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**NATIONAL UNIVERSITY OF LESOTHO**  
**FACULTY OF LAW**  
**PGD IN LABOUR LAW (CONCILIATION AND ARBITRATION)**  
**FINAL EXAMINATIONS**  
**LPD 106 - ARBITRATION THEORY**

**MAY 2018**

**MARKS: 100**

**TIME: 3 HOURS**

**INSTRUCTIONS:**

1. Answer any **FOUR (4)** questions.
2. Each question carries 25 marks.

**QUESTION 1**

Critically discuss the functions of arbitration.

**[25 MARKS]**

**QUESTION 2**

Critically discuss the difference between the processes of arbitration and adjudication in terms of their structures and the manner in which they are conducted.

**[25 MARKS]**

**QUESTION 3**

(a) Discuss the main requirements of a fair arbitration process.

**10 Marks**

(b) Discuss the ethical standards that are required of a person presiding over a matter as an arbitrator?

**15 Marks**

**[25 MARKS]**

**QUESTION 4**

(a) An arbitration award should be structured in a way that would make a party understand the arbitrator's decision and its basis. Discuss the key features of an arbitration award.

**15 Marks**

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- (b) Describe the processes of gathering evidence in Stage 4 of the arbitration phase where conciliation was not successful in a con/arb situation.

**10 Marks**

**[25 MARKS]**

### **QUESTION 5**

Write short notes on the following:

- a) Expedited arbitration and example of the process provided for in the Labour Code (Amendment) Act 2000. **5 Marks**
- b) The disputes of right that are resolved by arbitration in terms of the Labour Code (Amendment) Act 2000. **10 Marks**
- c) The significant processes that a person must consider before referring a dispute of right or interest for resolution. **5 Marks**
- d) Significant features of the public service dispute resolution system in Lesotho. **5 Marks**

**[25 MARKS]**

### **QUESTION 6**

Mr Lesole, a telecommunications technician employed at Les - Comm (Pty) Ltd was charged with misconduct for effecting an unauthorised Wifi connection in the residential premises of Ms Betty.

Mr Lesole had worked for the company for 20 years and had assumed the position of Senior Technician. He was dismissed following the disciplinary hearing and he referred the matter to the DDPR.



At the DDPR the conciliation process was conducted and the matter was not resolved. It then immediately proceeded to arbitration. In the arbitration proceedings Mr Lesole applied that the HR Manager who chaired the disciplinary proceedings should be joined in the matter. Both sides were requested to present arguments on the preliminary issue.

Mr Lesole alleged that the dismissal was procedurally unfair because the employer had refused him access to the Wifi connection records, contrary to the company regulations. His contention was that the records would help him prove that Ms Betty had in fact applied for Wifi connection but the person in charge of authorising the connection had deliberately omitted to authorise it for personal reasons.

The employer admitted that the rules allowed the employee to have access to the records in such situations. The employer stated however that it was appropriate for it to deny him access to the connection records because the employee was on suspension.

Mr Lesole alleged again that the dismissal was substantively unfair because the employer had not brought overwhelming evidence to prove that the Wifi connection was unauthorised. He said that the employer should have brought evidence of an expert and a forensic investigator to prove that the employee had committed the misconduct. The employer had only brought the evidence of a connection officer who received Ms Betty's application and stated that it had not been authorised for connection. The employer stated that this evidence was enough to prove the misconduct.

Mr Lesole requested that he should be reinstated to his position on the basis that the dismissal is procedurally and substantively unfair.

Discuss the legal issues necessary for drawing an arbitration award.

**[25 MARKS]**