

**NATIONAL UNIVERSITY OF LESOTHO**

**FACULTY OF LAW**

**LL.B FINAL EXAMINATIONS**

**L 581-LABOUR LAW**

MAY 2018

MARKS: 100

TIME: 3HRS

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**INSTRUCTIONS:**

1. Answer any **FOUR** (4) questions.
2. All questions carry equal marks.
3. Underline decided cases that you refer to in support of your arguments.

## QUESTION 1

Mr. Likate was an employee of Basotho Batho Development Bank. He served the bank for a period of thirty years (30) as a branch 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 March 2018, 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 2

Paseka was an employee of the Inland Revenue Services. He was employed in terms of a fixed term contract that provided for termination date of 31<sup>st</sup> March 2018. After the expiration of the term, his contract was not renewed as it was alleged that he was not performing up to the required standard. His contract contained a provision that he was to be informed of renewal or non-renewal of his contract not less than three months before the date of termination. Sometime in November 2017, Paseka and other employees were informed that their contracts were not going to be renewed automatically but they were going to be renewed on the basis of individual performance. It was further decided by the management that a contract of an employee who scores less than 50% after the appraisal will not be eligible for renewal.

Paseka and his supervisor agreed on a score of 67.8% which placed Paseka above the threshold. After the appraisal, recommendation of the renewal was forwarded to Ms. Matsoho, the Commissioner General of the Revenue Services. The Commissioner lowered Paseka's score to 46% placing Paseka below the threshold. Paseka's contract was never renewed.

Advise Paseka whether he has a cause of action against the Inland Revenue Services. **[25 Marks]**

## Question 3

Lesotho Union of Mine Workers is a Trade Union registered in terms of the laws of Lesotho. Balepi Diamond Mine has recognized the union as a representative union. Early this year (2018) the mine and the union engaged in a wage negotiation that reached an impasse, as a result the union is contemplating to embark on a strike.

- a) With the aid of appropriate authorities, advise the Lesotho Union of Mine Workers whether it can embark on a strike and the procedure to follow for their strike to be protected. 15 Marks
- b) Would your answer in (a) above be different if the Lesotho Union of Mine Workers had a collective agreement with Balepi Diamond Mine which provided that parties thereto will never resort to strikes and/or lock-outs? 10 Marks
- [25 Marks]**

#### Question 4

- 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 5

In light of the following dictum, critically discuss section 5 of the Labour Code Order No. 24 of 1992:

...while admittedly the resultant discriminatory effect of section 38A (4) does not fall within the definition provided for under subsection (3) of section 18 of the Constitution, it is none the less discriminatory in its effect for the reason of its being prejudicial to a select few such as Applicant *in casu*. For this reason, it is not justifiable that may well be why the definition itself contains the phrase 'or other status' which in my opinion was meant to cover other criteria not listed therein or which might not have been foreseeable at the time the definition was given. In this case, the



status is that of applicant falling under the private sector in contract with litigants falling within the public sector.

*Per Majara J in Tseuoa v Minister of Labour and Employment and Others CC No.4/2005.* **[25 Marks]**

### **QUESTION 6**

Critically discuss the view that unlike 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**