BER\_CH37-38

Chapter 34

Hypotec tacit:

* between landlord and tenant and comes into effect by operation of law when a tenant’s rent falls into arrears
* Section 32 allows a landlord to apply for the attachment and, in certain circumstances, for the removal of a tenant’s movable goods in the leased premises
* The landlord applies to the Magistrate’s Court for an attachment under Section 32 in securitatem debiti – in other words, to secure the debt (landlord may impound/remove tenant’s goods)
* The hypothec secures the landlord can burden the movables present on the leased land or while in transit to a new destination subsequent to the removal from the land. -Limited real right

A Lien: is a “right” to retain physical control of another's property as security for payment. The right of retention enables the creditor to retain the client's (“the debtor”) property if the debtor fails to settle their account.

Chapter 37: Week 11

Important notes when answering questions:

* Case law questions:

1. State facts
2. State principle applied in case
3. State conclusion of court

* IRAC Method:

1. Identify: State what the problem is and what you will be considering to answer the question
2. Recite: Give all the law relating to the topic and not only to your answer
3. Application: Apply the law mentioned under “R” to facts provide
4. Conclusion:

Purpose of labour law:

* Labour law is conserned with the rights and obligatins between parties engaged in the work world.
* It is imperative that employees are protected against arbitary employer descistions.
* The decisions and actions of employers are required to be fair and just.
* Labour law seeks to ensure that fairness prevails in the relations between emplyers and employees.
* The constitution states that everyone has the right to fair labour practices.
* **Section 23**:
* Every worker has the right to join a trade union to strike and to participate in activities and programs of a trade union
* Every employer has the right to form and join an employers organization and to participate in the activities and programs of an employer’s organization
* Every trade union and employees organization has the right to determine its own administration, programs and activities; to organize, to form and join a federation.
* Every trade union, employers' organisation and employer has the right to engage in collective bargaining.

The Labour Relations Act

* The purpose of the Act is to advance economic developments, social justice, labour peace and democratisan of the workplace.
* The Labour relations Act regulates both collective rights(held by trade unions providing organisational rights to establish bargaining structures and the rights to strike) and individual rights (protects individual employees against things like unfair dismissal).
* Primary objectives of the act:
* Give affect to, and regulate the fundamental rights concerned by section 23 of the constitution
* Provide a framework within which parties may collectively bargain to determine wages, terms in conditions of employment in other matters of mutual interest.
* Promote orderly collective bargaining
* The establishment of workplace forms and the effective resolution of Labour disputes

Basic Conditions Employment Act (BCAE)

* Purpose: to advance economic development and social injustice by fulfilling the primary objectives of the Act.

The employment equity act

The objective of the employment equity act he ais to achieve equity in the workplace by:

Eliminating unfair discrimination in order to promote equal opportunities and fair treatment and; implementing affirmative action measures to redress past discrimination

Individual and collective labour law:

* Trade unions provide a platform forn parties to negotiate changes to terms and conditions with the purpose to reach an agreement (collective agreements).
* Collective agreements set out specific conditions of employment or matters of mutual interest between employer and employee.

Disputes of right and disputes of interest:

* A dispute of right arises when there is a violation of a legally enforcable right (a pre-existing right).
* Disputes of interest are about the creation of new rights or about the alteration of existing rights (employees seek to establish can you right). Disputes of interests inevitably arise from the party's failure to reach an agreement during collective bargaining.
* Collective bargaining and industrial action are generally regarded as the most appropriate avenues for the statement of disputes of interests while arbitration and adjucation are regarded as the most appropriate methods for resolving disputes of right.
* The LRA allows for dispute that couldn't reach a consensus to be resolved through industrial action in the form of take that strikes and labour talk-outs.
* Individual labour law is about the enforcement of existing rights, resulting in the lodging of disputes of rights. Resolved through arbitration and adjucation.
* Collective labour law is about negotiation over new rights, giving rise to disputes of interest. Resolved through collective bargaining in industrial action.
* Bodies dad decide disputes Commission for conciliation, mediation in arbitration CCMA.
* Bargaining and statutory counsels: resolve unfair dismissal and unfair labour practice disputes.
* Labour Courts and a Labour Appeal Court LAC (has exclusive jurisdiction to hear and determine all appeals against judgment of the Labour Courts, has the power to confirm, amend or set aside a Labour Court’s judgment. The LAC is the highest court of appeal in labour disputes and has equal standing to Supreme Court of Appeal (SCA)).

Chapter 38: Week 12

ATAC method:

* Applicable principle.
* Theory of the applicable principle.
* Application of the principle to the problem.
* Conclusion.

Chapter 38: Week 8.1 Tut – ATAc Method

Q1: According to Section 10 Sylvia must prove the following:

\*she can bring the application because the claim is above R100

\*she complied with the formal rewuirements

\*that Ursula has committed an act of insolvency

\*facts exist that establish that sequestration would in fact benefit Sylvia

Q2: When distriburing funds from the proceeds of the sequestration, the cost of maintaining the property will be considred first.

Secured creditors, who rely on a security that is acknowledged by the National Credit Act, are considered. Remaining proceeds, from an assest serving as real secuirity will be transferred to the free residue account and distributed among unsecured creditors(from claims preferred by operation of law) and then concurrent creditors.

Therefore, the proceeds of the property will cover the R5 000 to maintain the house and R100 for the watch, first. Jerome’s pawn shop, as a secured creditor, will receive payment for the watch, serving as a real right. Payment will be maide to XY Bank for the secured by them. The remains will be transferred to the free residue account: The income tax payable by Mpho will go to SARS(statutory prefferent claim). Remaining proceeds, from an assest serving as real secuirity will be distributed among ABC Elementary School and Dr Osunlaja.

Q3:

|  |  |
| --- | --- |
| Marreid in community of property | Out of community of property |
| Couple’s estate will be will be sequestrated one | Other partner’s estate will not be sequestrated |
| Negative effect’s of seq will effect both partners. |  |