INSTRUCTIONS

1. Students are requested, in their own interests, to write legibly.

2. This paper consists of SEVEN (7) pages. Please ensure that you have all of the pages.

3. This paper consists of TWO (2) sections. Section A and Section B. Please note that you are required to answer ANY TWO (2) questions from Section A and ANY TWO (2) questions from Section B.

4. Please answer Section A and Section B in separate answer booklets.
SECTION A (50 MARKS)

(Ms S. ALLI)

ANSWER THIS SECTION IN A SEPARATE ANSWER BOOKLET

YOU ARE REQUIRED TO ANSWER ANY TWO (2) QUESTIONS FROM THIS SECTION.

Question 1

With reference to relevant case law describe the CONDONATION process at the CCMA.

[Total Q1: 25 marks]
Question 2

John was employed by Shoes for Africa as a supervisor in the manufacturing department, and worked 6 days a week. He has been working for the employer from 1st June 2004, and lived on the premises in a chalet at the back of the factory this whole time. He was earning R5000-00 per month. He loves his work and hopes he will be one of the Directors soon. He has not taken annual leave during the last year. He was horrified when he was called into the office and told that he would be retrenched effective from 31st May 2011. He now believes that the employer has betrayed him and is concerned that he will not receive all payments due to him. He seeks advice on the following:

(a) He was told by Shoes for Africa that he would be paid one month’s extra salary (R5000) on the 31st May as severance pay. He wishes to know whether this is the correct amount and whether there are any other monies he should receive. He was also told that he will be given one weeks’ notice to vacate the chalet.

[10 marks]

(b) Whilst shouting at an employee for poor work performance in February 2011, he banged on a machine in protest and a cable snapped. The workers now cannot use the machine until a new cable is installed. The cost of a replacement cable is R300 but the employer has told him that he would deduct R300 from his last salary, and he would also charge him a punishment fee of R3000 for inconveniencing him. He does not dispute that he broke the machine’s cable.

[10 Marks]

(c) In January 2011, he took 10 days sick leave for the first time in all his years of employment, but the employer told him that he was not entitled to be paid for these days because he had a certificate from a traditional healer rather than a medical practitioner. The certificate indicated that he was possessed by spirits and could not work, as the spirits affected his back and prevented him from walking properly. John is upset about this because the traditional healer is well-known in the area and has a good reputation in the community for curing all problems.

[5 Marks]

[Total Q2: 25 marks]
Question 3

What are the common-law duties of an employee? Please refer to case law in your answer.

[Total Q3: 25 marks]

Total Section A: 50 Marks

SECTION B (50 MARKS)

(Mr D SUBRAMANIEN)

ANSWER THIS SECTION IN A SEPARATE ANSWER BOOKLET

YOU ARE REQUIRED TO ANSWER ANY TWO (2) QUESTIONS FROM THIS SECTION

Question 1

Ms Kelly Clarkson worked as a secretary for Funky Pillows (KZN) for 3 years, on an annual contract, which has been renewed without problem in this time. During this period, she has been subjected to sexual harassment by the Branch Manager, Mr Joe Soaps. She has told him repeatedly that she does not like to be touched by him, and that she found some of his comments to her offensive. He simply laughed each time. She reported the matter to the Managing-Director, Mr Simon Slippery, who sighed impatiently, and told her that she must understand that this was not personal, simply business. He told her to go back and concentrate on making money for the business. As a result of Mr Soaps continued harassment, she has needed psychological counselling to deal with the stress. She decides one morning that she cannot bear to go to work, and sends Mr Soaps a letter of resignation. She is very angry, because he wrote back to her, telling her that he was not going to renew her contract anyway, which was due to be renewed that week.
She seeks the advice on whether she can challenge the termination of her services even though she resigned.

[Total Q1: 25 marks]

**Question 2**

The 400 employees (teachers, minders, and cleaners) at Peter Pan School for the Handicapped have entered into wage negotiations with the school. They are represented by the People's Trade Union who generally enjoys a very good relationship with management of the school. After three wage negotiation meetings, the parties are nowhere near reaching settlement. This is largely due to the fact that the school is facing a financial crisis because of the mismanagement of school funds. It now has very limited finances available for the employees annual wage increase. The school has dismissed those who were responsible for the mismanagement of its funds and are currently discussing retrenching another 100 employees to rationalise its operations. The employees demand a 200% wage increase. The inflation rate is accepted by all parties to be at 4.5%. The employees' wages are all higher than most employees employed in comparable institutions in the province.

One day, the employees wait until the parents of the children have dropped their children off before they announce that they will be striking. They leave the children unattended, and gather at the school gates where they sit in the shade, stating that they will not return to work unless they are given at least a 100% wage increase.

The School principal phones you in a panic wanting to know what he can /should do to deal with the conduct of the employees. Provide him with detailed advice.

[Total Q2: 25 marks]
Question 3

Susannetjie is a white Afrikaans-speaking female. She sees an advertisement in her local newspaper. It reads as follows:

“Bathing Costumes and Intimate Wear for Men seek a marketing/public relations manager. The successful candidate must: (a) have a Public Relations and/or Marketing diploma from a recognized institution; (b) be fluent in 3 black languages (more than 3 would be an added recommendation); and (c) prepared to travel a lot within South Africa and internationally.”

Susannetjie applies for the position. She is fluent in 5 black languages. She has both a Human Resources and a Marketing Diploma from the Durban University of Technikon (DUT). She is a single mother of three and is concerned about the travel requirement. However she thinks she could probably organise babysitters if the travel requirements were not too onerous.

She is granted an interview. During the interview, a young Human Resources Officer winks at her and says that because of the nature of the business they were hoping to attract male applicants and that that is why they inserted the traveling requirement. He tells her the traveling would probably only be within KZN, and would be rare. He adds however that there would be numerous night functions which she may find to be problematic as a single woman and mother.

Another member of the interview team tells her that their Affirmative Action target is 75% representivity of black people in managerial positions within the company, and that this was why they put in the ‘black languages’ requirement. Their Affirmative Action policy has been approved by the Trade Union active in the company. They are currently 65% black representative.
Susannetjie is told her application was unsuccessful. She notes that an Indian male was appointed to the position. He speaks 3 black languages, and has only a Public Relations Diploma, from DUT.

Advise Susannetjie as to whether she has any prospects of success in challenging the decision not to appoint her, and whether she can lodge a claim based on unfair discrimination.

[Total Q3: 25 marks]