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**UNIVERSITY EXAMINATION**

**1<sup>ST</sup> YEAR 2<sup>ND</sup> SEMESTER 2013/2014 ACADEMIC YEAR**

**MAIN EXAMINATION**

**MSC IN HUMAN RESOURCE MANAGEMENT**

**COURSE CODE: HRM 811**

**COURSE TITLE: LEGAL ENVIRONMENT OF EMPLOYMENT IN KENYA**

**DATE: 20<sup>TH</sup> AUGUST, 2014**

**TIME: 2:00P.M.-5:00P.M.**

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**INSTRUCTIONS**

- **Answer question one and any other three questions**

### **Question one**

Workers at Hotel Kupoa Ltd were up in arms against the management. They had withheld their labour for three days and negotiations between their trade union representatives and the management had not borne any fruits. The management on its part believed that the strike was unlawful since the issues raised had been discussed in collective bargaining meetings. To them, the workers demand for a 50% salary increase was way beyond what the company could afford. Instead, they had given a counter offer of 20% salary hike provided the workers signed a performance contract. Employees were also demanding for a stoppage of deductions on their wages, a demand the management felt it had no basis. In-fact, the management felt it was doing employees a favor discussing with their union issues since their union was not even recognized.

It is this scenario that employees feel is unjustified since to them, demands for salary increase would not be tied to any conditions. They are also insisting g on the need to regulate the deductions on their wages.

#### **Required:**

As an expert in labour law:

- a) Advise the management which is interested in having the strike declared unlawful, on where to go, highlighting the jurisdiction of such a court (10 marks)
- b) You have realized that even the discussion between the trade union and the employer that would have resulted in a collective agreement were bound to hit a snag since their agreement may not have been registered by the court. Explain to both the management and the union on how to ensure their collective agreement meets the legal thresholds (10 marks)
- c) Suggest alternative ways this impasse may be addressed. (6 marks)
- d) Advise the management on the statutorily permitted deductions on wages (14 marks)

### **Question two**

“The Industrial court has awarded the former managing director of Nzoia Sugar Co. Ltd Kshs 13.5 million as compensation for wrongful termination of his contract. The court held that the Board of directors in terminating the contract on December 31<sup>st</sup> 2008 had not followed rules of natural justice.” (Sunday Nation, 20<sup>th</sup> November 2011)

- a) With reference to the text, highlight circumstances when the court may decide that wrongful termination occurred. (6 marks)
- b) Critically examine other modes of terminating an employment contract (12 marks)

### **Question three**

- a) “Conflicts between employers and employees sometimes occur because neither party understands its duties in their relationship as provided for by law”. Validate this assertion. (10 marks)
- b) The Directorate of occupational safety and health has a major legal mandate in ensuring workplace safety and health. Discuss (10 marks)

### **Question four**

- a) With the aid of appropriate examples explain circumstances when the law may permit discrimination in employment. (10 marks)
- b) Critically examine the role of the salaries and Remuneration Commission in the Public Sector. (10 marks)

### **Question five**

- a) The Registrar of Trade Unions may deny a trade union registration. Examine circumstances when he/she may be forced to take such actions. (10 marks)
- b) Morara is not sure whether he is on a contract of service or a contract for service. As a result though he works at Kampuni Porojo as a security, he is not sure whether he is an employee or an independent contractor. As an expert in labour law, enlighten him on the difference between the two. (10 marks)