

THE UNIVERSITY OF ZAMBIA  
UNIVERSITY EXAMINATIONS  
SCHOOL OF LAW OCTOBER, 1983

1. Legal Process	- L 110
2. Certificate in Law	- L 140
3. Constitutional Law	- L 150
4. Legal Process	- L 210
5. Legal Process (Def/Sup)	- L 210
6. Law of Contract (Mid-Session)	- L 220
7. Law of Contract	- L 220
8. Law of Contract (Sup/Def)	- L 220
9. Law of Torts	- L 230
10. Criminal Law	- L 240
11. Constitutional Law	- L 250
12. Sup/Def	- L 250
13. Evidence	- L 310
14. Property Law and Succession	- L 320
15. Land Law and property relations Sup/def	- L 320
16. Commercial Law	- L 330
17. Sup/Def	- L 330
18. Administrative Law	- L 340
19. Family Law	- L 350
20. Sup/Def	- L 350
21. Jurisprudence (Mid-Session)	- L 410
22. The Law of Business Associations	- L 420
23. Sup/Def	- L 420
24. International Law	- L 430
25. International trade and investment Law	- L 450
26. Criminology	- L 470
27. Labour law and industrial Relations	- L 480
28. Taxation	- L 490

UNIVERSITY OF ZAMBIA  
UNIVERSITY EXAMINATIONS - OCTOBER, 1993

L 110

LEGAL PROCESS

TIME: TWO HOURS (PLUS 10 MINUTES TO READ THE PAPER).

INSTRUCTIONS:

1. ANSWER ANY FOUR (4) QUESTIONS
  2. ANY RELEVANT, UNMARKED STATUTE, MAY BE CONSULTED DURING EXAMINATION
- 

1. Trace the development of the Court System in both North-Western and North-Eastern Rhodesia from 1889 up to 1st August, 1911.
2. Peter Mulwanda wants to marry Mary Musanda whom he has known for two years. He has two options; either marry according to Customary law or go through a Ceremony pursuant to the provisions of the Marriage Act Cap 211 of the Laws of Zambia. He has consulted a lawyer in private practice who has advised him on the advantages and disadvantages of the two forms of marriage. He is however not clear on the circumstances in which African customary law cannot be applied. He has now come to you. With the help of suitable illustrative decided cases, explain to him the circumstances when African customary law cannot be applied.
3. "..... cannot well be accounted for except on the theory that Parliament generally changes the law for the worse, and that the business of the judges is to keep the mischief to its interference within the narrowest possible bounds."  
per: Pollock J. Quoted in Essays in Jurisprudence and Ethics  
p. 85.

Explain the causes of the difficulties experienced in the interpretation of statutes and outline the rules which assist judges in discovering the intention of Parliament from Statutes.

4. Twenty-nine years after independence Zambia still depends on the law, practice and procedure applicable in England in certain cases; Explain the laws which make the application of English law in Zambia possible and why such a situation continues to exist.
5. What do you understand by the judicial concept of Stare Decisis?
6. (a) Discuss the jurisdiction of the following courts:
  - (i) Consular courts
  - (ii) The High Court of North-Western Rhodesia and why it was created.
- (b) What do you understand by specific performance.

---

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - OCTOBER, 1993

L 140

CERTIFICATE IN LAW

TIME:           THREE HOURS

ANSWER:       ANY THREE QUESTIONS

- 
1. The accused Mary, killed Linda after coming upon her and her (Mary's) husband John in the very act of adultery. Mary was the senior wife and her husband had three other wives. The deceased, Linda was in fact John's fiancée and they planned to marry.

Polygamy was the normal marital status in Mary's community.

What offence(s) if any did Mary commit?

2. Write short notes on the following

- (a) Sources of the Criminal Law of Zambia
- (b) The Burden and standard of proof in criminal law.

3. X entered a shop to buy some sweets worth K50 for his son. He handed a K100 note to a cashier. The cashier, mistakenly thinking that X had given her a K500 note gave him (X) K450 instead of K50 as change.

X walked out of the shop smiling broadly as he was desperately in need of cash.

Unknown to him, the shop security guard who had witnessed the transaction was pursuing him.

Across the road, the security guard confronted X and asked him to accompany him back to the shop. X resisted and kicked the guard in the leg and ran away.

Three hours later, the police found X smelling heavily of Kachasu and arrested him.

What offence(s) did X commit?

4. To what extent can intoxication excuse crime under the Zambian criminal law?
5. "The offence of bigamy is one example of laws which are sometimes totally strange once transported from England to Zambia, and once they are applied to indigenous Zambians. In England polygamy is a totally unacceptable state of affairs".

Commissioner Ngulube (as he then was now the Chief Justice of Zambia) in the People V Nkoma (1978)  
ZR. 4

In the light of the above dicta discuss whether the law of bigamy should be retained in its present form?

---

END OF EXAMINATION

Across the road, the security guard confronted X and asked him to accompany him back to the shop. X resisted and kicked the guard in the leg and ran away.

Three hours later, the police found X smelling heavily of Kachasu and arrested him.

What offence(s) did X commit?

4. To what extent can intoxication excuse crime under the Zambian criminal law?
5. "The offence of bigamy is one example of laws which are sometimes totally strange once transported from England to Zambia, and once they are applied to indigenous Zambians. In England polygamy is a totally unacceptable state of affairs".

Commissioner Ngulube (as he then was now the Chief Justice of Zambia) in the People V Nkoma (1978)  
ZR. 4

In the light of the above dicta discuss whether the law of bigamy should be retained in its present form?

---

END OF EXAMINATION

CONSTITUTIONAL LAW

TIME: THREE HOURS

ANSWER: FOUR (4) QUESTIONS

NOTE: ONLY UNMARKED STATUTES MAY BE BROUGHT INTO THE  
EXAMINATION ROOM

- 
1. Critically discuss the extent and reality of Presidential power under the One-party system of government in Zambia.
  2. The Minister of Home Affairs presents the Criminal Procedure Code (Amendment) Bill, 1993 to the National Assembly. The Bill seeks to prohibit bail for capital offences, misprison of treason, treason-felony and aggravated robbery. This Bill comes in the wake of the decision of the courts to grant bail to members of an opposition party who were detained and <sup>later</sup> ~~later~~ charged with treason-felony and sedition. The National Assembly after a prolonged and acrimonious debate passes the Bill. Thirty-eight MPs then present a petition to the Speaker requesting ~~that~~ a judicial tribunal be set up to examine the constitutionality of the Bill. The Speaker rejects the petition on the ground that it is "misconceived" and since it does not violate the constitution in any way he is not bound to do anything at all.  
  
The aggrieved MPs come to you for advice. Write a brief setting out the relevant arguments, supported by appropriate authorities.
  3. Maleni is Publicity Secretary of an opposition party called ~~the Liberal~~ Democratic party. He is a very charismatic speaker and he ~~always~~ criticises government leaders for corruption and incompetence. The Minister of Home Affairs directs the Police not to allow Maleni to address any meetings in any part of Zambia until he stops criticising the government. Maleni's applications for ~~permits~~ to hold meetings are consequently turned down on numerous occasions.  
  
He comes to you for advice. Advise him with the aid of appropriate authorities.

On August 1, 1993 the President proclaims an emergency under Article 31 of the Constitution following wide-spread protests against the government's tough economic policies. Miti, a businessman, is on 2nd August arrested and detained by the police under emergency regulations for allegedly violating foreign exchange regulations. The particulars of the offence are that between January 1 and August 1 he conspired with aliens to buy foreign exchange from bureaus and remit it abroad contrary to foreign exchange regulations. While he is in police custody he is denied food for three consecutive days and is severely beaten in an attempt to force him to name his associates.

He is then released after fourteen days without being given written grounds for his detention.

He comes to you for advice. Advise him.

Monica sues Mumba for slander in the High Court. Mumba allegedly told Law students at UNZA that Monica is a loose woman who goes out with different men for money. The case is heard by Justice Lungu, who keeps postponing the proceedings on the slightest pretext because she and the defendant are family friends. It has now been two years since the conclusion of the hearing and Justice Lungu has not yet delivered judgement. Monica is very upset about this and wants to sue for redress.

Write a brief setting out the case for and against Monica.

Critically discuss the system of checks and balances under the 1991 constitution of Zambia. Do you think the checks and balances are effective? If not how may they be improved upon?

---

END OF EXAMINATION



On August 1, 1993 the President proclaims an emergency under Article 31 of the Constitution following wide-spread protests against the government's tough economic policies. Miti, a businessman, is on 2nd August arrested and detained by the police under emergency regulations for allegedly violating foreign exchange regulations. The particulars of the offence are that between January 1 and August 1 he conspired with aliens to buy foreign exchange from bureaus and remit it abroad contrary to foreign exchange regulations. While he is in police custody he is denied food for three consecutive days and is severely beaten in an attempt to force him to name his associates.

He is then released after fourteen days without being given written grounds for his detention.

He comes to you for advice. Advise him.

Monica sues Mumba for slander in the High Court. Mumba allegedly told Law students at UNZA that Monica is a loose woman who goes out with different men for money. The case is heard by Justice Lungu, who keeps postponing the proceedings on the slightest pretext because she and the defendant are family friends. It has now been two years since the conclusion of the hearing and Justice Lungu has not yet delivered judgement. Monica is very upset about this and wants to sue for redress.

Write a brief setting out the case for and against Monica.

Critically discuss the system of checks and balances under the 1991 constitution of Zambia. Do you think the checks and balances are effective? If not how may they be improved upon?

---

END OF EXAMINATION

**THE UNIVERSITY OF ZAMBIA**

**UNIVERSITY EXAMINATIONS - OCTOBER, 1993**

**L 210**

**LEGAL PROCESS**

**INSTRUCTIONS**

1. Answer any four (4) questions
2. Time allowed is <sup>THREE</sup>two hours (Plus 10 minutes to read the paper).
3. Any relevant, unmarked statute, may be consulted during the examination.

- 
1. Ringo Chingaipe was convicted and sentenced to seven years imprisonment with hard labour, by a Kaputa Magistrates court. The charge that Ringo faced before the subordinate court was that he had stolen a gearbox from a vehicle owned by Chibwenzi.

So far as is relevant, the statute under which Ringo was dealt with states as follows.

"If a theft is committed under any of the circumstances following; that is to say:-

- (a) the thing is stolen from any kind of vessel or vehicle or place of deposit; the offender is liable to imprisonment for seven years"

Ringo appeals to the High Court arguing among other things that the learned Magistrate erred in law in convicting him of the offence of theft from a motor vehicle since the gearbox was attached to or formed part of the vehicle itself.

Assume that you are a judge of the High Court to whom Ringo's appeal has been allocated. Interpret the above quoted part of the statute and determine whether or not under that provision the gearbox would be said to have been stolen. In doing so assume further that there is in the margin of the statute, adjacent to the part quoted above, a marginal heading which reads.

"Stealing goods in transit"

Giving appropriate reasons, execute the task.

2. "Our common law system consists in applying to new combinations of circumstances those rules of law which we derive from legal principles and judicial precedents: and for the sake of obtaining uniformity, consistency and certainty, we must apply those rules, where they are not plainly unreasonable and inconvenient, to all cases which arise; and we are not at liberty to reject them, and to abandon all analogy to them, in those to which they have not yet been judicially applied, because we do not think that the rules are not as convenient and reasonable as we ourselves could have devised." per Parke J in Mirehouse v. Regnall (1833)

Critically discuss the above excerpt using suitable illustrations.

3. Explain how and why Equity developed in England in the way it did. Discuss its threefold jurisdiction.

4. Sanikonda Banda, an Engineering student at UNZA was always had a liking for Melody Mukabwela, an economics student also at UNZA. She unfortunately has never liked Sanikonda because besides "having no looks" is a "lumpen and an unexposed fellow." Goodgirl Londolola, a mutual friend of Sanikonda and Melody told Sanikonda about Melody's opinion about Sanikonda. Sanikonda in turn decides to write a big poster in bright colours describing Melody "a prostitute, a whore of the highest order who has seen half of the men in the old residences." Sanikonda secretly hang the poster at the upper dining hall notice board at night, hoping no one would see him. Goodgirl Londolola, however, saw Sanikonda hang the poster, and besides being the first one to read the poster, she went and told Melody about it.

Melody thinks she has been defamed and she is outraged by Sanikonda's action. She intends to take out an action for heavy damages against Sanikonda. She approaches you for advice on

- (a) The court in which to commence has action
- (b) The law which is to apply to the dispute

Write a legal opinion setting forth the various considerations involved and giving appropriate guidance.

5. "Just as an English Oak so with the common law. You cannot transplant it to the African continent and expect it to retain the tough character which it has in England. It will flourish indeed but it needs careful tending..... per Ford Denning in *Nyali v. A.G.* (1959) IQBI.

With the help of decided cases critically discuss the magnitude of the problem that his lordship was alluding to and how it has been dealt with in practice in Zambia.

6. With your understanding of the judicial system of North-Western and North-Eastern Rhodesia in mind Show how and the extent to which the former differed from the latter and the reasons thereto.

7. (a) Write brief notes on the following
- (i) Consular Courts
  - (ii) The High Court of North-Western Rhodesia
  - (iii) Administrator's Court.
- (b) Briefly discuss the cases below and state their significance
- (I) *HWALIMA v HWALIMA*/1968/ZR 164.
  - (II) *DAVIES JOKEY KASOTE v DPP* /1977/ZR.

---

END OF EXAMINATION

**THE UNIVERSITY OF ZAMBIA**  
**UNIVERSITY SUPPLEMENTARY/DEFERRED EXAMINATIONS - DECEMBER, 1993**

**L 210**

**LEGAL PROCESS**

**TIME:**        **THREE HOURS PLUS 10 MINUTES TO READ THE PAPER**

**ANSWER:**     **ANY FOUR (4) QUESTIONS.**

---

1. "There is no statute or common law rule by which one court is bound to abide by the decision of another of equal rank, it does so simply from what may be called the comity among judges. In the same way there is no common law or statutory rule to oblige a court to bow to its own decisions, again it does so on the ground of judicial comity. But when a court is equally divided, this comity does not exist, and there is no authority of the court as such, and those who follow must choose one of the two diverse opinions .... The case may be different with the House of Lords since it is the ultimate court of appeal, and if it is otherwise there exists an uncertainty as to the law."

(From the Vera Cruz (1880) 9 P.D. 96 at 97.)

Critically discuss the quotation in view of the position obtaining in Zambia.

[25 Marks]

2. Rajiv Patel is an Indian businessman living in Zambia. He has been in Zambia since 1968 when his family migrated to Zambia from a poor Indian village in the outskirts of Bombay. Since Rajiv's family arrived, they have been making a "big killing" exploiting cheap native labour to promote their retail and farming businesses. They are now a very rich family in Lusaka.

Rajiv has been seeing a girl called Namakau Mwiyakuyi of a Ndembu/Lozi background. He manage to so impress the girl with his family's wealth, that when he finally asked her to move in and live with him, she gladly welcomed the opportunity. Namakau has been staying with Rajiv at the latter's apartment in the Madras area near Kamwala in Lusaka since July 1980. Namakau is now 27 years old and is six months pregnant.

Namakau's father, Bo-Mbo Liswaniso, has been quite disturbed about his daughter's affair with Rajiv. As a way of protesting and showing disapproval of his daughter's conduct, Bo-Mbo Liswaniso had imposed what he called "social sanctions" against her. In this regard, he never spoke to her neither did he allow her to visit his village in Kalabo. This went on until last <sup>month</sup> / when he decided enough was enough. He now wishes to commence an action against Rajiv for what he has done to his innocent young Namakau. He hears that you are a lawyer and so approaches you for advice on:

1. Whether he has any cause of action against Rajiv, who is non-Zambian.
2. What court and what law would be applicable.

Advise giving reasons and authorities for your opinion.

[25 Marks]

3. Critically assess the extent to which assessors are irrelevant to the present day system of administration of justice in Zambia and suggest changes, if any, that ought to be effected in the laws that govern the participation of assessors in the judicial system. In your answer examine also the possibility of using the jury rather than assessors in Zambia.

[25 Marks]

4. "The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of the law ... Left without the aid of counsel he may be put on trial without a proper charge and convicted upon incompetent evidence or evidence unrelated to the issue ..."

(Per Supreme Court of the United States in Powell V. Alabama (1932) 287 US 45)

Taking the above quotation as your point of departure, critically discuss the adequacy or inadequacy of the provision of legal services to the poor in Zambia.

[25 Marks]

5. Discuss the following:

- (a) the work of the Federal Supreme Court of the Federation of Rhodesia and Nyasaland in the period between 1955 and 1965.
- (b) Native Courts.
- (c) Administrators' Court of North-Western Rhodesia.
- (d) Appeals to the Judicial Committee of the Privy Council from the Protectorate of Northern Rhodesia.

[25 Marks]

6. Layman Banda, a non lawyer, has just discovered that inspite of having our own National Assembly which is empowered by the Republican Constitution to enact new laws and repeal old ones which are no longer relevant due to changed circumstances, there are still statutes which make provision for old and in some cases repealed English Statutes as well as some laws currently in force in England to apply to Zambia.

As a concerned patriotic Zambian, Layman is very uncomfortable about this state of affairs which he describes as "unfortunate in the third Republic" when members of Parliament are so critical on many issues affecting the welfare of Zambians. He is anxious to know why this state of affairs has been allowed to continue after so many years of independence.

Advise.

[25 Marks]

---

E N D   O F   E X A M I N A T I O N

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

MID-SESSIONAL EXAMINATIONS JULY 1993

L220 - LAW OF CONTRACT

TIME : TWO (2) HOURS (PLUS 10 MINUTES FOR READING  
THE QUESTION PAPER)

ANSWER : QUESTION ONE PLUS ANY TWO OTHERS.

NOTE : (1) ALL YOUR ANSWERS SHOULD BE SUPPORTED  
BY DECIDED CASE AUTHORITIES AND SHOULD  
INCLUDE REASONS FOR YOUR ADVICE.

(2) NO STATUTES ARE ALLOWED IN L220

- 
1. Ngenda, Nyambe and Nalwalo are prosperous Ndola businessmen, under the auspices of the Malozi Business Community Association. The Association has arranged for the Annual General Meeting at Lusaka's Garden House Hotel. The association members are required to arrange their own bookings for accommodation. The meeting is scheduled to start on Saturday 25th July, 1993 and the members should register at the Garden House on Friday 24th July, 1993.

Ngenda rings the Garden House's reception and asks the receptionist to reserve a double room for him. The receptionist takes down Ngenda's details and informs him that reservations are valid only until 1600 hours of the day on which the reservation is required. Ngenda started off from Ndola in good time but could not get to Garden House until after 1600 hours at which time he was told the double room had been taken by someone else.



Ngenda had to travel back to Ndola that same night at great expense and inconvenience and he wishes to sue for damages for breach of contract.

Nyambe and Nalwalo, on the other, decided to travel by bus. On arrival at the coach station, they were told the coach they had booked had already gone. They therefore decided to board a privately owned bus ND 5003. Soon after taking their seats on ND 5003, they saw the coach they should have boarded. They excused themselves and started off for the coach but on reaching the bus door for ND 5003, the conductor told them to pay the Lusaka fare because they boarded the bus and thus "there is a contract between you and us, for which you must pay the Lusaka fare."

As Nyambe and Nalwalo were hurrying to catch up with the coach, they had no time for argument. They paid the Lusaka fare swearing that they would recover it from the bus company.

When they got to the coach, they produced the tickets they had bought some four days earlier but were told that the coach was too full, and that in fact they could not be squeezed on any other coach for the next two days.

Ngenda, Nyambe and Nalwalo come to you for advice on their legal rights on these facts.

Advise them.

(40 marks)

2. Write short notes on any three of the following:-

- (a) - Agreement of parties in contract.
- (b) - The Rule in Pinnel's case.
- (c) - The imposition of terms by courts.
- (d) - Sufficiency and adequacy of consideration.

(30 marks)

3. "An exclusion or exempting clause only avails aparty when he is carrying out his part of the contract in its essential respects; they donot avail him when he is guilty of a breach that goes to the root of the contract."

Per Lord Denning MR. in Karsales /Harrow/ Ltd - v - Wallis /1956/2 All ER 866.

(30 marks)

4. Sikota and Liswaniso carry on business as retailers of ceramics products which they purchase from various sources including Mbambo Potteries Limited of Ndola.

The arrangement is usually that Mbambo Potteries Limited transports or arranges the transportation of the ordered goods from Ndola to Sikota and Liswaniso's premises on Lusaka's Cairo Road. The two have been dealing with Mbambo Potteries Limited for the past five years and on each transaction a purchase agreement is signed which provides, interalia, for the quantity of the goods, the purchase price, the fact that Mbambo Potteries Limited will deliver the goods in Lusaka and the instances when Mbambo Potteries Limited will be exempted from liability for damage to the goods.

On the 1st July, 1993, Sikota and Liswaniso ordered 100 boxes of plates and 200 boxes of mugs. Mbambo Potteries Limited engaged Gumu Transporters Limited to transport the goods from Ndola to Lusaka. Mbambo Potteries Limited prepared the usual agreement and handed it over to the driver of the truck belonging to Gumu Transporters Limited with instructions that as soon as the driver arrives, he should give that agreement to either Sikota or Liswaniso to sign before the boxes are off-loaded.

Through that driver's negligence, the goods were extensively damaged in an accident at the Chisamb area on Great North Road. When Sikota and Liswaniso approached Mbambo Potteries Limited and Gumu Transporters Limited for compensation, they both denied liability and sought to rely on a clause in the said agreement which exempted "the company or its servants from liability for damage to goods delivered howsoever caused."

Sikota and Liswaniso come to you for advice.  
Advise them.

(30 marks)

5. Compare and contrast any three of the following:-

- (a) - Conditions and warranties.
- (b) - Representations and terms.
- (c) - Karsales /Harrow/ Limited - v- Wallis /1956/  
2 All ER 866 and Photo Productions Ltd. - v -  
Securicor Transport Ltd. /1980/ 1 All ER 556
- (d) - Pinnel's case /1602/ and Central London  
Property Trust Limited - v - Hightrees House  
Limited /1947/ 1 KB 130.

**THE UNIVERSITY OF ZAMBIA**

**UNIVERSITY EXAMINATIONS - OCTOBER, 1993**

**L 220**

**LAW OF CONTRACT**

**TIME: THREE HOURS (PLUS 10 MINUTES FOR READING THE QUESTION PAPER)**

**ANSWER: QUESTION ONE AND ANY THREE OTHERS**

**NOTE: ALL QUESTIONS SHOULD BE SUPPORTED BY DECIDED CASE AUTHORITIES  
AND SHOULD INCLUDE REASONS FOR ADVICE**

**NO ACTS OR STATUTES ARE ALLOWED IN L 220**

---

1. Mundia is the Managing Director of the Malozi cleaners Limited a company incorporated in Zambia under the provisions of Cap 686 of the laws of Zambia.

The company carries on business as a supplier of industrial cleaners which it imports from the United States of America.

On the 30th June, 1993, Mundia approached the marketing department of Siwo Freight Company Limited, a company carrying on business as a freight forwarder Airlifting, shipping, road transport etc, for advice as to which port would be the best for Malozi Cleaners Limited to use when Importing goods from the United States. Mundia spoke to the Marketing Manager of Siwo Freight Company Limited, Mr. Muyambango. Mr. Muyambango advised Mundia that Walvis Bay in Namibia was the best, that Siwo freight company limited has an agent there who receives the goods and Once the agent has received them, Siwo freight company Limited delivers the goods to the customers destination in Zambia within two weeks from the date their agent receives the goods in Namibia.

On the strength of the above promises, Mundia contracts the Siwo Freight Company Limited, on behalf of his company, to handle a consignment of 40 pales of Industrial cleaning materials from the United States. Siwo Freight Company Limited agrees and the parties sign a form stating that Siwo Freight Company Limited agrees to handle the shipment.

The goods arrived in Namibia on 10th July, 1993 and Siwo freight company limited's agent received them the same day. Contrary to Muyambango's promises to Mundia on 30th June, 1993, the goods were not delivered to Malozi cleaners Limited until 30th September, 1993 by which time Malozi Cleaners Limited had lost its clientele by reason of the delay and when so delivered the goods were delivered in a damaged condition.

When the goods arrived on 30th September, 1993, the Malozi Cleaners Limited was charged for the handling, agency and sundry and on payment of that bill were given a receipt on the bottom of which were the words "for conditions, see overleaf" and at the back were conditions which provided, *Inter alia*, that;

- (a) The company shall not be liable to the customer or owner for loss or damage caused by any failure to carry out or negligence in carrying out the customers' or owners instructions or by any failure to perform or negligence in performing the company's obligations, whether such obligations arise by contract or otherwise, unless such loss is due to the wilful neglect or default of the company or its servants.
- (b) Further and without prejudice to the generality of the proceeding sub-condition, the company shall not in any event be under any liability for any delay or consequential loss of any market or deviation however caused or any loss, damage or expense arising from or in anyway connected with the marks, weights, numbers, brands, contents, quality or description of the goods however caused."

Having lost business by reason of the delay and having received damaged goods, Mundia comes to you for advice on the Malozi Cleaners Limited's Legal position on these facts as against that of the Siwo Freight Company Limited.

Advise him.

[40 marks]

"Prima facie that which in any contract is left to be implied and need not be expressed is something so obvious that it goes without saying, so that if while the parties were making their bargain, an officious by-Stander were to suggest some express provision for it in their agreement, they would testily suppress him with a common Oh of Course! "

Per Mackinnon L.J. in Shirlow -V Southern Foundries (1926) Limited (1939)2 KB 206.

DISCUSS.

[20 marks]

Lubinda is a successful businessman in the heart of Mongu in the Western Province of Zambia dealing in some of the most expensive and elegant Ornaments and suits.

On the 30th June, 1993, a smartly dressed customer enters the shop and orders two pairs of wedding rings and a set of 6 suits plus a wedding dress the total value of which was K5m. The customer goes to the counter where Lubinda was and offers to settle that amount by cheque. Lubinda refused to accept the cheque. After some negotiations, Lubinda agreed to accept the cheque only on condition that the customer would collect the goods only when the cheque is cleared.

At that point the customer produced a British Passport in the name of Bright Pearson saying as he did so that "you see who I am, Bright Pearson, the man behind BP fuel products. Do you imagine the BP chief executive can swindle you of K5m which is less than £6000?"

Thereupon Lubinda asked the customer to wait outside the shop, he closed the shop and faxed the details of the passport to the British Embassy which confirmed that Bright Pearson was British and was the Chief Executive of BP and further that the passport in question was his. Lubinda further took the passport to a local security firm that is internationally renowned, Vigil Security Services, which too confirmed the particulars.

Satisfied, Lubinda came back to the shop and allowed the customer to take the goods on payment by cheque; Infact it turned out that the passport was a forgery and the cheque was a stolen one which naturally was not honoured by the bank. The customer was infact a rogue called Charles Winston who by this time had re-sold the goods to Walubita for K500,000.00.

Advise Lubinda, Charles Winston and Walubita on their legal position on these facts.

[20 marks]

4. Mundia, a graduate from the UNZA School of engineering has applied for a job to the Zambia Bottlers Limited, manufacturer of coca cola and fanta, as a mechanical Engineer for their machines. The company has sent him an offer of employment which they have asked him to sign and return to the Personnel Manager if he wants the job, within two days.

The said offer stipulated, inter alia, that once he accepted the offer he must work for the company for not less than 15 years; that during the ten (10) years following the determination of his employment he would not carry on in Zambia, or be interested in glass bottle manufacture or drinks manufacture or any manufacturing business or be in any way connected with any business conducted by the company.

Before deciding whether or not to accept the offer, Mundia wants, legal advice on the legal implications of such provisions in a contract of employment, and comes to you for advice.

[20 marks]

5. Write short notes on any two of the following;

- (a) - Promissory Estoppel [10 marks]
- (b) - Damages as a remedy in contract [01 marks]
- (c) - Capacity of infants [10 marks]

6. The Western Democratic Alliance is a duly registered political party. They are engaged in a series of party meetings that would lead to a complete re-organisation of the party and for that purpose they require a hall.

Simasiku, the Party Secretary General approaches Milimo for the hire of milimo's hall. Simasiku signs an agreement that binds the party to hire, use and pay for the hall no matter what for a period of three months at the fixed charge of K3m to be paid in advance.

The party pays the K3m on 20th June, 1993 and commences the meetings. On 30th June, 1993, the Government, on suspicion that the discussions of the party bordered on treason, declared a State of Emergency and forthwith banned the party and detained most of its office bearers.

Comment on the legal position of the parties on these facts.

[20 marks]

7. "If there is one thing which more than another public policy requires, it is that men of full age and competent understanding shall have the utmost liberty of contracting, and that their contracts when entered into freely and voluntarily shall be held sacred and shall be enforced by the courts of justice"

Per Sir George Jessel in Printing and Numerical Registering Company -V- Sampson [1875] LR 19 Egat 465

Discuss.

[20 marks]

---

END OF EXAMINATION



L 220

LAW OF CONTRACT

TIME: THREE HOURS (PLUS 10 MINUTES FOR READING THE QUESTION PAPER)

ANSWER: QUESTION ONE AND ANY THREE OTHERS

NOTE: ALL QUESTIONS SHOULD BE SUPPORTED BY DECIDED CASE AUTHORITIES AND SHOULD INCLUDE REASONS FOR ADVICE

NO ACTS OR STATUTES ARE ALLOWED IN L220

- 
1. On the 10th November, 1993, One Ringo Phiri an employee of Barclays Bank (Z) Limited together with Mawele a driver from Securicor (Z) Limited were sent to deliver K300m to the central Bank. Instead the duo stole the lot and disappeared

On learning of the theft, Barclays Bank (Z) Limited issued the following advertisement in the Times of Zambia;

"Barclays Bank (Z) Limited are offering a reward of K1,000,000.00 to anyone who will provide information leading to the arrest and conviction of Ringo Phiri and Mawele employees of Barclays and Securicor, respectively. Every information received will be treated in strictest confidence. If the information is provided by an accomplice, he will himself receive leniency in addition."

Mwiinga, had read of the theft but had not seen the advertisement. He knew Ringo Phiri and when he saw Ringo in one Ndola house, he reported to the police.

At the same time, Milimo, who read the advertisement and who knew where all of Ringo's relatives stayed on the Copper-belt, set off from Lusaka to go and check on the said relatives, but before he found Ringo, Barclays Bank (Z) Limited issued a statement to the effect that they have cancelled their offer advertised in the Times of Zambia.

There was also Simasiku the police officer who had been detailed to guard the lot that Ringo and Mawele were delivering. Simasiku gave the information of the whereabouts of Ringo and Mawele solely to save his own skin.

Unaware of the statement cancelling the offer, Mubita started off from Livingstone, went to Ndola, found out where Ringo was staying and gave the information.

When later Mwiinga, Milimo, Simasiku and Mubita claimed for the promised reward, Barclays Bank(Z) Limited refused to pay any money.

Advise all the parties on the issues raised herein.

(40 marks)

2. Write short notes on any two of the following:

- (a) Clarke-V-Dunraven [1897] AC 59 (10 marks)
- (b) Honourable pledge clauses (10 marks)
- (c) Sufficiency of Consideration (10 marks)

3. "The purpose of the misrepresentation Act is to alter and amend the Common Law relating to Innocent misrepresentation"

Discuss

(20 marks)

4. Mundia in Zambia and Horney in Zaire have been doing business with each other for sometime under a specific contract. The contract involved the supply by Horney of watches, tinned foods and various perfumes to Mundia.

The goods normally took 2 weeks to arrive and Mundia was then obliged to pay within 2 weeks.

Horney dispatched a consignment on 10th September, 1993 but on 13th September, 1993, Zambia and Zaire declared war against each other. Meanwhile Horney was due to dispatch another consignment on 18th September, 1993.

Mundia comes to you for advice on these facts. Advise him.  
(20 marks)

5. (a) Mwangala owns a garage which is adjacent to the Lusaka International Airport. Chona and Mbinji are chairman and secretary of the ZCTU. They are flying to an Annual Congress of the ILO, in Rabat, Morocco. They drive to the airport in their cars. They contract to leave the cars with Mwangala while they are away. A clause in the written contract reads;

"Neither the garage proprietor nor his servants shall be liable for loss or damage caused to the cars by the negligence of himself or his servants"

On their return from Morrocco Chona and Mbinji find that Mwangala is unable to produce Chona's car while Mbinji's car has been damaged by the negligence of Mwangala's servants.

Advise Chona and Mbinji

(13 marks)

- (b) Advise also Wamunyima, whose car was damaged after Mwangala had accepted it on the express condition that their contract could not be legally enforceable or give rise to any legal relationship or be the subject of litigation. (7 marks)

6. Kabulubula, a 16 year old prosperous boy, was at Ndeke hotel on 16th November, 1993 drinking Bailey's Cream, his favourite. After he had taken a considerable amount of the same, Mbunu approached him with a proposition of selling a fiat 132 1972 model year of first Registration, 1973 at K4.5m. Kabulubulu agreed to buy this motor vehicle and the next day Mbunu parks the fiat outside Kabulubulu's home and demands payment of the K4.5m.

Kabulubulu remembers nothing of the deal and does not wish to purchase that car as it is not worth that much and has no such money. He come, to you for advice. Advise him. (20 marks)

7. Compare and contrast ALL of the following.

- (a) VOID and VOIDABLE contracts (4 marks)  
(b) OFFER and INVITATION TO TREAT (4 MARKS)  
(c) WINN -V- BULL [1877] 7 ch. D. 29 plus  
JONES -V- DANIEL [1894] 2 ch. 332 on  
the one hand and BRANCA -V-  
COBARRO [1947] ALL ER 101 on the other hand. (12 marks)

---

END OF EXAMINATION

**THE UNIVERSITY OF ZAMBIA**  
**UNIVERSITY EXAMINATIONS - JANUARY, 1994**

**L 220**

**LAW OF CONTRACT**

**TIME:** THREE (3) HOURS [PLUS 10 MINUTES FOR READING THE QUESTION PAPER]

**ANSWER:** QUESTION ONE AND ANY THREE OTHERS.

**NOTE:** ALL QUESTIONS SHOULD BE SUPPORTED BY DECIDED CASE AUTHORITIES  
AND SHOULD INCLUDE REASONS FOR ADVICE.

NO ACTS OR STATUTES ARE ALLOWED IN L 220.

---

1. Ndumba is the Managing Director and majority shareholder of MAT Limited, a company that manufactures shoes. On the 20th June, 1993, Ndumba wrote to Lisulo stating:

"I will give K 1,000,000:00 to anyone who walks from Lusaka to Kabwe wearing our shoes all the way."

Ndumba also put an advertisement in the Times of Zambia to the same effect. In the case of the letter he wrote to Lisulo he followed those words up with the words, "Please inform me by 20th July, 1993 whether or not you are willing to take a chance."

Lisulo wrote back on 30th June, 1993 stating that he can only think of walking if what is in it for him is K 5,000,000:00. Ndumba did not reply to this letter, but on 10th July, 1993, Lisulo, believing that if he walks the distance in MAT Limited's shoes he will be entitled to K 5,000,000:00, set off for Kabwe and completes the walk within 6 (six) days.

Kawanambulu sees the advertisement in the Newspaper and without informing Ndumba of his intention to walk to Kabwe, Kawanambulu walks to Kabwe in a pair of MAT Limited's shoes and completes the walk in five (5) days.

At that same time Nalwalo and Namangolwa whose favourite shoes are MAT Limited's, had a bet on walking to Kabwe. Nalwalo walks in response to that bet and on completion of the walk he hears of the prize and claims for it.

Meanwhile, Sibeta tells Ndumba that he is going to attempt the walk but when he reaches Liteta, Ndumba withdraws the offer. Sibeta carries on, reaches Kabwe and he claims for the prize.

Ndumba refuses to pay any money. Advise the parties.

[40 Marks]

2. "The question whether or not an earlier oral statement is a term of the contract can be determined only by looking at whether such oral statement is included in the deed that is later written down. If it is not included in the deed, it can never be a term of the contract and no other oral statement can be a term."

Discuss.

[20 Marks]

3. Write short notes on any two of the following:

- (a) Importance of agreement of the parties in contract
- (b) Promissory Estoppel
- (c) Fundamental Breach doctrine.

4. (a) Sitambi, a prosperous Lusaka businessman approached the Madison Insurance Company Limited wishing to enter into a Life Assurance Contract with them. Sitambi is given a standard form contract to fill in.

The form has general parts which Sitambi easily filled in and there was also a part that had questions to be answered by Sitambi as the applicant. On these questions, Sitambi either answered them half way or remained completely silent on them. The questions related to whether he had had any of the diseases listed on that part, whether there is a history of fatal hereditary diseases in his family, etc.

When he handed over the form to the Life Assurance manager, same was returned marked "unacceptable for misrepresentations."

Sitambi could not understand how misrepresentation could have arisen on these facts and he comes to you for advice. Advise him.

[12 Marks]

- (b) Discuss the case of Hedley Byrne and Coy Ltd-v-Heller [1963]  
2 ALL ER 575.

[8 Marks]

5. Patel, a sole trader trading under the name and style of Machipisa Bazaar is a general dealer.

On 30th November, 1993, he is approached by Namabanda who says he is Kawana, a businessman from Kabwe and proprietor of the largest chain store ZCBC Limited. Patel has heard of the businessman and on the basis of this fame he allows Namabanda to take delivery of jewellery, watches and mattresses in return for payment of half the purchase price of K 1,000,000:00 with a promise to pay the balance within 2 days.

Namabanda is actually a trickstar and never pays the balance. The supposed buyer, Kawana, is denying responsibility on the contract. In the meantime Namabanda has resold the items to Liswaniso who got them for value and in good faith.

Advise all the parties as to their legal rights. [20 marks]

6. "The only thing that has to be proved in order for a party to rely on an exclusion clause is that the clause is wide enough to cover the damage that has arisen."

Discuss. [20 Marks]

7. (a) Mwangala, who has won a scholarship to Oxford for a masters degree, asks Mubita to stay in his house and look after it while he is away.

Mubita moves into the house and in Mwangala's absence, Mubita does extensive works of improving the house. On his return, Mwangala is impressed with the improvements done to his house and in consideration thereof, he promise to pay Mubita K500,000:00.

Mwangala later refuses to pay the said money. Mubita comes to you for advice. Advise him on his legal position. [10 Marks]

- (b) Discuss the Law on misrepretation in relation to the misrepresentation Act. [10 Marks]

---

END OF EXAMINATION

INSTRUCTIONS

1. TIME: THREE (3) HOURS (Plus 10 minutes to read the paper)
  2. ANSWER: QUESTION ONE (1) and THREE OTHER QUESTIONS (i.e. FOUR QUESTIONS)
  3. Only unmarked statutes may be brought into the examination room.
- 

1. Apamwamba is a Minister in the government. He has the reputation of being uncouth, a loudmouth and lacking public relations. A major paper, the Lusaka Globe, runs a series of stories implicating him in a number of scandals. In the first story it is alleged that he invested K200 million belonging to the Ministry (which was meant to cover a pay increase for Civil Servants in his Ministry) in a fixed deposit account at Finance Bank, where he is a large shareholder. In the second story Apamwamba is reported to have been involved in a fist-fight with a fellow Minister at a Spanish restaurant in Lusaka. The third story is based on court testimony given by Charles, who is charged with corruption. Charles testifies that Apamwamba awarded a contract for the supply of office equipment to his Ministry, to a South African company without following the laid down government tender procedures. The fourth story is based on a speech given in the National Assembly by Douglas, an opposition member of parliament. Douglas alleges that Apamwamba sold government houses to his friends at give-away prices. He demands for Apamwamba's immediate removal from office as he is allegedly an embarrassment to the nation, immoral and dishonesty.

In the fifth story the Lusaka Globe reports that Apamwamba was beaten up by supporters of a rival party when he went to disrupt its rally in Matero. In the last story the Globe reports that Apamwamba hurled some racial slurs at a white woman who was serving drinks and snacks at a cocktail party hosted by the Swedish Embassy. He generally made a nuisance of himself at the party.

After publishing all these stories the Lusaka Globe in an opinion entitled, "Apanwamba: A fool who should be caged", writes, inter alia, "Men like Apanwamba who are appointed to high political office are quick to call themselves leaders .... Apanwamba is an embarrassment to himself, to his office, his constituents, his President, his government and, above all, to his country .... The Lusaka Globe has called for Apanwamba's removal from the Cabinet long ago, not out of malice, but because we don't believe this man's disgraceful conduct has any place in the new democratic political culture. But, the President is to blame for appointing Apanwamba to the Cabinet. The President's conscious decision to keep Apanwamba in the Cabinet can only mean that the President approves of his foolish and contemptible behaviour and that he wishes other citizens to emulate Apanwamba's leadership ..... If Apanwamba is so precious that the President cannot bring himself to sack him, at least he could do us all a favour and cage this dangerous serpent so that any further harm and embarrassment can be avoided."

Advise Apanwamba, the President, and the Lusaka Globe about their legal positions.

2. Write short notes on any two of the following:
  - (a) Group Defamation in Zambia
  - (b) The Rule in Rylands v Fletcher
  - (c) Nervous Shock
  - (d) Defences to Nuisance
3. The duty of the owner of a motor-car in a high way is not a duty to refrain from inflicting a particular kind of injury upon those who are in the highway. If so he would be an insurer," per Lord Atkin in Hambrook V. Stokes Brothers (1925) 1 K.B. 141  
Discuss this statement in the light of decided cases.
4. Linire has just finished LPI. She joins a Law Firm called Sinyinda and Company, which gives her an apartment in Rhodes Park. As the apartment is not furnished she goes to Manda Furniture Co. Ltd in Lusaka, where she buys a lounge suite, a double - bed and mattress, a chest of drawers and a dressing table, all valued at K2,000,000. She pays K1.5 million and does not take away the furniture right away because she does not have transport. Her uncle, Ganizani, who has a van, can only help her seven days later. In the meantime Manda Furnitures Co. Ltd sells the same furniture to Lubinda for K2.5 million, who immediately takes it to a warehouse owned by Lungu.



When Linire shows up to take away the furniture she is informed that Lubinda bought it and that she will have to wait for up to a month for the company to make her new furniture.

Linire seeks your legal advice. Advise her.

5. Anock, a lawyer in Lusaka, grants an interview to the Lusaka Register, a weekly newspaper, in which he criticises police brutality against suspects. A day after the interview is published Anock is picked up by the police and taken to Lusaka Central Police Station. He is charged with sedition. He is then taken in a closed van to an unknown place where for ten days he is held in a very small, empty, completely dark and dirty cell, with an earth latrine on the floor. His clothing is completely removed and he is not given any blankets. He is half-starved and given little or no water to drink and none to wash. He is interrogated in the dark office on a number of occasions, under three bright lights, threatened with death, or mutilation, and slapped and kicked and punched. He is also subjected to electric shocks. Throughout this period he is under guard. Some interrogators are CID officers and the guards are constable. The interrogations are meant to find out the nature of his links with human rights organizations within and outside Zambia. After ten days he is brought back to Lusaka Central police station and released. All the charges are dropped.

He comes to consult you.

6. Kafue Nitrogen Chemicals (Z) Ltd (NCZ) produces fertilizer for the nation. Fertilizer is very important for agricultural production as Zambia tries to make agriculture the mainstay of the economy.

NCZ discharges effluent into the Kafue River, as well as emits noxious fumes into the atmosphere. Mumpa, a resident of a Village adjoining the Kafue River, draws water from the River. Moreover, his cattle drink water from the River. Mumpa is afflicted by misfortune. His two sons, aged 10 and 6, contract cancer and his wife, Irene, dies. His twenty head of cattle also die. The doctors attribute the cancer, and the death of Irene and the cattle to the contaminated water in the Kafue River.

**Thandiwe**, a resident of **Kafue Township**, which adjoins the **NCZ factory**, contracts **TB** as a result of inhaling the noxious fumes.

Advise **Mumpa** and **Thandiwe** about their legal rights.

7. **Moomba** is a city of one million residents. It is run by the **Moomba City Council**, which inter alia, supplies residents with such services as water, sewage-disposal, garbage disposal and street lighting. Owing to serious financial difficulties, inefficiency and incompetence, the Council fails to purchase sufficient quantities of chlorine for treating the water, and to purchase garbage trucks to replace those that have broken down. Moreover, it fails to repair street lights. The Council does not inform the residents about these problems. Cholera breaks out as a result of the untreated water and uncollected garbage. Over six hundred people in the city die of cholera, among whom are **Ngombo's** two sons. His wife and two daughters are hospitalised for two weeks.

One day as **Kalinde** is walking home from work he is attacked by hooligans hiding in a dark street.

**Ngombo** and **Kalinde** want to sue the Council. Advise them.

---

END OF EXAMINATION

**THE UNIVERSITY OF ZAMBIA**  
**UNIVERSITY EXAMINATIONS - JANUARY, 1994**

**L 230**

**LAW OF TORTS**

**INSTRUCTIONS**

1. **ANSWER:**      4 (FOUR) QUESTIONS ONLY
  2. **TIME:**        3 HOURS (PLUS 10 MINUTES TO READ THE QUESTION PAPER)
  3. **ONLY UNMARKED STATUTES MAY BE BROUGHT INTO THE EXAMINATION ROOM.**
- 

1. Theresa, a lawyer in Lusaka, enters into an agreement to purchase a car with Yeti Motors Ltd. The car is priced at K 5 million but she pays only K 3 million. Yeti Motors Ltd nevertheless let her have it on hire-purchase terms, making it clear that she must not sell it before the balance is paid. However, Theresa takes the car to Tikambilane Auctioneers and asks them to sell it for at least K 4.5 million. The highest bid at the auction is only K 3.7 million. After the auction Theresa is asked in the Auctioneer's office if she is willing to accept K 3.7 million, and after the Auctioneers have reduced their commission she does so. Theresa then goes bankrupt, the purchaser, Rodwell and the car disappear.

Advise Yeti Motors Ltd on their legal position.

2. "At bottom I think the question of recovering economic loss is one of policy ...", per Lord Denning in Spartan Steel and Alloys Ltd, v. Martin & Co. (Contractors) Ltd [1973] 1Q. B. 27.

With the aid of case authorities critically discuss this statement.

3. Njobvu, a notorious criminal, steals a Toyota Landcruiser GX from an MP, Nicholas, outside the National Assembly Motel. The Police Anti-Robbery Squad is immediately alerted, and gives chase on the Great East Road. Njobvu, realising that the anti-robbery squad will soon start shooting at him, stops the car at Munalil Filling Station.

As the police attempt to drive their car alongside the Land Cruiser they collide with it and Njobvu, who has alighted with alacrity, is injured.

Discuss the legal issues arising.

4. Nawale was caretaker of Society House in which Lewanika and Co., a firm of lawyers, rented some offices. The building was owned by Z.N.B.S. Ltd. Nawale contracted with Lewanika and Co. to have its offices regularly cleaned, and this she did with the aid of three women employed by herself.

On December 31, 1993, while dusting an electric fire in the offices occupied by the Law firm, Nawale received severe electrical burns, as a consequence of which the fingers of her right hand had to be amputated. There was nothing wrong with the fire itself, and it was switched off at the wall; but although it was cold, the element was charged with electricity. This was because the wall-switch cut out the neutral wire instead of the live wire; and this had been made possible because the reputable electrical contractors who had rewired the offices four years previously at the instance of the defendants had done the job badly, by using only red wires instead of the distinctive red, black and green wires commonly used.

Nawale comes to you for advice.

5. "Sic utere tuo ut alienum non laedas"

Discuss this maxim, citing appropriate illustrations.

Are there any exceptions to this maxim?

---

END OF EXAMINATION

**THE UNIVERSITY OF ZAMBIA**  
**UNIVERSITY EXAMINATIONS - JANUARY, 1994**

**L 240**  
**CRIMINAL LAW**

**TIME:**       THREE HOURS  
**ANSWER:**    ANY FOUR (4) QUESTIONS

CANDIDATES MAY TAKE A COPY OF THE PENAL CODE, CAP 146 OF THE LAW  
OF ZAMBIA.

---

1. X believing that his enemy D was asleep in his (D's) house set it on fire so as to settle an old score with him. Unknown to X, D was half paralysed in the house, in a stupor of liquor.

In an attempt to save D's life, Y suffered severe burns which have left him lame and blind.

The DPP seeks your opinion as to X's liability in this case.

2. The appellant, Tembo had sex with the deceased, a child of twelve years, who seized with pain and grief fell into a creek where she drowned. Tembo intentionally abstained from rescuing her although he could do so without risk of danger to himself.

He was convicted of murder and sentenced to death. He has now appealed. What result?

3. How does intoxication operate as a defence? Does it negative an ingredient in a crime or is it a defence to a fully constituted offence?

4. Mwanza, aged 11 years was playing on a side walk along the Great East Road. He threw stones at passing cars. One of the stones landed on the road. Alex, who was driving very fast hit the stone. The car crashed into an electricity pole and Alex was severely injured.

What offence(s) has Mwanza committed?

5. John drives his car onto Orlando's self-service petrol station. He helps himself to petrol and then decides not to pay as Orlando's attendant is busy servicing other customers.

John drives away. What offence(s) has he committed?

6. Write short notes on the following:

- (a) Intention and Motive in Criminal Law;
- (b) Mistake and Ignorance in Criminal Law.

---

E N D   O F   E X A M I N A T I O N

CONSTITUTIONAL LAW

TIME:            **THREE HOURS**

INSTRUCTIONS:

1.     **ANSWER QUESTION ONE AND THREE OTHER QUESTIONS.**
2.     Candidates may only bring unmarked statutes into the examination room.

- 
1.     McRobby Chiwale was one of the founder members of the MMD. He not only expended a lot of money and time on organizing the party but he also risked everything he had, including his life. This was because it was dangerous to openly oppose the one-party dictatorship. During the 1991 General Elections he was elected to Parliament on an MMD ticket. Owing to serious differences with the leaders of the MMD he and several other MPs resigned from the MMD in 1993. He announced that he intended to form a new political party in future. Following his resignation the MMD National Secretary requested the Speaker to declare McRobby's Parliamentary seat vacant, so that a bye-election could be held to fill the seat. The Speaker obliged. McRobby granted several interviews to both the print and electronic media in which he denounced the President and his Cabinet. He alleged that some Ministers were corrupt and others indulged in drug-trafficking and that the President shielded them from prosecution. He also accused the government of economic mismanagement and failure to adhere to the MMD manifesto. The resignations of the MPs created a lot of excitement in the nation. In order to gauge the people's reaction to the creation of a new party McRobby scheduled a number of public rallies in various parts of the country. The police, acting on instructions from the Minister of Home Affairs, rejected all his applications to hold the said rallies. They justified their action on two grounds. First, that they did not want to give McRobby a platform to insult the President. Secondly, that he was not a member of a registered political party.

Advise McRobby on his legal position.

2. Compare and contrast the system of government under the Zambian constitution of 1991 and the American system of government. Which of the two systems advances democracy, transparency, accountability and national unity?
3. Critically discuss the relationship between the various organs of the Party Inter-se, and between party and government organs during the second Republic. To what extent was the principle of 'party supremacy' achieved in theory and practice?
4. On 10th July the Daily Express publishes a story in which it reveals that it has discovered a plot to destabilise the government, by the Congress Party of Zambia (CPZ). The plot, code-named "Operation Rescue Zambia," calls for the holding of public rallies, public demonstrations and strikes to protest against the structural adjustment program, which has pushed the majority of Zambians into abject poverty. Two days later the President declares an emergency pursuant to Article 31 (1) of the Constitution on the ground that the safety of the nation is in serious jeopardy. Several leaders of the CPZ, including its Secretary-General, Margaret Chalwe, are then served with Presidential detention orders issued under Regulation 33 (1) of the Preservation of Public Security Regulations. Six days later the President, without explanation, quietly issues another emergency proclamation under Article 30 (1) of the constitution. He then makes the following regulations pursuant to section 3 (1) of the emergency Powers Act, CAP. 108:

"The Preservation of Public Security Regulations made under the Preservation of Public Security Act shall apply as if made under the Emergency Powers Act."

Several more members of the CPZ, including Maleni Zulu, Enock Mbambara and Muntanga Muzyamba, are arrested and detained pursuant to detention orders issued by the President under the Emergency Powers Regulations.

The detainees are sent to remote parts of the country making it extremely difficult for lawyers and family members to visit them. Grounds of detention are served on the second group of detainees after 15 days and the fact of their detention is published in the gazette after sixteen days. Each of the detainees gets a letter in the following terms:

"That between November 1991 and July 9th 1993 you conspired with persons unknown to foment discord in the nation by authoring a document code-named "Operation Rescue Zambia."



Maleni Zulu can prove that he was studying in the UK during the relevant period. Another detainee, Kamoto, is illiterate and, therefore, cannot read the letter containing the grounds. Meanwhile, Margaret Chalwe and other leaders who were in the first group of detainees are released after five days and no grounds of detention are served on them.

Margaret Chalwe, Maleni Zulu, Enock Mbambara, Muntanga Muzyamba and Kamoto seek your legal advice. Advise them.

5. An independent and impartial judiciary is considered indispensable for the protection of individual rights and freedoms and the preservation of democracy.

With the aid of relevant legislation and cases critically discuss:

- (a) The powers of the judiciary with respect to the enforcement of individual rights and freedoms, and democracy under the Zambian Constitution;
- (b) The manner and extent to which judicial independence is secured under the law;
- (c) Factors that reduce the judiciary's effectiveness in protecting human rights.

6. Lillian Shawa, who was born in Zimbabwe, is a leading feminist scholar and strong advocate of Women's rights. She is a golf enthusiast and has dreams of becoming a professional golfer of international repute. In order to realize her dreams she applies for membership in Munali Golf Club a private club near the University of Zambia. Her application is turned down on the ground that the club only admits males and married women who are natural born citizens of Zambia. She then applies to join ZIMCO Golf Club, in which the state holds 51% of the share capital. Her application is rejected on the ground that she is a known critic of the ruling party and her radical views in favor of women's rights might jeopardize the Club's delicate relations with the government.

She comes to you for Advice. Advise her.

L 250

CONSTITUTIONAL LAW

TIME: THREE HOURS

ANSWER: Four (4) Questions

Note: Only unmarked statutes may be brought into the examination room.

---

1. Chizu is President of an apposition party called the Democratic Peoples Party (DPP). He is a very charismatic speaker and he always criticises government leaders for corruption and incompetence. The Ministry of Home Affairs directs the police not to allow Chizu to address any meetings in any part of Zambia until Chizu stops criticising the government. Chizu's applications for permits to hold meetings are consequently turned down on numerous occasions.  
  
He approaches you for legal advice. Advise him with the aid of appropriate authorities.
2. Critically discuss the case of Bennie Mwiinga V Attorney General. What is its significance in Zambia's constitutional history?
3. Discuss the impact of the one party state on:
  - (a) freedom of expression;
  - (b) freedom of association and assembly; and
  - (c) democracy.
4. On october 1, 1993 the President proclaims an emergency under Article 31 of the Constitution following wide-spread protests against the government's tough economic policies. Muriel, a businesswoman in Lusaka, is on 2nd October arrested and detained by the police under emergency regulations for allegedly violating foreign exchange regulations. The particulars of the offence are that between January 1 and August 1 he conspired with Aliens to buy foreign exchange from bureaux and remit it to South Africa contrary to foreign exchange regulations. While she is in police custody she is denied food for three consecutive days and she is warned that her business will be closed down if she does not name her associates.

She is then released after ten days without being given written grounds of her detention.

Advise her on her legal position.

5. "In Zambia, as in the U.K, parliament is sovereign and nothing said or done in parliament may be questioned or impugned in any fora."

With the aid of relevant authorities discuss to what extent, if any, this proposition is true.

---

END OF EXAMINATION

**THE UNIVERSITY OF ZAMBIA**  
**UNIVERSITY EXAMINATIONS - JANUARY 1994**

**L 250**

**CONSTITUTIONAL LAW**

**TIME:**           **THREE HOURS**

**ANSWER:**       **FOUR (4) QUESTIONS.**

**NOTE:**       **NO MATERIALS MAY BE BROUGHT INTO THE EXAMINATION ROOM.**

---

1. Critically discuss the case of Joshua Lumina v Bernie Mwiinga, SCZ Judgement No. 5 of 1991. What was its significance in Zambia's constitutional History?
  2. Compare and contrast the reality and extent of presidential power, under the second and third Republics.
  3. Critically examine the approaches taken vis-a-vis the protection of human rights of Africans under the Federal Constitution and under the Independence Constitution 1964? Which of the two approaches was more effective?
  4. What do you understand by the concept of democracy? To what extent was the one party state in Zambia democratic?
  5. To what extent was the executive accountable to Parliament under Zambia's one party system of government? How did the system of accountability compare with that existing in the United Kingdom?
- 

**E N D   O F   E X A M I N A T I O N**

**THE UNIVERSITY OF ZAMBIA**  
**UNIVERSITY EXAMINATIONS - JANUARY 1994**

**L 310**

**EVIDENCE**

**TIME:**           **THREE (3) HOURS PLUS 10 MINUTES TO READ THE QUESTION PAPER**  
**ANSWER:**       **QUESTION ONE AND ANY THREE OTHER QUESTIONS**

---

1. Musonda Moono and his wife Laiza and their neighbour Preamble Maningi have been friends since childhood. In fact Laiza is Preamble's younger sister. On Christmas eve Moono lent K 65,000 to Maningi which the latter wanted to use for gambling at the Hotel Intercontinental Casino. As fortune might have it Maningi won half a million kwacha. On 25th December, 1993 Maningi invited Moono and his wife for a night out at the same hotel to watch the South African song bird Yvonne Chaka Chaka. During the course of the night Moono demanded for half of Maningi's winning saying that it was his money that had yielded the half million kwacha. Maningi flatly refused and told Moono to "go to hell". A fight ensued. Seeing that her husband was on the receiving end Laiza joined the fight on her husband's side. Unfortunately for the Moonos both husband and wife were seriously hurt and were rushed to the UTH where Moono was pronounced dead on arrival. Laiza was in a state of comatose. At 04:30 hours Laiza regained consciousness and told the nurse on duty that: "I know it is all over for me, but let me make it clear that it was all my brother's fault, he has always hated Musonda, in fact the Okapi knife with which Preamble stabbed my husband was borrowed from our house." At 06:00 hours on Laiza fell into a deep coma and was pronounced dead at noon. Preamble Maningi was arrested and charged with the murder of Moono. The prosecution wishes to tender Laiza's statement as evidence.

Discuss.

[25 Marks]

2. Jason Sangwapo and Monde Mukumi entered into a customary union and thereafter lived together for one week until they were married at the Boma in Mongu on December, 18, 1987 under the Marriage Act, Cap 211. However, since Jason suspected that Moonde had the HIV virus he refused to consummate the marriage until Moonde went for an Aids test. Moonde consistently refused to take the test. Fed up with his matrimonial life Jason left for Somalia in December, 1986. He never bothered to write to Monde or indeed to anyone in Zambia.

5. On June 1, 1991 Jason Sangwapo went for a picnic with Hope Makobo. They settled for the Goma Lakes pleasure resort. Sangwapo had carried with him his pistol for protection just in case they were surprised by thieves. For some reason a quarrel developed between them. Sangwapo was heard shouting "I will shoot you" and a gun shot was heard. Jefferson Sibotwe rushed to the scene and found Sangwapo in a pool of blood. Whereupon Makobo said: "I shot him as he threatened to kill me and had uttered the words - 'I will shoot you several time.'" Sangwapo was rushed to the UTH in a coma. At 21:30 hours Sangwapo was awake and made the following statement: "Hope is the one who shot me. Nobody else did it. She shot in self defense. I can say no more, goodbye to all. Tell my wife that I am sorry." One week later on June 8, 1991 and feeling much better, Sangwapo told his wife when she brought him food that: "I expect to be out of hospital soon." Indeed Sangwapo's health continued to improve. However on April 10, 1992 when he tried to walk, the wound opened up again and this time he did not live long. He died on April 12, 1992.

Discuss the admissibility of the various statements.

6. Chilufya Mundia, a young girl aged 6 was left in her mother's car parked at Northmead shopping centre while her mother went into one of the shops to buy insecticide. Two men, Sangwapo and Amadilu entered the car and sped away. They dumped Chilufya in Garden Compound after taking turns in defiling her. Sangwapo and Amadilu were later in the day arrested. They were jointly charged with one count of theft of motor vehicle and one count of defilement. The prosecution decided to call Chilufya as the sole witness. At the commencement of the trial the Magistrate conducted a voir dire and ordered that Chilufya give evidence by way of an unsworn statement. Chilufya narrated how she had been abducted and defiled. The Magistrate in passing sentence said "You two behaved like animals and you deserve the maximum sentence." The two were sentenced to 6 years imprisonment with hard labour.

You are a Legal Aid Counsel and these two wish to appeal.  
Advise.

[15 Marks]

**THE UNIVERSITY OF ZAMBIA**

**UNIVERSITY EXAMINATIONS - OCTOBER, 1993**

**L 320**

**PROPERTY LAW AND SUCCESSION**

**TIME:**           **THREE HOURS PLUS 10 MINUTES TO**  
**READ THE QUESTIONS**

**ANSWER:**       **QUESTION ONE** and **any three** other questions. All questions  
carry equal marks.

You may avail yourself of relevant statutes provided these  
do not carry notes.

---

1. The theory of landownership at common law is that all land is held of the King who is the supreme feudal lord. In this carefully knit arrangement, subjects may hold directly of the King or, indeed, other superior to them. A holder of land is entitled to a number of legal rights in respect of his landholding. These rights ultimately crystallise into the tenants "estate" i.e. the period for which an interest can be held. If it is desired to ascertain his rights, it is imperative to decide what estate he owns and the type of rights and duties that kind of estate imposes at law. The most important of these is the Freehold estate.

- (a) Why are Freehold estates known by this name?
- (b) The fee simple estate has been characterised as differing from absolute dominion of a chattel in nothing except the physical divisibility of its subject.

Critically analyse this statement and reflect on the distinctions between a fee simple estate and the African customary estate.

2. Kasonde and his sister Susan Mkandawire hail from Chief Kankhomba in Katete District. Following the death of both their parents in 1980, Kasonde has not visited the village and neither has he carried out any farming on the fields of their ancestral land. He and his family are staying in Lusaka where Kasonde works. His sister Susan married John Mkandawire, a Lusaka businessman and she, too, has not visited the village since the death of their parents. Kasonde and Susan are patrilineal.

Recently, their cousin from the village visited Kasonde and told him that the village headman had "acquired" the fields and converted them to his personal use. On hearing this, Kasonde and Susan rushed to the village and sought explanation from the headman who confirmed acquiring the fields because their long absence from the village indicated an intention to abandon the land of their ancestors. Chief Kankhomba supported the headman and argued that it would be against the needs of development to leave land fallow for such a long period of time as Kasonde had done. As chief for the area, he added, he would support dispossession of any land lying idle in his area and re-allocation to any who needed it provided they hailed from there. This land fell in a Reserve.

However, Chief Kankhomba said Susan has no right to ask for the land of her father because as a married woman, her rights to land would be a responsibility of her marital village i.e. Chief Kalindawaro of Chipata.

Kasonde wants to acquire a title deed for the fields to avoid future disagreements. However, the Chief has refused to support his claim to his customary, land rights on the grounds that he had abandoned their ancestral land.

Kasonde's friend, John Bruce, an American investor wants a 500 acre piece of land in Chief Kalindawaro's area, a Trustland to put up a Charlet.

- (a) Discuss the status of rights to land for Kasonde and Susan in their village in the light of the foregoing development.
  - (b) Advise Kasonde and John Bruce on the procedure to take to acquire title deeds in the Reserve and Trustland respectively.
3. Critically analyse the content of the doctrine in *Walsh v. Lonsdale* (1882) 21 Ch. D 9 and assess its application in Zambia.
4. Write short notes on any three of the following:-
- (a) Equitable mortgage
  - (b) *Quicquid plantat solo solo cedit*
  - (c) Contractual licences
  - (d) Easement
  - (e) *Qui prior est tempore, potior est Jure*



5. Critically analyse the institutional roles of the Minister of Local Government on one hand and Planning Authorities on the other in the conceptualisation, development and implementation of the Development Plan under the Town and Country Planning Act.

(b) Mr. John Chinondo, a rich Lusaka businessman owns several houses in Lusaka. One of his houses is situated on plot 204 Kalundu, just opposite the University entrance across the Great East Road. This is a six bedroomed one story house. Kalundu is an exclusive area which is home to most of Lusaka's middle class families.

Chinondo has, in the past two years, rented his house to Lonhro Zambia Limited who had used it to house their Managing Director.

Lonhro did not renew the tenancy when it expired last June. Meanwhile, the Weekly Post Newspapers Limited, a newly introduced newspaper with the most "Screening" headlines among the newspapers in the country, negotiated a two year lease agreement in July and have been operating from there since then. They have been running their head office and the branch for Lusaka.

Last month, Lusaka urban District Council, as the planning authority for the area, wrote the Weekly Post and Chinondo directing them to abandon their plans to turn the house into an office.

Advise Chinondo and the Weekly Post.

6. Immediately after he graduated with a Batchelors degree in Law, Hobday joined Barclays Bank Zambia Limited as Legal Officer in October, 1991. Due to a severe shortage of staff housing in the bank, Hobday rented a three bedroomed house from Mudenda in Kaunda square, a peri-urban area.

Although he has lived in the house for close to two years now, Hobday did not sign any documents with Mudenda and these were not necessary at the bank either because he got his housing allowance together with his salary. Infact, it would not be wise for him to reveal the amount of rent he paid Mudenda to his employers (Barclays Bank) because though he pays Mudenda K80,000 per month for the house, the bank pays him K120,000 as his entitlement under his conditions of service. He pays this money at the end of every month and Mudenda keeps no records nor does he supply any receipts to acknowledge receipt of the money. Mudenda does not even know the existence of the Legal requirement on consent and neither does Hobday. Last month, Ogeto married Maria, Mudenda's young sister. Ogeto, a bumping Kenyan lawyer with business connections in Zambia has offered to rent the same house at three times

the amount Hobday is now paying. Mudenda, who has since been pruned from his employment and badly needed a large injection of funds quickly accepted the offer from Ogeto. As soon as Hobday paid his September rent, he (Mudenda) told him to leave the house because he intended to rent it to Ogeto his brother in law. Although he had tried to be regular in his rent obligations, Hobday skipped four months due to family problems he had suffered which compelled him to divert his resources towards these problems, a proposal Mudenda agreed to at the time. He has not yet discharged this debt. Now, Mudenda wants to recover this money. He has given Hobday two weeks to vacate the house.

Hobday has challenged Mudenda's action to evict him from the house which Mudenda forceably did after Hobday defied his two weeks ultimatum.

- (a) Identify the issues raised and, with the help of decided causes, advise the parties. Would your advice be different if the agreement had involved business premises?
7. The introduction of a landmarket in Zambia is the most controversial subject in the development of a system of sustainable land reforms. Analyse and evaluate the nature and implication, in law, of the concept of non-economic value to land in the Land (conversion of Titles) Act, 1975 and reflect on its validity.

---

END OF EXAMINATION

UNIVERSITY OF ZAMBIA  
DEFERRED/SUPPLEMENTARY EXAMINATIONS - DECEMBER, 1993

L 320

LAND LAW AND PROPERTY RELATIONS

TIME: TWO HOURS

ANSWER: QUESTION ONE AND ANY TWO OTHERS. EACH QUESTION CARRIES  
EQUAL MARKS.

YOU MAY HAVE RECOURSE TO UNMARKED STATUTES

---

1. There are several similarities and distinctions between the fee tail and the fee simple especially as regards the canons of descent at common law. But the leasehold estate has, in contrast, been historically distinct from the earlier feudal relationships of Lord and tenant though it, too, is recognised as an estate today.
  - (a) Analyse the main similarities and distinctions between the fee simple and the fee tail. In what ways is the freehold estate similar to the leasehold estate at common law?
  - (b) Zulu, the fee simple owner of Farm No. 204 Mkushi has made a grant of his land in the following words:

"... to Khani for life and thereafter to Musune for a fee simple estate ..."

Evaluate the nature of the grant created above and suggest whether it creates a remainder or reversion?
2. Discuss the nature of the doctrine of "four unities" in a joint tenancy showing when this would be lacking as regards the interest in the property. In what ways would words in a grant be construed as "words of severance" and what would be their effect on the tenancy?
3. "... Hence it is a contradiction in terms to claim as a profit appurtenant a right to fish in another's stream for commercial purposes: such a right does not accommodate the dominant tenement."

Harris V. Earl of Chesterfield [1911] A.C. 623

Compare and contrast a profit appendre from an easement.

4. Critically analyse the principles underlying landownership and access in customary tenure.. To what extent has the concept of customary tenure been modified by statute and case law in Zambia?
  5. With the help of precedents from decided authorities, evaluate the essence of the mortgagor's right to redeem a mortgage where he has fallen into arrears and the mortgagee is seeking possession of the mortgage property.
- 

E N D   O F   E X A M I N A T I O N

**UNIVERSITY OF ZAMBIA**  
**UNIVERSITY EXAMINATIONS - JANUARY, 1994**

**L 320**

**LAND LAW AND PROPERTY RELATIONS**

**TIME:**       THREE HOURS PLUS TEN MINUTES TO READ THE QUESTIONS.

**ANSWER:**     QUESTION ONE AND ANY THREE OTHERS. EACH QUESTION CARRIES  
EQUAL MARKS.

---

1. One of the chief cornerstones of Zambia's Economic reforms is the introduction of a liberal land market. Although the leasehold estate permits some limited rights to the individual lessee, it does not offer sufficient scope for the enjoyment of the full rights of the individual in "his" land.

The Government of the Republic of Zambia has consulted you on the most effective system of tenure to introduce as part of their economic reforms.

- (a) Advise the government on which system of land tenure between the fee simple estate and the leasehold estate would be the most ideal to introduce.
- (b) In what ways is customary tenure inadequate as a tool for social and economic reforms?
2. Mtonga is renting a house in Kalundu area, Lusaka, from Chola at K 500,000 per month payable one year in advance. Although the agreement is yearly, Mtonga has rented the house for the past four years now. Mtonga has regularly paid the rent at the beginning of each year except for this year despite his misgivings about its reasonableness. Twice, he sought audience with Shapi over the astronomical rent but the latter refused arguing that she spent a lot of money on rate charges to the council.

The agreement between Mtonga and Chola was verbal although the landlady had been issuing receipts each time she received the rental payments. Chola has avoided attempts by Mtonga to reduce the agreement in writing according to formalities on the grounds that this would expose her to tax liabilities on her income.

Last month, Chola issued two months notice to Mtonga to vacate the house by 31 January i.e. two months later. The reasons she cited for this action are:-

- (1) Mtonga's delay to pay the K 500,000 rent on 1 January 1992 although he paid it in June
- (2) She wanted to turn the house into a hair saloon for her sister.

You are a newly qualified advocate with Goma Lakes Chambers. Mtonga has approached your senior counsel to contest the action Chola intends to take. Prepare a well researched and legally defendable opinion on the rights of your client both at common law and under statute.

3. (a) Critically analyse the Common Law maxim, "Once a mortgage, always a mortgage".  
(b) In what ways does the Land (Conversion of Titles) Act, 1975, regulated a mortgage in Zambia? repealed ↑ Law
4. Discuss the nature of the doctrine of "four unities" in a joint tenancy showing when this would be lacking as regards the interest in property. In what ways would words in a grant be construed as "words of severance" and what would be their effect on the tenancy?
5. Chiwala owns a house in Kasempa, a reserve under the Zambia (State Lands and Reserves) Orders in Council 1928. He has rights to the land by virtue of his ancestral origins.  
Apart from his ancestral rights, Chiwala does not enjoy modern tenure or interests in the land.

In the last three years, he spent a lot of money developing the property including making all the provisions for a modern home. Last month, Norwegian Agency for Development (NORAD) approached Chiwala with an irresistible offer to buy the house at K 10 million. He spent three million kwacha to build the house.

However, NORAD insist that Chiwala must first obtain a Certificate of Title to the property before they can complete the transaction.

- (a) Advise Chiwala on the steps he would have to take to secure the Certificate of Title and the likely problems he may face.
  - (b) In what ways has Case Law modified the right of a customary land holder to dispose of his land?
6. Discuss the principle of law in Walsh v. Lonsdale and evaluate its application in Zambian Law.
7. Critically analyse the nature of an easement and contrast it to a profit apleandre. In what ways would it differ from a contract coupled with interest?
- 

END OF EXAMINATION ?

THE UNIVERSITY OF ZAMBIA  
UNIVERSITY EXAMINATIONS - OCTOBER, 1993

L 330

COMMERCIAL LAW

TIME:            THREE HOURS PLUS FIVE MINUTES READING TIME

ANSWER:        FOUR QUESTIONS, AT LEAST ONE FROM EACH  
SECTION

STUDENTS ARE PERMITTED TO BRING INTO THE  
EXAMINATION CLEAN COPIES OF RELEVANT  
LEGISLATION

---

SECTION A

1. Pangana company is a manufacturer of quality home furniture. To avoid problems of loss of reputation by customers chipping and damaging their goods when taking them into their homes and repeated requests for dismantling to enable access through narrow doors ect., Pangana company have started delivering their goods in crates for home assembly by customers.

Mwansa Bwalya ordered a glass topped table in September 1992. When placing the order, she stressed that she would require "delivery by Mid-December at the latest" in order to have it assembled before Christmas as she required it for entertaining at Christmas.

The Company completed the table to Mwansa's specification on 23rd December, 1992 and attached sticky labels to the crate stating "For Mwansa Bwalya". When Mwansa was contacted, she told Pangana Company that they were late as her workers who were to assemble it had gone on their Christmas break the previous day. She therefore asked for the crate to be delivered on 2nd January, 1993.



Early on New Years' Eve, there was a break in at the Pangana Company's premises and the crate containing Mwansa's table was stolen

Advise Mwansa.

Would <sup>your</sup> advice be different if it was discovered that Pangana Company had forgotten to include the screws for assembly into the crate?

2. Mulimbeni, a motor car dealer decides to take his annual holiday in November. Among his stock of used cars, he also has two Mercedes Benz Sports cars in his showroom. Being reluctant to leave them unattended, he sends the Benz cars to his friend Kapoto asking him to look after them whilst he is away. Kapoto, who runs a small car repairs garage agrees that they can be left under cover on his forecourt. Mulimbeni goes on holiday leaving a notice in his showroom window:

CLOSED FOR ANNUAL HOLIDAY. STOCK OF NEW MERCEDES BENZ SPORTS CARS CAN BE VIEWED AT KAPOTO'S GARAGE.

Munshi reads the notice and then visits Kapoto's garage to view the Benz Cars. Kapoto offers him one for K10 million "to get it off my hands." Munshi pays the asking price and drives off.

Kaluba is walking past and admires the other Benz. He asks Kapoto how long he has been selling cars as Kaluba lives locally and has not seen cars for sale at the garage before. Kapoto replies that his is selling them for a friend and inviting offers.

Kaluba offers him K30, million for the car which Kapoto accepts. Kaluba pays by cheque and drives the car away. The next day he sells the car to Mukuka for K40 million and absconds. Kaluba's cheque is dishonoured Kapoto becomes bankrupt. Mulimbeni has returned from holiday and seeks the return of his cars from Mukuka and Munshi.

Advise the parties.

SECTION B

3. Mambwe is notorious for avoiding his creditors. All businessmen in Lusaka now <sup>know</sup> his tactics and have resolved not to supply him with any goods on credit. Mambwe wishes to buy a fridge on credit from RDS Investments but is almost certain that RDS Investments will not allow him credit. Consequently he sends Muda, his brother in law, who is an Honourable Deputy Minister, to negotiate and conclude the fridge sale in his own name and Mambwe would pay him the deposit and the instalments. Muda duly concluded the contract and obtained twelve months credit. Mambwe paid half the instalments and became insolvent. RDS Investment learn what has happened and wishes to recover the fridge and repudiate the contract. Advise RDS Investments.
4. The Hire Purchase Act, Chapter 691 of the Laws of Zambia has great potential as a tool for consumer credit in the Third Republic. It is however grossly outdated and needs amendment. You are engaged to review the Act, what changes would you recommend to Government.

SECTION C

5. (a) Explain what you understand by the term "insurable interest" in a Life Insurance Policy.

(b) On 10th July 1993, Majoza filled in a proposed form of the Zambia State Insurance Company, in order to ensure his life for K5 million. He answered all the questions truthfully and disclosed all relevant facts. His deductions were to be by direct debit from his Bank. On July 18 Majoza was taken ill with Cholera. The Insurance Company accepted the proposal on 25th July 1993 and the first premium was paid. Majoza's condition rapidly deteriorated and on 30th October, 1993 Majoza died of cholera. The Insurance Company then learned for the first time that Majoza had cholera

1. Advise Majoza's widow who wants to claim the K5 million.
2. Would your answer be the same if Majoza had instead died from poison administered by his wife?

6. Critically analyse the essential nature of the bill of exchange identifying the main distinctions with the cheque at case law and under the Bill of Exchange Act, 1882.
7. Bank of Zambia were in the habit of accepting bills drawn on them by the Ministry of Finance payable to the order of Lusaka Maize Ltd, a maize buying agent under the new maize marketing arrangements. Lisimba, a clerk at Bank of Zambia who usually worked on this file, forged such a bill. He represented to his Senior Officers that Lusaka Maize Ltd were entitled to an immediate payment of K10 million suggesting that, as in other cases, the bill was drawn by the Ministry of Finance. Bank of Zambia who did not discover the forgery by Lisimba of the Ministry of Finance's two authorised signatories i.e those of the Permanent Secretary and the Chief Accountant, accepted the bill and made it payable to Lusaka Maize Ltd.

Lisimba then added the Indorsement of Lusaka Maize Ltd to the bill, presented it and obtained payment. He subsequently disappeared to Namibia through Sesheke with girlfriend Twaambo.

The Ministry of Finance has, through the Attorney General, brought an action for a declaration that the bank was not entitled to pay Lisimba the K10 m. from the Ministry account.

- (a) Identify the issues and advise the parties.
- (b) Would you say Lisimba was a holder in due course, for value or mere holder?

---

END OF EXAMINATION

**THE UNIVERSITY OF ZAMBIA**

**UNIVERSITY SUPPLEMENTARY/DEFERRED EXAMINATIONS - DECEMBER 1993**

**L 330**

**COMMERCIAL LAW**

**TIME: THREE HOURS (PLUS 10 MINUTES TO READ THE QUESTION PAPER)**

**ANSWER: FOUR QUESTIONS. ANSWER AT LEAST TWO QUESTIONS FROM EACH SECTION.**

---

Q1. Mushala is a specialist in procuring cleaning equipment and charges 15 percent of cost. Ababusaka Ltd is a company set up to provide cleaning services to Lusaka's international community especially diplomats. Ababusaka Ltd have established a formidable reputation for very high standards of professionalism. It is a cardinal company policy that all procurers of equipment must obtain it from established reputable manufacturers.

Mafo Electrics have until recently been regarded as the market leaders in the manufacture of vacuum cleaners and carpet shampooers. However, they are currently facing two legal suits from customers alleging that the shampooers have been leaking resulting in flooding and short circuits. Mafo Electrics have as a result experienced a fifty percent drop in business for their first quarter. They have therefore resorted to offering 30 percent discounts on all orders. This offer is widely advertised. However, there is another payment being quietly negotiated with agents who place orders above K1 million. Mafo Electrics is paying them double the principal's commission.

Mushala orders 20 vacuum cleaners and shampooers at a cost of K2,000,000. Mafo Electrics promptly pay him K600,000 on top of the K300,000 payable by Ababusaka Ltd. Five of the machines flood on the job resulting in the cancellation of Ababusaka's Cleaning Contracts with the Danish and Norwegian Embassies. One of the cleaners is also almost electrocuted and has to spend a fortnight in UTH at a cost of K50,000 to Ababusaka Ltd.

Advise Ababusaka Ltd. What remedies are available to them if any.

- Q2. If an agent or a person who appears to be acting as an agent negotiates a contract which his or her principal has forbidden the agent to make, in what circumstances is the third party nevertheless able to enforce the contract against the principal?
- Q3. Masauso and Mutale agreed after protracted negotiations that Masauso would sell to Mutale five numbered piles of edible rice scattered around his warehouse which together amounted to 1 tonne. It was agreed that before signing the sales contract:-
- (a) Mutale would be free to examine the piles; or
  - (b) Mutale would be sent a sample from anyone of the piles.

Other conditions included the following term:

"No warrantly or condition is hereby given as to the defects in the goods that the buyer could have noticed before signing the contract."

Mutale examined pile 2 and was satisfied that the rice was fit for human consumption. He thereafter signed the contract and paid K500,000 for it. Later, before delivery, Mutale decided that he should also have a sample sent to him from the piles in case of problems arising later. Masauso sent a sample from pile 1. Mutale found nothing wrong with this sample. A day later the rice arrived and Mutale discovered to his dismay that the rice was full of stones and sand. He decided to return the rice and demand his money back.

Mutale brings an achoir against Masauso alleging that:-

- a) The rice was unmerchantable
- b) The rice did not correspond to sample.

Advise Masauso.

SECTION B

- Q4. The general thrust of the Hire Purchase Act, Cap 691 of the Laws of Zambia, appears to be to extend protection to hirers which the market does not provide. Discuss.
- Q5. Write critical notes on the following:
- (a) Dalby v India and London Assurance Co. (1854) 15 C.B. 365.
  - (b) The effect of a policy without an interest.
  - (c) Cover notes.
  - (d) Subrogation.
- Q6. Chinondo is engaged as Consultant Engineer with the Lonrho Group of Companies based in Lusaka. Consultant Chinondo enjoys some of the most attractive terms and conditions on the market including an annual entitlement to the 13th cheque.

Mr. Patel, the Lonrho Chief Accountant, prepared a cheque for Chinondo for K10 million being payment for consultancy services the latter rendered to the Company in the last three months. This cheque was drawn on Barclays Bank Ltd. (Mutaba House) Lusaka and was signed by the two authorised signatories, namely Mr. Patel and Mr. Sakala, the Managing Director. The cheque was endorsed "Not Negotiable" as well as "Account Payee" both terms appearing on its face.

As Chinondo was based at the Lonrho Branch in Ndola, arrangements were made to send the cheque to him at his station. Chinondo maintained a personal account with Standard Bank in Ndola to which the cheque was to be sent through Barclays Bank Mutaba House, Lusaka.

When he inquired, Chinondo was told by Mr. Patel to expect the money to the credit of his account the following day. A week later this had not been done because Kabwalala, a clerk in Mutaba House of Barclays Bank cancelled the endorsements "Not Negotiable" and "Account Payee."

Having dealt with Lonrho cheques for a long time, Kabwalala was quite familiar with Patel and Sakala's signatures. He forged these signatures and reflected them against the cancelled endorsements purporting that they were authentic signatures of the two signatories..

Having done this Kabwalala drew the cheque with the cooperation of his colleague also a cashier and both fled the country.

After waiting for 9 days, Chinondo personally travelled to Lusaka to find out about his cheque at Barclays Bank. The Bank disclosed that the cheque was drawn by Kabwalala. When Chinondo demanded for his money, the Bank denied liability pointing out that he (Chinondo) or Lonrho did not even warn them in the press about the loss of the cheque even one week after it was not remitted to Ndola. Chinondo and Lonrho argued that the two endorsements were adequate to have ensured that the cheque was not paid otherwise than through the banking system.

Identify the issues of law and advise the parties on their rights and liabilities.

---

END OF EXAMINATION



THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - OCTOBER, 1993

L 340

ADMINISTRATIVE LAW

TIME: THREE HOURS

ANSWER: QUESTION 1 AND THREE OTHERS.

NOTE: CANDIDATES ARE ALLOWED TO HAVE IN THE  
EXAMINATION HALL AND TO REFER TO UNMARKED  
COPIES OF THE FOLLOWING STATUTES:

1. The constitution of Zambia Act No. 1 of 1991
2. The Service Commissions Act, 1991
3. The Industrial Relations Act, 1990 and all  
amendments thereto
4. The Commission for investigations Act
5. The Interpretation and General Provisions Act,  
CAP 2 of the Laws of Zambia.
6. The Inquiries Act

COMPULSORY (40%)

1. Mabvuto, a fourth year student at the University of Kanchule (UNKA) was expelled from the University after being found guilty by the University's Disciplinary Committee of having incited his fellow students to violently demonstrate against the UNKA administration which resulted in the burning and looting of property belonging to the University.

Mabvuto has approached you for advice and has given the following instructions:

He denies having committed the offence in relation to which he was expelled. He states that although he was given an opportunity to appear before the Disciplinary Committee, he was not formally informed of the nature of the charges against him until he appeared before the Committee. He states however that he was aware of likely allegations he was to face because two days after the demonstration, he was subjected to a severe tongue-lashing by the Varsity's Principal.

When the charges were put to him on the hearing date, Mabvuto elected not to apply for an adjournment preferring to have the matter determined on the said date.

According to the disciplinary rules of UNKA, the Disciplinary Committee was to consist of 5 members and any 3 members thereof could constitute a quorum. The rules also provided that one students' representative should be present at all the hearings of the Committee. Mabvuto informs you that at the time when his case was being heard, the overall Committee comprised only 4 members, the fifth member having previously left the University. However, 3 members of the Committee were present through out the hearing although the three didnot include the Students' Representative because the Students' Union had not been informed of the hearing.

Mabvuto appeared in person to conduct his defence. He was advised of his liberty to call any witnesses to testify on his behalf save that he was not allowed to address the Committee when he closed his case.

Mabvuto also informs you that he believed the decision to expel him from UNKA was reached after the Committee had taken into account certain allegations of previous misconduct on his part which had been raised in his absence by one of the members of the committee and which allegations he had no opportunity of challenging. Finally, Mabvuto avers that no reasons were given by the Committee for arriving at the decision to expel him because the committee was not obliged under the rules governing its procedure to give reasons.

Advise Mabvuto.

NB: (This question carries 40% of the total marks)

2. "[T]he purpose of administrative law is [ not ] to stifle administration".

per: Yardley, (1986) Principles of Administrative Law

"[T]he practice of administrative law should lead to the assistance of good administration".

per: Yardley (as above).

"It is a mistake to suppose that a developed system of administrative law is necessarily antagonistic to efficient [administration]".

per: H.W.R. Wade (1988)  
Administrative law, 6th ed.

Critically discuss the above statements and where appropriate, illustrate your views with the aid of decided cases in Zambia and any other jurisdictions with which you are familiar.

3. A definitive feature of this our age of administration is the prevalence of various repositories of law-making powers, subordinated to the peoples Assembly (National Assembly).

With reference to Zambia, describe the nature of the laws made by such repositories as aforesaid and critically assess the justifications for, and the effectiveness of the means of control over such laws.

4. Chola and Gertrude are first year students in the School of Education at the University of Kadansa.

Chola's father, an ex - principal at a college, and Gertrude's, an ex-Deputy Minister, were sacked at a recent press conference by the State President of the Republic of Kadansa.

No reasons were given by the President for the sackings, save for a subsequent press statement to the effect that the President had used his prerogative.

Assume that the relevant laws (i.e case and statute laws) of the Republic of Kadansa, are similar in all material aspects to the Zambian Laws, tender comprehensive pieces of advice to Chola and Gertrude as regards the legal positions of their respective fathers.

Chola and Gertrude intimates to you that their fathers are contemplating initiating separate Court actions, discuss the relative strengths and or weaknesses of the two prospective court actions and their likely out-come.

5. (a) "The Commission for Investigations is not an Ombudsman".  
Discuss
- (b) Are Zambia's service Commissions proper subjects of administrative law as an academic discipline?

6. "[Administrative] tribunals are not part of the administrative machinery of Government .....; they are part of the Judicial system of the land under the rule of law".

From: Lord Denning, The Discipline of Law

Do you agree? Discuss the above assertion with reference to atleast one tribunal with which you may be familiar.

7. Write comprehensive notes on any two of the following:-

- (a) The cases of *In re MAILLO*  
[1960] R & N 132 and  
*JACKSON V. A-G* [1979] Z.R.
- (b) *LOCUS standi* and Declaratory Judgement
- (c) Commissions of Inquiry

---

END OF EXAMINATION

**THE UNIVERSITY OF ZAMBIA**  
**UNIVERSITY EXAMINATIONS - JANUARY 1994**

**L 340**

**ADMINISTRATIVE LAW**

**TIME:** THREE HOURS

**ANSWER:** QUESTION ONE (01) AND THREE OTHERS

**NOTE:** CANDIDATES ARE ALLOWED TO HAVE IN THE EXAMINATION HALL AND TO REFER TO UNMARKED COPIES OF THE FOLLOWING STATUTES:

1. The Constitution of Zambia Act No. 1 of 1991
  2. The Interpretation and General Provisions Act, CAP 2 of the Laws of Zambia.
  3. The Industrial Relations Act 1991/93.
- 

Q1. "Administrative Law seeks to reconcile the conflicting claims of liberty and authority or power".

Do you agree? Using any appropriate case law, discuss the accuracy and/or otherwise of the above proposition.

Q2. What is the relevance and significance of the following to students of Zambian Administrative Law:

- (a) Delegated legislation;
- (b) Commissions of Inquiry; and
- (c) Service Commissions?

Q3. Section 97 of the Industrial and Labour Relations Act No. 27 of 1993 enacts thus:

"Any person aggrieved by any award, declaration, decision or judgement of the [Industrial Relations] Court may appeal to the Supreme Court on any point of law or any point of mixed law and fact".

Discuss the implications of the above provision in the light of the justification for, and raison d'être of the Industrial Relations Court.

Q4. "The dichotomy that is normally drawn between Constitutional Law and Administrative Law is not only specious but highly fallacious".

Do you agree? Discuss the above statement by highlighting the salient features, similarities and differences between Constitutional Law and Administrative Law.

Q5. In his celebrated dissenting opinion in the landmark case of **LIVERSIDGE v. ANDERSON** [1942] A.C. 206, Lord Atkin, in interpreting a statute expressed the view that the words 'If a man has' do not mean 'If a man thinks he has'.

Using any appropriate Case Law, discuss the ramifications and implications in administrative law of the two sets of phrases.

Q6. "The application of the principles of administrative law is important in promoting sound public administration".

Critically discuss.

---

E N D   O F   E X A M I N A T I O N

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

MID-SEMESTRAL EXAMINATIONS - JULY 1993

L350 - FAMILY LAW

TIME : TWO (2) HOURS

ANSWER : ALL THREE QUESTIONS

YOU MAY REFER TO ANY RELEVANT STATUTE(S)

- 
1. Tom, a Malawian aged 19 and domiciled in Malawi, got married to her childhood friend Wendi, a Zambian girl, also aged 19. Tome was on contract with a Polytechnic College in Lusaka and Wendi has always maintained that Zambia will for ever be her home. The marriage was solemnised in a small church in George Compound by a friend who they paid to act as a priest. The only people who were invited to attend the ceremony were Tom's two sisters. No certificate of marriage was obtained and this was because the parties were in a hurry and considered it to be a waste of time to obtain such a document. They had a son, Meki, who grew up into a robust, handsome young man. At 15 years of age, he fell in love with Lucy aged 22 years of age, and wants to marry her under Marriage Act.

Advise him as to,

- a) The law that will govern his capacity to marry and
- b) Whether he can contract a valid marriage with Lucy.



2. (a) Briefly explain five grounds which may render a marriage void.
- (b) Joe and Sipiwe contracted a marriage under the Act in December, 1988. There were no children of the the marriage and this was because Joe, on having learned that Sipiwe had a child with another man, had developed repugnancy towards even touching her. In fact since the solemnisation of their marriage, the couple had not had any sexual intercourse at all. The marriage was virtually dead and Joe decided to marry another woman, Shupile, under Tumbuka Customary Law. Bandawe, Sipiwe's brother is not happy with the arrangement and wants to contest the validity of Joe's second marriage to Shipile.

Advise him.

3. Mabvuto and Thando were married under the Act. They lived in a house which Mabvuto had inherited from his father and which was exclusively in his name. Two years later, Mabvuto deserted his wife, Thando, and started living with another woman.

Before leaving her, Mabvuto told her that she could always live in the house and nobody would disturb her. Thando continued to reside in the home and two years later she obtained a decree nisi of divorce against her husband on the ground of his adultery and desertion.

Mabvuto has now brought proceedings for possession of the house and Thando wants to resist this arguing that she has an irrevocable licence to live in the house during her life.

- a) Advise Thando as to whether she can succeed and what course of action she should take.

b                    Would it make any difference if the house  
belonged to Mabvuto and Thando jointly?

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - OCTOBER, 1993

L 350

FAMILY LAW

TIME: THREE HOURS (PLUS 10 MINUTES TO READ THE QUESTION PAPER)

ANSWER: ANY FOUR QUESTIONS

STUDENTS MAY BRING INTO THE EXAMINATION CLEAN COPIES OF RELEVANT LEGISLATION

- 
1. Section 11(1) of the High Court Act, Chapter 50 of the Laws of Zambia provides that:

"The jurisdiction of the [High] court in divorce and matrimonial causes and matter shall ... be exercised in substantial conformity with the law and practice for the time being in force in England."

Bearing in mind the social and legal nature of the institution of marriage, critically discuss the full implications of the above provision. Are there any advantages and/or disadvantages in retaining the above provision as part of the Laws of Zambia.

2. Musonda, a 25 year old Zambian man domiciled in Zambia went through a form of marriage under the Marriage Act, Cap 211 of the Laws of Zambia with Khadija a 14 year old muslim girl domiciled in Manana, a newly independent African State. In Manana the capacity to contract any type of marriage is fixed at 13 years. Manana marriage laws also provide that any person domiciled in Manana can contract a valid customary law marriage under any customary laws of any independent African state.

Musonda and Khadija had the intention to live in Zambia and lived in Zambia after their marriage. They bought a matrimonial home in Kalingalinga. After a very happy year of marriage Musonda and Khadija had a son, Mohammed. This seemed to be the turning point. Musonda began to feel neglected. He started to drink and to come home late. Eventually he began to beat up Khadija every night when he returned.

Khadija decided to run away to her elder sister Fanta who resided in Kitwe. Whilst there she fell in love with her sister's neighbour, Mulenga, who was about to go for post-graduate studies in London. Mulenga married Khadija under Bemba customary law and took her with him as his wife. Mohammed was left under Fanta's care.

After completion of his studies, Mulenga decided never to return to Zambia. He found himself a good job with Hammersmith Council and bought a house. Khadija and Mulenga have now been in the UK for ten years. Mulenga no longer wants Khadija as his wife because of her "inability to mix". He feels he could assimilate himself better into British society if he married an English wife.

Mulenga wants to know if he can divorce his wife in the English courts.

Meanwhile Mohammed is now 14 years old and wants to get married. Mohammed wants to know what legal system will govern his capacity to marry.

Advise both Mulenga and Mohammed.

3. The 'Divorce Reformer' of 1969 introduced "irretrievable breakdown of marriage as the sole ground upon which a petition for divorce can be presented to court. What is meant by the phrase "irretrievable breakdown of marriage".?

Critically discuss this phrase in relation to each of the five (5) facts with which a court must be satisfied before a marriage can be dissolved.

4. Write notes on the following:

- (a) Presumption of Marriage
- (b) Presumption of death
- (c) Mutual desertion
- (d) Loss of consortium

5. Discuss fully the legal implications of marriage in Zambia resulting from the following two decisions: Siwo v. Siwo and Somanje v. Somanje.

Do you agree or disagree with either of these decisions? Give your reasons why.

6. John Sekwiba is a Cabinet Minister and highly respected Zambian politician. As a result of a serious car accident in which his wife is killed, Sekwiba can sometimes be found talking to himself and is often incoherent in conversation after 22.00 hours. His family therefore ensure that he is not in public after 21.00 hours. They would like him to see a psychiatrist but are worried about the effect this would have on his public standing and his post should the story be

leaked to the Weekly Post.

They therefore do nothing and just hope the situation will improve.

Being of high standing Sekwiba has been placed on the list of most eligible bachelors by many Lusaka marriage hunters and their ambitious mothers. Jane Masuwo, a beautiful identical twin who is his personal secretary feels she has a headstart. The only problem is that she is four (4) weeks pregnant from her Asian boyfriend. She nevertheless manages to entice Sekwiba to spend two consecutive Thursday nights at her flat. The following month she accuses Sekwiba of having made her pregnant and that she will "spill the beans" to the Weekly Post unless he marries her. Sekwiba consults his family who advise him that the only way he can come out of it honourably is indeed to marry her as it was too soon after his wife's death for him to be exposed in such a scandal.

Jane persuades Sekwiba to send her to London for her wedding shopping although her real intention is to go and terminate her pregnancy. The operation goes horribly wrong and she is too ill to travel back in time for the wedding. Her parents persuade her twin sister June to take her place. The marriage is duly solemnised in the office of the Registrar of Marriages. June is however unable to let Sekwiba have sexual intercourse with her. She is in love with Simon who is studying Accountancy in the U.K. She hopes she can put Sekwiba off until Jane returns.

Sekwiba cannot understand the rejection and has fallen into severe depression. Jane in the meantime dies in London. June wants to end the marriage.

Advise the parties.

---

END OF EXAMINATION

L 350

FAMILY LAW

TIME: THREE HOURS (PLUS 10 MINUTES TO READ THE QUESTIONS)

ANSWER: ANY FOUR QUESTIONS

STUDENTS MAY BRING INTO THE EXAMINATION CLEAN COPIES OF  
RELEVANT LEGISLATION

---

Question (1) (a) Discuss comprehensively the distinction between a marriage that is a contract, and one that is a status.

(b) The law, once upon a time required that a married woman's domicile was that of the husband or dependent on the husband.

What changes with regard to the above were subsequently introduced by the Domicile and Matrimonial Proceedings Act of 1973?

Question (2) With the aid of relevant authorities state the most essential conditions required for valid statutory and Customary Marriages.

Question (3) Mutafe, a 28 year old Zambian man and domiciled in Zambia went through a marriage ceremony under the Act with Njabi a 15 year old girl also domiciled in Zambia.

A few months later, Njabi insisted that they undergo a Customary Ceremony of marriage, as well, to please her parents. Not wanting to lose Njabi, Mutafe proceeded to do so and paid the lobola demanded by Njabi's parents.

Two years later, Njabi discovers that Mutafe has begun 'seeing' other women. She accuses him of adultery and threatens to divorce him. Mutafe resists by saying he was free to court other women for purposes of assessing whether he could marry them since their marriage was customary. Njabi insists that they had meant their marriage to be monogamous from inception.

Eventually, because of continued excessive bickering over the issue, the marriage is dissolved by the parents from both sides. Mutafe demands his lobola back.

Identify the issues arising in the foregoing, stating whether there was a valid marriage. Does Mutafe have a right to his lobola?

- Question (4)
- (a) Citing relevant authorities, distinguish between void and voidable marriages.
  - (b) 'At common law, no child could be legitimate unless born or conceived in wedlock.'  
What statutory provisions exist today, which have modified this common law principle?  
Explain the meanings of the said provisions.

- Question (5) Mweemba and Mary have been married for four years now and have one child aged two.

Mweemba, a soldier in the army of the republic of Zambia, has just been included in a contingent of soldiers leaving for Mozambique to take part in the UN peacekeeping mission. They eventually leave on the first of June, 1992.

After four months Mweemba returns home for a two weeks break much to the delight of his wife who has missed him. Mweemba returns to Mozambique after the break and only returns home, finally, on the 1st of March, 1993. His wife tells him she feels like she is expecting their second child. Mweemba expresses joy and takes his wife to a doctor to make sure. After a routine examination, the doctor says his wife is three months pregnant. Mweemba is happy, but then makes a quick mental calculation and angrily tells his wife that the pregnancy is not his after all. She insists it is his as he had even returned home at one point. Mweemba refuses still and accuses her of having committed adultery while he was away. He tells her that he will institute divorce proceedings as he will never be able to stand the thought that she behaved so disgustingly. He cannot reasonably be expected to continue living with her.

Determine the issues in the above matter and state whether Mweemba will succeed in his divorce suit.

Question (6)      Discuss the social role performed by the following payments practised under customary law.

- (a)    Chisungu (Bemba)
- (b)    Cijulamulomo (mouth opener)
- (c)    Malowolo

---

END OF EXAMINATION



Question (6)      Discuss the social role performed by the following payments practised under customary law.

- (a)    Chisungu (Bemba)
- (b)    Cijulamulomo (mouth opener)
- (c)    Malowolo

---

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA  
UNIVERSITY EXAMINATIONS - JANUARY, 1994

L 350  
FAMILY LAW

TIME:     THREE HOURS PLUS FIVE MINUTES TO READ THE PAPER

INSTRUCTIONS:

1. ANSWER QUESTION ONE AND ANY OTHER THREE
  2. CANDIDATES MAY BRING INTO THE EXAMINATION CLEAN COPIES OF RELEVANT LEGISLATION.
- 

1. Musavu and Lumamba, his wife, both Zambians have enjoyed a happy marriage for three years now. They were married under the Act and have one child. Mulenga, meanwhile, has always admired Lumamba and had wanted to marry her before she married Musavu. Mulenga is still extremely jealous of their marriage. He has always been looking for a way of ending it.

During one of his 'snooping around' errands, Mulenga discovers that Musavu and his wife Lumamba are actually related. He has figured out that Musavu's grandmother and Lumamba's greatgrandfather were cousins. He now wants to bring the matter to the attention of the 'relevant authorities.'

Meantime, Musavu, who works for an engineering firm is injured badly when he slips on a wet floor of one of the engine rooms. After investigations it is discovered that one of the Supervisors had negligently left a tap open in the room overnight and the room had been flooded. Musavu, being the first to enter the room, had simply opened the door and walked straightin when he slipped. He has sustained a severe dislocation of the hip and strained the nervous system to his private parts. The doctors have assessed that he will never be able to have sexual intercourse with his wife again.

Thus, while Mulenga is up to his own scheming, Musavu's wife also decides to bring an action against the negligent Supervisor for damages for loss of consortium with her husband.

Keeping in mind the relevant issues arising in the foregoing, advise both Mulenga and Musavu's wife.

2. With the aid of authorities, explain the following:

- (a) Unconsummated Marriages
- (b) Capacity to Consummate
- (c) Wilful refusal to Consummate

3. Loveness and Maurice have been lovers for three years now. Maurice is 28 years of age and Loveness is 20. They are both domiciled in Zambia. They decide that it is time to get married. Loveness is delighted and rushes off to discuss the issue with her parents. Initially, the parents do not object but on discovering that their prospective son-in-law comes from a 'far flung' tribe, they refuse to sanction the marriage.

Loveness is distressed. She discusses the development with Maurice and they decide to defy the parents of Loveness. They hire a pastor from the local church and undergo a private ceremony of marriage in a friends house. Meanwhile Loveness's mother gets to hear about the ceremony. She tries to convince her husband that they should just accept the marriage as it has already taken place. Her husband refuses to recognise it.

Three years later, Loveness and Maurice are going through a bad patch. Maurice has taken to excessive drinking and is not providing any food for the wife and their only child. When Loveness tries to discuss the problem, Maurice tells her that after all they were not married as such. There was no proper procedure followed and the parents of Loveness did not accept the marriage.

Maurice decides to leave Loveness and goes through a statutory marriage with another woman named Eunice.

Determine, with relevant authorities;

- i) The status between Maurice and Loveness before the second marriage of Maurice
- ii) The status of the second marriage.

4. Lucy, a 20 year old Zambian woman had been married to Banda a 25 year old man for two years. Banda worked for the National Wildlife Game Safaris Limited.

In June of 1983, while on one of the safaris, Banda disappeared with a group of tourists he was leading. The Company's efforts to trace them failed and the search was abandoned after three months.

Lucy was distressed but struggled on alone. In August 1990, a story begun to go round that Banda and the tourists had been gunned down by a gang of poachers and their bodies fed to the lions. Mwenya, a housewife renowned for gossip, and who happened to be Lucy's neighbour narrated the story directly to Lucy and claimed someone had actually seen the leftovers (skeletons).

Lucy mourned for her husband but because of the hardships she was now going through, she decided to get married to Petros, a man who had been pestering her for marriage ever since her husband disappeared.

A year later, Banda suddenly reappeared. He and the tourists had apparently been kept captive all these years by a rebel group from a neighbouring country, after they had strayed into the territory during the walking safari. Luckily they had now been set free. Banda claims his wife back. Petros insists that he duly married her as Banda had been given up for dead.

- i) Does Banda have a legitimate claim?
- ii) What is Lucy's position as regards the answer to the above?

5. Write comprehensive notes on the following:

- i) Lex domicilli vis-a-vis, marriage.
- ii) Recognition of Foreign Marriages.
- iii) Lex Loci celebrations.

6. Jacob and Ruth, both Zambians, have lived together for 18 years. They never underwent any ceremony of marriage. Jacob is now 53 years of age and Ruth is 36. They have four children and the house they live in, is Ruth's.

One day Jacob did not return home from work. It later transpired that he had suddenly fallen head over heels in love with another young lady of 28 years of age and had begun to live at her home. Ruth is shocked by the turn of events.

After three years, Jacobs affair fails and he decides to return to Ruth insisting that she is still his wife. Ruth instead tries to chase him away, saying she can no longer be expected to live with him after his abominable behaviour. Jacob says since they are married, she can only get rid of him by formally divorcing him. Ruth replies that they were never married in the first place - they just begun living together. Jacob refuses to leave. Ruth goes to seek advice from two different lawyers. The first one advises her to bring an action for divorce on the ground of adultery or in the alternative desertion. The other lawyer simply tells her to call the police to evict Jacob from her home since he is not legally her husband - there having been no ceremony of marriage or anything else to prove marriage.

Ruth is confused.

You now advise her as to her best course of action.

---

E N D   O F   E X A M I N A T I O N

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

MID-SESSIONAL EXAMINATION JULY 1993

LA10 - JURISPRUDENCE

INSTRUCTIONS:

ANSWER : QUESTION ONE AND TWO OTHER QUESTIONS  
TIME : TWO HOURS (PLUS 5 MINUTES TO READ THE  
PAPER)

---

1. "Law is but only a superstructure built upon an economic base to serve the interests of the propertied classes,..... With the abolishment of classes, Law and the State will no longer be necessary."

Critically assess the above statement by advancing your point of view.

2. "The Law is the pronouncement of the courts. The legislature is only a source."

Do you agree with the above view?

Give comprehensive reasons for your answer.

3. With reference to relevant authorities, state whether you agree or do not agree with Kelsens theory on the juristic implications of a revolution.
4. What have been the major criticisms levelled at John Austins theory of the Law as a command of the sovereign? Do you subscribe to the said criticisms.

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - OCTOBER, 1993

L 410

JURISPRUDENCE

INSTRUCTIONS

- (1) Answer Question One (1) and any other three
- (2) Question ONE (1) carries 34 marks. The rest carry 22 marks each
- (3) Time: 3 hours plus 10 minutes to read the paper.

- 
1. After a protracted and heated debate, the legislature of the Republic of Chaka, manages to squeeze through a Government initiated Law which now allows abortion.

As expected, the Universal Church, which enjoys a large following in the Republic of Chaka, condemns the law in a hard hitting statement. The government is accused of encouraging immorality by passing a so-called law, which will only serve to increase the incidence of promiscuity and other decadent behaviour. The law, the church says, is against Christian teachings and in a country which professes to be Christian, it comes with a sense of profound shock to <sup>have</sup> such a law passed. All laws ought to conform to Gods plan, otherwise they are invalid, it says.

A women's group, on the <sup>other</sup> hand, calling itself the Movement for the Total Liberation of Women, (MOTOLIWO) welcomes the new law. It is time, MOTOLIWO says, that women were allowed to do what they wanted with their bodies. It was not up to anyone (especially the men) to dictate, in a free country, how women should use or misuse their own bodies. In anycase abortion hurt no one but the woman herself, if at all!

A committee of the Law Association of Chaka, declaring that its not yet decided on the matter, nevertheless goes on to advise the two 'warring' groups to firstly assess the objective of the said new law. The committee says it recognises at least two or so jurisprudential issues over the matter and it would do well for the two respective camps to analyse the issues before making any hasty stand.

Discuss what you think are the issues recognised by the Committee of the Law Association of Chaka in the matter. End by expounding your on views over the issues.

2. "According to the declaratory theory of Law, it is no part of a judge's function to create rules of Law ...

On the other hand, the realists contend that without judicial recognition the words of statutes are dead - in effect, that the judge's determine what the law is."

Explain the reasons advanced for both arguments above, giving authoritative examples if possible.

3. A criminal law of the Republic of Zambezia forbids Loitering after midnight. It is an offence for which if convicted, one is liable to a mandatory sentence of Life Imprisonment.

Lazarous Phiri and six other persons are arrested at different places and charged with loitering after midnight. They are all subsequently convicted and sentenced to life imprisonment at different trials. The trials have all followed the rules of criminal procedure except that of Lazarous Phiri where he was not allowed to say anything by the magistrate in spite of his desire to do so.

A foreign lawyer, on a visit to Zambezia reads about the cases and immediately reacts by stating that the convicted persons had not been accorded justice. He argues that the punishment is not proportionate to the offence which he considers petty.

A local lawyer on the other hand argues that he does not recognise any injustice except perhaps, in Lazarous Phiri's case since in the others the due process of law was followed. In any event, he says, there is no necessary nexus between Law and Justice.

Keeping in mind the various attributes of Justice, state which side of the argument (if any) you would take, giving reasons for the choice.

4. "The sheer weight of black letter law is pushing away from popular consciousness an appreciation of some of the broader perspectives which legal studies should inculcate ... Deeply learned, with utmost thoroughness, in the contents of law books and applying the principles to facts before them, lawyers feel the task is accomplished and the interest in the matter therein ceases."

Discuss how Jurisprudence in general and the sociological school in particular, have done much to correct the above short sightedness.



5. "The rule that a man may not ride a bicycle on the pavement may have its Source in the by-laws of a city council; the rule that these by-laws have the force of law has its source in an Act of Parliament ... The Act of Parliament has been passed because the constitution clothes Parliament with the authority to do the same."

Whence does the Constitution, in the foregoing passage, derive its force of law?

6. Write brief but Comprehensive notes on two of the following;
- (i) Law and Politics.
  - (ii) Criteria for determining the existence of Law viz-a-viz 'Primitive' or simpler Societies and Modern Legal Institutions.
  - (iii) The contribution of the theories of Locke and Rousseau to the development of liberal Democracy in the West.
7. "All people, lawyers and judges included, are the creatures of their times and circumstances, and the legal systems they evolve are not purely logical exercises but practical compromises and suggestions, prompted by contemporary events ... that laws are not of Universal validity but, like language, are peculiar to the nation that produces them."

With reference to the relevant School of thought and jurist(s) who expound the above, state whether you think Zambia's legal system is a reflection of its basic national character or not.

---

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - OCTOBER, 1993

L 420

THE LAW OF BUSINESS ASSOCIATIONS

TIME: THREE HOURS (PLUS 10 MINUTES TO READ THE PAPER)

INSTRUCTIONS:

1. STUDENTS MUST ANSWER QUESTION 1 AND ANY OTHER THREE QUESTIONS, AT LEAST ONE QUESTION FROM EACH OF SECTIONS A.B. AND C. IN ALL STUDENTS MUST ATTEMPT FOUR (4) QUESTIONS.
2. STUDENTS ARE ALLOWED TO BRING INTO THE EXAMINATION ROOM AND TO CONSULT CLEAN, UNMARKED COPIES OF THE COMPANIES ACT CAP686 OF THE LAWS OF ZAMBIA, THE COOPERATIVE SOCIETIES ACT CAP 689, THE PARTNERSHIP ACT OF 1890, AND ANY OTHER RELEVANT STATUTE.

---

QUESTION 1 : Compulsory

Chibwezi limited was incorporatd under the Companies Act, Cap 686 of the Laws of Zambia. The objects for which the company was established are:

1. To enter into the export and import of any kind of goods, articles or merchandise of whatever discription.
2. To make, assemble, manufacture and maintain all kinds of irrigation pipes, tractors, agricultural equipment generally and canoes of all discriptions and types.
3. To do the business of bankers and travel agents
4. To do any other business in the furtherance of the above objectives as the directors may deem appropriate.
5. Articles of Association of Chibwenzi Limited provided inter alia that:

"The Board of Directors shall have all the powers of members in General Meeting, and shall exercise such powers as they may see fit to do so."

Mojo Investors Limited were approached by Chibwenzi limited for possible funds for their factory making heavy plant for as irrigation canal project. The funds were supplied as negotiations showed Chibwenzi Limited were a very well-established firm of diverse business interests. The Managing Director, duly appointed, clinched this deal.

Mr. Ganizani approached a clerk of Chibwenzi Limited and asked for a world traveller's guide book for tours and fees in East and Central Africa. The clerk informed Mr. Ganizani that tours in East Africa are no longer popular due to the outbreak of AIDS and that they are reluctant to book people going there. The Managing Director overheard this conversation, came out from his office and assured Mr. Ganizani that there is no such AIDS epidemic in East Africa but that it existed in isolated places only. Mr. Ganizani was happy and he made his booking and travelled a week later.

The canal was completed in time but the anticipated agricultural boom never occurred as no rains fell in the catchment area of the Mulonga River. Chibwenzi Limited failed to meet its obligations on repayment of funds from Mojo Investors Limited. The latter has sued for their money.

In the meantime, Mr. Ganizani has contracted the AIDS virus on his sojourn to East Africa and has brought proceedings against Chibwenzi Limited for the representations made on the prevalence of AIDS in East Africa.

Advise Chibwenzi Limited on their liability if any to either or both the plaintiffs

(25 marks)

#### SECTION A

##### Question 2

- (a) "The process of privatisation can be a contentious and complex political issue. The Government, therefore, has to find methods of privatisation that are administratively feasible, economically efficient and politically acceptable."

With the help of suitable illustrations of recent economic developments in Zambia, critically discuss."  
(12½ marks)

- (b) The Articles of Association of Chongololo Diggers Limited stipulated that notice of every meeting must be given to the Advocates of the company who would in turn send a representative. Chongololo Diggers Limited held a meeting at which their Advocates were not represented. The Advocates had indicated long before hand to the Managing Director that they would

not be able to send a representative to the next meeting. No notice was given to the Advocates. A resolution was passed at the meeting to the effect that the company Advocates be replaced. Some shareholders of Chongololo Diggers Limited who had missed the meeting wish to challenge the decision.

Advise Chongololo Diggers Limited

(12½ marks.)

### Question 3

In June, 1990 Brilliant Kondakonda, a third year law student at the University of Zambia (popularly known on campus as Poverty's most helpless victim) had the rare fortune of winning K2,000,000 from the Pick-a Lot-Jackpot. He opened a clothing shop a month later in association with twelve of his other student friends, three of his loafer relatives, his girl friend Melody and her two childhood friends. Melody's elder brother, Sangwapo contributed a sewing machine and joined the others in ensuring that the shop ran successfully. In January 1991, Jungam Bobobobo, an assiduous Company Law student at UNZA convinced Brilliant and his business associates of the numerous benefits that their business might derive from incorporation. He also told them that in case they were interested, his father was selling a "Ladies Dress shop" which they might buy and resell together with thier own business to the company when it was formed. Brilliant and his associates got together and after hasty cost and benefit analysis decided to buy Jungam's father's shop with a view to reselling it to the company when it was formed. The purchase price agreed upon was K3,000,000. the necessary agreements were prepared but completion was held up by the father's insistence that the purchase price be revised.

In February 1991 Brilliant and his friends decided to form the company. Jungam and his father who were actively interested in this development gave them advice on the intricacies of incorporation and also offered them the services of the family lawyer. The articles were drawn up appointing Brilliant and his three relatives the directors and a prospectus inviting subscriptions was prepared. Just after this Jungam's father's shop was purchased at K3.5. the company was formally incorporated early in March 1991 and the two shops were sold to the new company, Kalimukwa Limited, for K4,000,000= and K6,000,000=. K200,000 out of the latter amount was paid to Jungam's father for his good services. Both figures were admittedly in excess of any real estimate of the shop's value.

The sale of the two properties and all the relevant facts connected therewith were made known to the four directors who in fact approved it on behalf of the company. In June 1991, the company issued a prospectors stating inter alia that the company had purchased "two very promising clothing shops from a firm owned by Brilliant at K4.m and K5.m respectively." A good number

of people purchased shares in the company.

The new company has been breaking ever since its incorporation but John Lucifer and his friend Troublemaker Besa two shareholders or the company who purchased shares in June, 1991, and Ally a debenture holder whose debenture is secured by a charge over all the company's assets, have just found that the properties (i.e. the two shops) were acquired by the company at exorbitant prices and they have sworn a private oath to avenge the injustice they think they have suffered.

What rights do they have and against who?  
(25 marks)

### SECTION B

#### Question 3

- ✓ (a) With suitable illustrations briefly discuss the circumstances under which a private company Limited by shares may reduce its share capital.

(6 marks)

- (b) Green Kwenda and his friend Habenzu Hamudebwe wish to commence business as a buying and selling firm of the produce of their village. They realise that this would not only earn them some income, but would also provide a useful service to their community which is in a remote part of North Western Province. They approach you for advice on what form of business enterprise would be more ideal. Advise, setting out the procedure of forming such business as well as the documents that would have to be prepared and where they would have to be registered if at all.

(19 marks)

#### Question 4

- ✓ (a) Chenjelani is a partner in K and K. He applies to the High court under section 35 (e) of the Partnership Act. Evidence before the court was that the partnership has been doing quite badly and making substantial losses due partly to past mismanagement by Chenjelani and partly to his long absence from business due to his ill health, which continues. His only partner gives evidence to the court that it is quite possible for the business to be carried on at a profit.

What is the probable outcome of Chenjelani's application?

(10 marks)

- (b) "The Zambia privatisation Act of 1992 does not accord with the Third Republican 'new culture' and 'transparency' and calls for urgent amendment."

Discuss.

(15 marks)

Question 5

- (a) Panjinga Limited a company incorporated in Zambia has five directors and twenty-two shareholders. The affairs of the company are reportedly conducted in an improper manner and the company makes no profit as a result. The directors blame it on the managing Director and his deputy who are not only major shareholders but influential and arrogant. In due course the members decided to call a general meeting to discuss among other things, the reorganisation of management and the future of the company. The Director thereupon took out an ex parte interim injunction in the High Court restraining the holding of a general meeting. The matter is scheduled to come up for inter parte hearing. The members do not understand the reasoning of the court and so they approach you for advice.

Write a brief opinion to them giving the position of the law.

(12½ marks)

- (b) Briefly discuss the philosophy behind the formation of parastatal organisations and in the case of parastatal companies under the companies Act, how that philosophy conflicts with traditional company law.

(12½ marks)

SECTION C

Question 6

Kwenga a Deputy Permanent Secretary in Government was nominated as a shareholder in the National Media Corporation in March 1991. The Articles of Association of National Media Corporation do not make public office a condition precedent to becoming a shareholder. In April 1992 Kwenga resigned his position as Deputy Permanent Secretary and died two months later of natural causes. His wife Majory as the survivor wishes to inherit the husband's shares in National Media Corporation on the strength of article 24 which reads:

"In the case of death of a member, the survivor or survivors whether the deceased was a joint holder, and the legal representative of the deceased where he was the sole holder, shall be the only person recognised by the company as having title to his interests in the shares."

What is the legal problem here and how would you resolve it?

25 marks

Question 7

Write brief notes on:

- (a) The cooperative principles
- (b) Derivative actions
- (c) The golden share
- (d) The ratio decidendi in the case of ANTOINE ATTALA TRUST LTD v. REGISTRAR OF COMPANIES (1972) ALR  
Comm. 300

---

END OF EXAMINATION

**THE UNIVERSITY OF ZAMBIA**  
**UNIVERSITY SUPPLEMENTARY/DEFERRED EXAMINATIONS - DECEMBER, 1993**

**L 420**

**THE LAW OF BUSINESS ASSOCIATIONS**

**TIME:** THREE HOURS (PLUS 10 MINUTES TO READ THE QUESTIONS)

**INSTRUCTIONS:** 1. STUDENTS ARE ADVISED TO ANSWER QUESTION 1 AND ANY OTHER THREE QUESTIONS, AT LEAST ONE QUESTION FROM EACH OF SECTION A, B AND C. IN ALL STUDENTS MUST ATTEMPT FOUR (4) QUESTIONS.

2. THIS IS NOT AN OPEN BOOK EXAMINATION. HOWEVER, STUDENTS ARE ALLOWED TO BRING INTO THE EXAMINATION ROOM AND TO CONSULT THE COMPANIES ACT CAP 686 THE PARTNERSHIP ACT OF 1890, AND ANY OTHER RELEVANT STATUTE.

---

**Q1. COMPULSORY**

John Lamb is holder of 200 shares in the Entebbe Cultural Company, a company registered under Cap 686 of the Laws of Zambia. The object of the company is the commercialisation of traditional Zambian values. By some medically inexplicable reasons he has developed an allergy to the sight of Albert Goat, a majority shareholder in the company and one of its directors. He therefore decides to sell his shares and mentions this ~~fact~~ to Albert who says he will be willing to buy them to show that John's allergy has in no way affected his relations with him. In January this year, Entebbe's shares sold for as much as K10 per share but have been drifting steadily and now cost K5 per share. John sells his 200 shares to Albert at this price.

About four months ago, Abu, a research employee of Entebbe discovered a new miniature device for determining the age of archaeological findings. When Albert learnt of this, he and Abu agreed that Abu would resign, later patent the device and share the royalties equally with Albert. John Lamb knew nothing about this. One month after he sold his shares to Albert, news of the device leaked to the press, and before the public realised that Entebbe might now own the patent rights, Entebbe shares jumped to K50 per share. John bought some 60 shares at this price, having induced a Mr. X to renounce a letter of allotment in his favour.

As soon as the news of Abu's resignation and the separate patent leaked out, Entebbe's shares fell to K1 a share. Albert, the only one of the five directors who had consistently refused to take his qualification shares on the grounds that they are counter-revolutionary, is by now a rich majority shareholder and has started telling everybody what to do.



The company's accountant who greatly resents Albert for this, has refused to pay Soko for goods delivered to the company under a contract entered into between him and Albert acting for and on behalf of the company.

This entire state of affairs is worrying a number of parties.

- (1) The Registrar of Companies has just discovered that the Entebbe Cultural Company is registered as a private company and wants to strike off its name from the Register of Companies. Can he do this? If not, what legal consequences, if any, would the company and its directors suffer?
- (2) Advise Soko, listing all the legal arguments he can make to sustain an action for recovery against the company.
- (3) What rights does the company have and against whom?
- (4) What are John's rights?

[ 25 Marks]

### SECTION A

- Q2. (a) "The only problem with privatisation in Zambia is that it has all been hurried through and vital considerations have been overlooked".

Critically discuss.

[12½ Marks]

- (b) Peter C. akorwa was a partner in a firm carrying on a garage business mainly concerned with letting lock-up garages and repairing cars. George Chibuku was a sleeping partner. A clause in the partnership deed excluded the buying and selling of cars. Peter, without George's authority, sold a car, to which he had no title, to the Chibwenzi Merchantile Company Ltd so that it could let it on hire-purchase to a customer. The company paid Peter K5m. When the company found that Peter had no title to it, it claimed K5m from George Chibuku.

Write a legal opinion stating whether any action against Chibuku by Chibwenzi Merchantile company can succeed. Use appropriate authorities to support your statements.

[12½ Marks]

- Q3. (a) Sibweni desperately required K6m to invest in treasury bills. His ultimate goal was to purchase a Mercedes Benz for K15m. He approached his bank, Kredit Bank (Z) Ltd and requested the manager for a loan. The manager however refused to lend him any money as he had no security to offer the Bank, and besides Bank policy over the years had changed from lending indiscriminately to lending only to corporate clients.

Sibweni then decided to incorporate a company which he called Chivwindi Ltd in which he was majority shareholder with his wife and two children holding one share each in the company. The company opened an account with Kredit Bank (Z) Ltd and shortly thereafter applied for a loan for K6m. The loan was duly approved and given. The memorandum of Association of Chivwindi Ltd empowered the company to borrow and raise money, but investment in treasury bills and Government bonds was not among the powers granted to the company.

Sibweni bought treasury bills and continued reinvestment in bills until he finally had K15m which he used to purchase a Mercedes Benz car. Meanwhile, the Bank, wishing to recover its money has been writing to Chivwindi Ltd but receiving no reply. Since the company was incorporated over one year ago it has never carried on any business.

The bank comes to you for advice.

Advise.

[20 Marks]

- (b) What was the ratio decidendi in the case of Mwanza (FK) V. National Transport Corporation of Zambia and Another (1979) ZR 129.

[5 Marks]

SECTION B

- Q4. (a) "It is obvious that the law as to ordinary partnerships would be inapplicable to a company consisting a great number of individuals ... The legislature then devised the plan of incorporating these companies in a manner unknown to the common law ... providing at the same time that all the world should have notice who are the persons authorised to bind all the shareholders by requiring the company's partnership deed to be registered and accessible to all. All persons, therefore, must take notice of the deed and the provisions of the Act. If they do not choose to acquaint themselves with the powers of the directors, it is their own fault ...."

Critically discuss.

[15 Marks]

- (b) In what respect is a private company limited by shares similar to a cooperative society formed under the Cooperative Societies Act?

[10 Marks]

- Q5. (c) The Privatisation Act No. 21 of 1992 provides for various methods of privatisation. In your view, which of the methods is best suited to the Zambian scenario taking into account recent developments on the Zambian securities market? Use suitable illustrations in your answer.

[12½ Marks]

- (b) MONDECO Ltd is a parastatal company formed under the provisions of the Companies Act. It is also a wholly owned subsidiary of MONDEX Ltd, which is a government owned holding company. The government in its quest for control of all the affairs of parastatal companies has appointed a Minister for parastatals who has been given power to appoint directors and make regulations for all the parastatals. The Articles of Association of MONDECO Ltd on the other hand provide that members in general meeting shall appoint directors and shall make regulations for the company.

How would you reconcile these two co-operative factors in the control of parastatal companies?

[12½ Marks]

SECTION C

- Q6. (a) What would you say are the advantages of partnership over Limited Companies and Cooperatives?  
Use suitable illustrations in your answer.

[12½ Marks]

- (b) In what circumstances may a partnership be dissolved without recourse to the courts of law?

- Q7. "Cooperative Societies and Parastatals are all instruments used by the Government to ensure that the commanding heights of the economy of the country are in the hands of the nationals". Do you agree with this statement? If so give reasons. Further consider where the privatisation of parastatals will remove the commanding heights of the economy from the hands of nationals.

[25 Marks]

---

END OF EXAMINATION

**UNIVERSITY OF ZAMBIA**  
**UNIVERSITY EXAMINATIONS - OCTOBER, 1993**

**L 430**

**INTERNATIONAL LAW**

**TIME:**        **THREE (3) HOURS**

**ANSWER:**    **FOUR (4) QUESTIONS**

-----

1. Discuss the concept of sovereign equality of states and its significance in relation to the interaction of states inter se.
  
2. Zambezi state has a problem of drug trafficking. Its Drug Trafficking Agency (DTA) recently apprehended 3 people in separate incidents at its international airport. One of these was a European found with rhino horns in a suitcase. He was intending to fly to a country in Europe. A woman was also apprehended after her arrival from Asia. She was found with 50g of heroin on her. The DTA has been suspecting her of money laundering through her many businesses in the country. She holds nationality of Kafue state, but has been resident in Zambezi state for many years. The third person is a Zambesian who was found with mandrax worth K10 m street value. It is alleged that on his arrival he passed the suitcase containing mandrax to a member of the diplomatic service of one of the missions in Zambia. A dog trained in sniffing drugs caught this man by the leg and severely injured him before it could be restrained. The man refused to surrender the suitcase to the DTA.

Discuss jurisdictional issues in these facts.

3. Tracing the development of international law since the turn of this century, discuss whether or not it is still accurate to term current international law Eurocentric?

4. Consensus on the extent of the territorial sea and the continental shelf has been shifting over the decades. Discuss the reason for this viz-aviz the rights of the coastal state and those of other states in the international community.
  5. The United Nations has recently been increasingly called upon to function as a world government in relation to the maintenance of international peace and security. Discuss its role in this respect.
  6. Rationale for reservations in treaties is usually based on either the desire to maximise their integrative nature in relation to their objectives and purposes or to maximise their universal membership. Discuss solutions so far attempted to resolve these competing aims by international law.
  7. Tukongote state obtained independence under unstable circumstances. Although one of the major freedom fighter parties got into power at independence, at least 2 of the freedom fighter movements continued to wage war against the new government, arguing that it was not democratically elected. In the process each of these movements controlled a part of the country. They eventually agreed to merge which resulted in them controlling about half of the state territory of the independent state. This movement attacked villages, hit hospitals and shelled railway lines. It committed so many atrocities killing innocent villagers en masse.  
Analyse international law issues arising from these facts.
- 

E N D   O F   E X A M I N A T I O N

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - OCTOBER, 1993

L 450

INTERNATION TRADE AND INVESTMENT LAW

TIME: THREE HOURS

INSTRUCTIONS: ANSWER QUESTION ONE AND ANY OTHER THREE QUESTIONS.  
ALL QUESTIONS CARRY EQUAL MARKS.

READ THE QUESTIONS CAREFULLY BEFORE YOU ATTEMPT THE ANSWER.

---

1. Assume that GATT has set up a panel with you as its Chairman to decide on a complaint made by South Africa against Japan the details of which appear below.

South Africa has claimed that Japanese customs duties and labelling practices on South African wines and other alcoholic beverages violate Article 111(1) and (2) of the GATT.

South Africa has claimed that Japanese system of taxation made a basic distinction between western style - imported liquors and Japanese traditional alcoholic beverages like mirin, sake and shochu. Japanese tax system taxed similar products differently simply because they were made by slightly different production process. For example, shochu is similar to vodka but shochu category for tax purposes excluded spirits filtered with a birch charcoal filter.

The artificial differentiation of separate tax categories protected traditional domestic produces and consumption patterns in breach of Article 111(1) and (2) of the Agreement. As a result tax per litre on western - style spirits such as gin and vodka imported from South Africa was 4 to 7 times higher than tax on shochu. Tax on a litre of imported South African special grade whisky was respectively 41 and 26 times higher than the tax on a litre of Type B shochu and Type A shochu. Thus the large domestic market was protected for the domestic product shochu by a tax - determined price mechanism. The detailed and artificial product categories and sub-categories numbering more than 20 for tax purposes were arbitrary and resulted in different tax treatment of imported and domestic like products or competitive and sustainable products which is unlawful.

Moreover, Japan classified whiskies and brandies into three grades with different tax rates on them which resulted in discriminatory tax treatment of imported and domestic like products. For example, whisky and brand was graded by raw material and alcohol content on a compulsory basis and,

unless proved otherwise, was graded as belonging to special grade which attracted higher tax rates than sake which was only graded if the producers sought a special grade. The result was that all South African whiskies and brandies were classified in luxury category and taxed very highly.

Japan denied that its liquor tax Laws discriminated between domestic and imported alcoholic beverages. It claimed that its tax categories and sub-categories were based on clear and objective criteria such as raw materials used and manufacturing methods applied, not on the basis of whether the beverage was domestic or imported. High class liquor like whisky and brandy attracted lower tax because it was considered high class items patronised by wealthy Japanese clients.

Shochu attracted lower tax because it was considered a low - class liquor and was consumed by people in lower income brackets. The grading followed a similar principle. Article 111(1) and (2) did not prohibit establishment of differences in internal taxes among like products or among directly competitive or sustainable products.

In the light of the above facts, you are required to decide on the following:

- (a) The proper interpretation of Article 111(1) and (2) of GATT particularly whether Article 111 allowed a country to classify its products for tax purposes?
- (b) Was Japan in breach of obligations imposed by Articles 1, and 111 (1) and (2) of the GATT?
- (a) Critically examine the concept of the "Investment Centre" in the Investment Act No. 19 of 1991.
- (b) How would a foreign investor in the tourism industry proceed to acquire an investment licence and incentives where he intends to establish a tourist resort in Mfuwe? Does the procedure differ from the 1986 Act and what are the various classes of incentives provided in the 1991 Act?

Compare and contrast the content and structure of the PTA and SADC treaties with particular reference to the concept of "merging" of the two organisations.

Zambia and other member states of the PTA Treaty have notified the GATT CONTRACTING PARTIES of the formation of the preferential trading arrangement among them under the 1979 Enabling Clause. The text of the PTA treaty contemplated the formation of a common market by December 1998.

In reply, the United States of America fully supported the efforts of the PTA countries to form a Common Market that



liberalised trade among them and did not raise barriers to third countries. However, it did not consider notification of the PTA under the Enabling Clause as legal in the GATT requirements of the preferential trade arrangement. In the United States view, supported by several western countries, the Enabling Clause had been negotiated to address developing country preferences which could not otherwise be justified under the GATT provisions. The United States believed that Article XXIV was the principal GATT provision for the formation of a preferential trade arrangement, customs Unions and common markets.

You are Zambia's representative to the Council of Ministers of the GATT at which this question has been raised. Prepare a comprehensive position in opposition to the western view reflecting the concrete examples on the ground of the view by developing countries that the Enabling Clause is the appropriate framework for the notification of their regional economic groupings to the GATT machinery.

5. Explain how the General System of Preference (GSP) works in International Law in relation to the United States Model and contrast it from the Generalised System of Trade Preferences (GSTP).
6. "..... As can be seen from the contributions .....the Lome Conventions 'can be viewed from one or the other of two main perspectives. At one extreme end, the Convention can be seen as a poorly camouflaged attempt at institutional consolidation of the more insidiously exploitative aspects of neo-colonialism and imperialism. At the other end of the spectrum, it may be viewed as a genuine and novel attempt to introduce fairness and parity of treatment in relations between two groups of countries at radically different levels of economic development in cognate and crucial area of trade, commerce and industry..."

University of Ghana Law Journal, Special Volume:  
Workshop on ACPEEC Convention of LOME Vol. XIII, 1976.

- (a) Critically analyse the main features of the Legal structure of the Lome IV convention?
  - (b) Discuss the essence of the two Lome facilities i.e. Sysmin and stabex.
7. Zambia's foreign debt stands at roughly \$6.9 billion (US\$1000 per capita). Of this, 40% is bilateral, 35% is multilateral while 25% is commercial. Although the country is spending an estimated 67% of its net foreign exchange earnings on servicing the debt, it is not likely that it will ever be repaid in future.

- (a) You are engaged by the Zambian Government to propose legal methods that could be used on debt relief negotiations at Paris and London Clubs in the light of the prevailing methods in International Law and practice. How do the Toronto terms differ from the Baker Plan?
- (b) The objectives of the World Bank differ from those of the IMF. Discuss the distinctions in the context of the Articles of Agreement of the two organisations.

---

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

MID-SESSION EXAMINATIONS JULY 1993

LA70 - CRIMINOLOGY

ANSWER : ANY THREE (3) QUESTIONS

TIME : TWO HOURS

- 
1. Assess the theory of differential association and the theory of opportunity. How applicable are these theories to the Zambian situation?
  2. Discuss the law and practice relating to the arrest, detention and sentencing of juvenile offenders in Zambia, carefully outlining major weakness.
  3. Discuss the view that the current police excesses and assault on suspects wherever they occur, are rooted in the history of the Zambia Police Force. How could these abuses be minimised?
  4. A member of Parliament wishes to move a private motion to abolish the death penalty in Zambia. Prepare a memorandum for him outlining the advantages and disadvantages of abolition.

UNIVERSITY OF ZAMBIA  
UNIVERSITY EXAMINATIONS - OCTOBER, 1993

L 480

LABOUR LAW AND INDUSTRIAL RELATIONS

TIME:     THREE HOURS PLUS TEN MINUTES TO READ THE QUESTIONS.

ANSWER:   QUESTION ONE AND ANY THREE OTHER QUESTIONS. EACH QUESTION CARRIES THE SAME MARKS.

-----

1. The introduction of a liberal economic system involves, inter-alia, the privatisation of public enterprises to rationalise government resources. The Zambia Privatisation Agency (ZPA) is the instrument charged with the responsibility of selling parastatal Companies to the private sector and commercialising selected government departments to enable them operate on market principles and relieve the public treasury of the obligation to finance their operations.

The ZPA negotiated and sold AFE Limited (AFE) to Yusuf and his brothers.

AFE is an agro-based firm engaged in the production and sale of agricultural implements and equipment. It also deals with agricultural consultancy.

The Company employs a total of 1000 unionised workers and fifty members of staff on management conditions of service. Both the negotiations and the final deal were kept secret to the union and the individual workers. The matter was handled by the Managing Director, Financial Controller and the Board of Directors on one hand and Yusuf and his Lawyers Mwenda and Company on the other.

The workers first learnt of the sale in the Times of Zambia and, a day later, the Managing Director issued a thinly veiled statement in which he, on behalf of management and the board of directors, announced the "successful conclusion" of negotiations in which AFE had been sold to Yusuf and Brothers Limited. The MD indicated that the terms and conditions of workers would not change and that management would be inviting the Union to complete the ongoing bargaining process. He appealed to workers to go about their work and not panic.

Six months after the sale, Yusuf announced major changes in the Company including withdrawal of personal-to-holder vehicles to heads of departments, removal of funeral benefits to workers, suspension of loans and salary advances. Yusuf defended his actions on the grounds that the Company had to introduce these "survival measures" to ensure it continued to exist because it no longer received the state subsidies which constituted thirty percent (30%) of the total corporate budget.

The workers felt cheated and the union immediately announced they did not accept the action of the new owners because it "violated" the contracts of service. Mwenda and Company, on behalf of Yusuf, rejected the union's interpretation of the events and stressed that the continuity of the employment of all the employees was preserved after the sale of the Company from government (AFE) to Yusuf and Brothers and Limited and that, in any case, only the identity of the employer changed but nothing else did.

- (a) Identify the issues and advise both the two parties i.e. Yusuf and the union.
- (b) Would your advice be different if the change in the structure of the Company had been brought about by an order of the court to the shareholders to amalgamate with another Company in a similar business. What would, in this case, be the status of the contracts of service in the new amalgamated Company where the dissolution of the earlier Companies was supervised by a receiver appointed by debenture holders?

2. Mbita, a newly qualified advocate, has been working for the Zambia National Commercial Bank Limited, a state bank, for eight (8) months. The ZIMICO Conditions of Service which apply to ZNCB workers stipulate that employees shall be confirmed on permanent establishment upon their completion of 6 calendar months from date of their employment on probation. In practice, it takes much longer than this.

Mbita had not, in her 8th month, been confirmed. Meanwhile, she got pregnant and, as her first pregnancy, her health suffered a lot. She suddenly began dozing at work, sleeping a great deal more thereby resulting in some delays in her reporting for work though other workers did<sup>so as well</sup> for various reasons. Recently, Mbita has been absent from work for one or two days per week due to illnesses related to the pregnancy. Although she had medical records to prove this, management wrote her twice reminding her she was not yet confirmed in her appointment and, therefore, would need to justify her continued employment by diligently addressing herself to her work. However, her health deteriorated as the pregnancy advanced.

Under the ZIMICO conditions of Service, an employee on probation would not be entitled to maternity leave but only to four months compassionate leave after delivery. Two weeks before delivery, workers at ZNBC including Mbita went on an illegal strike which lasted for four days. Although Mbita did not play a high profile, she nonetheless stayed away for four days. When she reported on the fifth day, her fellow legal Officer in the bank, John, remarked "pregnant women should just be dismissed because they become lazy when nearing delivery." Mbita and friends heard this remark and were particularly worried because John was very close to the Managing Director.

That afternoon, John was seen driving with the Managing Director and later attending a meeting of Senior Management officials which drew a "five man list" of workers who were identified as ringleaders for the strike. They were instantly fired. The workers included Mbita.

Mbita is contesting the dismissal on the grounds that it was discriminatory . ZNCB has engaged you to defend the proceedings. Advise the Company on Contract al rights and Statutory duties.

3. In the light of decided cases, discuss the content of the concept of protected employment and explain its rationale. In view of several statutory interventions on employment, show how it contrasts from an ordinary contract of service.
4. Article 21 (1) of the Constitution of Zambia provides inter-alia for freedom to form and belong to trade unions yet section 9(8)(c) of the Industrial and Labour Relations Act, 1993 denies the right to register a trade union for workers whose class are already represented in an existing trade union.

Evaluate the constitutionality of these provisions and rationalise the apparent incongruence.

(b) How does the statutory restriction on trade unions differ from the Concept of a Closed Shop?

5. The measure of damages in a wrongful dismissal is different from the measure of damages in an instant dismissal and this differs from remedies an employee at pleasure would enjoy following a dismissal. Discuss.
6. In what ways does the legal and institutional process for the settlement of collective disputes differ in the Industrial and Labour Relations Act, 1993, from the Industrial Relations Act, 1971.
  - (b) Characterise the differences between the concepts of voluntary methods and compulsory methods in development of a Collective Agreement.
7. (a) Discuss the concept of a joint council in the Industrial and Labour Relations Act, 1993, and distinguish it from a bargaining unit.

(b) In what circumstances would a strike be legal in Zambian law?

-----

THE UNIVERSITY OF ZAMBIA  
UNIVERSITY EXAMINATIONS - OCTOBER, 1993

L 490

TAXATION

TIME: THREE HOUR (PLUS 10 MINUTES TO READ THE QUESTION PAPER)

ANSWER: QUESTION ONE AND ANY THREE OTHER QUESTIONS

NOTE: CANDIDATES MAY CONSULT THE INCOME TAX ACT AND ANY AMENDMENTS THERETO.

- 
1. Simbotwe, Chilekwa and Sangwapo entered into a partnership with the intention of carrying on the business of farming together. The starting capital was K10 million. Simbotwe and Chilekwa contributed K5 million and K3 million respectively while Sangwapo contributed, the remainder. The firm purchased a tractor worth K1.6 million and a water pump worth K400,000. In addition, the firm constructed a dwelling house worth K2 million for their farm manager. K200,000 was spent on fencing the farm. In the same year K300,000 worth of orange trees seedlings were planted. The total amount on other expenses amounted to K2 million. At the end of the financial year the firm made a gross profit of K30 million.

The firm has retained you as their tax consultant and want you to advise them on how much tax each partner will pay.

2. (a) Compare and contrast accelerated depreciation and a tax holiday. Which of the two is more attractive from the point of view of:
- (i) a foreign investor,
  - (ii) the Income Tax office.
- (b) Between the two which one should the government include in its Investment Act?
3. "The type of Company tax system that a country adopts plays a great role in the economic development of a country."

- N. Simbyakula, An Introduction to Tax Law in Zambia.

- (a) With reference to this statement discuss three commonly used company tax systems and their economic impact.
- (b) In light of the Zambian government's new policy of privatization which of the methods would you recommend that Zambia adopts?



4. GM enterprises Limited are in the business of poultry and general farming. In fiscal year 1992 the company obtained a patent from UNZA for the production of chicken feed. UNZA charged them K1.5 million for the use of that right for a period of five years. During the year the company disposed of three major assets by auction because they had become obsolete. A combine harvester whose salvage value was K90,000 was sold for K190,000. A tractor whose salvage value was K320,000 was auctioned off for only K70,000. A water pump whose salvage value was K15,000 was sold off for exactly the same amount.

At the end of the financial year the company made a gross profit of K16 million. You are informed that other expenses amounted to K2 million. Calculate the tax payable by GM enterprises Ltd.

5. Peter Buthelezi is a medical student at the University of Cape Town in South Africa. He entered Zambia on April 1st, 1993 on a tourist visa intending to visit places of interest in Zambia. A week later his car and all his belongings were stolen off him in Cairo road. In an effort to raise money for his ticket to Gaborone he found employment as a research assistant at UNZA School of Medicine. On July 30th he was paid K550,000 and this information was passed on to the Income Tax Office. Peter who is also an accomplished musician made four cabaret appearances at the Ridgeway Hotel where he was paid entertainment fees amounting to K250,000. Citing relevant authorities determine whether or not he can be taxed. If he is taxable calculate total tax due from him.
6. Sans Quarries Ltd is a family owned enterprise with a share capital of 100,000 shares at a par value of K20/share. Jason Sangwapo owns 50,000 shares all fully paid up. The other shareholders are his wife Bwalya with 10,000 shares all full paid up and their twin sons James and John with 5,000 shares each all fully paid up.

Apart from the quarrying business Sans Quarries owns 30,000 shares all fully paid up in Lusaka Waste Busters Ltd.

At the end of the financial year San Quarries made a pre-tax profit of K17.5 million. The company also declared a dividend of K20/share. Lusaka Waste Busters also declared a dividend of K10/share.

- (a) Advise Sans Quarries on how much total tax it must account for.  
(b) How much will each share holder take home?

---

END OF EXAMINATION