



RHODES UNIVERSITY
Where leaders learn

Faculty of Law
Labour Law

Course Outline 2024

1. INTRODUCTION

Labour Law is a compulsory final year LLB course in the Faculty of Law.

This course is designed to facilitate student learning and skills development in order to:

- integrate student knowledge of different sources of law with a view to solving familiar and unfamiliar problems in the field of labour law;
- build student capacity to differentiate, interrogate and critically analyse different theories, methodologies, and approaches within the field of labour law in context;
- take responsibility for their own learning and decision-making in respect of the use of resources in full accountability for their own actions and those of others where appropriate.

Labour Law is a NQF Level 8 course, equivalent to an Honours exit level course. It carries a credit value of 10 NQF credits. This means that students are expected to devote at least 100 hours to their learning in this course over the semester.

Assignment Date: 22 March 2024 (will be available on RUconnected from 1 March 2024)

Test Date: 2 May 2024 (Venue and time will be confirmed in due course).

2. RESOURCES

The following texts books will be referred to in the course material and lectures:

Prescribed textbook:

- a. Collier (ed) et al *Labour Law in South Africa: Context and Principles* (2018)
- b. Basson AC et al *The New Essential Labour Law Handbook 7th Edition* (2019)

In addition to the textbooks, references will be made to prescribed case law and journal articles.

Students are advised to read widely about the topics to enhance their knowledge and insight into this dynamic area of law.

3. TEACHING METHODS

The course will be presented by way of two lectures per week, which will be interactive. Students are required to prepare for lectures by doing the prescribed reading before hand.

Course outcomes and assessment criteria

Knowledge area	Assessment criteria
Legal framework regulating labour relations in SA	Students are expected to outline, explain and critique the applicable legal framework, and identify appropriate sources to solve problems that may arise in the field of labour law
Basic conditions of employment and NWA	Students are expected to explain and apply the legislative standards in relation to basic conditions of employment and national minimum wages.
Individual labour law <ul style="list-style-type: none"> • Contracts • The meaning of employee • Dismissal • ULP • Dispute resolution 	Students are expected to know and apply the legal standards relating to individual contracts of employment as modified by legislation and solve problems with reference to case law, the common law and statutory provisions.
Employment Equity and Affirmative action	Students are expected to know and apply the appropriate legal standards regulating the prohibition of unfair discrimination in the workplace and the law relating to affirmative action
Collective labour law <ul style="list-style-type: none"> • Freedom of association • Organisational rights • Collective bargaining and its regulation • Industrial action 	Students are expected to explain and critique the significance and importance of the regulation of labour relations in the collective sphere at the level of the workplace or plant, enterprise and sector. This includes knowledge and application of regulatory principles in relation to industrial action, such as strikes, lockouts, protest action, and picketing that usually go with industrial action.

4. CONTENT AND READING LIST PER TOPIC

PART A: INTRODUCTION TO LABOUR LAW

TOPIC 1: Historical context and SA history

Readings

- a. Collier *et al* Part 1 (Chapters 1 – 4), Chapters 5 and 7
- b. *Code of Good Practice: Who is an Employee?* GN 1774/2006 in GG 19445 (1 December 2006).
- c. *National Union of Civil & Allied Workers on behalf of Mhlongo and Department of Co-operative Governance & Traditional Affairs & another* (2020) 41 ILJ 296 (CCMA) National Minimum Wage Act 9 of 2018 section 1

Focus points

- Historical context
- Sources and framework regulating labour relations
 - Sources of labour law
 - Statutory framework and application
 - Core legislative protection – LRA and BCEA, application and the meaning of ‘employee’
 - NMWA and the meaning of ‘worker’
 - Non-standard employment
- Overview of course
 - NB distinction individual and collective labour law and disputes arising

PART B INDIVIDUAL EMPLOYMENT RELATIONSHIP

TOPIC 2: The employment contract

Readings

Collier *et al* Chapter 7
Garbers *et al* Chapter 2

Focus points

- Essential requirements

Discovery Health Limited v CCMA and others [2008] 7 BLLR 633 (LC) paras 20-41

Kylie v CCMA [2010] 7 BLLR 705 (LAC) paras 21-55

- Formalities
- Terms of the contract/restraint of trade/ vicarious liability
- Duties/obligations: employer/employee
- Impact of legislation

SA Maritime Safety Authority v McKenzie [2010] 5 BLLR 488 (SCA)

- Duration of contract
 - Fixed-term employment and TES
 - Indefinite term agreements

Assign Services (Pty) Ltd v NUMSA [2018] 9 BLLR 837 (CC) Dlodlo J's judgment

Piet Wes Civils CC and another v Association of Mineworkers and Construction Union and others [2018] 12 BLLR 1164 (LAC)

- Breach

Coetzee and another v Pitani (Pty) Ltd t/a Pitani Electrification Projects and others [2000] 8 BLLR 907 (LC) paras 42-52

- Termination

Oasis Group Holdings

TOPIC 3: The meaning of 'Employee'

Readings

- a. Garbers *et al* Chapter 3

Focus points

- The definition of employee
- Non-standard employment
- The identity of the employer

TOPIC 4: Basic conditions of employment and national minimum wage provision

Readings

- a. Collier *et al* Chapter 8
- b. Garbers *et al* Chapter 4
- c. Basic Conditions of Employment Act 75 of

1997 National Minimum Wage Act 9 of 2018

- d. Godfrey and Jacobs 'The National Minimum Wage: How Best to Align it with the Existing Labour Regulatory Framework' (2018) 39 *ILJ* 1.
- e. *Oasis Group Holdings (Pty) Ltd v Bardien* [2011] 3 BLLR 284 (LC) paras 20-28

Focus points

- Application of BCEA, variation – agreements and determinations
- BCEA – hours, leave, particulars of employment, termination of employment, employment of children, enforcement (note 2018 amendment)

NMWA – application, review, enforcement

TOPIC 5 – Dismissal Part A

Readings

- a. Collier et al Chapters 10, 11, 12, 13 and 14
- b. Garbers et al Chapter 5,6
- c. LRA Schedule 8 *Code of Good Practice: Dismissal*
- d. *Guidelines on Misconduct Arbitrations* GN R224/2015 in GG 38573 (17 March 2015) Bassuday and Rycroft 'Incapacity or Disability? The Implications for Jurisdiction Ernstzen v Reliance Group Trading (Pty) Ltd (C717/13) [2015] ZALCCT 42 (2015)' 36 *ILJ* 2516

Focus points

- Forms of dismissal (dependent on employment relationship and see s186)
 - Termination with notice / termination without notice
 - Reasonable expectation of renewal of fixed-term contract

Pik-It-Up Johannesburg (Pty) Ltd v SA Local Government Bargaining Council (2011) 32 *ILJ* 2728 (LC)

- Refusal to allow employee to return after maternity leave
- Selective re-employment
- Constructive dismissal

Pretoria Society for the Care of the Retarded v Loots [1997] 6 BLLR 721 (LAC)

- Automatically unfair dismissals (s 187 – note all the variants)

Kroukam v SA Airlink (Pty) Ltd (2005) 26 *ILJ* 2153 (LAC)

Allpass v Mooikloof Estates (Pty) Ltd t/a Mooikloof Equestrian Centre

(2011) 32 *ILJ* 1637 (LC)

TOPIC 6 – Dismissal Part B

Readings

Garbers *et al* Chapter 7

- Reasons for dismissal (determinative of substantive fairness)
 - Misconduct –
In general:

Schedule 8

Sidumo v Rustenburg Platinum Mines Ltd [2007] 12 BLLR 1097 (CC) Assault and violence

– in and out the workplace

Absence from work

Kievits Kroon Country Estate (Pty) Ltd v Mmoledi (2014) 35 ILJ 406 (SCA)

Mzeku v Volkswagen SA (Pty) Ltd 2001 (4) SA 1009 (LAC)

Dishonesty

Autozone v Dispute Resolution Centre of Motor Industry (2019) 40 ILJ 1501 (LAC)

Insolence and insubordination

Palluci Home Depot (Pty) Ltd v Herskowitz (2015) 36 ILJ 1511 (LAC)

Racial context / name-calling

SARS v CCMA (2017) 38 IJL 97 (CC)

Rustenburg Platinum Mine v SAEWA obo Bester and Others [2018] 8 BLLR 735 (CC)

Duncanmec (Pty) Ltd v Gaylard NO (2018) 39 ILJ 2633 (CC)

TOPIC 7 – Dismissal Part C - Team Misconduct – Shrinkage/ Derivative misconduct

Maqutu ‘Collective Misconduct in the Workplace: Is ‘Team Misconduct’ ‘Collective Guilt’ in Disguise ?’ (2014) 25 *Stell LR* 566

Safety policies and strict liability

Mphaphuli v Ramotshela NO (2020) 41 ILJ 242 (LC)

National Union of Mineworkers on behalf of Mash v Samancor Ltd (Eastern Chrome Mines) (2021) 42 ILJ 1881 (CC)

Dismissal of a probationary employee
SAQA v Mbeki (2019) 40 ILJ 1446 (LC)

Derivative misconduct

National Union of Metalworkers of SA on behalf of Nganezi & others v Dunlop Mixing & Technical Services (Pty) Ltd & others (Casual Workers Advice Office as Amicus Curiae) (2019) 40 ILJ 1957 (CC)

- Incapacity

General Motors (Pty) Ltd v NUMSA obo Ruiters [2019] 5 BLLR 464 (LAC)

CF: Solidarity v Armaments Corporation of SA (SOC) Ltd (2019) 40 ILJ 535 (LAC)

- Operational reasons – distinguish small and large scale retrenchments
Code of Good Practice on Dismissal Based on Operational Requirements Gen N 1517/99 in GG 20254 (16 July 1999)

Bracks NO v Rand Water [2010] 8 BLLR 795 (LAC)

Steenkamp v Edcon Ltd 2016 (3) SA 251 (CC)

- Procedural fairness

Schedule 8(4) and relevant case law

TOPIC 8 - Unfair labour practice

Readings

- Collier *et al* Chapter 9
- Fourie 'What Constitutes a Benefit by Virtue of Section 186(2) of the Labour Relations Act 66 of 1995? *Apollo Tyres South Africa (Pty) Ltd v CCMA* 2013 5 BLLR 434 (LAC)' [2015] *PER* 4
- Apollo Tyres South Africa (Pty) Ltd v Commission for Conciliation, Mediation and Arbitration and others* [2013] 5 BLLR 434 (LAC)
- Noonan v Safety and Security Sectoral Bargaining Council* (2012) 33 ILJ 2597 (LAC)

Focus points

- What is an Unfair Labour Practice?
- Different forms of Unfair Labour Practice

TOPIC 9 - Dispute resolution processes and remedies

- Remedies

What remedies can be ordered? LRA

Sections 193-195

ARB Electrical Wholesalers (Pty) Ltd v Hibbert [2015] 11 BLLR 1081 (LAC) paras 20-25

- Dispute resolution – forums, process etc Onus, time frames and date of dismissal LRA Sections 191 and 192

Food and Allied Workers Union obo Gaoshubelwe v Pieman's Pantry (Pty) Limited [2018] 6 BLLR 531 (CC); (2018) 39 ILJ 1213 (CC)

Forums and framing a case - general

Fredericks v MEC for Education and Training, Eastern Cape [2002] 2 BLLR 119 (CC)

Chirwa v Transnet Ltd [2008] 2 BLLR 97 (CC)

Gcaba v Minister of Safety and Security [2009] 12 BLLR 1145 (CC)

CCMA and Bargaining Councils

LRA on establishment, accreditation and jurisdiction – section 112 -150 Case law as considered – review standard

James v Eskom Holdings (2017) 38 ILJ (LAC)

Motor Industry Staff Association v Macun NO (2016) 37 625 (SCA)

Qibe v Joy Global Africa (Pty) Ltd: In re Joy Global Africa (Pty) Ltd v CCMA

(2015) 36 ILJ 1283 (LAC)

Building Industry Bargaining Council (Southern & Eastern Cape) v CCMA

(2011) 32 ILJ 1305 (LC)

Labour Court and Labour Appeal Court LRA Section

151 -183

Jurisdiction to the exclusion of CCMA and BCs

PART C: EMPLOYMENT EQUITY AND AFFIRMATIVE ACTION

Readings

- a. Collier et al Chapters 25 to 27
- b. Ebrahim 'Equal pay in terms of the Employment Equity Act: the role of seniority, collective agreements and good industrial relations : *Pioneer Foods (Pty) Ltd v Workers against Regression* 2016 ZALCCT 14' *PELJ* (2017) 1

TOPIC 10 – Aspects of the EEA

Focus points

- Unfair discrimination, including harassment

Code of Good Practice on Equal Pay/Remuneration for Work of Equal Value GN 448 in GG 38837 (1 June 2015)

Amended Code of Good Practice on the Handling of Sexual Harassment Cases in the Workplace GN1357 in GG 27865 (4 August 2005)

Code of Good Practice on HIV and AIDS and the World of Work GN 451

GG 35435 (15 June 2012)

Ntsabo v Real Security CC (2003) 24 ILJ 2341 (LC)

Smith v Kit Kat Group (Pty) Ltd (2017) 38 ILJ 483 (LC)

Newaj 'Defining Discrimination on an Arbitrary Ground: A Discussion of *Minister of Justice & Correctional Services & others v Ramaila & others* (2021) 42 ILJ 339 (LAC)' (2021) 42 ILJ 1405

TOPIC 11 – Equality in the Workplace

Readings

Garbers *et al* Chapter 12

- Employment Equity – Affirmative Action

Employment Equity Regulations GN R595 in GG 37873 (1 August 2014)

- Dispute resolution

PART D: COLLECTIVE LABOUR LAW

Readings

- a. Garbers et al Chapter 13 to 20
- b. Collier et al Chapters 17 to 24
- c. LRA Chapter 2, 3 and 4
- d. *NUMSA v Bader Bop (Pty) Ltd* 2003 (3) SA 513 (CC)
- e. Theron, Godfrey and Fergus 'Organisational and collective bargaining rights through the lens of Marikana' (2015) 36 ILJ 849.

TOPIC 12 – Collective Bargaining - Freedom of Association

Focus points

- Freedom of association and collective bargaining
- Trade Unions and Employers Organisations
 - Recognition and organisational rights for TUs
 - Liability

Wallis 'Now You Foresee It, Now You Don't— *SATAWU v Garvas & Others* (2012) 33 ILJ 2257'

- Collective bargaining forums
- Collective bargaining
- Industrial action

Guidelines issued in terms of Section 95 (8) LRA GN 1395/2018 in GG 42121 (19 December 2018)

Guidelines on Balloting for Strikes and Lockouts issued in terms of Section 95(9) LRA GN1397 in GG42121 (19 December 2018)

Code of Good Practice: Collective Bargaining, Industrial Action and Picketing

TOPIC 13 – Strikes – Lockouts – Protest Actions - Picketing

Focus points

LRA GN 1396/2018 in GG 42121 (19 December 2018)

- Strikes

Wallenius Wilhelmsen Logistics Vehicle Services v National Union of Metalworkers of SA & others (2019) 40 ILJ 1254 (LAC)

Association of Mineworkers & Construction Union v AngloGold Ashanti Ltd t/a AngloGold Ashanti (2022) 43 ILJ 291 (CC)

- Lockouts

Transport and Allied Workers Union of South Africa v PUTCO Ltd

(2016) 37 ILJ 1091 (CC)

- Protest action
- Picketing

Picketing Regulations LRA GN 1393/2018 in GG 42121(19 December 2018)

- Essential and maintenance services

SAPS v POPCRU [2011] 9 BLLR 831 (CC)

Du Toit, Jacobs and Ronnie 'Revisiting Strikes in Essential Services' (2018) 39 *ILJ* 2131.

L. Katiyatiya

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