

THE OPEN UNIVERSITY OF SRI LANKA
 FACULTY OF HUMANITIES AND SOCIAL SCIENCES
 DEPARTMENT OF LEGAL STUDIES
 LL.B DEGREE PROGRAMME – LEVEL 6
 FINAL EXAMINATION – 2017/2018
 LWU4323/LLU6715 – LABOUR LAW
 DURATION – THREE HOURS



DATE: 26th February 2020

TIME: 01.30 p.m. – 04.30 p.m.

Answer five (05) questions only.

Candidates will be penalized for illegible handwriting.

1. “ There was a time when the common law regarded an employer as having proprietary rights in his servant with criminal sanctions attaching to breaches of contracts by employees. Even though the common law has come a long way since that time, in the modern common law the contract of employment is still considered more or less conclusive in determining the rights of the parties...”

S.R De Silva, The Contract of Employment, The Employers Federation of Ceylon, 2008 p 21.

Do you agree with the above statement?

Give reasons for your answer with reference to developments in the sphere of labour law of Sri Lanka.

(20 Marks)

2. (a) Explain the legal aspects relating to job security of probationers in the private sector. Your answer should be supported with relevant case law.

(10 Marks)

(b) ‘AMC Builders’ is a well known construction Company which has several ongoing projects in different areas in the country. In January 2015, AMC Builders recruited Chanaka as a plumber to work in residential projects in Wellawatta. However, he was transferred from site to site and his payments were made on a weekly basis. The Company gave him the designation as ‘casual worker’. He was not paid the allowances which were paid to the other employees of

AMC Builders. In December 2019, his services were terminated on the basis that his services were no longer required.

Janaka has been taken by the Company as an assistant engineer based on a contract for a period of two years. His contract is due to end on 1st of February 2020. The management of AMC Builders has taken a decision not to renew Janaka's contract at the end of the contract period.

Chanaka and Janaka wish to know whether they are entitled to relief against termination of their services. Advise them. Your answer should be supported with relevant authorities.

(10 Marks)

3. "The equitable nature of the jurisdiction of Labour Tribunal has consistently been recognized in the decisions of our courts. However in the process of redressing grievances of workmen in a just and equitable manner, one cannot lose sight of procedural propriety and evidentiary legitimacy"

Saleem Marsoof, J. in *Indrajith Rodrigo v Central Engineering Consultancy Bureau*, (2009) 1 Sri LR 248 at p.260.

Critically analyse the above statement with reference to the provisions of the Industrial Disputes Act and case law

(20 Marks)

4. Namal was an employee of Surya and Sons Pvt. Ltd. Due to a financial crisis, Surya and Sons Ltd. decided to merge their two apparel factories. The employment of about twenty employees including Namal was terminated due to a surplus of labour. Namal and the other employees have worked in the Company for many years. The management of the Company did not obtain the consent of Namal or the approval of the Commissioner. Namal did not receive any compensation for termination of his employment.

Namal seeks your advice with regard to the following:

- (a) Whether his termination is legally valid under the Termination of Employment of Workmen (Special Provisions) Act?

(10 Marks)

- (b) Whether the Commissioner has any power to order Surya and Sons Ltd. to reinstate Namal in the same position or order any other relief? **(10 Marks)**

Advise Namal with special reference to the relevant provisions of the Termination of Employment Workmen (Special Provisions) Act and case law.

5. Critically assess the effectiveness of the Payment of Gratuity Act in the light of promotion of social security for workers in the private sector.

(20 Marks)

6. DJ Leather Pvt. Ltd is one of the leading shoe manufacturers in Sri Lanka and it has 800 employees. More than 650 employees of the company are members of the DJ Sewaka Samithiya, a trade union in the company. Last year, other employees formed another trade union called Nidahas DJ Sewaka Samithiya and currently 80 employees are members in the new union.

Surath has joined in the DJ Leather Company as a probationary employee in January 2020. When he assumed duties, the management informed him that if he wishes to join any trade union he should join Nidahas DJ Sewaka Samithiya. He was further informed that becoming a member of DJ Sewaka Samithiya would affect his confirmation.

Members of the DJ Sewaka Samithiya organized a picketing to convey their disagreement to the management for preventing the new employees becoming members of their trade union. The management refused to have any discussion with the DJ Sewaka Samithiya relating to this issue. A few days after the picketing, the Company terminated ten of its employees including some office bearers of DJ Sewaka Samithiya. The union alleged that dismissals were acts of victimization of union members. The members of DJ Sewaka Samithiya commenced a strike action against the arbitrary decisions of the management.

During the strike period, all members of the Nidahas DJ Sewaka Samithiya reported to work and they were given a special allowance in addition to their wages. As a result of the strike, the Company failed to complete some foreign orders and it caused a huge financial loss to the

Company. Now the management of the Company intends to take legal action against the strikers.

Identify the legal issues in the above situation, and advise the relevant parties with reference to relevant authorities.

(20 Marks)

7. (a) Critically explain the statutory provisions relating to working hours, night work, maternity leave and working conditions of female workers in the private sector in Sri Lanka.

(12 Marks)

(b) Do you think that the existing legal framework adequately addresses the issues and challenges faced by female workers in the private sector in Sri Lanka? Give reasons for your answer.

(08 Marks)

8. Explain any **TWO (02)** of the followings:

- (a) Collective bargaining and collective agreement
- (b) Employment of children
- (c) Industrial arbitration

(10x2= 20 Marks)

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