Tsabedze's hands and face. His hands and face were burnt, and he lost his sight in his left eye.

Discuss fully.

(25 Marks)

QUESTION FIVE

Tayren Roets is employed by ABC (Pty) Ltd as personal assistant to the Managing Director (MD). One day while going through her boss's electronic mail messages, Tayren came across an e-mail from the Human Resources Manager informing the MD that he had since come up with a way to decrease the escalating wage bill of the company. The email went on to say that the best way to decrease said wage bill was by retrenching certain named employees who were costing the company a lot of money and

letting the employees understudying them take over those positions because they were going to be cheaper for the company.

Tayren stood up to go to the bathroom, having made sure that she locked her office so that no one would have access. On her way to the bathroom she met Newman Mamba, one of the individuals to be affected by the retrenchment and told him about the email and its contents. Newman, at the first opportunity he got went to the Human Resources Manager to ask him about what he had heard from Tayren. The Human Resources Manager was taken aback because this information had not yet been released to the employees. After speaking with the MD, they decided to call Tayren for a hearing. They considered that since Tayren was the only person who had access to the MD's e-mail this information had to have been leaked by her. There was no other person who could have seen the email. At the hearing Tayren denied having ever seen such an email, or ever telling anyone about anything, despite the fact the Newman gave evidence at the hearing that he had gotten information on the proposed retrenchments from Tayren. Pursuant to the hearing, Tayren was dismissed from the company.

Discuss Fully.

(25 Marks)

QUESTION SIX

"An employee may be dismissed for participating in an unprotected strike".

Discuss this statement fully, citing appropriate authorities.

(25 Marks)