FEEDBACK TUTORIAL LETTER

2ND SEMESTER 2021

ASSIGNMENT 1

LABOUR LAW TUTORIAL 1B
LAL112S
Greetings to you all. I hope everyone is ok under the circumstances. First of all, let me use this opportunity to thank most of you for submitting your assignment 1 on time. Having said this, I am glad many of you passed the assignment. I am specifically happy for students who managed to score marks above 75%.

Like your assignments in semester one, many of you repeated the same mistakes in assignment 1 of semester 2. Below is the summary of shortcomings that I discovered while marking your assignment 1.

Plagiarism

Like last semester, I observed that many of you cite sources without acknowledging their authors. Plagiarism remains a challenge for many of you. Please be advised, plagiarism is a serious academic offence which can attract a sanction from the University. I therefore urge you to acquaint yourselves with NUST’s rules and regulations pertaining to academic referencing. Every source of information you use in answering your assignment questions should be properly referenced. Failure to do so, leaves me with no choice but to mark you a zero.

Using irrelevant sources from other countries to answer assignment questions

Although nothing prevents you from using any materials to answer your assignment questions, it is also important to note that such sources though persuasive are largely irrelevant in the Namibian context. Please consult relevant and locally sourced materials to argue your case in the assignment. Some of you even went as far as citing materials from jurisdictions such as Canada, Iceland, Luxembourg etc. Countries with legal systems that are completely different from ours.

1. Academic dishonesty

I have also realized a growing and worrying trend of students copying each other’s work. This is not only a serious academic, offence, but an issue which borders on ethics. This type of behavior is no different from plagiarism. I wish to further inform you that I have the discretion to mark your work zero if I discover that students submitted an assignment that is exactly the same i.e word for word, mistake for mistake. Therefore, I urge you to refrain from this conduct.


In this assignment I observed that some of you copied and pasted provisions directly from the Labour Act without scrutinizing them. This kind of behavior is tantamount to lazy plagiarism. When you cite the relevant provisions from the Labour Act, try by all means to paraphrase them.
Having said what I said above, I hereby wish you the best in your next assignment.
Below is the memo and guidelines for assignment 1.

Question 1
Match or fill in a word or phrase to statements below

1.1 Constructive dismissal  (1)
1.2 One week  (1)
1.3 International law  (1)
1.4 Deadlock  (1)
1.5 Trade Union  (1)

Question 2
Answer the following statements as either true or false and briefly motivate why?

2.1 False. The Minister may do so  (2)
2.2 False. This is the employer's remedy against striking workers.  
(2)
2.3 True. For as long as the strike is lawful  
(2)
2.4 True. Any change of employment conditions should be agreed upon with the employee. (2)

2.5 False. An arbitration award can be appealed in the Labour Court. (2)

Question 3

3.1 Seelow O Plata is a youth activist who is interested in labour issues. He is currently conducting a research paper on exclusive bargaining. He is referred to you by his supervisor for advise in this regard. He wants to know the requirements of becoming a bargaining agent. How would you advise him? (6)

• To qualify for recognition as exclusive bargaining agent of employees in a bargaining unit, a registered trade union must represent the majority of the employees in a bargaining unit. (1)

• A majority means 50% plus one of the employees in bargaining unit has joined the union. (1)

• The Labour Act stipulates that an employer or employer’s organisation must not recognise a registered trade union as an exclusive bargaining agent, represents the majority of employees in the bargaining unit. (1)

• A registered trade union may seek recognition by delivering a request in the prescribed form to an employer or an employer’s organisation, while a copy of such request must be submitted to the Labour Commissioner together with proof that the request has been served on the employer. (1)

• The Labour Commissioner may request proof that the trade union represents the majority of the employees in the bargaining unit. (1)

• Within 30 (thirty) days of the receipt of the request, the employer or employer’s organisation must notify the trade union in the prescribed from that it either recognises the trade union as the exclusive bargaining agent of the employees in the bargaining agent of the employees……(1)

• Students can elaborate further based on what is provided for under page 61 and 62 of the study guide.
3.2 While interviewing you, he asks you what are the advantages of an exclusive bargaining agent. How are you going to answer him? (5)

- Once recognised as an exclusive bargaining agent, the trade union concerned obtains sole bargaining rights. (1) This means that the employer is legally prohibited from negotiating with any other trade union as long as the recognition agreement remains in force in relation to the employees falling in that bargaining unit. (1)

- The authorised representative of an exclusive bargaining agent may request permission to enter the employer’s premises during working hours to recruit members or to perform any function in terms of a collective agreement, (1) the union’s constitution or the Labour Act, while a registered trade union may only request the employer to perform these functions outside working hours (1)

- Only an exclusive bargaining has the right to negotiate the terms of and enter into a collective agreement with an employer or a registered employer’s organisation. (1)

Question 4

4.1 Agrippa van reaper and 15 others are General workers at a certain clothing store in Windhoek. Due to the covid crisis, the store decides to reduce their working hours and by implication their salaries by a third. Agrippa and his co-workers are not happy about this arrangement. They decide to go on strike. However, their store manager threatens them with dismissal if they do so. They decide to come to your law firm specialising in labour matters. They seek your advice on the legality of their employer’s threats to dismiss them for planning to hold a strike. How will you advise them? (6)
• The right to strike is constitutionally guaranteed as per article 21 (1) (f). (1) Even though the employer’s right to take industrial action is not guaranteed in the Constitution, the Labour Act accords the same status to both parties by granting the right to strike to employees and the right to lock-out to employers in the equivalent circumstances. (1)

• A strike or lockout should be an action of last resort. (1) The extent to which a strike or lockout interferes with the employer’s production and the fact that employees do not get paid for the duration of the strike or lockout make either form of industrial action a no-win situation for either party. (1)

• Strikes are the means by which employees exercise their collective right to withdraw their labour and by which the employer’s ability to do without labour is weighed against the employee’s capacity to endure without pay. (1) Strikes are intended to cause harm to not only the employer, but also to non-striking employees and even customers and suppliers. (1)

• Apart from being allowed to picket for the purpose of peacefully demonstrating support for the strike, all the striking workers may lawfully do in support of their strike is to withhold their labour, either partially or completely. (1) They are not entitled to sabotage machinery, assault or intimidate fellow workers or take other similar actions that sometimes characterise strike action. (1) If the provisions of the Labour Act with regards to a strike or lockout action are not followed, it shall be regarded as unlawful and also constitutes a breach of contract. (1)

Students can mention any 6 of the above answers.
4.2 After failing to reach an agreement on salary increment and other benefits, a group of medical doctors and nurses decide to go on strike. However, the Ministry of Health and Social Services applies for an urgent interdict in the High Court to prevent these health workers from going on strike. The Ministry argues that as a consequence of the strike, many lives will be lost. Is the Ministry’s argument in this regard valid?

- The Labour Act recognises the fact that certain employees are engaged in providing services that are necessary to maintain the health and safety of the communities that are recipients of such services. (1)

- Essential service is defined as a service that, if interrupted, would endanger the life, personal safety or health of the whole or any part of the population of Namibia and which has been designated as such in terms of section 77 of the Labour Act. (1)

- The Labour Act makes provision for the establishment of an Essential Services Committee, one of the committees of the Labour Advisory Council, which must recommend to the Labour Advisory Council all or part of a service to be an essential service if, in the opinion of the said committee, the interruption of that service would endanger the life, personal safety or health of the whole or any part of the population of Namibia. (1)

- Employees engaged in a designated essential service may not strike and may not locked out by their employer. (1) The prohibition of strike action by essential service employees constitutes a limitation on the constitutional right to strike, but the limitation has not been challenged and is likely to be found justifiable. (1)
Since essential service employees may not strike, they are entitled to refer all disputes for arbitration. (1) The Labour Act provides that any party to a dispute of interest who is prohibited to participate in a strike or lockout because that party is involved in an essential service may refer the dispute to the Labour Commissioner after a copy of the has been served on all other parties to the dispute. (1)

**Question 5**

5.1 Mokelle Mbembe is a Professor of Labour Law at NUST. The Faculty of Human Sciences requests him to teach another subject called Law for Public Managers without being remunerated for this extra work. He refuses and the university threatens to institute disciplinary action against him. He consults a Lawyer who advises him seek the intervention of the Labour Commissioner. Both him and NUST representatives agrees to solve the dispute through conciliation instead of taking it to the High Court for adjudication. Why do you think they chose conciliation as opposed to the High Court to settle their dispute? (9)

- Conciliation is a private and confidential process where the parties can freely explore options
- The parties keep control of the process because they control the outcome
- The parties determine and shape the terms of any settlement
- The conciliation process is relatively informal and flexible process
• The parties do not need legal representation

• In shaping the outcome of the process the parties use their own notion of fairness rather than having one imposed on them

• The process can assist to build relationships

• Conciliation is appropriate if the parties are unable to communicate effectively with each other

• The conciliation process is relatively inexpensive and quick

5.2 Can a lawyer represent a party during the arbitration process?

(4)

• This can only occur if the parties to the dispute agree (1) or

• At the request of a party to a dispute, (1) the arbitrator is satisfied that:

• -the dispute is of such complexity that it is appropriate for a party to be represented by a legal practitioner and (1)

• -the other party to the dispute will not be prejudiced or (1)

Total marks

(50)