

**THE OPEN UNIVERSITY OF TANZANIA
FACULTY OF BUSINESS MANAGEMENT**

**MASTER OF BUSINESS ADMINISTRATION
DISTANCE PROGRAMME**

OHR 601: LABOUR LAW

COURSE OUTLINE

General Overview

Labour law is an important course to any person in the world because at any time in the modern world a person is either an employer or an employee. However, this course has been designed and structured purposely to serve as a guide to distance education learners thus departing from the conventional style of running a course. Labour law in Tanzanian context is a vast subject given the multiplicity of statutes and procedures and therefore it is expected that the learners should take effort to follow the course outline as designed without skipping a topic. On the matters of convenience, the case law has not been included in this course outline but they will feature in the discussions of a particular topic.

In short, the course covers the brief historical development of labour legislation in Tanzania; the nature and scope of employment contracts; and the rights, protections, duties of both employers and employees as provided for in various legislation in force in the country. Dispute settlement and enforcement of rights accrued under the contract of employment is also covered. The course also envisages the aspect of International Labour Standards as set forth by the International Labour Organisation.

It is worthy noting that the regime of labour laws obtaining in Tanzania has been changed radically by the passing of two new statutes namely, the Employment and Labour Relations Act, 2004 and the Labour Institutions Act, 2004. The new labour regime is yet to come into force but the Labour Institutions Act, 2004 has already come into force. However, the new regime will become operational as soon as the Employment and Labour Relations Act, 2004 comes into force. These new statutes repeal and replace most of the labour statutes which are existing. It is for this reason that in the course of dealing with the topics herein detailed, a comparison with the new laws which are yet to apply will be an essential part.

It is assumed that this course outline will provide a useful guide to the targeted learners and will be the starting point of further readership in this field.

General Objective(s)

The objectives of this course are *inter-alia* to impart to the student the knowledge of laws and legal principles governing employment as they apply in Tanzania.

THE COURSE CONTENT

1.0 INTRODUCTION TO LABOUR LAW

Introduction

This topic covers the introductory part of the labour/employment law. The historical background is covered which explains the genesis of the employment laws in Tanzania. The sources of labour law of Tanzania are also covered. The part also deals with the definition of basic concepts in labour law as they apply in Tanzania.

Learning Objectives

The objectives of this particular topic is *inter-alia*:

1. to lay down the foundation to the student of labour law in as far as the labour law of Tanzania is concerned.
2. to impart to the student the knowledge of the basic concepts in labour law
3. to impart to the student, the knowledge of the sources of labour law as it applies to Tanzania

Subtopics

- Definition of concepts
- Development of Labour Law in Africa, and in Tanzania in Particular
- Sources of Labour Law in Tanzania

References

Davies, P. *Labour Law: Text and Materials*, London, Weidenfeld and Nicholson, 1979

Kapinga, W., "Compensation for Occupational Hazards." *In East African Law Review* Vol. 16, June 1989, Issue no. 1

Kapinga W. "State Control of the Working Class through Labour Legislation" in Shivji, I. (ed.), *The State and the Working People in Tanzania*. Dakar, 1986

Kapinga, W. and Shaidi, J. "Labour Relations and the Law in Tanzania" in Evans, K. & Lovemore, M (ed), *Public Employment in Southern Africa*, 1996

Statutes

The Employment Ordinance, Cap 366

The Employment and Labour Relations Act, 2004 (Yet to be operational)

2.0 EMPLOYMENT CONTRACTS

Introduction

Employment contracts are a special kind of contracts as governed by the laws. This part covers the concept of employment contracts as distinguished from any other type of contract. It also covers the formation of the contract of employment, forms of such contracts, contents of such contracts, duration of such contracts, breach of such contracts as well as the termination of such contracts. Special emphasis is placed upon the preconditions to the contract of employment, the guiding principles before entering into contract; the concept of the contract of service as distinguished from a contract for service; and the rights as well as obligations created by a contract of employment. In this topic a brief discussion is had of the Employment contracts under the Employment and Labour Relations Act, 2004 which is yet to be operational.

Learning Objectives

The objectives of this topic are inter-alia

1. to enable the student of labour law to distinguish the contracts of employment from all other forms of contracts
2. to enable the student of labour law to distinguish between the contracts of service and contracts for service
3. to enable a student of labour law to identify the rights and obligations created by a contract of employment

4. to impart to the student the knowledge of oral and written contracts of employment as they apply in Tanzania
5. to impart to the student the legal ways of forming as well as terminating the contracts of employment

Subtopics

- Introduction, Nature of Employment Contract: Contract of Service and Contract for Service
- Formation of Employment Contracts: Parties to the contract, Competence of Parties, Consideration
- Forms of the Contracts of employment: Oral and Written Contracts
- Contents of the Employment Contract: Obligations Under the Contract of Employment; Obligations of the Employer and Obligations of the Employee; Rights of the Employees: Leaves, Rest days and Holidays, Repatriation, Social Security contributions, Medical Treatment etc
- Period of contracts of Employment: Oral Contracts, Written Contracts
- Termination of contract of employment: Oral Contracts, Written Contracts, Presumption as to New Contracts, Relationship between Termination and Dismissal

References

Pett, G., *Employment Law*, Sweet & Maxwell, London, 1992

Rideout, R., *Principles of Labour Law*, 4th edn. London, Sweet & Maxwell, 1983

Sargeant, M. *Employment Law*, 2nd Edn., Pearson Education Limited, Harlow, 2003

Selwyns, N., *Selwyn's Law of Employment*, (8th Ed) Butterworths, London, Dublin, Edinburgh, 1993

Davies, P. and Freedland, M., *Labour Law: Text and materials*, Weidenfeld and Nicolson: London, 1979

Kahn-Freund, "Servants and Independent Contractors," 14 *MLR* 504, 1951.

Statutes

Employment Ordinance, Cap. 366

The Employment and Labour Relations Act, 2004 (Yet to be operational)

3.0 DISPUTE SETTLEMENT CONCERNING EMPLOYMENT

Introduction

Normally disputes may arise in any contract for many reasons. This part deals with the settlement of disputes in as far as employment is concerned. It should be noted from the beginning that disputes concerning employment in Tanzania are not simple to handle due to multiplicity of procedures under different pieces of legislation. What determines the procedure to be used include, the nature of the dispute as well as the parties involved. This part covers the procedure of dispute settlement under the Employment Ordinance only. However, a brief discussion is had of the comparison between the procedures under the Employment Ordinance in Contrast with the Employment and Labour Relations Act, 2004 which is yet to be operational.

Learning Objectives:

The objectives of this topic is inter alia:

1. to enable the student of labour law to identify the type of disputes which can be settled under the Employment Ordinance
2. to impart to the student of labour law the knowledge of the procedures involved in dispute settlement under the Employment Ordinance.
3. to impart to the student the knowledge of the institutions responsible for settlement of employment disputes under the Employment Ordinance.

Sub-topics

- Dispute settlement under the Employment Ordinance: Subordinate court, Jurisdiction of the Magistrate, Application of Criminal Procedure Act, 1985 and Civil Procedure Code Act, 1966, Appeal

Statutes

The Employment Ordinance, Cap 366

The Employment and Labour Relations Act, 2004

4.0 SECURITY OF EMPLOYMENT AND DISCIPLINARY PROCEEDINGS

Introduction

This topic concerns the two conflicting concepts. On one hand the employees are supposed to have secure employments and on the other hand the employers powers to control the discipline of the employees. With security of employment, the protection by the law here is to ensure that an employee is secure against the arbitrary dismissal by the employer. Thus the employee should be sure of being in the employment until when it is lawfully determined. The main concern in this topic therefore, is on the power of the employers to dismiss the employees summarily for indiscipline. The law concerning security of employment is aimed at restricting the inherent Common Law right of the employers to hire and fire at will.

The topic deals with the procedures involved in cases of summary dismissals/ summary termination of employment. In this topic the Security of Employment Act, 1964 is discussed in detail as well as the procedure for settlement of disputes under the same law. It is to be noted that in all issues of summary dismissal where the employees are covered by the Security of Employment Act the law and the procedure applicable is that under the Security of Employment Act. Where an employee is not covered by the Security of Employment Act but by the Employment Ordinance only the law applicable in case of summary dismissal is the Employment Ordinance. Lastly this topic deals with the establishment and the functioning of the institutions which are responsible in the settlement of disputes of disciplinary nature under the Security of Employment Act.

Learning Objectives

The objectives of this topic are *inter-alia*:

- 1) to impart to the students the concept and reasons for security of employment
- 2) to impart to the students the procedures for effecting the disciplinary measures against an employee legally
- 3) To enable the student to identify the summary dismissal disputes which are to be settled under the Security of Employment Act as distinct from those to be settled under the Employment Ordinance.
- 4) To impart to the student the knowledge of the institutions involved in the settlement of disciplinary proceedings.
- 5) To impart to the student the knowledge of the finality and ouster clauses and their effect in the settlement of disciplinary proceedings.

Subtopics

- Dismissal and termination under the Security of Employment Act, 1964: Meaning of dismissal and procedures for disciplining the employees, Lawful and Unlawful Dismissal, Communication of Circumstances for termination of employment
- Dispute settlement under the Security of Employment Act: Nature of disputes which are covered, Procedure of disputes settlement; Field branch, Conciliation Board, Minister, Finality and Ouster clauses
- Reinstatement and reengagement: Impact of Act no. 1 of 1975

References

Statutes

The Employment Ordinance Cap. 366

The Security of Employment Act, 1964

5.0 INDUSTRIAL DISPUTES

Introduction

This topic deals with the collective disputes settlement in Tanzania. These disputes are also referred to as Trade disputes. Principally, the term industrial disputes/collective disputes refers to the employment disputes involving more than one employee. However, it should be noted that in the Tanzanian context, the term industrial disputes under certain circumstances, includes disputes involving a single employee. That is to say in Tanzania a single employee can institute a trade dispute if he is certified by a labour officer to be a management employee. It should be noted also that hand in hand with the trade disputes is the concept of trade enquiry.

The topic also covers the issues of strikes and lockouts as an important aspect of collective bargaining.

Learning Objectives

The objectives of this topic include *inter-alia*:-

1. to impart to the student the knowledge of the concept and principles of industrial disputes generally
2. to impart to the student the knowledge of the application of the industrial disputes as they apply in Tanzania
3. to enable the student to acquire the knowledge of the procedures involved in the settlement of trade disputes as they apply in Tanzania
4. to enable the student to acquire the knowledge of the concepts and procedures used in trade enquiry
5. to enable the student to identify the institutions responsible in the settlement of industrial disputes
6. to impart to the student the knowledge of the finality and the ouster clauses as they apply in industrial disputes settlement.
7. to impart to the student the knowledge of the procedures of carrying out a lawful strike and lock outs.

Subtopics

- Meaning of Industrial Disputes: Permanent Labour Tribunal Act 1967, Establishment and Jurisdiction of Industrial Court, Composition of the Court, Application of the CPC and CPA
- Nature of the disputes settled under the Industrial Court Act, 1967: Collective disputes, Individual disputes

- Procedure of settlement of Disputes: Negotiation, Conciliation, Adjudication, Enquiry
- Negotiated Agreement and Voluntary Agreement
- Finality and Ouster Clauses
- Strikes and Lock outs in Tanzania

References

Mihyo, P. *Industrial Conflict and Change in Tanzania*, (1983) Tanzania Publishing House, Dar es Salaam.

Smith, I. and Wood, J., *Industrial Law*, (3rd Ed.) Butterworths, London, 1986

Statutes

The Industrial Court Act, 1967

6.0 SOCIAL SECURITY

Introduction

In this topic social security as an important aspect in employment law is discussed. This covers the issues of the welfare and subsistence of an employee at the time when the employment comes to an end or is interfered by any contingency. Such contingencies range from the attainment of old/retirement age, the contracting of a disease; to the occurrence of an accident to mention but a few. The topic therefore deals with the principles of the traditional as well as modern social security schemes albeit in short. The Workmen's Compensation Schemes are discussed together with the pensions schemes, provident schemes as well as the national health insurance schemes.

Learning Objectives

The objectives of this topic include *inter alia*:

1. to impart to the student the knowledge and concepts as well as the rationale for social security schemes and their importance in labour law
2. to impart to the student the knowledge of the rights and duties of both the employers and the employees in relation to social security schemes.
3. to enable the student to grasp the distinctions in application and operation of different social security schemes
4. to enable the student to identify the relevant social security schemes in respect of different types of employers

Subtopics

- The Concept and Rationale for Social Security: Traditional and modern Social Security
- The Workmen's Compensation: Compensable Accidents and Occupational Diseases, Types of disability, Criteria for compensation, Procedure for claiming compensation
- Other Social Security statutes: National Health Insurance Fund Act, 1999, The Parastatal Pension Scheme, Act 1978, The Public Service Retirement Benefits Act, 1999, The National Social Security Fund Act, 1997, The Local Authority Provident Fund, 2000 etc

References

Baugh, W., *Introduction to Social Services*, London, Macmillan Education Ltd., 1987.

Bossert, A., *Traditional & Modern Forms of Social Security in Tanzania: An Examination of the Conditions of their Development*," German University of Augsburg, 1987

Kapinga, W., "Compensation for Occupational Hazards." *In East African Law Review* Vol. 16, June 1989, Issue no. 1

Mounton, P., *Social Security in Africa Trends, Problems and Prospects*, Geneva ILO Office, 1975

Statutes

National Health Insurance Fund Act, 1999,
The Parastatal Pension Scheme, Act 1978,
The Public Service Retirement Benefits Act, 1999,
The National Social Security Fund Act, 1997,
The Local Authority Provident Fund, 2000
The Workman's Compensation Ordinance, Cap. 263

7.0 WORKER'S AND EMPLOYER'S ASSOCIATIONS

Introduction

This topic deals with the questions of the freedom of association. The workers have the freedom to associate with other workers through trade unions while the employers are free to associate with other employers through employers' associations. The topic therefore covers the concept of the organizations of workers (trade unions) and the organizations of employers. The topic also looks at the concepts of collective bargaining via trade unions.

Learning Objectives

The objectives of this topic includes *inter alia*:

1. to impart to the student the knowledge of the concepts and rationale for employers and employees associations
2. to enable the student to identify the procedures in the formation and the operation of trade unions and employer's association as an important aspect of labour law.

Subtopics

- Concept and Rationale for Trade Unions
- Historical background to the law relating to trade unions in Tanzania: The State and the Independence of Trade Unions, The Rise of State Controlled Trade Unions, The enactment of the Trade Unions Act, 1998 and the Independence of Trade Unions in Tanzania.

References

Shivji, I., *Law, State and the Working Class in Tanzania*, Tanzania Publishing House, Dar es Salaam, 1986

Kapinga, W. and Shaidi, J. "Labour Relations and the Law in Tanzania" in Evans, K. & Lovemore, M (ed), *Public Employment in Southern Africa*, 1996

Smith, I. and Wood, J., *Industrial Law*, (3rd Ed.) Butterworths, London, 1986

Statutes

The Trade Unions Act, 1998

8.0...INTERNATIONAL ASPECTS OF LABOUR LAW

Introduction

This topic deals with the international standards as set by the ILO. This part covers the forms, importance and enforcement of the ILO standards. Every member of the UN is supposed to adhere to the ILO standards in formulating its labour legislation.

Learning Objectives

The objectives of this topic include *inter-alia*:

1. to impart to the student the concept, forms, content, adoption and enforcement of the ILO conventions as an important aspect of labour law.

Subtopics

- Brief introduction to International Labour Organisation's Labour standards
- Forms of ILO standards – Conventions and Recommendations, sources of the standards, importance, adoption, enforcement
- Fundamental ILO Conventions and their Ratification:
- ILO Conventions which have been adopted by Tanzania

References

Conventions

The Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87),
The Right to Organize and Collective Bargaining Convention, 1949 (No. 98),
The Forced Labour Convention, 1930 (No.29),
The Abolition of Forced Labour Convention, 1957 (No. 105),
The Equality Discrimination (Employment and Occupation) Convention, 1958 (No. 111),
The Equal Remuneration Convention, 1951 (No. 100),
The elimination of child labour Minimum Age Convention, 1973 (No.138),
Worst Forms of Child Labour Convention, 1999 (No. 182)

GENERAL REFERENCES

Baugh, W., *Introduction to Social Services*, London, Macmillan Education Ltd., 1987.
Bossert, A., *Traditional & Modern Forms of Social Security in Tanzania: An Examination of the Conditions of their Development*," German University of Augsburg, 1987
Davies, P. *Labour Law: Text and Materials*, London, Weidenfeld and Nicholson, 1979
Kapinga, W., "Compensation for Occupational Hazards." *In East African Law Review* Vol. 16, June 1989, Issue no. 1
Kapinga W. "State Control of the Working Class through Labour Legislation" in Shivji, I. (ed.), *The State and the Working People in Tanzania*. Dakar, 1986
Kapinga, W. and Shaidi, J. "Labour Relations and the Law in Tanzania" in Evans, K. & Lovemore, M (ed), *Public Employment in Southern Africa*, 1996
Makaramba, R., *Children Rights in Tanzania*,_ Friedrich Ebert Stiftung, Dar es Salaam, 1998
Mihyo, P. *Industrial Conflict and Change in Tanzania*, (1983) Tanzania Publishing House, Dar es Salaam.
Mounon, P., *Social Security in Africa Trends, Problems and Prospects*, Geneva ILO Office, 1975
Pett, G., *Employment Law*, Sweet & Maxwell, London, 1992
Rideout, R., *Principles of Labour Law*, 4th edn. London, Sweet & Maxwell, 1983

- Sargeant, M. *Employment Law*, 2nd Edn., Pearson Education Limited, Harlow, 2003
- Selwyns, N., *Selwyn's Law of Employment*, (8th Ed) Butterworths, London, Dublin, Edinburgh, 1993
- Shivji, I., *Law, State and the Working Class in Tanzania*, Tanzania Publishing House, Dar es Salaam, 1986
- Smith, I. and Wood, J., *Industrial Law*, (3rd Ed.) Butterworths, London, 1986
- Whincup, M., *Modern Employment Law*, 6th edition, Heinemann Professional Publishing Oxford, 1998

REPORTS

ILO Conference 91 session 2003: List of Ratifications by Convention and by Country as of 31st December 2002. ILO Geneva, Report III (part 2)

STATUTES

1. Employment Ordinance, Cap. 366
2. Security of Employment Act, 1964
3. Industrial Court Act, 1967
4. Workmen's Compensation Ordinance Cap. 263
5. Trade Unions Act, 1998
6. National Social Security Fund Act, 1997
7. Parastatal Pension Fund Act, 1978
8. Employment and Labour Relations Act, 2004 (not in force)
9. Labour Institutions Act, 2004 (not in force)

CONVENTIONS

- Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87)
- Right to Organize and Collective Bargaining Convention, 1949 (No. 98)
- Forced Labour Convention, 1930 (No.29)
- Abolition of Forced Labour Convention, 1957 (No. 105)
- Equality Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
- Equal Remuneration Convention, 1951 (No. 100)
- The elimination of child labour Minimum Age Convention, 1973 (No.138)
- Worst Forms of Child Labour Convention, 1999 (No. 182)
- Social Security (Minimum Standards) Convention, 1952 (No. 102)

DURATION AND EVALUATION

The course runs for one academic year. The mode of evaluation includes:-

- (a) EITHER 2 Assignments @ 15% of the total assessment each OR 1 term paper which carry 30% of the total assessment
- (b) 1 test which carry 20% of the total assessment; and
- (c) Examination which carry 50% of the total assessment

The pass mark in respect of this course shall be 50%