



ZIMBABWE EZEKIEL GUTI UNIVERSITY

FACULTY OF LAW

EXAMINATION PAPER

COURSE CODE	:	LLB309
COURSE TITLE	:	LABOUR AND EMPLOYMENT LAW
DURATION	:	3 Hours
LEVEL	:	3.3
DATE	:	3 June 2019

INSTRUCTIONS TO CANDIDATES:

1. Answer any **two** questions from **Section A** and any **two** questions from **Section B**.
2. Start each question on a new page of your answer sheet..
3. Each question carries **25** marks.
4. Credit shall be given for referring to case law, statutes or any other authorities wherever applicable.
5. Notes, handouts and textbooks are not allowed into the examination.
6. Cellphones are not allowed into the examination room.
7. Begin each answer to a full question on a fresh page.

SECTION A

QUESTION 1

Madziwa Workers Union signed an agreement with their employer's organization on 1 January, 2016. The agreement was later reduced into a Collective Bargaining Agreement which was published as Statutory Instrument 150 of 2016. It was agreed that this Collective Bargaining Agreement resolved the dispute over salaries which was pending in the Labour Court. Therefore, the parties withdrew the matter from the Labour Court. The clause dealing with salary reviews stated that the parties had agreed to base salary reviews on year-on-year inflation figures prevailing at the relevant time. One of the clauses stipulated that the issue of actuals would be dealt with by individual institutions. A disagreement about how to interpret the agreement led to the matter being referred to the Designated Agent. The employer's organization argued that any salary increment should be based on inflation figures for 2016 which were pegged at five percent. The employees demanded a salary increment of twenty-five percent. The Designated Agent awarded a ten percent increment. The ten percent increment by the Designated Agent was upheld by the Labour Court.

Required

Citing relevant authorities, advise the parties on their legal remedies and the correct procedures to be followed in enforcing the remedies. [25 marks]

QUESTION 2

Tendai was employed by Communications Wireless (Pvt) Ltd as an accountant. He alleged that he had been unlawfully dismissed and the matter was referred to the Conciliator. The Conciliator found that the employer was supposed to pay damages for unlawful dismissal. The Conciliator ruled that the parties were free to approach him for quantification of damages if they did not agree on the quantum. The employer refused to discuss the issue of the quantum of damages with Tendai. The employer proceeded to file an appeal to the Labour Court. The employer further applied to the Labour Court that the Conciliator should not conduct further proceedings pending the outcome of the appeal. Tendai proceeded to file an application with the Conciliator for quantification of damages. The Conciliator proceeded to quantify the damages in the presence of both parties. A decision was made by the Conciliator on the quantum of damages.

You have been approached by Communications Wireless (Pvt) Ltd as its legal advisor.

Required

Advise your client, Communications Wireless (Pvt) Ltd, on the legal position and the next course of action to be taken by Tendai. [25 marks]

QUESTION 3

- a) Moses was charged with various offences by his employer, the Grain Marketing Board. A hearing took place and he was to be dismissed. However, he was told that he could resign to avoid dismissal and he complied the same day. Afterwards, he wrote an appeal to the Appeals Officer but the appeal was rejected as he had already resigned. Moses argued that he only resigned because he was forced to do so.

Required

Advise Moses on whether he has any remedies. (10)

- b) After an investigation by the works council, Peter was found guilty of negligence which had caused his employer financial loss. The penalty which was imposed was demotion. Peter notified his employer of his intention to appeal against the determination but was told to report for duty. Acting on legal advice that the noting of appeal suspended the decision of the works council, Peter stayed away from work. For this, he was charged with and found guilty of absenting himself from duty without reasonable cause. He was dismissed from his employment

Required

Advise the parties on their rights and obligations (15)
[Total: 25 marks]

SECTION B

QUESTION 4

‘The Labour Court should be reformed to properly dispense justice in labour disputes.’
Critically evaluate the above statement. [25 marks]

QUESTION 5

Discuss the legal principles which regulate payment of remuneration to employees. [25 marks]

QUESTION 6

“Controversy has emerged over whether back pay is a distinct statutory remedy or part of damages in lieu of reinstatement”. With reference to decided case law authorities and statutory provisions, discuss the above statement. [25 marks]

END OF PAPER