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**SCHOOL OF LAW**

<b>COURSE NAME:</b>	Labour Law
<b>COURSE NO:</b>	LA 317
<b>TIME ALLOWED:</b>	3 hours
<b>READING TIME:</b>	15 minutes
<b>NUMBER OF PAGES:</b>	5 (including cover sheet)
<b>NUMBER OF QUESTIONS ON PAPER:</b>	8
<b>NUMBER OF QUESTIONS TO BE ANSWERED:</b>	4 (1 From part A and 3 from Part B)
<b>MARK ALLOCATED FOR EACH QUESTION:</b>	12.5
<b>TOTAL MARKS:</b>	50

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**MATERIALS PERMITTED IN EXAMINATION ROOM:**

This exam is open book. All material except for library books is allowed into the exam room.

**SPECIAL INSTRUCTIONS:**

Please write your answers in blue or black pen.

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**Part A:** Answer any **1 (one)** of the following 3 essay questions:

1. Write an essay that outlines the role that unions should ideally play in the labour market, and discuss the barriers that exist in the South Pacific that hinder the operation of unions.

You may either discuss this question generally or in respect of one or more jurisdictions in the USP region.

2. The International Labour Organisation (the ILO) recommends that countries use a tripartite system to manage their labour markets.

Write an essay that outlines what the tripartite system is, explains why the ILO recommends the use of such a system, and discusses how effectively the tripartite system operates in the country of your choice.

Base your answer in **one** jurisdiction within the USP region.

3. Write an essay that compares the adequacy of the employment contracts legislation from Vanuatu, Samoa and Fiji in each of the following areas:

- a. maternity leave
- b. sick leave
- c. annual leave

**Part B:** Answer any **3 (three)** of the following 5 problem questions:

4. *Base your answer to the following question in the jurisdiction of your choice. Please state which jurisdiction you use at the beginning of your answer.*

Mere worked as a kindergarten teacher. She was employed on a written fixed term contract for 1 year. She had not been brought to her place of work by her employer. The job description in the contract only stated that Mere was to be employed as a kindergarten teacher. It did not provide any other information about the scope of the job. Mere was paid monthly under this contract. There were no provisions in this contract for termination by way of notice.

After Mere had been in the job for 6 months she began to have problems with work. There were 20 children in the group that she was meant to look after. Mere went to the manager and said that she could not safely look after so many children. She also said that, because she had to prepare for so many extra children in her group she was having to work through her lunch hours and for two hours after work each day. The manager agreed that Mere was having to work an extra 3 hours per day because of having too many children in her group. The manager also agreed that Mere should not be working these extra hours and promised to employ an assistant to assist her.

After two weeks no assistant had been employed so Mere went back to the manager and again requested assistance. Again the manager said that they would employ a second person to assist Mere. Mere said that this must be done within a week, because she could not safely look after such a large group of children. Mere also stressed that she was unwilling to keep working under these conditions because, if anything happened to any of the children, it would affect her chances of ever getting another job in the childcare industry. The manager agreed that this was an issue of real concern.

One week after this second meeting there was still no assistant. Mere therefore went to the manager and asked when she could expect this assistant to start. The manager said that he was just writing the job advertisement to put into the paper. Mere then said that she was resigning as she was unwilling to continue working in such an environment.

At the time that she resigned Mere had just been paid for her regular hours of work. She had no annual leave owing. She had worked for 7 months.

Advise the parties (Mere and the kindergarten who employed her) as to their legal positions in respect of this issue.

5. You have been asked to explain to the Chamber of Commerce in Tonga, where no statute governing employment contracts exists, the legal obligations of employers and employees in a situation where no written contract of employment has been created.

Write a letter to the Chamber that answers the above query.

6. *Base your answer to the following question in the jurisdiction of your choice. Please state which jurisdiction you use at the beginning of your answer.*

John was terminated because his employer thought that he was responsible for a theft of money from his workplace. It has since been discovered that another employee committed the theft. However, although John would like to return to his old job, he has not been given his job back.

At the time of termination John had been working for 2 1/2 years. He was on an unwritten open ended contract and was being paid every fortnight (every second Friday). He had never taken any annual leave. On the day he left John had completed three days work since his previous payday. He has never been paid for this work. John used to work for 8 hours per day, excluding lunch breaks, 5 days per week. His employer had brought John to his place of work from a village 100 kilometres away. As part of the employment package the employer provided John with housing.

John's rate of pay at the time of termination was \$/Tala 3 per hour (200 vatu per hour if you use Vanuatu as your jurisdiction). For the first year of John's employment he had been paid \$/Tala 2 per hour (150 vatu if you use Vanuatu as your jurisdiction). You can assume that these rates of pay were above the minimum wage requirements.

Please advise John as to any damages he can claim and any other remedies he can seek.

7. *Base your answer to the following question in the jurisdiction of your choice. Please state which jurisdiction you use at the beginning of your answer.*

Leilani worked as a law clerk. She was employed on an unwritten open ended contract, and was paid on a weekly basis. When Leilani was at her job interview she told the interviewer that she had completed her LLB. Because she had this qualification Leilani was offered the job.

Soon problems began to arise. Her legal opinions were not well reasoned, and frequently displayed fundamental legal errors. She also began coming to work late. One day the senior partner called Leilani into his office. He warned her that she must start coming to work on time. Leilani apologised and said this would not happen again. He also told Leilani that her legal work was not thorough enough, and that she must work to improve the quality of her work.

After this conversation Leilani did begin coming to work on time most days. However, there was not much improvement in the standard of her legal opinions. After a couple of weeks the senior partner was talking to one of the lecturers from the law school where Leilani said she had studied. He mentioned the problems his firm was having with Leilani. The lecturer expressed surprise that Leilani had a job as a law clerk, as she had dropped out after failing some courses in second year.

The next day the senior partner called Leilani into his office. He asked Leilani if she had completed her LLB. Leilani said no, but said that she wanted to return to law school to complete it, and this is why she wanted a job in a law firm. The senior partner then said that, as she did not have her LLB, she was fired. She was paid for all of the days that she had worked since her last payday then left.

At this point Leilani had worked for 7 months. She had taken no annual leave.

Advise the parties (Leilani and the law firm who employed her) as to their legal positions in respect of this issue.

8. Robert worked as a typist. He worked from an office maintained by Typing Solutions Ltd. Typing Solutions Ltd supplied all of the equipment that Robert needed, including computers, printers and paper. It also carried out all of the maintenance on the equipment.

Robert attracted work by putting up signs offering a typing service around the university. These advertisements offered typing by Robert, not by Typing Services Ltd. He was also given work to do by Typing Solutions Ltd. Each day Robert had to finish any work required by Typing Solutions Ltd before he could do any work that he had attracted through her advertisements around the university.

Robert was not permitted to let anyone else use the computers to help him finish his work. He was, however, allowed to work whatever hours he wanted to, just so long as the work got done. Robert had no typing equipment at home or anywhere else, so all of his typing work was done in the Typing Solutions Ltd office.

Robert was paid on a piecework basis. Every piece of work, whether it was for Typing Solutions Ltd or for someone who had seen one of Robert's signs, cost the same amount per page. This amount was set by Typing Solutions Ltd. The arrangement for payment was that all of the people who Robert did work for had to collect the work from the Typing Solutions Ltd secretary. The secretary would collect all payments for work done. Robert would then be paid a percentage of the amount that the secretary collected for his work. No one paid any taxes on this money.

When Robert completed any piece of work, whether for Typing Solutions Ltd or for other clients, the office manager would check it through, and if there were any mistakes would send the work back to Robert to correct.

Typing documents is a central part of Typing Solutions Ltd's business. It has 5 typists who work in its offices on the same arrangement as Robert.

In your opinion is Robert an employee or an independent contractor?