FEEDBACK TUTORIAL LETTER

2nd SEMESTER 2019

ASSIGNMENT 1

LABOUR LAW 1B

LAL112S
Feedback tutorial for assignment 1. Labour Law 1B

Thank you all for submitting your assignments on time. Most of you performed poorly in assignment one. I can only attribute this to your inability to read and understand your assignment questions before attempting to answer them.

Below are my comments and/or observations pertaining to your first assignment.

1. **Plagiarism**

I have noticed that many of you still struggle to properly refer to your sources of info. Plagiarism is a serious academic offence and may incur some severe penalties. Please acknowledge all your sources of info you used in the assignment. You are further requested to acquaint yourself with NUST’s rules and regulations pertaining to plagiarism.

2. **Over-reliance on the study guide.**

Please use other materials to answer your assignment questions. The study guide as the name implies, is a guide and does not contain all the necessary information for the subject. You are therefore requested to consult as much materials from the library and the internet as possible.

3. **Using South African Labour related laws and policies in making your arguments**

I have also noticed that some of you over-relied on South African law to make your arguments. Although this is entirely not wrong, you are nevertheless still required and overwhelmingly expected to use Namibian labour related laws and policies in your assignments. After all, all the case studies used in your assignments relate to the Namibian situation.

In your next assignment I hope you will address my concerns and do better.
Question 1

Choose the correct answer from the given options in each of the following questions. There is only ONE correct answer for each question.

1.1 ………………is one of the most common reasons for which an employer terminates the contract of employment

(a) Failure to produce a medical certificate after missing from work because of illness

(b) Refusing to work overtime

(c) Poor work performance

(d) Refusing to obtain the necessary qualifications for the job

1.2 Promotion does not only relate to an increase in salary and benefits, but it always entails an increase in………………………

(a) Responsibility and status

(b) More benefits such as vacation days and medical coverage

(c) The ability to make binding decisions

(d) All of the above

1.3 During a lawful strike action:

(a) Employees may be dismissed for abscondment

(b) Employers are prohibited from paying any remuneration to the striking workers, as the “no work, no pay’ principle prevents the employer from paying them.

(c) Employees must require the non-striking workers to do the work of the striking workers.

(d) As a general rule, an employer is not allowed to hire any individual to perform the work of a striking or lock-out employee.
1.4 A picket, as regulated by the Labour Act 11 of 2007, can be described as:

(a) A demonstration at, near or inside the place of employment in furtherance of a strike

(b) A strike action, as it is an orchestrated stay-away action where workers publicly complain about conditions at the workplace.

(c) A demonstration where only members or officials of a registered trade union may take part.

(d) All of the above. (1)

1.5 The following article in Convention 158 of 198: Convention concerning the Termination of Employment at the initiative of the employer states that the employment of a worker shall not be terminated unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or business.

(a) Article 7

(b) Article 4

(c) Article 11

(d) Article 13 and 14 (1)

1.6 Choose the incorrect statement:

(a) The purpose of probation is to provide the employer with the opportunity to evaluate the employee’s performance and to give the employee instruction, training, guidance and counselling in order to allow the employee to render satisfactory service as required by the employer before confirming the appointment.

(b) Employees do not have an automatic right or entitlement to training and therefore cannot demand training as a matter of right, unless such a right is secured in terms of the contract of employment, company policy or a collective agreement or where the employee can show that s/he had a reasonable expectation to be trained.

(c) Without a pending procedure, they can still be a valid suspension

(d) If conciliation takes place, the Minister of Labour appoints a conciliator (1)
1.7 Which of the following is not a benefit of an exclusive bargaining agent

(a) The authorised representative of an exclusive bargaining agent may request permission to enter the employer’s premises during weekends and public holidays to recruit members or to perform any function in terms of a collective agreement.

(b) 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, 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.

(c) 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.

(d) A and B are correct

(1)

1.8 An employer is entitled to retain a collection fee of a maximum of ...............of the total amount deducted and the remaining money deducted must be paid to the trade union within 7 days of the end of the month in which the deductions were made.

(a) 7%

(b) 12%

(c) 9%

(d) 5%

(1)

1.9 Which of the following is a correct statement. The Labour Act provides that a collective agreement binds:

(a) The parties, the labour commissioner and the arbitrator to the agreement

(b) Members of any registered trade union that is a temporary party to the agreement

(c) Members of any registered employers’ organisation that is a party to the agreement.

(d) All of the above.

(1)
1.10. An employee is entitled to resume employment within.............days of the date that the strike or lockout has ended or that the employee became aware or could reasonably have become aware of the end of the strike or lockout, unless the employee has been dismissed for a fair and valid reason.

(a) 7 days

(b) 14 days

(c) 5 days

(d) 3 days

Question 2

State whether the following statements are true or false and motivate your answer.

2.1 The Labour Act does not impose a duty on registered trade unions, employers’ organisation to bargain.  

2.2 Every worker has the right to join and form a trade union.

2.3 There is no extension of a collective agreement to non-parties.

2.4 The “no work, no pay” principle is unconstitutional and contrary to Labour related laws in the country.

2.5 An employee can be dismissed for taking part in a strike

Question 3

Cudjoe van Wyk is a shop steward at J and B grocers and restaurant. One day he got into a heated argument with one of the clients when he was racially abused by the 7 year old son of the said client. Upon hearing, this Cudjoe was immediately dismissed from work. According to the Manager of J and B grocers and restaurant, the client is always right and Cudjoe’s dismissal was justified.

How would you advise Cudjoe in this regard?
Question 4

The right to strike is constitutionally guaranteed. Please discuss

Question 5

Nangula ya Jihad is a nurse at Central hospital and she is informed that all public workers will be going on strike next month to demand a 6% pay increase. She informs her boss that she will also down her tools and join the strike. To his surprise, she is reprimanded by her boss and threatened with disciplinary action.

Is the conduct of the boss in this regard justified?

Question 6

After working as an Engineer for 6 years, Boris Manjinela is summoned to the Human Resource office of his company Jackjill Engineering Services. He is then informed that his pension and medical aid has been increased by 13% effective end of the month. He was also informed that due to the financial problems affecting the company, he will have to at least work on Saturdays twice a month without claiming an overtime payments.

Boris Manjinela, is not happy with this new conditions of employment, he comes to you, a Lawyer specialising in Labour Law for advise. How are you going to advise him?
Assignment 1 memo

Question 1

1.1 C
1.2 A
1.3 D
1.4 A
1.5 B
1.6 C
1.7 D
1.8 D
1.9 C
1.10 D

(10)

Question 2

2.1 True. (1) The Labour Act does impose a duty on registered trade unions, employer’s and employers organisations to bargain. However, this is not a general duty-only in situations where the provisions of the Labour Act or a collective agreement require such a party to bargain collectively. (1)

2.2 True. (1) Both the Constitution of Namibia and the Labour Act allows every worker to join and form a trade union. (1)

2.3 False. (1) The parties to a collective agreement may request the Minister, in the prescribed form, to extend that agreement to non-parties, provided that, inter alia, the agreement is not in conflict with the Namibian Constitution. (1)

2.4 False. (1) The Labour Act permits the “no work, no pay” principle. When a person is employed, it is expected that the work assigned will be carried out. When this work is not done, the employee is not eligible for payment of any salary. (1)

2.5. False. (1) If the strike is lawful, an employer is not allowed to dismiss the employee, unless such an employee committed misconduct during the strike. (1) (10)
**Question 3**

This amounts to unfair dismissal. 

(1) Cudjoe was not given the right to be heard and represented in a proper disciplinary enquiry. 

(1) Section 86(15) (d) of the Labour Act states that if there is a dispute about the fairness of a dismissal, the dismissed employee may refer the dispute in writing to the Labour Commissioner and serve a copy of the said notice on all other parties to the dispute. 

(1) Such dispute must be referred within six months of the date of dismissal. The Labour Commissioner must thereupon refer the dispute to an arbitrator to resolve the dispute through arbitration. 

In any proceedings concerning a dismissal, the employee only needs to establish that he/she has been dismissed and, unless the employer can prove that the dismissal is fair, it is presumed to be unfair. 

(1) If an arbitrator finds a dismissal to be unfair, the arbitrator may, amongst other, order the reinstatement of an employee. 

**Question 4**

Yes. The right to strike is a constitutionally guaranteed right. 

(1) The right to strike is guaranteed in Article 21 (1) (f) of the Namibian Constitution, where it is stated that “All persons shall have the right to withhold their labour without being exposed to criminal penalties”. 

(1) Even though the employer’s right to industrial 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 stipulated circumstances. 

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 this form of industrial action a no-win situation for either party. 

(1) Apart from being allowed to picket for the purpose of peacefully demonstrating support for the strike, all that 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 characterize 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. 

(8)
Question 5

Nangula ya Jihad is a nurse at Central hospital and she is informed that all public workers will be going on strike next month to demand a 6% pay increase. She informs her boss that she will also down her tools and join the strike. To his surprise, she is reprimanded by her boss and threatened with disciplinary action.

Is the conduct of the boss in this regard justified? (7)

Nangula ya Jihad cannot go on strike because her kind of job is designated as an essential service. (1). An 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). As stated before, employees engaged in a designated essential service may not strike and may not be locked out by their employer. (1) The prohibition of strike action by essential service employees constitutes a limitation on a 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)

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 notice has been served on all other parties to the dispute. (1) The Labour Commissioner may then refer the dispute to an arbitrator to arbitrate the dispute in terms of the Labour Act. (1)

Question 6.

This is tantamount to unilateral change of any term or condition of employment. (1). In terms of the common law any unilateral change of a contract of employment is a breach of contract. (1). Repudiation by the employer gives the employee the right to either accept the repudiation (cancellation) or claim damages or to reject the repudiation and hold the employer to the contract (specific performance). (1) Any change to the terms and conditions of employment of an employee, including status, job grading, salary, job description, working hours, and location of employment is unfair unless the employer had consulted with the employee affected and has endeavoured to reach agreement on such changes. (1)

The terms of contract of employment may only be changed lawfully in the following circumstances:

- Changes in basic conditions of employment (1)
- By mutual agreement between the parties (1)
- Change in work practices for business efficacy (1)
Moreover, Employees do not have a vested right to preserve their working conditions completely unchanged as from the moment they first begin to work. (1) It is only in a situation where the changes were so dramatic as to amount to a requirement that the employees are expected to do an entirely different job that they could refuse an instruction to abide by contracts by introducing the new working practice. (1)