



SCHOOL OF LAW

COURSE NAME:	LABOUR LAW
COURSE NO:	LA 317
TIME ALLOWED:	3 hours
READING TIME:	10 minutes
NUMBER OF PAGES:	7 (including cover sheet)
NUMBER OF QUESTIONS ON PAPER:	9
NUMBER OF QUESTIONS TO BE ANSWERED:	4
MARK ALLOCATED FOR EACH QUESTION:	25
TOTAL MARKS:	100

MATERIALS PERMITTED IN EXAMINATION ROOM:

This examination is open book. All material, *except for library books*, is permitted to be taken into the examination room

SPECIAL INSTRUCTIONS

Answer **one (1)** question from Part A and **three (3)** questions from Part B.

Please do not turn over any page until you are told to do so.

PART A: Essay question

Answer any **one (1)** question.

1. What, in your opinion, are the major priorities for reform of your country's labour laws? Explain your opinion, giving examples.

Note, you must answer this question in respect of your home country, or country of citizenship.

2. The Group of 77 is a coalition of developing countries within the United Nations. Its Pacific island country members include Fiji, Tonga, Vanuatu, Samoa, Solomon Islands and Marshall Islands. In a statement in 1997 it said:

[The Group] must take certain measures ... in ... resisting pressures for new protectionist measures such as the linkage of labour standards ... with trade.

What is meant by protectionist measures in relation to labour standards and why is this an issue of concern for developing countries? Do you think that this concern is valid?

3. To what extent do you think International Labour Organisation (ILO) Conventions should guide employment law reform in situations where a country is either not a member of the ILO or a signatory to a particular convention. Explain your opinion, giving examples.
4. Compare the adequacy of the annual leave provisions of Solomon Islands, Samoa, Tonga and Cook Islands. Which approach do you think is the best and why?

PART B: Problem Questions

Answer any **three (3)** questions.

5. Eve is a journalist. She writes stories for the Nation newspaper. Eve usually works from her computer at home, although she does have a computer in the office of the Nation that she can use. Eve paid for the computer and printer but the Nation supplies Eve with paper and printer cartridges for her printer.

The Nation pays Eve by the number of words that are published. Eve must complete at least two stories per day. These must be completed by 5 o'clock each day, so that they can be included in the next day's paper. If Eve delivers less than 2 stories per day, or delivers the stories late then she will lose her job with the Nation.

Every morning there is a meeting for all of the writers. Some people are assigned stories. Eve is not assigned stories can choose what she writes on, so long as it does not repeat a story that someone else is working on. Eve usually attends these meetings, but does not always go to them. If she does not attend the meeting then she calls into the Nation office and picks up a list of the story topics that have been assigned to other writers.

Neither the Nation nor Eve pays any tax or national provident fund contribution on Eve's wages. There is no written contract between the Nation and Eve. Eve does not hold her own business license.

Eve is studying economics part time and writing stories for the Nation part time. She does not write stories for anyone else because she does not have time to do so. She bought her computer and printer so that she could easily type up assignments.

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

Outline the arguments on each side using case authorities, then draw a clear conclusion showing which view you prefer and why.

6. *Mary lives in the common law jurisdiction of Pacifica. Other Pacific judgments, and the common law of England, New Zealand and Australia, are persuasive authorities.*

On August 15 2005 Mary signed a contract with BC Oil. The contract said:

- a. This contract is for a fixed term of 1 year, subject to a probation period of 6 weeks during which time either party can terminate the contract without notice.
- b. The employee is employed as a secretary.
- c. The employee's hours of work are Monday – Friday, 9 am – 5 pm.
- d. The employee is to be paid \$250 per week, on the last working day of each week.

This was Mary's first job. She did not have any experience as a secretary, but had done some courses on typing and computers. When she applied for the job she showed the interviewer a certificate that said she knew how to type and could type accurately at 40 words per minute.

For the first few weeks Mary was helping to organise the office. She was mainly reorganising the filing, and only did a bit of typing. When she started to do more typing it became clear that whilst she could type quite fast, she could not spell. Every letter that she typed had to be checked by her supervisor and sent back for correction. This was quite annoying for the supervisor, who saw it as a waste of time. The supervisor bought Mary a dictionary and told her she must improve her spelling. After Mary got the dictionary there was a small improvement, but there are still mistakes in everything she types.

On 28 October there was a small party after work at the BC Oil office to welcome a manager from the BC Oil Head Office in New York. There was alcohol at the party and a few people got drunk. Mary was not used to drinking and got drunk quickly. She got sick from the alcohol and vomited right next to where the manager from New York was standing.

Mary's supervisor was horrified by this, and does not want Mary working for him any more. He came to see you on 1 November to ask advice on how he can terminate Mary.

- a) Can BC Oil terminate Mary by paying wages in lieu of notice? Why/why not? If it can, how much will BC Oil have to pay?
- b) Can BC Oil summarily dismiss Mary for misconduct? If so, what procedure will it have to follow?
- c) What other option(s) might BC Oil have if it wants to stop Mary working for it immediately?

7. *The problem is set in the common law jurisdiction of Pacifica. Other Pacific judgments, and the common law of England, New Zealand and Australia, are persuasive authorities.*

Peter owns a farm on which he grows vegetables. Peter supplies vegetables to all of the supermarkets and restaurants in town. He employs 5 people to work on the farm. His employees have a variety of duties, including fixing fences, cutting grass and plowing fields using the tractor, and planting and tending to crops.

Simeon is one of Peter's employees. Simeon comes to work drunk quite often. Peter knows this and has banned Simeon from using the tractor. Peter has not done anything else, and Simeon has continued to use the tractor quite often.

One day Simeon came to work drunk. He got on the tractor to go and cut some grass. Because he was drunk he was not watching where he was going carefully and hit Alfred, who is another of Peter's employees. Alfred ended up with a broken leg.

When Simeon saw what he had done he panicked and lost control of the tractor. The tractor crashed through a fence into the neighbour's property and knocked down a shed, destroying it.

- a) Can Peter terminate Simeon for serious misconduct? If so, what procedure will Peter need to follow?
- b) What liability does Peter have in respect of Alfred's broken leg?
- c) What liability does Peter have in respect of the neighbour's shed that has been destroyed?

8. *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. Note, if you use Vanuatu, \$141 = 14,100 vatu and \$3.75 = 375 vatu.*

Jenny works as a shop assistant in a supermarket. On Monday – Friday she works on the checkout. On Sunday nights she helps to restock the shelves. Parts of her contract state:

- 3(i) The employee will work the following hours:
Monday – Friday: 8 am – 6 pm.
Sunday: 9 pm – 11 pm.
- 3(ii) The employee will be given a 1 hour lunch break on Monday - Friday. The supervisor will determine what time this break is to be taken.
- 3(iii) Hours may be extended at the direction of the supervisor, and with the agreement of the employee. These hours will be paid at an overtime rate of time and a quarter (\$3.75 per hour).
- 4(i) The employee will be paid a sum of \$141 per week.
- 4(ii) Wages shall be payable by direct credit to the employee's bank account every Monday
 - (a) provided that payment for all overtime shall be calculated monthly and shall be payable on the first Friday of every new month.
- 4(iii) Half of the wage may be paid by way of credit at the supermarket. Payment by credit shall only be done at the request of the employee.
- 5(i) The employee shall be entitled to 20 days paid annual leave per year.
- 5(ii) The employer shall be entitled to 10 days paid sick leave per year
 - (a) provided that no sick leave will be paid unless a medical certificate is presented to the employer.
- 6 Either party may terminate the contract by giving 2 weeks notice.
- 7 If the employee resigns she shall be prohibited from working in any other supermarket in the same city for a period of 3 months.

Go through clause by clause, identify whether it is legal and clearly drafted and suggest changes (if any are needed) that would make the clause legal and clearly drafted.

Your layout should be as follows:

3(i)

This is/is not legal because...

The problems with drafting are...

It should be redrafted as follows:

9. *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.*

Donald worked as a labourer on a plantation. His contract was for no fixed term and was oral. No notice provisions had been agreed to. His employer, Pineapple Plantations, brought Donald to work for him from his home on another island, which was 200 kilometres away. Pineapple Plantations provided Donald with housing on the plantation.

One day the water tank at Donald's house was empty. This was normally filled with rainwater. When there was not enough rain the manager was meant to run the pump that drew the water from the bore. Donald therefore went to see the plantation manager. The manager said he would get someone to look at the problem. In the meantime he gave Donald a 5 litre container of water to drink and wash in. The next day there was still no water.

That day the manager came to look at the pump. He switched it on and a small amount of muddy water flowed into the tank. Donald told the manager that this water was not fit to drink and that there was not enough of it to wash in.

The manager said, "I will keep giving you 5 litres of water every day in the container. If you need extra water then the water in the tank is fine to wash in. If you are not happy with living on the plantation in this house then you will have to resign." Donald asked if he could be given 10 litres of water a day, but the manager said no, because there were water shortages all over the plantation. Donald therefore resigned and left the next day. He was given no payments on resignation.

Donald started working for Pineapple Plantations on February 20 2001. He left work on 28 October 2005. His last pay was on 21 October. Donald was being paid \$200/20,000 vatu per fortnight. The value of his housing was another \$50/5,000 vatu. It cost him \$50/5,000 vatu to get back to his home village.

Donald had been given 5 days paid annual leave per year. He has never taken any sick leave.

Advise Donald as to his legal position.