ASSIGNMENT 2 FEEDBACK TUTORIAL LETTER

Dear Student

Thank you for submitting your second Labour Law 1A assignment in due time. Like your first assignment, your performance in the second assignment was below average. This is attributed to a number of factors I outlined below.

Below are some of the shortcomings that I observed when marking your assignment:

1. Failure to adequately refer to your sources of information.

Many students just copied and pasted the required information for the assignment from the Internet without acknowledging their sources of info thereto. Please be warned as this is tantamount to plagiarism—a very serious academic offence. Some of you could have scored more marks had you properly referenced your work. I deducted marks from some of your assignments because of issues pertaining to either improper referring or no reference at all.
2. Copying and pasting each other’s work

Several students were caught copying and pasting each other’s work. This is a form of cheating and often attracts a heavy punishment from COLL. You are requested to independently do your assignments as this will assist you to prepare for your final exams. Group assignments are allowed but producing the same work as a result of working together is unacceptable.

3. Failing to read questions and understanding them

Like in your first assignment, some of you failed to comprehend assignment questions. As tertiary students, you are expected to read and understand your assignment questions before attempting to answer them. The quality of your answers to some of the questions were dismal.

4. Overreliance on the study guide

It seems most of you, if not all of you over relied on the Study Guide for answers. Please be reminded that the Study Guide is what it is-i.e. a Guide. Although it is a useful tool for the course, it is nevertheless not sufficient. Labour Law is a legal course and as such it requires students to research beyond the Study Guide. They are many textbooks and other materials pertaining to the subject in your library and the internet. Please be advised that students tend to score more marks when consulting more than one source for their assignments. You are thus encouraged to consult, while acknowledging your sources, as many materials as you can in your future assignments.

5. Giving long answers to questions that requires you to be concise

Some of you provided long and irrelevant answers to questions that required you be crisp and concise. When providing answers, you are required to be guided by marks allocated to the question. Providing long answers to questions will not result in you getting all the marks availed to you. Please heed this warning and do better in your next assignment.
6. Unable to fully comprehend the legal nature of the subject

Importantly, by reading through your assignment sheets, one can deduce that most of you are unable to fully comprehend the legal nature of the subject. I am re-emphasising the point that Labour Law is a legal course and as a consequence, it should be treated as such. I am aware, that most of you lack the necessary legal background to fully understand the nature and content of this subject, but you are nevertheless expected to think like a “lawyer” when approaching questions asked. You will score more marks if you refer to legal authorities when making your argument. Examples of legal authorities are: case law, statutes to mention but a few.

7. Using the equivalent of the South African Labour Act to answer questions that pertains to the Namibian situation.

Like in your first assignment, some of you used South African labour law related legislation to answer some of the assignment questions. Although the legal system of Namibia and South Africa are similar, they are nevertheless not the same. Some students used the South African equivalent of the Namibian labour Act to argue a Namibian scenario in the assignment. This is unacceptable and should not be repeated in your next assignment. You are advised to use Namibian labour related laws and policies in all your assignments as this will be crucial when you enter the industry.
Below are answers to the assignment questions

Assignment 2

MEMO FOR ASSIGNMENT 2.

Assignment 2.

Question 1

There is only ONE correct answer for each question. Negative marking will not be applied but answers to questions will not be marked where more than one answer has been given. Choose the correct answer.

1.1 Choose the false statement from the following:

(a) Payment in kind means payment in the form of goods and services instead of money
(b) Monetary remuneration is that part of the remuneration that is paid in money
(c) The Labour Act lays down minimum wages
(d) The employer’s duty is to pay the employee a salary or wage strictly and punctually in terms of the agreement.
(e) Basic wage means the monetary remuneration part of the remuneration plus the cash equivalent of payment in-kind, but excludes allowances such as travel and subsistence etc. (2)

1.2 Choose the correct statement from the following:

(a) In order to calculate the average weekly remuneration or basic wage of such an employee, the total amount of remuneration earned over a period of the immediately preceding 14 (fourteen) weeks of work or the shorter period of work, if applicable, must be divided by the total number of weeks the employee worked.
(b) In terms of section 11 of the Labour Act, the employer is obliged to pay any remuneration (both in money and in kind) not later than two hours after completion of the ordinary hours of work on a normal pay day.
(c) The employee may request the employer to make the payment in kind portion at a different time than stipulated.
(d) The employee may be paid in a shop, bottle store or other place where intoxicating liquor is sold or stored or in any place of amusement, unless the employee is employed in that shop.
(e) All of the above (2)

1.3 In terms of the Labour Act, Act 11 of 2007, an employer is obliged to:

(a) Provide accommodation to all employees or provide them with a housing allowance
(b) Provide transportation to all employees or provide them with a transport allowance
(c) Provide accommodation to an employee who is required to live at the place of employment or to reside at any premises owned or leased by the employer
(d) Provide transportation to the place of recruitment to all employees who are dismissed at any place other than the place of recruitment.
(e) Provide cell phone allowances to employees with higher qualifications

1.4 Night work is described as any work performed between the hours of:

(a) 20h00 and 07h00
(b) 19h30 and 06h30
(c) 21h00 and 06h00
(d) 06h00 and 06h00
(e) None of the above

1.5 An employee is entitled to a meal interval of at least one hour continuous work of unless shortened by agreement with the employee (may not be shortened to less than 30 minutes and written notice to the Permanent Secretary of such an agreement)

(a) 7 hours
(b) 4 hours
(c) 8 hours
(d) 10 hours
(e) 5 hours

1.6 An employee is entitled to a weekly interval of at least consecutive hours

(a) 24
(b) 30
(c) 12
(d) 36
(e) 48

1.7 Choose an incorrect statement below

(a) The objective of the Employees’ Compensation Act is to compensate employees for disablement caused by work related accidents or diseases contracted out of, and in the course of their employment or for death resulting from such accidents and diseases.
(b) Family among other things means a child (including a child adopted in terms of any law, custom or tradition).
(c) During the period of maternity leave, the provisions of the contract of employment shall remain in force and the employee is entitled to the remuneration payable except the basic wage.
(d) Employees living on agricultural land may not be provided with accommodation
(e) All of the above

1.8 Before the employee (or his or her family) will be able to claim compensation from the employer, the following will have to be proved:

(a) The employer or somebody else for whose conduct the employer is liable (vicarious liability) must have committed an act or failed to act (an omission).
(b) The act or omission must be the cause of the personal injury or damage
(c) Damage or personal injury must in fact have resulted
(d) The injured party should have been an employee of the employer for a period of 10 years or more
(e) A, B and C

1.9 A common law remedy of..............is a court order in terms of which the party committing the breach is ordered by the Court to fulfil the contractual obligation.

(a) Cancellation
(b) Damages
(c) Specific Performance
(d) Interdict
(e) Rescission of judgment

1.10 choose the correct statement below. Dismissal will be appropriate sanction if:

(a) There is no alternative sanction which will be effective or practical
(b) Corrective measures, such as warnings and demotion are not appropriate in the given circumstances
(c) The misconduct/transgression results in a material breach of the employment agreement
(d) The misconduct (or the repetition thereof) is of sufficient serious nature that it renders the continuation of the employment agreement impossible i.e. the employer-employee relationship had broken down irretrievably
(e) All of the above

Question 2.

Discuss the remedies for breach of any term or condition of employment. Your discussion should be between 350 and 400 words.
Question 3

Francisco Redbeard works as an Engineer at a Ship repairing company at Walvis Bay. He is the most experienced Engineer in the company and as a result he does most of the work. He is also responsible for supervising junior Engineers. After a hard day at work, he decided to go to a local pub. After downing several pints of beer. He got into a heated argument with a bar tender. Fists were exchanged and the police were called in. He was promptly arrested and spend a day in holding cells. Luckily for him, the bar tender did not press any charges. The following day he went back to work only to be told that he has been fired. According to the company, his street fight brought the name of the company into disrepute.

Is the action of the company justified in this regard? (10)

Question 4

Hans Kaapse Dans is employed as a driver for a construction company. One morning, as he was pulling out of the parking lot at a local warehouse, he hits another vehicle. Incensed, the owner of the car decides to sue for damages. However, he is not sure of whom to institute action against. Hans or the construction company.

How would you advise him? (6)

Total marks (50)

Feedback to question 1. 2 marks each

1. C
2. C
3. C
4. A
5. E
6. D
7. D
8. E
9. C
10. E
Feedback to question 2. 14 marks

Common law remedies are:

- **Specific performance.**
  An order for specific performance is a Court order in terms of which the party committing the breach is ordered by the Court to fulfil the contractual obligations. The order may take the form of: an order to do something; or to restore something or an interdict to refrain from doing something contrary to the victim/innocent party’s rights.

- **Cancellation.**
  The remedy of cancellation (termination) of a contract of employment is only available to either party if the other party’s actions amount to repudiation of the contract, or where the breach is so serious that it renders the continuation of the employment relationship impossible.

- **Damages.**
  The loss suffered by a victim of a breach of contract is known as damages. Damages may be claimed whether the contract is upheld or cancelled. Breach of contract does not necessarily cause the innocent party to suffer loss. The plaintiff is not entitled to claim damages merely because of breach of contract, s/he must prove that damages were actually suffered, as well as the extent of damages.

- **Refusal to pay/work.**
  An employee is only entitled to receive remuneration for work actually done in terms of the common law rule of ‘no work, no pay’ and, in the same way, an employee may refuse to work on the basis of the “no pay, no work” principle. The employer is accordingly allowed to deduct an amount proportional to the absence from the employee’s remuneration and will not be deemed to be in breach of contract.

Similarly, the refusal to work in the event of non-payment of remuneration will not constitute a strike or breach of contract, but rather a legitimate exercise of contractual rights. An employee also has the legitimate right to refuse work until a dangerous situation at the workplace is corrected, i.e if the employer failed to comply with the duty to keep the workplace safe and healthy.

**Statutory remedies**
In addition to the common law remedies, the parties may utilise the statutory remedies provided for in the Labour Act. The said Act provides dispute resolution measures in a variety of matters, for example, disputes concerning fundamental rights and protections (child labour, forced labour, discrimination, sexual harassment and freedom of association); disputes concerning basic
conditions of employment (remuneration, hours of work, leave, accommodation and termination of employment) health, safety and welfare of employees; unfair labour practices.

Feedback to question 3. 10 marks

For the company’s action in this regard to be justified, the following must be adhered to:

- A fair disciplinary action must comply with both substantial (fair and valid reason) and procedural (fair procedure) fairness.
- Part of fair procedure is that the employee should be notified of the hearing by the employer.
- The notice should give details about the charges, be served timeously to allow the employee sufficient time to prepare and inform the employee of his/her rights to representation.
- The notice need to make provision for acknowledging receipt thereof. If the employee does not want to acknowledge the notice, it need to be handed to the employee in the presence of witnesses.
- A disciplinary hearing should be held in the presence of the employee.
- A hearing in the absence of the employee would be allowed in circumstances where a notice of the hearing was served, but the employee refuses to attend the hearing or where the employee absconded and cannot be traced.
- If the employer is unable to prove that Linda received the notice of hearing, the hearing in her absence would have been procedurally unfair.
- Negligence, theft, fraud and insubordination will all be valid and fair reasons for dismissal.
- Substantive fairness will be complied with if it can also be proven that the employer has treated similar cases in the past in the same manner, i.e. dismissal.
- Even though the disciplinary action might have been substantively fair, the disciplinary action will still be deemed as unfair, because it was not also procedurally fair.

Feedback to question 4. 6 marks

- In this scenario the doctrine of vicarious liability applies.
- Vicarious liability is a legal doctrine that assigns liability for an injury to a person who did not cause the injury but who has a particular legal relationship to the person who did act negligently.

For an employer to be held liable for the delicts of the employee, the aggrieved party can prove the following:

- There was an employer-employee relationship between the parties.
- The delict was committed in the course and scope of the duties of the employee and
- While promoting the interests of the employer.
- If Hans Kaapse Dans is an employee of the said construction company, the employer could be held liable as the other requirements have been met.

Total marks: (50)