

UNIVERSITY OF SWAZILAND

DEPARTMENT OF LAW

FINAL EXAMINATION PAPER, 2010 (SUPPLEMENTARY)

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**

Zakhe Mhlongo is one of the consultants doing work for Sento (Pty) Ltd. He, together with all the other consultants receives no fixed salary but is remunerated by way of commission earned and his working hours are left to his discretion. Mhlongo is provided with a company vehicle, which he is allowed to use outside of working hours, for carrying out his duties. In terms of his contract with the company, Mhlongo is required to devote all his working time to his work with the company and to carry out such functions and duties as are from time to time assigned to him by the company. His contract goes on to state that all consultants are to join the company's pension and medical aid schemes. You have recently been appointed as human resources manager for the company and have been asked to appraise the consultants' contracts. In an interview with Mhlongo you gather that he considers himself an employee of the company. You talk to the Managing Director about this and he tells you that he thinks Mhlongo is mistaken, and that he is in fact an independent contractor. Draft a brief stating the true legal position in this situation.

(25 Marks)

### **QUESTION TWO**

The employment relationship gives rise to certain duties between the parties to it. Critically analyse EITHER the employer's duties to his/her employee OR the employee's duties to his/her employer.

(25 Marks)

### QUESTION THREE

Gobigagu Skhondze is the managing director of Gagu (Pty) Ltd, a company registered and operating in Swaziland. One day he got to the company premises to find two of his employees fighting. Having recently acquired a copy of the both the Industrial Relations Act, 2000 and the Employment Act, 1980 he terminated the services of both employees immediately. He told them that on the basis of section 36 of the Employment Act, he was entitled to terminate their services summarily because they were fighting on the company premises. A week later he received a copy of a report of dispute by both his employees to the Conciliation, Mediation and Arbitration Commission (CMAC) together with an invitation to attend a conciliation hearing. Skhondze was confused because he thought he had followed the law to the letter and decides to come to you for advice on the matter.

(25 Marks)

### QUESTION FOUR

Sibusiso Lukhele is an electrical engineer employed by an aviation company, Ndizani Aviation (Pty) Ltd. It is a term of his contract that the company should provide him with protective clothing for him to wear when carrying out his duties. Lukhele has only been supplied with one set of such protective clothing and even though he expressed to his superior that it was inconvenient for him to have only one set of protective clothing; he has been doing his best to cope. Despite his best efforts, Lukhele has noticed that his work clothes are now worn out and his company has done nothing to replace them regardless of his repeated written and oral requests that the company supply him with a new set. Noticing that his company was not responding to his requests, Lukhele has since written to the company informing them of his decision to refrain from his normal duties until he is supplied with the appropriate clothing. The company has responded to Lukhele's letter, stating *inter alia* that they viewed his act of refusing to work as a breach of his contract. Lukhele has come to you for advice regarding his position.

(25Marks)

### **QUESTION FIVE**

Zibonele Dlomo was employed by Sibekosabo (Pty) Ltd as a driver. Dlomo was assigned to drive one vehicle in the company, a Toyota Hilux van, which he used to deliver documents and do other errands for the company. On some days Dlomo was not required to go anywhere as there were other drivers in the company and on those days there would have been fewer errands. On or about July 2008, Dlomo's supervisor noticed that every morning Dlomo would get a petrol voucher from the office and put a full tank of petrol in the car, regardless of whether he was required to go anywhere. After an investigation it transpired that Dlomo would sell this petrol to members of the public and pocket whatever money he received. The company decided to lay a charge for fraud with the local police and suspended Dlomo without pay following his arrest by the police. Dlomo's matter was concluded at the Magistrate's Court in August, 2009 and he was acquitted of the charge. Dlomo left police custody and went home where he stayed until last week Friday, when he approached you for legal assistance. He has instructed you that he wants the company to reinstate him to his previous position and pay him arrear wages from the time he was arrested. Write a brief, informing him of his rights in the matter.

(25 Marks)

### **QUESTION SIX**

Mbenga (Pty) Ltd is a company located in the Matsapha Industrial Area. The Company, through its Chief Executive Officer (CEO) Ms. Msibi has given you instructions that it has 663 people in its employ. You are further instructed that on or about 2007 the company entered into a recognition Agreement with the Manufacturing and Allied Workers' Union (MAWU) and that 507 of its employees are members of this union. The reason that Ms. Msibi has come to you is that MAWU has recently elected one Mr.

Mamba, the Chief Financial officer, who is not a member of the Union, as its treasurer and the said Mr. Mamba has agreed to serve as an official of the union. Ms. Msibi finds this a bit problematic. When she raised this matter with the Union, the Union responded that they are aware that Mr. Mamba is not a member of the Union but that there is nothing that precludes them from electing him into office. In addition, the Human Resources Manager has been served with a notice to attend a Disciplinary Notice and on the first day of the hearing he was represented by the trade union even though he is not a member of the Union, nor is he eligible to join. Advise Ms. Msibi on the matters that arise herein.

(25 Marks)