

ZIMBABWE EZEKIEL GUTI UNIVERSITY

FACULTY OF LAW

LABOUR AND EMPLOYMENT LAW-LLB309

DURATION: 3 HOURS

22 JAN 2020

23 JAN 2020

INSTRUCTIONS TO CANDIDATES

1. Answer any **two** questions from Section **A** and any **two** questions from Section **B**.

INFORMATION FOR CANDIDATES

1. Credit shall be given for referring to case law, statutes or any other authorities wherever applicable.
2. Notes, handouts and textbooks are not allowed into the examination.
3. Cellphones are not allowed into the examination room.
4. Begin each answer to a full question on a fresh page.

SECTION A

QUESTION 1

Chamunorwa was dismissed from his employment by Shanduko Fertiliser Company, the employer. He decided to appeal to the Labour Court. Hence he came up with the following grounds of appeal;

- a) The Disciplinary Authority was not properly constituted.
- b) The Disciplinary Authority did not prove all the essential elements of the charges I was facing.
- c) The Disciplinary Authority erred by not giving me the opportunity to cross examine witnesses.
- d) The Disciplinary Authority failed to note that the penalty given to me, even if one is to assume that I was guilty, was too excessive in the circumstances.

Required

With reference to decided case law authorities and statutory provisions, discuss the approach which the Labour Court is likely to take on each of the raised grounds of appeal. **[25 marks]**

QUESTION 2

Mr. Moyo and Mr Phiri were employed by Pfura Enterprises on fixed term contracts of 9 months duration. Before the expiry of the contract, Zvamunoda Enterprises terminated their contracts of employment 3 months earlier than the expiry date. Mr. Moyo and Mr. Phiri were to be paid one month pay in lieu of notice. Zvamunoda Enterprises then reconsidered its position. It cancelled the termination and reinstated the contracts of employment with full pay up to the dates the fixed contracts would have expired. After the contracts had expired, they were not renewed.

Required

- a) Advise Mr. Phiri and Mr. Moyo on the legal position which determines the status and duration of their contracts. (10)
- b) What procedure, if any, should they follow to get the required legal protection? (15)
- [25 MARKS]

QUESTION 3

Nyati was employed by Lifestyle Holdings as a Finance Manager. On the 5th of October 2018, he was send on paid leave and was then suspended on 19 November 2018 on allegations that he had breached the code of conduct. After the initial suspension he was subjected to re-suspensions and reinstatements by Lifestyle Holdings on the basis that the actions were meant to regularize the anomalies attendant to the initial suspension process. During that process Nyati referred the matter to the Labour Officer on the basis of the delay in finalizing the matter. After referring the matter to the Labour Officer, Nyati was invited to attend a disciplinary hearing by the employer where he was found guilty and dismissed. Nyati pursued his matter with the Labour Officer who ordered his reinstatement. Lifestyle Holdings was not happy with the decision of the Labour Officer.

Required

Advise Lifestyle Holdings on the course of action which it can take and the prospects of success in the chosen course of action. [25 marks]

SECTION B

QUESTION 4

How effective is the dispute resolution process by Labour Officers in the light of Labour Amendment (Number 5) Act of 2015. **[25 marks]**

QUESTION 5

Evaluate the notion that the duty to respect the employee's entitlement to membership of trade unions and worker's committees is the most important duty of the employer. **[25 marks]**

QUESTION 6

Discuss the nature and importance of show cause orders in dealing with collective job action. **[25 marks]**

[END OF EXAMINATION -100 MARKS]