



RHODES UNIVERSITY
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LABOUR LAW 2021



Lecturer: Mr T Moroeng

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 solve 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 (ie the equivalent of an honour exit level course) and carries a credit value of 10 NQF credits. This means that students are expected to devote 100 notional hours to their learning in this course over the semester.

RESOURCES

The following is the prescribed textbook that will be used for this course:

D Collier and E Fergus *Labour Law in South Africa: Context and Principles* (2018) Oxford University Press.

In addition to the textbook, reference will be made to prescribed case law and journal articles. Students are advised to read widely around the topics to enhance their knowledge and insight into this dynamic area of law. Updated resources will be provided on RUconnected where necessary.

For those that are able to access additional textbooks, the following are recommended texts that will help supplement your learning:

- A van Niekerk and N Smit eds, *Law@Work* 4th Edition (2017) Lexis Nexis
- Govindjee et al. *Labour Law in Context* 2nd 2017
- John Grogan *Workplace law*, 11th Edition (2014)
- McGregor et al, *labour Law Rules!*, 3rd ed, 2017
- Basson et al, *Essential Labour Law*, 5th ED 2009. Labour Law Publications,

TEACHING METHODS

This course will be presented by way of various lessons short online lessons per week (excluding mid-term break). Supporting material will be provided throughout the course to supplement the lessons. Students are required to prepare for these lessons in advance by doing the prescribed reading. Some lessons may be replaced with interactive sessions at the discretion of the teacher. The teaching methods are subject to adaptations and students can expect communication from the teacher if any changes happen.

COURSE OUTCOMES AND ASSESSMENT CRITERIA

Knowledge area	Assessment criteria
Legal framework regulation 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 the National Wage Act	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 • Transfer of business • Dismissal • Unfair labour practices • 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	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.

ASSESSMENTS

Formative Assessments

Students will be encouraged to engage in online forums. The teacher will provide updates on RUconnected in the event that formative assessments are to be completed. These assessments will not be for marks, but will be used to test whether students are engaging with the resources.

Summative Assessments

Summative Task 1: 15%
Summative Task 2: 15%

Exam: 70%

CONTENT AND READING LIST

1. The legal framework regulating labour relations in South Africa

Textbook

- Collier *et al* Chapters 1 – 5 and 7

Case Law

- *National Union of Civil & Allied Workers on behalf of Mhlongo and Department of Co-operative Governance & Traditional Affairs & Another* (2020) 41 *ILJ* 296 (CCMA).

Policy Documents

- *Code of Good Practice: Who is an Employee?* GN 1774/2006 in GG 19445 (1 December 2006).

2. The employment contract [Individual labour law]

Textbook

- Collier *et al* Chapter 7

Case Law

- *Discovery Health Limited v CCMA and others* [2008] 7 *BLLR* 633 (LC) [especially paras 20 – 41]
- *Kylie v CCMA* [2010] 7 *BLLR* 705 (LAC) [especially paras 21 – 55].
- *SA Maritime Safety Authority v McKenzie* [2010] 5 *BLLR* 488 (SCA)
- *Assign Services (Pty) Ltd v NUMSA* [2018] 9 *BLLR* 837 (CC) [especially Dlodlo J's judgment]
- *Piet Wes Civils CC and another v Association of Mineworkers and Construction Union and Others* [2018] 12 *BLLR* 1164 (LAC)
- *Coetzee and another v Pitani (Pty) Ltd t/a Pitani Electrification Projects and others* [2000] 8 *BLLR* 907 (LC) {especially paras 42 – 52}.
- *Oasis Group Holdings*

Journal Articles

- C Bosch "Can Unauthorized Workers be Recognised as Employees for the Purposes of the LRA?" (2006) 27 *ILJ* 1342.
- R Le Roux "The meaning of 'worker' and the road towards diversification: Reflecting on Discovery, SITA and 'Kyle'" 2009 (30) *ILJ* 49.

3. Basic conditions of employment and national minimum wage provision

Textbook

- Collier *et al* Chapter 8

Case Law

- *Oasis Group Holdings (Pty) Ltd v Bardien* [2011] 3 BLLR 284 (LC) [especially paras 20 – 29].

Legislation

- Basic Conditions of Employment Act 75 of 1997
- National Minimum Wage Act 9 of 2018

Journal Articles

- Godfrey and Jacobs “The National Minimum Wage: How Best to Align it with the Existing Labour Regulatory Framework” (2018) 39 *ILJ* 1.

4. Unfair labour practice [Individual labour law]

Textbook

- Collier *et al* Chapter 9

Case Law

- *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)

Journal Articles

- 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

5. Dismissal [Individual labour law]

Textbook

- Collier *et al* Chapters 10 – 14

Case Law

- *Pik-It-Up Johannesburg (Pty) Ltd v SA Local Government Bargaining Council* (2011) 32 ILJ 2728 (LC)
- *Pretoria Society for the Care of the Retarded v Loots* [1997] 6 BLLR 721 (LAC)
- *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)
- *Sidumo v Rustenburg Platinum Mines Ltd* [2007] 12 BLLR 1097 (CC)
- *Kievits Kroon Country Estate (Pty) Ltd v Mmoledi* (2014) 35 ILJ 406 (SCA)
- *Mzeku v Volkswagen SA (Pty) Ltd* 2001 (4) SA 1009 (LAC)
- *Autozone v Dispute Resolution Centre of Motor Industry* (2019) 40 ILJ 1501 (LAC)
- *Palluci Home Depot (Pty) Ltd v Herskowitz* (2015) 36 ILJ 1511 (LAC)
- *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)
- *Mphaphuli v Ramotshela NO* (2020) 41 ILJ 242 (LC)
- *SAQA v Mbeki* (2019) 40 ILJ 1446 (LC)
- *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)
- *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)
- *Bracks NO v Rand Water* [2010] 8 BLLR 795 (LAC)
- *Steenkamp v Edcon Ltd* 2016 (3) SA 251 (CC)

Policy Documents

- LRA Schedule 8 *Code of Good Practice: Dismissal Guidelines on Misconduct Arbitrations* GN R224/2015 in GG 38573 (17 March 2015)
- *Code of Good Practice on Dismissal Based on Operational Requirements* Gen N 1517/99 in GG 20254 (16 July 1999)

Journal Articles

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

6. Transfer of business as a going concern or in instances of insolvency [Individual labour law]

Textbook

- Collier *et al* Chapter 15

Case Law

- *NEHAWU v UCT* 2003 (3) SA 1 (CC)
- *SAMWU v SALGA* [2010] 8 BLLR 882 (LC)
- *Aviation Union of SA v SAA (Pty) Ltd* (2011) 32 ILJ 2861 (CC)
- *Imvula Quality Protection and others (Red Alert TSS (Pty) Ltd and others as Intervening applicants) v University of South Africa* [2017] 11 BLLR 1139 (LC)

7. Employment Equity [Individual labour law]

Textbook

- Collier *et al* Chapters 25 – 27

Case Law

- *Ntsabo v Real Security CC* (2003) 24 ILJ 2341 (LC)
- *Smith v Kit Kat Group (Pty) Ltd* (2017) 38 ILJ 483 (LC)

Policy Documents

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

Journal Articles

- 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

8. Dispute resolution processes and remedies [Individual labour law]

Case Law

- *ARB Electrical Wholesalers (Pty) Ltd v Hibbert* [2015] 11 BLLR 1081 (LAC) {especially paras 20-25}.
- *Chirwa v Transnet Ltd* [2008] 2 BLLR 97 (CC)
- *Gcaba v Minister of Safety and Security* [2009] 12 BLLR 1145 (CC)
- *Food and Allied Workers Union obo Gaoshubelwe v Pieman's Pantry (Pty) Limited* [2018] 6 BLLR 531 (CC); (2018) 39 ILJ 1213 (CC)
- *Fredericks v MEC for Education and Training, Eastern Cape* [2002] 2 BLLR 119 (CC)
- *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)

Legislation

- LRA sections 112 – 150.
- LRA Section 151 -183
- LRA Sections 191 – 195.

9. Collective labour law

Textbook

- Collier *et al* Chapters 17 – 24.

Case Law

- *NUMSA v Bader Bop (Pty) Ltd* 2003 (3) SA 513 (CC)
- *Wallenius Wilhelmsen Logistics Vehicle Services v National Union of Metalworkers of SA & others* (2019) 40 ILJ 1254 (LAC)
- *SAPS v POPCRU* [2011] 9 BLLR 831 (CC)
- *Transport and Allied Workers Union of South Africa v PUTCO Ltd* (2016) 37 ILJ 1091 (CC)

Legislation

- LRA Chapters 2 – 4

Policy Documents

- 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* LRA GN 1396/2018 in GG 42121 (19 December 2018)
- Picketing Regulations LRA GN 1393/2018 in GG 42121 (19 December 2018)

Journal Articles

- Theron, Godfrey and Fergus 'Organisational and collective bargaining rights through the lens of Marikana' (2015 36 ILJ 849.
- Wallis "Now You Foresee It, Now You Don't— SATAWU v Garvas & Others" (2012) 33 ILJ 2257