



**KISII UNIVERSITY**  
**UNIVERSITY EXAMINATIONS**

**FOURTH YEAR EXAMINATION FOR THE AWARD OF**  
**THE DEGREE OF BACHELOR OF LAWS**  
**FIRST SEMESTER, 2023/2024**  
**(AUGUST-DECEMBER, 2023)**

**LLBK: 413 LABOUR LAW**

**STREAM: Y4 S1**

**TIME: 2 HOURS**

**DAY: FRIDAY, 9:00 – 11:00 AM**

**DATE: 17/11/2023**

**INSTRUCTIONS**

- 1. Do not write anything on this question paper.***
- 2. Answer Question ONE (COMPULSORY) and any other TWO questions.***
- 3. Illustrate your answer with relevant cases and statutory provisions where applicable.***

**QUESTION ONE**

Ndoto Njema Limited deals with manufacturing blankets. John was employed 20 years ago as a machine operator and his current salary per month is Kshs 15,000/=. Because of his experience, he is therefore, conversant with the general safety measures in the factory. One of the safety measures is that if the wool is stuck while being processed, the machine operator is required to switch off the machine and remove the stuck wool using an instrument provided by the company.

On 12<sup>th</sup> April 2023, John tried to stop the machine but due to a technical fault, the machine failed to stop. No maintenance had been done on the machine for a period of 18 months. In a bid to keep the process of production going, John attempted to remove the stuck wool with his bare hands and in the process of removing the stuck wool, he tripped, because the floor where was slippery. His right hand was caught in the roller blade and as a result he sustained serious injuries. There was no notice displayed warning the employees that the floor was slippery or of imminent danger to make the employees take extra precaution. Before the accident, John had informed his immediate supervisor that the machine was faulty but he ordered him to continue working and ensure that the production process was not interrupted. Following the accident, John was rushed to Pona Haraka Memorial Hospital for treatment. He was given off duty for five weeks to recuperate. After the five weeks' rest, John returned to work but was

told by his immediate supervisor that the company no longer needed his services and was sent home without any pay.

John was annoyed because for the entire 20 years that he worked at the factory, he had never missed work neither had he taken leave or received pay in lieu of leave. Upon request for a certificate of service, the Company refused to grant it and instructed the security at the main entrance of the company not to allow John into the premises. The company instructed the security to treat John as a trespasser and if he managed to enter the premises, the guards on duty would lose their job. The guards executed their duties as directed and never allowed John into the premises.

- a) Using relevant provisions from statute, the Constitution of Kenya, 2010, international instruments and case law, discuss fully the legal issues in the above case **(18 Marks)**
- b) Advise John on the possible causes of action that he can take against Ndoto Njema Limited **(7 Marks)**
- c) Analyse the provisions relating to occupational diseases under the Work Injuries Benefits Act. **(5 Marks)**

## **QUESTION TWO**

- a) Illustrating your answer with specific examples, explain the extent to which the Labour Relations Act 2007 protects the employee's right to freedom of association. **(8 Marks)**
- b) Explain the meaning of redundancy and the rules that govern it under the Employment Act chapter 226 Laws of Kenya. **(6 Marks)**
- c) Discuss how the Kenyan labour law regime protects employees against discrimination. **(6 Marks)**

## **QUESTION THREE**

- a) James Munyama was employed as a machine operator by Timcut Investments Ltd from March 2011 to June 2022. He was a member of a militant trade union movement called "Workers Unite". In June 2022 James was dismissed from employment for having taken two days off employment to attend a congress of his trade union. During the whole of 2020 leading to the time of Munyama's dismissal, he and his best friend and fellow employee, Wanyama, had been subjected to a lot of harassment and humiliation by their superiors at Timcut Investments Ltd. Soon after Munyama's dismissal, Wanyama decided to leave his job. The two friends,

who are avid members of the trade union movement, are aggrieved by their employer's action.

Discuss the legal position of Munyama and Wanyama against Timcut Investments Ltd. **(6 Marks)**

- b) Explain the matters which must be provided for in the constitution of a trade union or an employers' organization. **(7 Marks)**
- c) Discuss the responsibilities of the Cabinet Secretary for Labour may in relation to dispute resolution. **(7 Marks)**

#### **QUESTION FOUR**

- a) Explain the meaning of unfair dismissal and the remedies available for unfair dismissal in the context of the Employment Act Chapter 226 Laws of Kenya. **(10 marks)**
- b) Discuss the obligations of an Employer under the Work Injuries Benefits Act. **(5 Marks)**
- c) Discuss the powers of a medical officer appointed under the Labour Institutions Act. **(5 Marks)**

#### **QUESTION FIVE**

Write explanatory notes on the following.

- a) Discuss the jurisdiction of the Employment and Labour Relations Court established under Employment and Labour Relations Court Act 2011 and the reliefs which it can grant. **(8 Marks)**
- b) Kimani is employed as a driver by Kinangop Dairy Ltd. His duties involve delivering and distributing milk in Nairobi from Kinangop, a round trip of approximately 250 kilometres in a van that had no heating system, and whose windows were badly fitted allowing a lot of cold wind into the van as one is driving even at a moderate speed. Kimani has suffered severe frostbite as a result of the cold and he is intending to file a claim for damages against his employer.

Give Kimani a detailed opinion whether he will succeed in a claim for damages. **(6 Marks)**

- c) Discuss the duties of an occupier under the Occupational Safety and Health Act. **(6 Marks)**