

THE UNIVERSITY OF ZAMBIALAW EXAMINATIONS - AUGUST 1991

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CRIMINAL LAW AND PROCEDURE

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

ANSWER: QUESTION NUMBER ONE COMPULSORY AND ANSWER IN ADDITION ANY OTHER THREE QUESTIONS

PENAL STATUTES ARE ALLOWED IN THE EXAMINATION

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1. (a) On 17th June, 1991, Mr. P. Mooto was driving a fiat car Reg. No. AAA 6214 along Lumba road in Matero township, due to his negligent driving collided with another Vehicle Toyota Car, Reg. No. AAK 7081, being driven by Mr. F. Pufi. He was not arrested nor charged with any offence by the Police on that particular date, and the police now intend to have him brought before a subordinate court for an offence of careless driving section 195 of Roads and Road Traffic Act, Cap. 766. They come to you for an advice how Criminal Proceedings can be instituted against Mr. P. Mooto. What would be your advice?  
(b) What is a specified offence?  
(c) What is the maximum imprisonment term a magistrate class II can impose on a convicted person?
2. How do you understand the concept of rehabilitation/Reformation as a theory of punishment? And what kind of Sentence or Penalty under the Penal Code, Cap 146 you consider to be associated with the stated theory?
3. Consider criminal liability in the given facts:  
One afternoon Dimba was on his way home and meets Mary Pofu aged 18 years, a girl he has been admiring for a long time in their residential area coming from the opposite direction, as she had gone to attend to a dancing exercise lesson at Lusaka Showgrounds. Dimba proposed to make love with Mary, who turned down the proposal,. He, then held her and twisted her arms backwards. She struggled until he overpowered her and pushed her to the ground in the nearby bush. He undressed himself by unbuttoning his trousers and pulling his person out. He pulled Mary's dress upwards and tried to remove the dancing costume which was under the dress, but failed. He then let Mary go and said these words, "Oh, I have remembered today is my birthday and I am not to behave like this, otherwise I would have torn your costume and fuck you". Dimba then dressed up and went away.  
Would Dimba be charged of any offence? Please discuss.

4. "The defence of 'Bona fide claim of right' only applies to cases of Theft". Do you agree with the above statement? Give reasons for your answer with authorities.
5. Banda, a Police Officer stationed at Chilenje Police Station on 5th July, 1991 got information that a Mr. Bwalya was keeping a firearm without having a licence in his house. Banda decided to search Bwalya's house and went to the house, where Bwalya gave him permission to search. He searched, but found no firearm as alleged, but discovered that Bwalya had K50 note tied in bundles of K20,000.00 each and these bundles were eleven in number and altogether contained K220,000.00. He was suspicious as to how the money was packed; whether intended for smuggling or not. He took the whole amount of K220,000-00 to the Police Station and told Bwalya to report himself to Chilenje Police for questioning over the money on 6th July. Banda did not inform his superiors above the money.
- On 6th July, Bwalya went to the Police Station as he was instructed. Banda, advised Bwalya not to keep a large sum of money in his house and returned K100,000-00 to Bwalya, and informed him to <sup>come</sup> back to the Police Station for the remaining K120,000-00. Bwalya, did as he was told, but on this day the 7th July, 1991, Banda told Bwalya that there was no money for him as the whole amount collected from his house was given to him (Bwalya) on 6th July. Banda further stated that 'I only found K100,000-00 on the search done on 5th July'.
- Bwalya, thereafter, reported the matter to Banda's superiors as to what has happened on 5th, 6th and 7th July and that Banda has failed to return to him K120,000-00 the money got from his house on a search conducted by Banda. The Police seek your legal opinion, whether they should charge Banda with Theft by Servant or Theft by Public Servant, of K120,000-00, and even if there is no offence committed. What is your opinion? Discuss.
6. On one Wednesday night in July, 1991 Mr. Mporokoso was returning from work and met Mr. Goti carrying a Television set from the direction of his house. They passed each other, and Mporokoso reached his house and to his disappointment discovered that his house was broken into and a Television set was stolen. He informed his neighbours and they then followed Goti whom they caught within 800 metres. Goti resisted and picked up a stick he used to hit Mr. Mporokoso before he was overpowered.
- The Police arrested Goti and charged him with Aggravated Robbery. You are asked by your Senior Counsel to represent Goti at his trial. What would be your argument on behalf of Goti?

7. Write brief notes on TWO of the following:
- (a) How is Theft by Trick distinguished from obtaining goods by false pretences? Give your reasons with decided cases.
  - (b) Self-defence to a Criminal Charge.
  - (c) Mistake of fact.

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END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - AUGUST, 1991

L 220

LAW OF CONTRACT

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

ANSWER: QUESTION ONE (1) PLUS ANY THREE OTHERS

(REMEMBER: ALL YOUR ANSWERS SHOULD CONTAIN REFERENCES TO RELEVANT JUDICIAL DECISIONS)

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1. Nyambe, Luywa and Lubasi, 3 second year Law students at UNZA, get their term III allowance and immediately wish to rush to town to purchase some essential commodities. At the UNZA bus stop, they found a bus marked "LK007", a bus registered under the UTTA. A bus attendant was outside shouting; "K12.00 town, K12.00 town, K12.00 town" and as they approached the attendant tells them to get onto the bus.

Soon after taking their seats on the bus, Nyambe realises that he has left his carrier bag and he wishes to go and collect it. As he stood up to leave the bus, the attendant was closing the door and the bus started moving to leave the UNZA bus stop. Nyambe told the attendant to open for him as he wished to get out. The attendant told him to pay K12.00 saying "once you get on the bus you have to pay the fare." Nyambe paid the K12.00 as he wanted to quickly get his bag and rush to town, promising to recover the K12.00 swearing that there is no contract between him and the Bus Company.

On their way to town. Luywa and Lubasi pay K12.00 and they are given a ticket on the face of which was the price and the words "conditions are available on request." One of these conditions stated that "the Company was not liable for any injury to any of their customers or damage to their goods howsoever caused.

As a result of the driver's negligence, the bus was involved in an accident. In that accident Lubasi suffered some personal injuries and Luywa's camera was broken.

Advise Nyambe, Lubasi and Luywa as to their rights [if any]. (30 marks)

L 220

Hamanjanja, a graduate, goes to work for Gwayi Bakery Ltd in Kasempa. His contract of employment provides that if he ever leaves Gwayi's employment he will never solicit any of their customers, divulge any of their secret processes to any one, enter the employment of <sup>any</sup> other Bakery in Zambia or set up in competition with Gwayi Bakery Ltd.

Hamanjanja is now considering leaving Gwayi's employment. He comes to you for advice on the extent to which, if he does leave, he will be bound by his contract of employment with Gwayi Bakery Ltd. Advise him. [23-33 marks]

Write short notes on all of the following:

- (a) Offers to sell accepted by telex
- (b) Fundamental Breach
- (c) Parol evidence Rule.

(23-33 marks)

Arnold Silungwe, a graduate from UNZA wishes to furnish his newly acquired house. On the 13th day of March, 1991, he picks up a copy of the Times of ~~Zambia~~ and under the heading "~~Readers Bargain~~ for sale" he saw the following notice;

"Lounge Suit for Sale, K20,000.00, contact Lubasi wa Lubasi, Tel. 222186"

Mr. Silungwe, who knew Lubasi ~~wa~~ Lubasi and had on some previous occasion visited his home and had seen an attractive maroon lounge suit, believes the advert to refer to that maroon lounge suit, and immediately went to see Lubasi wa Lubasi. Lubasi wa Lubasi, however, did not know Mr. Silungwe. So, Arnold Silungwe gets to Lubasi wa Lubasi and agreed to buy the Lounge Suit at K20,000.00 and Arnold Silungwe wants to pay by a cheque but Lubasi wa Lubasi refuses. Arnold Silungwe then produces a business card marked:

"Judicial Department: A.M. SILUNGWE Chief Justice"

Lubasi wa Lubasi now accepts the cheque and allows Arnold Silungwe to take the Lounge suit at which point Arnold Silungwe realises that the advert did not relate to the maroon lounge suit, but all the same he takes it away. The cheque which Arnold Silungwe gave to Lubasi wa Lubasi bounces. Meanwhile, Arnold Silungwe, who infact has no connection with the Honourable Chief Justice A.M. Silungwe, sold the lounge suit to an innocent third party, Limata, for K10,000.00. Does Lubasi wa Lubasi have any remedy against Arnold Silungwe or Limata?

(23.33 marks)

5. Kalaluka and Mundia meet at their Lusaka favourite drinking place, Lusaka Hotel. Kalaluka who has just been paid his profit sharing at Barclays Bank(Z) Ltd., drinks in celebration and is soon drunk. Kalaluka is also known to suffer from mental disability, especially under the influence of alcohol. Mundia owns a fiat 132 which is in a bad mechanical condition that it has to be push-started and is fraught with many other defects. On this day the said fiat is parked in Katondo Road. Kalaluka signs a piece of paper to the effect that he will buy Mundia's car for K450,000.00. The next day Kalaluka can remember nothing of this "deal" and he certainly doesnot want to buy Mundia's car. Advise him. (23.33 marks)
6. Kanchule Limited, a construction company, enters into a contract with Mafuta and Co. Ltd, a company dealing in petroleum products. The contract is for Kanchule Limited to construct a pipe line between the Head office of Mafuta and Co. Ltd, in Lusaka Town Centre and another branch office to be built in the heavy Industrial Area of town. The whole project is to cost K20 million. Kanchule Limited start clearing the 'bushy' area through which the pipe line will pass. They spend one month clearing the area in preparation of the construction work to begin. They erect their construction shelters and commenced digging the "line". At the time they moved on site Mafuta and Co. Ltd, paid an advance payment to Kanchule Ltd, of 10 percent of the total cost of building the pipe line. Just before the laying of the actual pipe-line begins, the Government announces that it is withdrawing all licences given to companies to trade in petroleum products because of the uncertainty in the prices of oil caused by the Gulf War, and that henceforth Only ZIMCO shall Lawfully trade in petroleum products. As a consequence, the building of the oil-pipe-line is postponed indefinitely. Advise Kanchule Ltd as to their legal position. (23.33 marks)
7. Discuss any two (2) of the following;
- (a) Promissory estoppel
  - (b) Incorporation of Exclusion Clauses
  - (c) Common Law Implied terms
  - (d) Damages as a remedy in contract
- (23.33 marks)

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - SEPTEMBER, 1991

L 230

THE LAW OF TORT

TIME: THREE HOURS

ANSWER: ANY FOUR QUESTIONS

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1. (a) Contrast tortious liability from contractual liability.

(b) In 1910, Salmond posed this question:

"Does the law of torts consist of a fundamental general principle that it is wrongful to cause harm to other persons in the absence of some justification or excuse, or does it consist of a number of specific rules prohibiting certain kinds of harmful activity, and leaving all the residue outside the sphere of legal responsibility?"

Highlighting the competing arguments in support of both views attempt a reasoned answer to this question. Is a reconciliation of the two propositions possible?

2. Discuss any THREE of the following:-

(a) Innuendo

(b) viz major

(c) Res ipsa loquitur

(d) Volenti non fit injuria

(e) Innocent misrepresentation

3. Peter and David were partners in the business of building contractors. Peter was given the use of a Datsun vanette both for the work of the partnership as well as for his own private use. Following a dispute between the partners over the return of the vehicle, David made a false report to the Police alleging that his vanette had been stolen, and later added to it that Peter was seen with it heading to Livingstone. Peter was arrested and charged with theft. Following representations by Peter's lawyers that the dispute was of a civil nature, Peter was released from custody.

Advise Peter as to his chances of success in an action against David for:-



THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - AUGUST, 1991

L 240

CRIMINAL LAW AND PROCEDURE

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

ANSWER: QUESTION NUMBER ONE COMPULSORY AND ANSWER IN ADDITION ANY OTHER  
THREE QUESTIONS

PENAL LAW STATUTES ARE ALLOWED IN THE EXAMINATION

1. (a) Chulu, being a member of ZMP, a Political Party in Petauke district on 7th June, 1991 went out campaigning on behalf of his party, had met Mbewe of GP, a rival Party, who put up a different view based on the manifesto of his party. They differed and this led them to fight. Chulu punched Mbewe on the forehead and then Mbewe fell, and hit himself against the stool which was lying around there. Mbewe was taken to the hospital where he was admitted and died two days later. The Police arrested and charged Chulu with the offence of Manslaughter contrary to section 199 of the Penal Code. The Public Prosecutor prepared a charge sheet and brought Chulu before Mr. P. Bupe, a Principal resident Magistrate for trial of manslaughter. Mr. Bupe read the charge to Chulu and asked him how pleads. Chulu admitted the charge and the Public Prosecutor read out the brief facts of the case, and sub/Inspector Bowa, was the Public Prosecutor. Chulu again admitted the facts to be correct as read. The trial Magistrate, Mr. Bupe, found Chulu guilty of manslaughter on his own admission and convicted him as charged. Mr. Bupe then transmits the case record to the High Court for sentence as he thought a heavier penalty was needed as provided for under section 217 of the Criminal Procedure Code. Cap 160. You are a Judge sitting at the High Court how would you deal with this case and what would be your order?
- (b) How do you understand a Summary Committal Procedure in Criminal Proceedings?
- (c) Subordinate courts have power of imposing imprisonment terms on the convicted persons, but their powers are exercised differently. Discuss.

- The** The Act No. 3 of 1990, section 201 modified death sentence to a murder charge, by empowering the trial court to pass some other sentences provided in the Penal Code, after taking into account some mitigating factors. Can you discuss the applicability of this replaced section as regards to principles of sentencing and theories of punishment.
3. Mr. B. Bwalya on 7th July, 1991 was seated outside his house at a village in Kasama district, when Mr. Chisenga aged 16 years passed-by and uttered these words "Bwalya you are a big monkey, how can you sit there doing nothing. I have never seen a lazy bastard like you."  
Mr. Bwalya stood up and searched for his axe, which he found in a small hut. He chased Chisenga and struck him with the axe on the head. Chisenga fell down and he was brutally assaulted and died two hours later.  
The Police arrested and charged Bwalya with murder, contrary to section 200 of the Penal Code. You are sitting as a Judge can you write the judgement on the case discussing the appropriate defence(s) that can be considered on behalf of Bwalya.
4. In the case of HAUGHTON v. SMITH (1974) 58 Cr. App. Rep. 198 it was stated that "there can be an attempt to commit an offence where the failure to complete the commission of it is due to ineptitude, inefficiency, or insufficient means on the part of the defendant; but where the defendant finds that what he is proposing to do is impossible, not because of inefficiency of means, but because it is for some reason Physically not possible whatever means be adopted the defendant may be saved from criminal liability."  
Does  
.../the statement reflect the position of the law as it relates to Attempts to Commit a Crime as we understand it in Zambia?
5. One Friday afternoon Mojo aged 21 years went to visit Moma, his fiancée in Matero compound, and finds Monk, assaulting Moma. Mojo loves Moma very much and would not ever think or want such a thing to happen to her. At that time Moma was bleeding. Mojo then picked a stick which was lying nearby and hit Monk once on the right side and broke his right arm. Monk sustained also some internal injuries in the chest.  
He (Monk) was taken to J.T.H for treatment. The Doctor examined him and noticed the broken arm, but did not request to have an X-ray examination taken to determine the internal injuries. Monk was treated for the broken arm and later discharged.  
On the fourth day after the discharge Monk died at his home. The postmortem examination was carried out and it was discovered that the cause of death

was the internal injuries sustained.

Mojo was arrested and charged with murder of Monk. You are asked to give legal opinion on behalf of Mojo as to his criminal liability and any defence(s) that could be raised on his behalf.

6. (a) Assault occasioning Actual bodily harm, contrary to section 248 of Penal Code and unlawful wounding contrary to section 232 (a) of the Penal Code are both offences of personal injuries and are not distinguishable. Discuss the truth of this statement.
- (b) Joy, a Saleslady in Lima shop, on 15th July, 1991 at 14.30 hours got a notice of water disconnection at her flat; and Banks were already closed. The Bill was for K1,500-00 inclusive of re-connection charge. She got K2,000-00 from the Cash Box intending to refund or replace it early in the morning after getting some money from her bank account. The extra K500-00 was for booking a taxi from Lima shop to Lusaka Civic Centre and back to the shop.

When she returned to the shop, she found the owner of the shop waiting. He immediately told her to open the cash box, as he urgently needed the money to pay for urgent orders and supplies that were made that afternoon when she was away. On opening the cash box the manager counted the money and found that there was a downfall of K2,000-00 compared to the sales. He then read the note which was in the cash box reading "I have to repay K2,000-00 used early in the morning". Joy, immediately told the manager that I used the money with intention of repaying it tomorrow morning. I did not steal.

The manager reported the matter to the Police who arrested and charged Joy with Theft by Servant, contrary to section 278 of the Penal Code. The case is brought to you as you are sitting as a Magistrate. What would be your Judgement?

7. Write brief notes on TWO of the following:-

- (a) Under what circumstances self-Induced Intoxication is a defence to Criminal Matter.
- (b) Indecent Assault
- (c) Insanity as a defence.

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATION - SEPTEMBER, 1991

L 250/L 150

CONSTITUTIONAL LAW

TIME: THREE HOURS (plus 10 minutes to read the question paper)

ANSWER: Question 1 and any three other questions

NOTE: (a) All questions carry equal marks  
(b) The Constitution of Zambia and any amendments thereto may be consulted.

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1. As at December 22, 1989 there were 135 members of the National Assembly. One of these members, the honourable Dr. Jason Sangwapo MP for Lusaka central, was appointed by the President to the newly created post of Minister of State for the Civil Service. The appointment took effect on December 23, 1981. However, a week later on December 30 1989 he was served with a presidential detention order under the preservation of Public Security regulations on the grounds that he had incited civil servants to go on a nation-wide strike. His petition against the detention was subsequently thrown out by both the dHigh Court and later by the Supreme Court. He was eventually released from detention on July 31, 1990.

Meanwhile, the President decided to fill the vacancy left by Dr. Sangwapo by nominating Ms. Mwelwa Kambikambi to the National Assembly as an MP and appointing her as Minister of State for the Civil Service.

The Civil Servants Union has questioned the constitutionality of Ms. Kambikambi's appointment as Minister of State. They have come to you as a constitutional lawyer for expert advice. Advise them.

2. "For years now Judges have had less than confluent views as to whether what are commonly referred to as economic crimes can be or are, a threat to public security in Zambian Law."  
- B.H. Simamba in "The Relevance of Economic crimes to public security: A Zambian case study" 1988 Lesotho L.J. 171.

Set out in detail the views of various Judges as they appear in decided cases. Include in your answer your own opinion and reasons therefor.

3. Outline the compositions, functions and powers of the commission for Investigations in Zambia and other legal and extra-legal factors relevant to its effectiveness. In your view, if that body is maintained in its present form, will the change to a multiparty constitutional system make it more effective, less effective or have no effect? Give reasons for your answer.
4. Trace and comment on the law and facts affecting the independence of the judiciary from 1964 to 1991.
5. (a) State and analyse the legal provisions and facts which affected the doctrines of separation of powers, and checks and balances during the one party constitutional system.  
  
(b) What, in your view, was the impact of Act No.20 of 1990, which "re-introduced multipartism" on the operation of the concepts of checks and balances, and separation of powers?
6. In the case of The People v The Speaker of the National Assembly, the Hon. R.M. Nabulyato, Ex parte: Harry Nkumbula H.C. (1970)97., the High Court for Zambia had this to say: "The respondent (Mr. Speaker) however, has not seen it fit to appear or to be represented, and we are left to decide this motion on the material by the applicant." {ZLR.p.99}

Do you think that the Speaker would or would not be justified to refuse to appear before the Court of Law? Discuss.

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END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - SEPTEMBER, 1991

L 320

PROPERTY LAW AND SUCCESSION

TIME: THREE HOURS

ANSWER: FOUR QUESTIONS - ONE FROM EACH SECTION

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SECTION A

THE CUSTOMARY LAND LAW

1. In the case of Mwindwa v. Gwaba one of the assessors described the system of customary landholding as follows:

"When a man moves from a village, the land he was ploughing or the land he was given on which to settle, that land remains the property of the headman. It is the headman who is going to be approached to allocate land."

Regarding the general pattern of landholding, Max Gluckman concluded:

"Thus I would say that my framework of a hierarchy of estates of holding is likely to cover most systems of African land tenure."

Charles White has, however, taken a contrary view. He writes:

"Here we have no hierarchy of estates: The Tonga had no traditional authorities to allocate land in any case and the Tonga headman of a village does not allocate land....."

WHICH of the above propositions, if any, reflects the nature of the customary system of landholding in Zambia? Is it possible to reconcile the above propositions?

2. (a) Evaluate the procedure by which an interested person may acquire a lease or occupancy licence in Reserves and Trustland in terms of its practicability.
- (b) The Northern Nigeria Lands Committee of 1908 stated:

"In attempting to formulate...a description of the system of land tenure... it seems well to avoid as far as possible such technological phraseology as inevitably conveys ideas and associations prevailing in England. The real question we have to consider is, what should be the actual powers and rights in regard to the land, of the government, of the former ruling classes, chiefs or tribal authorities, and of the actual cultivators or occupiers of the soil and how those powers and rights should be defined and protected by law and by methods of administration. We must, therefore, avoid as far as possible the use of such expressions as freehold, copy hold, or leasehold tenure, tenancy at will etc, all of which belong to a system of land tenure which, though it may, in some respects, present curious analogies with some of the customs, has a peculiar and wholly different history."

Discuss the above obsecuation with referece to any system of customary and holding with which you are familiar bringing into focus what the views of scholars on terminological issues are.

SECTION B  
THE LAW OF SUCCESSION

3. (a) Dismayed by the practice of property-grabbing by surviving relations of a deceased Mawilo prepared what he called his last will and testament and his dispositions were as follows:
- (i) My house to my wife together with a sum of K50,000 absolutely free from duty;
  - (ii) A sum of K1.million to my two children in equal shares on condition that they take good care of their aging mother;
  - (iii) In order to appease my mother's relations, I give all the residue of my estate to my maternal uncle, Kondwelani.

The document was duly signed by Mawilo and both his sons signed as witnesses in his presence and in the presence of each other.

Following the death of Mawilo, his extended relatives, through Kondwaleni are seeking to grab everything and distribute his entire estate amongst themselves.

Advise the beneficiaries under the Will

- (b) Isaac was a Zamian of mixed race his father being white (British) but his mother being an indigenous Zambian. Isaac's ties with his mother and maternal relations were weak as he scoffed village life and adopted a largely European culture - living in a luxurious mansion in the city, sending his children abroad for study and exploiting to the full and modern comforts. He was, however, married to a girl who is also an indigenous Zambian.  
girl who is also an indigenous Zambian.

Prior to marriage he executed a will disposing of his entire estate to his father. After marriage, however, he decided to draw up another will. With this idea in mind, he took the current will crushed it into a ball and throw it into the waste-paper bin expecting the cleaner to empty the bin and burn the contents. That day, however, the cleaner did not come but before executing the second will he died from stroke.

The will has been found but Isaac's widow seeks your advice on any rights which she may have with regard to the deceased husband's estate.

Advise her.

4. Critically analyse the devolution of property under the Intestate Succession Act, 1989.

### SECTION C

#### THE GENERAL PART

5. "There is a crying need for more liaison and co-operation between local authorities and planning authorities..... An acute shortage of manpower in both planning authorities and local authorities is obviously one contributing factor to the difficulties. If that is likely to continue, we can only suggest that serious consideration should be given to simplifying the Town and Country Planning legislation in so far as it relates to areas outside the main towns in the country."

T.C.P.T. in Bendela's case. Comment on the above observations in the context of the efficacy of the of the town and country planning machinery in Zambia.

6. "The experience of the freehold system both in Tanzania and other countries is that this system operating within the context of a free land market gives rise to ineluctable social economic and political problems." (R.W. James; 1971).



In the light of this statement examine, critically, the extent to which the nationalisation of land has been used by the Zambian government to achieve its social, economic and political objectives.

7. (a) Briefly discuss the following:
- (i) Clogs on the equity of redemption;
  - (ii) Collateral advantages;
- (b) Evaluate the role of mortgages as devices for securing development loans in Reserves and Trustland.

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END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - SEPTEMBER, 1991

L 340

ADMINISTRATIVE LAW

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

ANSWER: QUESTION 1 AND ANY THREE (3) OTHER QUESTIONS.

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1. COMPULSORY QUESTION

Zulu has been carrying on the business of retail trade for 20 years. In January, 1991 his application for a renewal of his trading licence was turned down by the Licensing Authority on the grounds that he smuggled essential commodities to a neighbouring country. He appealed to the Minister against the Local Authority's decision. The Minister turned down the appeal. Section 19 of the Trade Licensing Act, Chapter 707 of the Laws of Zambia states:

- "(1) Any person who applies to a Licensing Authority may, if he is aggrieved by the decision of the Licensing Authority upon such application, appeal against such decision to the Minister.  
(2) The decision of the Minister in respect of an appeal under this section shall be final and shall not be questioned in any court".

Zulu seeks legal advice on:

- (a) Whether he can successfully challenge the decision of the Minister;  
and  
(b) What remedies are available to him

Advise Zulu.

2. "It is fundamental to fair procedure that both sides should be heard: audi alteram partem 'hear the other side'. This is the more far-reaching of the principles of natural justice since it can embrace almost every question of fair procedure or due process and its implications can be worked out in great detail. It is also broad enough to include the rule against bias, since a fair hearing must be an unbiased hearing".

(Wade, Administrative Law 6th Edition, page 496).

Do you agree with Wade? Using decided cases show in what circumstances this rule of natural justice applies.

3. Either

- (a) To what extent is decentralisation compatible with proper financial accountability? Discuss in relation to the position in Zambia since the passing of the Local Administration Act, 1980.

OR

- (b) To what extent do the provisions of the Local Administration Act, 1980 promote participation in local government and improve co-ordination of Development. Discuss.

4. Evaluate the effectiveness of the Commission for Investigations as a defender of citizens' rights against administrative wrongs in Zambia.

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

- (a) Habeas Corpus ad subjiciendum
- (b) Prohibition
- (c) Mandamus
- (d) Injunction
- (e) Declaration

6. Distinguish between any 2 of the following:

- (a) Judicial review of administrative action and judicial review of legislation
- (b) Want of power and excess power
- (c) Judicial review and administrative adjudication and
- (d) Error of Law within jurisdiction *and non-jurisdictional* error.

7. "Parastatals operate autonomously, provided they remain within the broad framework of Government Policy." Is this statement true of Zambian parastatals? Give reasons for your answer.

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - SEPTEMBER, 1991

L 350

FAMILY LAW

TIME: THREE HOURS (plus 15 minutes read the question paper).

INSTRUCTIONS:

- (i) Answer any FOUR questions
- (ii) All relevant and Unmarked Statutes may be brought into the Examination Room.

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1. Mrs. Kapotwe who has filed a petition for maintenance has just discovered that her husband has made a Will giving his block of apartments to his uncle. Although Kapotwe runs several businesses, a good part of his income comes from the apartments which he has given to his uncle under the Will. Mrs. Kapotwe's petition is an interim maintenance petition pending the hearing of her petition for Judicial separation. Advise Mrs. Kapotwe on;
    - (a) Whether she can legally restrain her husband from transferring ownership of the block of apartments.
    - (b) The legality or otherwise of her husband's alleged transfer of the block of apartments.
    - (c) The technical term of her maintenance petition.
    - (d) The appropriate judicial office to hear her maintenance petition.
  2. In Zambia, the advent of colonialism brought with it a dual legal system with imported English law on one side and the local Customary law on the other. In marriage law a person has a choice of marrying either under customary law or under statutory law.
    - (a) Briefly contrast the requirements of a valid Customary law marriage with those of a statutory marriage.
    - (b) What do you think are the main reasons why most Zambians, especially men, prefer to contract marriages under customary law.

3. Buta and Thando got married in the winter of 1987. They lived in a house which Buta had inherited from his uncle and which was exclusively in his name. In December, 1989, Buta deserted his wife, Thando, and started living with another woman.

Before leaving her, Buta told her that she could always live in the house and nobody would disturb her. Thando continued to reside in the matrimonial home and in June 1991 she obtained a decree nisi of divorce against her husband on the ground of his adultery and desertion.

Buta 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 Buta and Thando jointly?

4. (a) Mwenso, an illegitimate child has since his birth two months ago been in the care of his uncle and aunt who are both aged 20 years and they reside at Bauleni, Lusaka. They wish to adopt Mwenso.

Advise them.

- (b) Who appoints a guardian ad litem and what are the duties of a guardian ad litem?

5. Dean, an Englishman living in England was offered a job by the University of Zambia on contract for five (5) years. A few days after his arrival in Zambia, Dean was attracted to Tracy and the two fell in love. Tracy introduced Dean to her father. Dean proposed marriage to Tracy. Tracy's father insisted that the marriage had to be a customary one. Dean paid K15,000.00 lobola and Dean and Tracy were married according to Lamba Customary law. Tracy moved out of the matrimonial home. Dean met Valerie, an attractive 23 year old woman and married her under the ACT. Two children were born to the marriage. Valerie has discovered Dean's earlier marriage to Tracy.

She is anxious to know the legal status of her marriage to Dean and that of their children.

Advise Valerie.

6. Tiki and Shupile married in 1983 and there were two children of the marriage, both daughters aged in 1991, four and six respectively. Both parties were comfortably off and Shupile provided for the matrimonial home from her own resources. The house was in Avondale, Lusaka. In 1989, Shupile committed adultery with a married man who lived in Ndola; she subsequently confessed and her husband forgave her. In 1990 she deserted Tiki and abandoned the two children with him and went to live near the man in Ndola. The break up of the home was in no way due to Tiki's conduct. Tiki asked her wife to come back so that they could look after their children, but she refused and advanced no reason for her refusal. Tiki took the children to be looked after by his unmarried sister and he provided them with a comfortable home which he owned exclusively. On hearing this, Shupile instituted proceedings to have custody of the children because she wants the children to have a religious upbringing.

Advise Tiki as to who will be granted Custody, Care and control, and access to the two children.

7. The Law Development Commission intends to revise our family laws dealing with marriage and divorce. On learning that you are an expert in family law, the Commission has appointed you to assist in stating what you consider to have been the major social and economic changes since independence which have affected marriage and divorce. You should make reference to marriage and divorce both under Customary law and under the statute.

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END OF EXAMINATION

JURISPRUDENCE

TIME: THREE HOURS

INSTRUCTIONS:

1. Answer: ANY FOUR QUESTIONS
  2. All Questions Carry Equal Marks
- 

1. "Jurisprudence was the first of the social sciences to be born", said Wurvel, and "its province has been determined and re-determined because the nature of the subject is such that no delineation of its scope can be regarded as final".

Evaluate the validity of this statement and give a comprehensive account as to why jurisprudence, as an academic discipline, has not had a universally agreed definition.

2. Clearly assess and compare the extent to which Hans Kelsen's Theory of law was expounded and applied in the cases of Ex Part Matovu (1966) (Ugandan case) and Edward Sallah v. Attorney-General (1970) (Ghanaian case).
3. "The life of the law has not been logic: It has been experience. The felt necessities of the time, the prevailing moral and political theories, intuitions of public policy, avowed or unconscious, even the prejudices which judges share with their fellow-men, have had a good deal to do than the syllogism in determining the rules by which men should be governed....." (Justice Oliver W. Holmes of the American Supreme Court).

Then again,

"....The prophecies of what the courts will do in fact, and nothing more pretentious are what I mean by the law".  
(Justice O.W. Holmes).

In these two statements the whole programme of American theories of sociological jurisprudence and of American Legal Realism is neatly summed up. Comment on this approach to the study of legal philosophy bringing out clearly your understanding of the major points of differences between it and the British-type of Analytical positivism.

4. Write out an essay on the main functions of law in society with references to a new nation like Zambia.
5. Examine the main tenets of the idea of "Justice" and indicate its importance in its realisation in any legal system of a truly democratic society.
6. "It appears proper and desirable to divide legal sources into two major categories, to be designated as "formal" and "nonformal" sources".
  - (i) Elucidate what this categorisation of the sources of law mean and imply.
  - (ii) With refernces to actual decided cases that you have come across during your studies in the School, assess the extent to which "nonformal" sources of law have been made use of by courts.
7. Comment comprehensively on any of the following two concepts:
  - (a) The 'volksgeist' as the main theme of the teachings of the Historical School of Jurisprudence.
  - (b) Natural Law
  - (c) Roscoe Pound and the Jurisprudence of Interests.

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END OF EXAMINATION



THE UNIVERSITY OF ZAMBIA

UNIVERSITY SUPP/DEFERRED EXAMINATIONS - DECEMBER, 1991

L 410

JURISPRUDENCE

TIME: THREE HOURS

INSTRUCTIONS:

1. Answer Any FOUR (4) Questions

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1. Critically examine the Austinian Theory of law bringing out clearly its potential areas of criticisms.
  2. Analyse the contributions of Von Savigny to the evolution of Jurisprudence as an academic discipline.
  3. "Law has not been logic: it has been experience". Justice Oliver W. Holmes.  
  
Expand on this proposition in the light of the American Realist theories.
  4. What is "justice" and its implications on the political, economic and social institutions of society.
  5. Examine the relevance of a theory of law as expounded by the sociological school of jurisprudence in Zambia.
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END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - SEPTEMBER, 1991

L 420

BUSINESS ASSOCIATION

TIME: THREE HOURS (plus 10 minutes in which to read the question paper)

ANSWER: FOUR Questions (i.e two from each section)

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SECTION A

ANSWER ANY TWO QUESTIONS FROM THIS SECTION

1. (a) Make critical comments on the following cases:
  - (i) Lonrho Ltd v Shell Petroleum Company Ltd (1980) 1QB358,
  - (ii) The Commissioner of Taxes v Nchanga Consolidated Copper Mines Ltd (1964) A.C. 948,

(10 marks)
- (b) Identify and comment on the basic documents that have to be drawn and filed with the Registrar of Companies in order to form a company limited by guarantee under the Companies Act, Cap 686 of the Laws of Zambia.

(15 marks)
2. (a) Critically examine the legal heritage of the doctrine of ultra vires as it applies to Zambia today.

(10 marks)
- (b) Tazi Import and Export Company Limited has been operating in Zambia for the past twenty years. Its main line of business, as the name suggests, is import and export trading in finished products. Recently the Government imposed restrictions on the issue of import and export licences so as to provide stimulus for the locally-based industries. Inevitably this has affected the viability of Tazi Import and export Company Limited.

In order to save the company from imminent liquidation the directors have altered the objects clause so as to enable the company to own and sell land and to manufacture semi-precious stones which are in abundance in Zambia.

SECTION B

ANSWER ANY TWO QUESTIONS FROM THIS SECTION

- (a) What role does ZIMCO limited play in Zambia's parastatal sector? Explain this in terms of economic entity theory and legal separation theory. (10 marks)
- (b) MONDECO Limited is a parastatal company formed under the provisions of the Companies Act. It is also a wholly-owned subsidiary of MONDEX Limited which is a government owned holding company. The government, in its understandable desire to control the affairs of all parastatal companies and the national economy as a whole, has created a Ministry of Parastatals and National Economy. Among other things, the Minister of Parastatals and National Economy is empowered to appoint directors and to make regulations for the parastatal companies.

The articles of association of MONDECO Limited, on the other hand, provide that the shareholders in a general meeting shall appoint directors and shall make regulations for the company. How would you reconcile the two conflicting co-operant factors in the control of the parastatal companies? (15 marks)

- (a) How are co-operative societies different from other forms of business associations in Zambia? (10 marks)
- (b) Critically evaluate the role of the Government in the promotion and development of the co-operative societies in Zambia. (15 marks)
- (a) Discuss the statutory duties of partners. (10 marks)
- (b) Kalingalinga and Company is a partnership comprised of White Zulu aged 60 years and Malbury Kamanga aged 14 years.

The partnership arose out of an oral agreement between Zulu and Kamanga whereby Zulu buys blocks of cigarettes which he gives to Kamanga to sell and at the end of the day they share the profits in the ratio of one to four.

It was agreed that although Kamanga was not to contribute any money to the partnership, his labour would count as twenty percent towards the partnership capital.

Kamanga has given notice to Zulu that he wants to terminate the partnership and to be paid his dues so that he can set up the same business as a sole trader.

Zulu has refused to give Kamanga any fraction of the share capital which now stands at K2,400.00 and has in fact threatened to sue Kamanga for breach of the contract of employment.

Advise Kamanga of his rights.

(15 marks)

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END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - SEPTEMBER, 1991

L 420

BUSINESS ASSOCIATION

TIME: THREE HOURS (plus 10 minutes in which to read the question paper)

ANSWER: FOUR Questions (i.e two from each section)

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SECTION A

ANSWER ANY TWO QUESTIONS FROM THIS SECTION

1. (a) Make critical comments on the following cases:
  - (i) Lonrho Ltd v Shell Petroleum Company Ltd (1980) 1QB358,
  - (ii) The Commissioner of Taxes v Nchanga Consolidated Copper Mines Ltd (1964) A.C. 948,

(10 marks)
- (b) Identify and comment on the basic documents that have to be drawn and filed with the Registrar of Companies in order to form a company limited by guarantee under the Companies Act, Cap 686 of the Laws of Zambia.

(15 marks)
2. (a) Critically examine the legal heritage of the doctrine of ultra vires as it applies to Zambia today.

(10 marks)
- (b) Tazi Import and Export Company Limited has been operating in Zambia for the past twenty years. Its main line of business, as the name suggests, is import and export trading in finished products. Recently the Government imposed restrictions on the issue of import and export licences so as to provide stimulus for the locally-based industries. Inevitably this has affected the viability of Tazi Import and export Company Limited.

In order to save the company from imminent liquidation the directors have altered the objects clause so as to enable the company to own and sell land and to manufacture semi-precious stones which are in abundance in Zambia.

Pursuant to the new objectives, the company has sold one thousand acres of farming land to Up-North farms and one ton of finished products from semi-precious stones to Unza Fashions Limited.

Both Up-North farms and Unza fashions Limited have declared disputes with Tazi Import and Export Company Limited, had overcharged them.

Write a legal opinion on the rights of Up-North farms and Unza Fashions Limited against Tazi Import and Export Company Limited. (15 marks)

3. (a) Reappraise the rule in Foss v Harbottle with reference to enforcement of directors' duties. (10 marks)
- (b) UNZACO Limited, a wholly-owned subsidiary of the University of Zambia, which has been undercapitalised for sometime now, wishes to restructure its share capital with a view to raising more working capital. At a meeting held by the directors on 1st July, 1989, it was resolved to recommend the following measures to the shareholders:-
- (i) That the company's share capital be raised from K100,000.00 to K200,000.00; and
  - (ii) That the share capital of the company be divided into 100,000 ordinary shares with voting rights and 100,000 deferred shares without franchise at the par value of K1 each.

There was no general meeting called but all the shareholders except one endorsed the recommendations of their directors. The chairman of UNZACO Limited has written to the Board of Directors giving them green light to implement the new measures.

On the strength of the letter from the chairman the Board of Directors has invited Josse, a renounced Katondo Street dealer to invest in the company. Josse has bought 80,000 ordinary shares and proposes to alter the objects clause of the company to enable him to deal in drugs of all descriptions including those which are proscribed by law.

The University of Zambia is worried about this turn of events and wished to know how it can reassert its control over the subsidiary company.

Advise the University of Zambia and Josse as to their rights in UNZACO Limited. (15 marks)

- 3 -  
SECTION B

ANSWER ANY TWO QUESTIONS FROM THIS SECTION

- (a) What role does ZIMCO limited play in Zambia's parastatal sector? Explain this in terms of economic entity theory and legal separation theory. (10 marks)
- (b) MONDECO Limited is a parastatal company formed under the provisions of the Companies Act. It is also a wholly-owned subsidiary of MONDEX Limited which is a government owned holding company. The government, in its understandable desire to control the affairs of all parastatal companies and the national economy as a whole, has created a Ministry of Parastatals and National Economy. Among other things, the Minister of Parastatals and National Economy is empowered to appoint directors and to make regulations for the parastatal companies.

The articles of association of MONDECO Limited, on the other hand, provide that the shareholders in a general meeting shall appoint directors and shall make regulations for the company. How would you reconcile the two conflicting co-operant factors in the control of the parastatal companies? (15 marks)

- (a) How are co-operative societies different from other forms of business associations in Zambia? (10 marks)
- (b) Critically evaluate the role of the Government in the promotion and development of the co-operative societies in Zambia. (15 marks)
- (a) Discuss the statutory duties of partners. (10 marks)
- (b) Kalingalinga and Company is a partnership comprised of White Zulu aged 60 years and Malbury Kamanga aged 14 years.

The partnership arose out of an oral agreement between Zulu and Kamanga whereby Zulu buys blocks of cigarettes which he gives to Kamanga to sell and at the end of the day they share the profits in the ratio of one to four.

It was agreed that although Kamanga was not to contribute any money to the partnership, his labour would count as twenty percent towards the partnership capital.

Kamanga has given notice to Zulu that he wants to terminate the partnership and to be paid his dues so that he can set up the same business as a sole trader.

Zulu has refused to give Kamanga any fraction of the share capital which now stands at K2,400.00 and has in fact threatened to sue Kamanga for breach of the contract of employment.

Advise Kamanga of his rights.

(15 marks)

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END OF EXAMINATION



THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - SEPTEMBER, 1991

L 430

INTERNATIONAL LAW

TIME: THREE HOURS

ANSWER: Four (4) Questions only, Note that question 1 is Mandatory and carries 40 marks.

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PART I

Mandatory Question

1. Kaliko lives in Zambezi state and has lived there for about 15 years now. She is married to a Zambezian national and they have children. Although she had applied for Zambezian citizenship, she had not received any response from the authorities.

Meanwhile, the political situation in Zambezi state has recently changed. There are mass demonstrations for the introduction of multi-party democracy. Kaliko and her husband had been very involved in this movement, and it was during this time that Kaliko's husband was detained for his activities in the movement. Kaliko and her children, not being sure of their safety fled to Liambai state.

Before settling in Zambezia state Kaliko had lived in Nile state for about 10 years. Her two companies which she was still operating in Zambezi state before she fled were incorporated there. Zambezi state has compulsorily acquired her two companies.

In addition to the two companies she operated in Zambezi state, she is a majority shareholder in Kilimanjaro Co. Ltd which has its head office in Liambai state.

There is a wrangle among the states involving the espousing of her claim and that of the companies at the international level. To complicate matters further, there is no agreement between Zambezi and Liambai states regarding Kaliko's request to the latter for asylum.

Give a legal opinion on the issue of contention.  
(40 Marks)

L 430

2. Discuss International Law principles relating to the functioning of the United Nations Security Council that were at stake, in the Gulf war Saga. (20 Marks)
3. The government of Tukoongole state has been in power since the country's independence some years back. A political party rival to that in government has been carrying on a guerrilla warfare claiming that the government in power has not been democratically elected. Consequently, some states have not recognized this government.  
  
Discuss theories of recognition relevant to this situation. (20 Marks)
4. Discuss the significance of the Exclusive Economic Zone (EEZ) and the Contiguous Zone concepts both to coastal and landlocked states. (20 Marks)
5. In which ways do the Reparation for Injuries suffered in the service of the United Nations (1949) case and the Legal Consequences (1971) case signify the growth dimensions of international law in the 20th Century? (20 Marks)
6. State and discuss the objectives of the Organization for African Unity as you perceive them in the current relatively liberal atmosphere. (20 Marks)
7. Pacta Sunt Servanda is acknowledged by some international law scholars as a jus cogens. Reconcile this principle with the topic of reservations in treaties relating your discussion to the various views.

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END OF EXAMINATION

- (a) It's chances of securing financial assistance under the STABEX scheme which forms part of the fourth Lome convention.
- (b) Whether it would be better for the government of country Y to approach the International Monetary Fund (IMF) for assistance under its compensatory Financing Facility (CFF), and why?

Note that country Y is a member of the IMF.

Discuss the problem of administrative barriers to international trade and how the General Agreement on Tariffs and Trade (GATT) has sought to deal with it.

Zambia's main investment legislation is the 1986 Investment Act (Act No.5 of 1986). This Act provided "concessions" which were intended to attract foreign investors to this country. Discuss how successful this Act has been in achieving its intended objective, and suggest changes, if any, that would improve the Act.

Discuss the role of the World Bank (IBRD) and the International Finance Corporation (IFC) in providing the much needed development capital to developing countries.

The government of Zambia, a developing country in Southern Africa, is invited to a summit for Central, Eastern, and Southern African countries (all members of the GATT) aimed at creating an Economic Community to be known as Uhuru Economic Community. At the end of the conference, a treaty creating the Community is signed and later ratified making all participating states members of the Community. Advise the Zambian government on the effects of such membership on its rights and obligations under the GATT.

Discuss any three of the following:-

- (a) Anti-dumping duties
- (b) Countervailing duties
- (c) The most-Favoured Nation clause
- (d) Producers' Associations
- (e) The United Nations Common Fund

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - SEPTEMBER, 1991

L 480

INDUSTRIAL LAW

TIME:      THREE HOURS

INSTRUCTIONS:

1. This examination paper is divided into two sections, A and B.
2. ANSWER question number One which is compulsory and any other THREE of which at least one question must be chosen from each section.
3. Time allowed is THREE (3) HOURS plus ~~ten~~ (10) minutes to read through the question paper.
4. Candidates are strongly ~~advised~~ to cite relevant authorities and to be clear in their presentation. Credit will only be given for clarity of presentation and the appropriate use of authorities.
5. Relevant statutes may be brought in the examination room provided they do not bear any marginal notes, markings or any such mark intended to aid the candidate.

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SECTION A

(Answer question 1 and at least any other one from this section)

1. "...there are good reasons for changing the rules of employment law so as to give a measure of protection to individuals who take part in industrial action. If in principle the case for change is made out, then immediately questions arise concerning how such reform could take place, and what its content might be." (B.W. Napier [1987] 46 Camb. L.J., 287 at p.295)

Critically analyse the above statement by clearly discussing the legal position of an employee who has taken part in industrial action, how the courts have approached the issue and what protection, if any, you would recommend.

(31 marks)

2. Discuss the significance in employment law of CONTRACT HAULAGE LIMITED v MUMBUWA KAMAYOYO (1982) ZLR 13

(23 marks)

3. (a) Clearly distinguish between (i) REINSTATEMENT and (ii) REENGAGEMENT.  
(8 marks)
- (b) Section 114 of the now repealed Industrial Relations Act of 1971 provided, inter-alia for the reinstatement of an employee whose services had been terminated on the ground of race, colour, sex, marital status, religion, political affiliation or opinion.
- With the aid of relevant authorities demonstrate how the Industrial relations court interpreted and enforced this section. What is the position under the 1990 Industrial Relations Act? (15 marks)

SECTION B

(Answer at least one question from this section)

4. Discuss the structure of trade unions in Zambia under the 1971 and 1990 Industrial Relations Acts. Which one of them is consistent with the International labour standards? Elaborate.  
(23 marks)
5. "The Rules of a trade union in the conduct of its affairs are important if the trade unions' decisions are to be valid."
- Discuss the above statement in the light of LUCIANO MUTALE AND JACKSON CHOMBA v NEWSTEAD ZIMBA SCZ No. 12 of 1988  
(23 marks)
6. Briefly discuss any THREE of the following:
- (a) The Russel commission
  - (b) The Bladialoe . commission
  - (c) The Foster commission
  - (d) The Dalgleish commission
  - (e) The Branigan commission

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END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY SUPP/DEFERRED EXAMINATIONS - OCTOBER, 1991

L 480

INDUSTRIAL LAW

TIME:           THREE HOURS

INSTRUCTIONS

1. This examination paper is divided into two sections, A and B
2. Answer question number one which is compulsory and any other three provided that at least one question is chosen from each section.
3. Candidates are strongly advised to cite relevant authorities and to be clear in their presentation. Credit will only be given for clarity of presentation, the appropriate use of authorities and the candidate's knowledge of the legal issues involved.
4. Relevant statutes and statutory Instruments may be brought in the examination room provided that they do not bear any marginal notes or any such writings intended to aid the candidate.

SPETTER LA

1. Bangwele was, on 2nd January 1980 employed by Manifesto Enterprises Limited as a car-pusher at their Lusaka depot. His job description was ".... to push or pull vehicles brought at the garage for repair for purposes of parking or starting such vehicles at distances of not more than one kilometre and to perform such a duty diligently. Where there is more than one vehicle to be pushed or pulled as the case may be the car-pusher shall be given ten minutes rest between the pushes or pulls."

Bangwele happened to be the only car-pusher at manifesto Enterprises.

On 4th June, 1982 management announced that there would be Labour day Prices Ceremony the following day, and that all employees should attend. Bangwele, having worked so hard the past two years was more that confident to scoop some prize. He got none, much to his frustration.

When he went back to the garage Bangwele noticed that six vehicles had been parked for pushing while two more were being entered in the control Register for pushing Annoyed Bangwele went to his supervisor and said "I want to go home and rest - I am very tired" to which the supervisor answered "you are employed to push cars until 1700 hours. This is only 1530 hours and you only pushed five vehicles this morning." Without a word Bangwele left and went to his house.

The following day Bangwele reported for work and nobody asked him why he had not worked up for 1700 hours the previous day. At about 1645 hours he went to the manager and requested for one month's leave. The Manager refused to grant him leave through a memorandum written to Bangwele saying "Leave cannot be granted not until we advertise for and have the services of a relief car pusher with the commitment and competence as yours....."

When Bangwele went home he pulled from his suitcase The "Terms and Conditions of Employment" clause 10.3.3 read as follows:

"Every car-pusher shall be entitled to one month leave for every successful calendar year worked and the company shall pay for the following expenses

- (a) transport of the car-pusher and his spouse and up to six children by UBZ ordinary bus;
- (b) medical fees for the employee to enable him to be examined by a competent physician".

Annoyed with himself as well as Management Bangwele burst out of the house and simply said to his wife I have gone to drink some Chibuku...."

During the drink he got involved into an argument as a result of which he assaulted someone. He got arrested and was detained by the police. Two days later his wife went to report at Manifesto Enterprise Limited that her husband was in Police custody. She was immediately given a letter to give to her husband. The letter read in part:

"You will recall that on 4th June, 1982 you absented yourself for part of the afternoon without reasonable cause. On the 5th of the same month you requested for leave which was not granted and since then you have not reported for work. You are therefore dismissed from our employment as from the 6th of June, 1982 as your conduct is contrary to clause 13.4.6...."

Clause 13.4.6 read:

"An employee who shall absent himself from work for a period in excess of seven days without reasonable explanation shall be deemed to have left the employer's service without notice. Any other such absence for a period of less than seven days may be acted upon by the employer in such a manner as the employer may determine including terminating the employees employment without benefits."

Clause 16.1.9 read:

"Each party shall give two months notice or pay the other party two months salary in lieu of such notice to resign from or to terminate the employment."

When charged before a court of law Bangwele was acquitted.

He now approaches you for legal advice. Write a memorandum of advice on all the relevant legal issues involved and citing the relevant authorities. (31 marks)

2. Judge HOLMES an American great Jurist, in his dissenting judgement imbued with prophetic vision at a time when combinations by workmen were still resisted, said:

"..... One of the eternal conflicts out of which life is made up is that between the efforts of every man to get the most he can for his services, and that of society, disguised under the name of capital, to get his services for the least possible return. Combination on the one side is patent and powerful. Combination on the other is the necessary and desirable counterpart, if the battle is to be carried out on in a fair and equal way...."

If it be true that working men may combine with a view, among other things, to getting as much as they can for their labour, just as capital may combine with a view to getting the greatest possible return, it must be



true that, when combined, they have the same liberty that combined capital has, to support their interests by argument, persuasion..."

Vegelehn v Guntner, Supreme Judicial Court of Massachusetts, 1896 167 Mass. 92, 44 N.E. 1077

And, earlier, in the case of Mogul S.S. Co: v McGregor, Gow & Co. LTD [1892) A.C. 25 the court said.

"The truth is that the combination of capital for purposes of trade and competition is a very different thing from such a combination of several persons against one, with a view to harm him, as falls under the head of an indictable conspiracy. There is no just cause or excuse in the latter cases."

And, finally, per Lord HALSBURY, at p. 87 that

".....the procuring of people to break their contracts" is an "unlawful" act.

Expecially within the context of the TRILOGY OF THE HOUSE OF LORDS explain how the position in relation to the combination of workmen on the one hand and that of capital was seen. What is the present position? (23 marks)

3. Kambwanga is a unionised employee with University of Zambia in Lusaka in the catering department. In 1986 he contested the elections as a trustee and he won the election for that post. When he took up the post Kambwanga realised that trade union matters took much of his time hardly leaving him with ample time in which to attend to the job for which the Universty employed him. He then decided to write a memorandum to the Registrar in the following terms:

"Dear Sir,

15th August, 1986

As you are aware I was elected as a trustee for the University of Zambia and Allied Workers Union (UNZAAWU) six months ago. As an assistant catering officer I have found out that I cannot adequately perform my functions in that capacity because of my union activities. Given the above I wish to apply to you to allow me to perform lesser administrative matters within the catering department.

Yours faithfully

England Kambwanga."

After one week Kambwanga received the following reply:

Dear Mr. Kambwanga,

23rd August 1986

Your letter of 15th August refers.

The University administration is certainly aware of your trade union activities and we have been very concerned with the shoddy performance of your job as a result of your involvement with the trade union. The university administration is also aware that your wife, Mrs Kambwanga who is also employed by the University as a Librarian does not report for work at least every Tuesday of every month. The University feels that you are both not interested with the jobs.

In accordance with clause 32.9 of the current conditions of service you are hereby dismissed. Your wife will be under strict observation. You are also required to vacate the University accommodation in two weeks time.

We wish you well in your trade union activities.

Yours faithfully,

Katyetye Lazalo.

Clause 32.9 of the conditions of service provided:

"Where the employee's competence is not established, or where the employee absents himself from work for five consecutive days for no cause the employer shall summarily dismiss such an employee."

Three days later the UNZAAWU executive met and made a decision to have Kambwanga expelled from the union "because he has ceased to be an employee of the University." Kambwanga was accordily informed of the decision.

Two weeks later Kambwanga approaches you for legal advice and tells you in confidence that he has found another job and, in his opinion, a much better job.

Advise Kambwanga.

#### PART B

4. In the context of approaches to the study and understanding of industrial relations discuss the main threads of the unitary, the conflict and the systems theories.
5. Concisely trace the major judicial and legislature innovations into the question of combination of workers to better their conditions of work.
6. University of Zambia lecturers and trade

union and a representative has approached you for advice on how to proceed. Write a memorandum advising them on the statutory requirements.

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END OF EXAMINATION

UNIVERSITY EXAMINATIONS - SEPTEMBER, 1991L 490TAXATION

TIME: THREE HOURS (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; the Selective Employment Tax Act; and the Equity Levy Act.

Q.1 Marbles (Zambia) Ltd was incorporated in Lusaka. Its main shareholder with 60% equity is a South African company Roma Enterprises Pty registered in Pretoria. The other shareholder is Lusaka Stax Ltd registered in Zambia with 30% equity. The other share holders are Mr. Jimi Hendrix resident in Pretoria with 5% equity and Mr. Mwelwa a Zambian with 5% equity. Marbles is in the business of ranching. You have been informed that Marbles Ltd has a share capital of 100,000 shares at K20/share all fully paid up. The ~~pre-tax~~ **profit**/after all deductions is K11 million. A dividend of K10/share has been declared. Calculate the tax that Marbles must account for.

Q.2 "The whole structure of personal reliefs is linked to the concept of ability to pay."

With reference to this statement critically discuss the major policy considerations that a government may take into account when determining the nature of exemptions and deductions.

Q.3 (a) Mr. Bwalya Simbotwe owns and operates a retail shop on Cairo Road. He is in the business of buying and selling shoes. For fiscal year 1990 his records show as follows:

(i)	Opening stock	(50 pairs of shoes @ K500/pair)
(ii)	January purchase	(100 pairs @ K500/pair)
(iii)	April	" (250 " " K500/pair)
(iv)	June	" (400 " " K750/pair)
(v)	August	" (500 " " K800/pair)
(vi)	November	" (1000 " " K900/pair)

At the end of the financial year his records show that 1,700 pairs of shoes were sold. Using the FIFO method, determine his inventory discount.

- (b) From among the various methods used in computing inventory, which method would you advise the Ministry of Finance to recommend for legislation if it is desired to raise greater tax revenues from the corporate sector? What effect would such legislation have on the investment climate in the country?
4. "Accelerated depreciation is an important <sup>incentive</sup> often offered as a way of attracting foreign investment as well stimulating domestic investment."
- (a) Is this statement true? Give reasons for your answer  
(b) In your opinion, should accelerated depreciation be encouraged in a developing country such as Zambia? State the arguments for and against.
5. The memorandum of Association of Zambina/<sup>Ltd</sup> shows that it has an authorised share capital of 500,000 shares at a par value of K10/share. Records further show that as at January 1, 1990 the company had issued out 200,000 shares all fully paid up. In turn Zambina has a subsidiary by the name of Carreno Ltd in which Zambina holds 150,000 fully paid up shares at a par value of K20/share. At the end of fiscal year 1990, Carreno Ltd declared a dividend of K10/share. Zambina has also declared a dividend of K1.50/share. Both companies have retained you as their tax lawyer and they want you to advise them as to how much withholding Tax is due from them.
6. Critically analyse the policy issues behind the enactment of the Selective Employment Tax Act? In your view what should be the proper tax policy that would ensure rapid Zambianization?

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END OF EXAMINATION