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**NATIONAL UNIVERSITY OF LESOTHO**

**FACULTY OF LAW**

**LL.B FINAL EXAMINATIONS**

**L 581: LABOUR LAW**

May, 2017

MARKS: 100

TIME: 3HRS

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**INSTRUCTIONS:**

1. Answer only **FOUR** questions.
2. All questions carry equal marks.
3. Underline decided cases that you refer to in support of your arguments.

## QUESTION 1

Mr. Thokoa was an employee of Maja-ka-Thaata Mobile Services. In 2016 when he retired, he was approached by Mr. Lethoko, the Human Resources of Maja-ka-Thaata and requested to incorporate a company that will then provide Maja-ka-Thaata with cleaning services. Mr. Thokoa incorporated a company, Hleka (Pty) Ltd and Maja-ka-Thaata outsourced the cleaning services to this company.

Maja-ka-Thaata then retrenched all its employees who were employed as cleaners claiming that after the restructuring that the company went through, their positions became redundant. However, all these employees were recruited by Hleka (Pty) Ltd and they continued to perform their duties as if nothing had happened. They reported to the same person, kept their uniform, used the same Human Resources Manual and followed the same clocking formalities. The only material changes were that the benefits that they had were cut off and they were now being paid their salaries by Hleka (Pty) Ltd.

Miss. Likonelo, one of the cleaners was dismissed after being subjected to a disciplinary hearing in terms of the Maja-ka-Thaata Human Resources Manual. However, she referred a matter of an unfair dismissal as she felt that the hearing was not fair. In her referral, she indicated Maja-ka-Thaata as her employer. At the hearing, Maja-ka-Thaata claims that Miss. Likonelo is not one of its employees.

With reference to appropriate authorities advise Miss Likonelo on how to counter Maja-ka-Thaata's argument. **[25 Marks]**

## QUESTION 2

Tshepiso is a citizen of the Republic of Botswana. He was recruited by Chebelo Pele Consultants in Botswana to do some consultancy job in Namibia. While in Namibia, he was told to fly to Pretoria in South Africa to a particular hotel, where at he received a contract via e-mail and he was required to sign it. The contract



deployed him to Mokhotlong, in Lesotho. He was to be paid in South African currency (ZAR) and required to open an account at a certain bank that has branches both in South Africa and Lesotho.

While in Lesotho, he had a problem at work and was disciplined. He was called to Maseru, at a certain hotel, subjected to a disciplinary enquiry through video-conferencing devices. He was then found guilty by the chairperson based in South Africa.

The contract provided that the law applicable was the South African law. However, he has now referred the matter of unfair dismissal to the DDPR. At the DDPR, the employer raised an objection claiming that the DDPR does not have jurisdiction.

Advise Tshepiso on whether the DDPR has jurisdiction to hear and determine his matter or not.

**[25 Marks]**

### **Question 3**

Lesotho Brewing and Allied Workers Union (LEBAWU) is a trade union registered in terms of the laws of the Kingdom of Lesotho. The union has a recognition agreement with Lesotho Brewing Company (LBC). LEBAWU has been engaged in wage negotiations with the LBC for almost three years now. LEBAWU claims that the salary structure of LBC is below that of other companies in the same industry, LEBAWU, therefore, demands an increment of sixty percentile of the market median for their members.

LBC is adamant that its salary structure is highly competitive as such, LBC is not willing to make any increment for its employees. LEBAWU has communicated this to its members who are adamant that if their employer does not make an offer, they will embark on an industrial action.

You have been approached by the Secretary General of LEBAWU, he wants you to advise him on the procedure to be followed before engaging in an industrial

action and the possible ways through which an employer may counter their industrial action.

With the aid of appropriate authorities, advise LEBAWU.

**[25 Marks]**

#### **Question 4**

Mr. Likate was an employee of Basotho Batho Development Bank. He served the bank for a period of thirty years (30) as a credit manager. His pay slip indicated that 6% of his salary was being deducted as his contribution towards a certain pension scheme while the bank's contribution was 8%. He received annual statements indicating the total amount debited on his pension account.

In April 2017, Mr. Likate reached the retirement age. He received a statement indicating that he would receive M 500, 000.00 as his benefits. The statement indicated that the payment shall be made within seven working days from the receipt of the statement and that Mr. Likate will receive M 5, 000.00 monthly as his pension.

Upon perusal of the statement, Mr. Likate realised that the statement did not reflect severance pay. He then approached his human resources manager and asked about the omission of the statutory severance pay. He was informed that he is not entitled to the statutory severance pay because the bank operates a pension scheme which is more beneficial to him. Mr. Likate was surprised to hear this, since he had always believed that he was entitled to both the severance pay and pension.

Mr. Likate asked some of his colleagues whether they were aware that their employer is not paying the statutory severance pay and they were all surprised.

With reference to appropriate authorities, advise Mr. Likate on whether he can successfully claim his statutory severance pay from Basotho Batho Development Bank.

**[25 Marks]**



**Question 5**

- a) Compare and contrast arbitration and conciliation procedures before the Directorate of Dispute Prevention and Resolution. 15 Marks
- b) Discuss how a dispute of interest differs from a dispute of right and indicate the procedure(s) followed to resolve each. 10 Marks
- [25 Marks]**

**QUESTION 6**

Critically discuss the view that the that unlike under the Constitution of the Republic of South Africa, the Constitution of Lesotho does not guarantee the employees' right to fair labour practices and leaves employees in Lesotho vulnerable and susceptible to abuse by their employers. **[25 Marks]**

**END**