

UNIVERSITY OF COLOMBO, SRI LANKA

FACULTY OF LAW

BACHELOR OF LAWS EXAMINATION – YEAR IV, 2016/2017

LABOUR LAW

(Three hours)

Total Number of Questions: 07

Answer **ANY FOUR (04)** questions and **no more**.

(Candidates will be penalized for illegible handwriting.)

1. The Employment relationship must be defined by looking into the economic realities of the relationship rather than to the technical concepts of employment. When the courts look into all of the factors it is said to have adopted a hybrid test of employment status.

(Dawn D.Bennett – Alexander and Lawra B.Pincus, Employment Law for Business, at p.42)

Do you agree? Explain with special emphasis on the varied interpretations given by the Courts to decide whether someone is working under an employment relationship.

2. (a) You have been identified as a resource person to make a presentation at a job fair organized by the Sri Lanka Consortium of Entrepreneurs on the following theme:

“Legal Framework Relating to Different Employment Sectors in Sri Lanka”

Write-up your document on the given theme to be presented at the job-fair.

- (b) Explain the following statements with particular reference to the legal consequences arising in each situation:

- (i) Public corporations lie somewhere between a pure public authority and a private commercial company.

- (ii) Public officials hold office at the pleasure of the Cabinet of Ministers and the President.

- (iii) Domestic sector employees are no way protected under the labour law regime in Sri Lanka.

3. (a) *State Distilleries Corporation v. Jackson Rupasinghe* [(1994) 2 Sri LR 395] is a land mark case in the promotion of job security of probationers in Sri Lanka. Do you agree? Give reasons for your answer.
- (b) Pugoda Batiks Ltd recruited Ravi as an Assistant Salesman in 2012. The Company trained him in work relating to promotion of sales and increased his daily wages. The Company put him in - charge of it's business outlet in a five star hotel and Ravi worked six days a week in the outlet. His daily wages were Rs.1300/= and it was paid once in two weeks according to the number of days he had worked during the period. In 2015, the Company issued a letter to enable Ravi to obtain a loan. In the letter, the Company stated: "Ravi works as a casual workman since ...". Ravi accepted the letter without any objection. After a dispute, the Company terminated his services in June 2017 by stating "Your casual employment is no longer required by the Company." Ravi wishes to know whether the nature of his employment in the Company was 'casual' or 'permanent'.

Advise him.

4. Deva has been in employment at Horizon Bank for the last fifteen years as a staff officer. The Bank terminated the services of Deva after holding a domestic inquiry on the grounds of dishonesty and loss of confidence. The Bank is of the view that dismissal is warranted as the charges have been proved since Deva had not adhered to a clause in the contract of service entered between the Bank and him. The relevant clause read as follows:

"You are requested to give your whole time and attention to the discharge of your duties and observe the rules and regulations from time to time issued by the Bank for the guidance and strict compliance by its employees. You will not engage yourself in any parallel gainful employment/profession or business except with the sanction of the Board of Directors."

The charge sheet contained the following charges:

- (a) that the employee in violation of the said clause has started a business by the name "Sri Lakshmi Exchange" and registered the business in his wife's name with the objective encashing cheques drawn by government/corporations and post-dated cheques.

(b) that the employee has used his position to obtain confidential information of the Bank's customers before cashing the cheques while violating the rules relating to secrecy of the customers' accounts. This was substantiated by tracing proof of regular telephone conversations he had with an employee at "Sri Lakshmi Exchange". Though the Business was registered under his wife's name she had no knowledge on monetary transactions nor banking matters and she was a housewife.

(c) Considerable commissions have been collected by the employee while attending to cheque encashments which had direct conflict with the business of the Bank. Thus the employee acted dishonestly and the Bank had lost the confidence reposed on him.

At the domestic inquiry, Deva contended that

- (i) "Sri Lakshmi Exchange" was not his business and was also not involved in money lending.
- (ii) The clause contained in the contract of service did not prevent him from carrying an another occupation outside normal working/official hours.
- (iii) The circular that required the employees to make a declaration that 'they are not gainfully engaged in any other business' had not specified the period within which they should discontinue such engagements, if any.
- (iv) The issue of breach of secrecy was not a charge made against him on the charge sheet served on him for the domestic inquiry.

A Trade Union of the Horizon Bank made an application to the Labour Tribunal on behalf of Deva against the termination.

Discuss the following issues:

- (a) On what basis could the trade union file an application on behalf of Deva.
- (b) The procedure to be adopted in filing an application against the termination and the relevant provisions provided in the Industrial Disputes Act, No. 43 of 1950 as amended.
- (c) If you are the President of the Labour Tribunal how would you make an order on the basis of the given facts.
- (d) State whether as the President of the Labour Tribunal you are bound by the clause contained in the contract of service or not?

5. Identify **an ambiguity** created by the provision/s in each of the following enactments and explain, in light of case law, the intervention made by the judiciary in the identified provision/s to reconcile the ambiguity by judicial interpretation:

- (a) Industrial Disputes Act, No. 43 of 1950 as amended.
- (b) Payment of Gratuity Act, No 12 of 1983 as amended.
- (c) Termination of Employment of Workmen (Special Provisions) Act, No.45 of 1971 as amended.

6. If trade unions are to carry out their legitimate functions in industrial relations, they require protection from the common law liability which would restrict their activities. This has been one of the objectives of statute law since 1935. But the statutory immunities are not a licence to do anything, but only provide a protective cover for trade unions when legitimate objectives are being pursued.

Read the above passage carefully and answer the following:

- (a) Explain with illustrations and decided cases the well established legal liabilities at common law which restrict effective industrial activities of trade unions.
- (b) Explain the extent of and the nature of protective cover provided by the Trade Unions Ordinance of Sri Lanka (No 14 of 1935 as amended) for trade unions.
- (c) State the limitations that restrict the activities of trade unions if any.

7. (a) Discuss the extent to which the Core Conventions of the International Labour Organization relating to child labour protect the children from economic exploitation.

(b) Discuss the extent to which the Sri Lankan labour standards are compatible with the labour standards set by the Convention on Discrimination (Employment and Occupation) (C 111) of the International Labour Organization.