

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

2010/2011 SECOND SEMESTER

1. L262 FAMILY LAW
2. L342 ADMINISTRATIVE LAW II
3. L352 NATIONAL HUMAN RIGHTS LAW
4. L382 LABOUR LAW
5. L412 JURISPRUDENCE II
6. L422 COMPANY LAW
7. L432 THE LAW OF INTERNATIONAL ORGANISATIONS

THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW

SECOND SEMESTER FINAL EXAMINATION – DRAFT

L262 Family Law – 2010/2011 Academic Year

INSTRUCTIONS:

- a) Section A is compulsory and carries 25 Marks
- b) Answer atleast one question from section B and section C ie either two from section B and one from section C or one from section B and two from section C. Each question carries 15 marks.
- c) You are allowed to refer to clean and unmarked copies of the Matrimonial Causes Act 2007, Marriage Act and Adoption Act during the examination.
- d) No other statutes or reference materials are allowed for this examination.
- e) You have five minutes to read through the paper and a total of three (3) hours within which to answer all the four questions.
- f) Clearly indicate the question numbers for all questions attempted.

SECTION A: QUESTION ONE COMPULSORY

Micheal Banda married Monica Chisela in 1984 under customary law of the Bemba people. As the parties were going through the traditional aspects of marriage, they also gave notice at the civic center of their intention to marry. They also informed the church through their small Christian community of their intention to marry. The parties' marriage was solemnized on 9th September, 1984 at Nsansa parish in chinsali district.

During their courtship, Michael insisted that they should never be involved in sexual activity until they were pronounced husband and wife. This pleased Monica who was brought up in a very strict home where rules were to be followed to the letter. On the wedding day, Michael appeared drunk. When queried, he said that his friends had organized a bachelor's party for him the night before and that he took some alcohol but he would be fine. Monica was very surprised because Michael never took alcohol.

As the couple retired to their hotel room after the reception, Monica decided to take a bath to freshen up for the big night. As she came back to the room, she found her husband fast asleep. She was shocked but she decided not to disturb him. Night after night, Michael made sure he went into bed first and fell asleep or he came back home so late and found his wife already asleep. This puzzled Monica but she kept it to herself thinking he was going to change but nothing. Years passed and life continued. It was rumoured that Michael was involved in homosexual conduct with a friend of his named Chibonga Mbuzi. However, Monica was not able to verify the truth of the rumour. Michael did not engage in sexual intercourse with his wife but would often suggest doing oral sex which was taboo to Monica and so she refused.

Michael who worked for a construction company was at one time seriously injured in an accident at work and was paralysed for a period of about six months or so. He was later healed and left the company for greener pasture. He entered into a business with his friend Chibonga. They were involved in import and export of various commodities. Unfortunately, as fate would have it, one day as they arrived from Dubai aboard a South African airline plane, their consignment was intercepted at OR Tambo airport as it contained cocaine. His friend managed to run away but Micheal was caught. He was arrested, tried, convicted and sentenced to 15 years imprisonment with hard labour in a South African prison. Life was not as Monica expected married life to be. And with the arrest of the husband, the situation became very bad. She visited him in prison a few times but got tired and stopped out of frustration. She would often tell people she did not know where he was and that maybe he was dead. When the husband had been in prison for about 7 years, she decided enough was enough and wanted the marriage to end. She however did not know what to do. Her friend told her that you are an expert in family law, having graduated recently from the University of Zambia.

She comes to you for help, please advise her. **25 Marks**

SECTION B

QUESTION TWO

With the help of suitable case and statutory authorities, discuss the following sources of family law showing clearly their practical effect in the Zambian Legal system: the constitution, customary law and English Law. List and intelligently comment on the four functions of family law. **15 Marks**

QUESTION THREE

In the case of **De Reneville Vs De Reneville 1948 Probate, 100 at page 110**, the court stated that “a void marriage is one that will be regarded by every court in any case in which the existence of the marriage is in issue as never having taken place and can be so treated by both parties to it. A voidable marriage is one that will be regarded by every court as valid until a decree annulling it has been pronounced by a court of competent jurisdiction”.

Critically discuss the grounds upon which a marriage can be said to be void in Zambia. **10 Marks**

Analyse the consequences of the distinction in the above definition. **5 Marks**

QUESTION FOUR

“Consortium refers to the nature of the relationship between a husband and a wife. A wife has no greater right to force herself upon the husband than he has to compel her to cohabit with him”
Nanda Vs Nanda 1968 Probate 351.

Critically analyse the above statement stating clearly the rights and duties of the parties in a marriage. **15 Marks**

SECTION C

QUESTION FIVE

Zambia has a dual legal system where customary law operates side by side with the statutory law. In relation to marriages, customary law marriages are also valid marriages in Zambia. In fact the application of customary law has been recognized by the Constitution of Zambia chapter 1 of the laws in article 23. Zambia has 73 ethnic groupings with different cultures although similarities do exist among them.

Discuss the requirements for a valid customary law marriage. **15 Marks**

QUESTION SIX

Love Chikondi a young man of 26 years of age married his childhood love Rose Maluba aged 22 years on 24th December, 2004 before the Registrar of Marriages at Lusaka. It was a very colourful ceremony that told the world of the love and affection the two had for each other. They lived in chilenje south. In April 2006, the couple decided to get extra help for the household. They brought in a distant cousin to Rose named Mundu Mungwe from the village who helped with the cleaning and cooking. Unknown to Rose, her dear husband started having an illicit affair with the girl. The girl conceived leading Rose to know what was happening in her household. This was in December of 2006. When Rose confronted her husband, he said that 'as a man he was allowed to marry more than one wife and besides in his culture it was not an offence for him to have sex with his wife's cousin or even sister'. This event took the parties on a rough patch of their relationship. Rose refused to engage in sexual relations with the husband. Love took to excessive drinking and would spend nights away from home at will. He would often insult his wife and demean her in public. This made Rose very miserable. She realized she had made a mistake to get married to her husband and she is determined to leave him. However she does not know what to do and she comes to you for help. She was told by a friend that you are a very experienced family law lawyer.

With the help of suitable case and statutory authorities, advise Rose. **15 Marks**

QUESTION SEVEN

In the case of **Watchel Vs Watchel 1973 1 ALLER 1**, the court defined family property as "all properties acquired by the parties during the subsistence of the marriage which are intended to be continued provision for the family as a whole".

With the help of suitable case and statutory authorities, discuss the property rights of parties to a customary law marriage at its dissolution. **15 Marks**

THE UNIVERSITY OF ZAMBIA
THE SCHOOL OF LAW

SECOND SEMESTER – EXAMINATION MAY 2010

L342: ADMINISTRATIVE LAW

1. Answer Four (4) Questions: ONE Question from Each Section.
 2. Question One (1) is **Compulsory**.
 3. Question **ONE** carries **18 Marks** and **14 Marks** for each one of the remaining (**THREE**) Questions.
 4. You have Five (5) Minutes to read the paper and **THREE (3) Hours** to answer the questions.
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PART ONE

QUESTION ONE (18 Marks)

Section 53(1) of the Medical and Allied Profession Act provides:

53. (1) There shall be a committee of the Council¹ styled the Disciplinary Committee, which shall consist of-
- (a) the Chairman; and
 - (b) not more than four and not less than two other members of the Council, who shall be appointed by the Chairman for the purposes of any particular proceedings of the Disciplinary Committee.

Section 55(1) provides:

55. (1) If any registered person is, after due inquiry, judged by the Disciplinary Committee to have been guilty of infamous conduct in any professional respect, the Disciplinary Committee may, if it thinks fit, impose one or more of the following penalties:
- (a) direct the erasure of his name from the register;
 - (b) censure him;

¹ "Council" means the Medical Council of Zambia established by section three.

- (c) caution him and postpone for a period not exceeding one year any further action against him on one or more conditions as to his conduct during that period;
- (d) order him to pay to the Council any costs of and incidental to the proceedings incurred by the Council.

Section 58 provides:

58. (1) Where the Disciplinary Committee-

- (a) makes a finding and imposes a penalty on a registered person under section fifty-five; or
- (b) rejects an application for the restoration of a name to a register under section fifty-six; or
- (c) directs the erasure of an entry from a register under section fifty-seven;

the registrar shall give the person to whom the proceedings relate notice in writing thereof and such person may, within ninety days of the date on which the notice was given, appeal to the High Court.

(2) On any appeal under this section, the Council shall be the respondent.

(3) No direction for the erasure of the name of a registered person from a register under section fifty-five or fifty-seven shall take effect until the expiration of the time for appealing or, if an appeal is brought, until such time as the appeal is disposed of, withdrawn or struck out for want of prosecution, as the case may be.

(4) The High Court may, on any appeal under this section-

- (a) confirm, vary or set aside any finding of, penalty imposed or direction given by, the Disciplinary Committee;
- (b) confirm the rejection by the Disciplinary Committee of the application for restoration or direct the restoration of the name to the register;
- (c) remit the matter to the Disciplinary Committee for further consideration;
- (d) make such other order as to costs or otherwise as may to it seem just:

Provided that no proceedings of the Disciplinary Committee shall be set aside by reason only of any informality in those proceedings which did not embarrass or prejudice the appellant.

(5) The Chief Justice may, by statutory instrument, make rules regulating appeals to the High Court under this section.

Dr. Mwila is a surgeon at a newly opened private hospital. On 25th May 2011, he received a letter from the Disciplinary Committee informing him that one of his patients had laid a complaint against him to the effect that she had been operated on by Dr. Mwila, whilst he Dr. Mwila was under the influence of alcohol. According to the Committee, given the seriousness of the allegation they had no choice but to erase his name from the register of doctors. In the same letter copied to the hospital and the Registrar who is the keeper of the register of medical practitioners, the Committee directed that the Registrar deletes Dr. Mwila's name from the register within seven days and within the same number of days the hospital severs all Dr. Mwila vacates his office.

Dr. Mwila has explained that he only learnt about these developments when he received the letter.

You work in the firm of Mabonga, Mwila & Roberts, which has been representing Dr. Mwila for years. Dr. Mwila has asked your firm to do everything possible for him to continue to practice medicine. He has stated that the allegations against him were totally unfounded. You have been tasked by the partners to research on the matter and present a brief at the next meeting on how best to protect Dr. Mwila's interest.

Prepare your brief for consideration by your superiors.

18 Marks

PART TWO

QUESTION TWO (14Marks)

The Republic of Azania has a constitutional and legal order similar to that of Zambia being a former British colony. The people of Anzania are scheduled to go for presidential, parliament and local government elections later in 2011. President Goodluck Mweemba is seeking re-election for his second and last term in line with the Constitution of Anzania. Like Zambia, Anzania has gone through the process of privatizing most of the state owned companies.

In the month of April, at a political rally in a town, believed to an opposition stronghold, the President announced that all persons, still in houses owned by parastatal companies and local authorities throughout the country, were to buy the same at a flat of price 1,000 cedi, which is equivalent to US\$1.

The main opposition party believes that this is a ploy by the President to win votes in the upcoming elections. The party's central committee has tasked the Chairman of the legal Committee of the party to look into the means of stopping this move by the President.

The Chairman of the Committee is your former class-mate having graduated together at the University of Anzania. After graduation he went into politics whereas you went into private practice. He recalls that whilst at the University you were very good in public law. He wants to know whether it is possible for his party to challenge the President's decision.

Advise him.

QUESTION THREE (14 Marks)

James Banda is a Zambian citizen studying law in the United Kingdom. He is in Zambia visiting his family. He has come to you having heard that you are also studying law at the University of Zambia and that one of the courses you are studying this semester is administrative law. Out of interest he wants to know if there is any difference in the scope of the Court's powers of judicial review between Zambia and England.

Explain to him

PART THREE

QUESTION FOUR (14 Marks)

The Rules Committee of the High Court is reviewing the provisions of Order 53 with the aim of formulating rules governing judicial review that would be

relevant to Zambia. You are a researcher for the Committee and you have been mandated to research on a number of issues among them:

- (a) The Committee wants to know in what circumstances under Order 53 is the interim injunction and the stay available as interim relief; and (7 Marks)
- (b) The possible effect on inferior courts, persons and institutions performing public functions if Rule 3 of Order 53 was left out in the new rules on judicial review. (7Marks)

QUESTION FIVE (14 Marks)

Francis Mabonga is an officer from the Drug Enforcement Commission authorised by the Commissioner to perform the functions under the Prohibition and Prevention of Money Laundering Act No. 14 of 2001. The said Act provides:

An Act to provide for the prohibition and prevention of money laundering; the constitution of the Anti-money Laundering Authority and the Anti Money Laundering Investigations Unit; to provide for the disclosure of the information on suspicion of money laundering activities by Supervisory Authorities and regulated institutions; to provide for the forfeiture of property of persons convicted of money laundering; to provide for international cooperation in investigations, prosecution and other legal processes of prohibiting and preventing money laundering; and to provide for matters connected with or incidental to the foregoing.

On 21st May 2011, officer Mabonga, whilst on operation with officers from the Zambia Revenue Authority learnt that Peter Mwanza, a well-known car dealer, had brought into Zambia a BMW 530i, 2009 model and declared the value as US\$50,000. Mabonga through his contacts learnt that the value was under-declared hence the correct duty and VAT was not paid. The real value was in fact US\$86,000.

On 27th May 2011, Mabonga seized Mwanza's car on the premise that the correct duty and VAT was not paid and that this was an offence. He further maintained that he had power under Section 15 of the Prohibition and Prevention of Money Laundering Act to seize the vehicle. The said Section provides:

An authorised officer shall seize property which that officer has reasonable grounds to believe that the property is derived or acquired from money laundering.

Section 2 of the said Act provides:

"money laundering" means-

- (a) engaging, directly or indirectly, in a business transaction that involves property acquired with proceeds of crime;
- (b) Receiving, possessing, concealing, disguising of or bringing into Zambia, any property derived or realized directly or indirectly from illegal activity; or
- (c) The retention or acquisition of property knowing that the property is derived or realised from illegal activity.

"proceeds of crime" means any property, benefit or advantage, within or outside Zambia realized or derived, directly or indirectly from illegal activity.

Mwanza, though he is not a lawyer, is convinced that what Mabonga has done is wrong. He wants you to explain to him what is wrong with what Mabonga has done.

Explain to him.

PART FOUR

QUESTION SIX (14 Marks)

In *Chief Constable of North Wales Police –v- Evans* [1982] 1 W.L.R. 1155 at 1160; [1982] 3 ALL E.R. 141 at 143, Lord Hailsham L.C. said:

The first observation I wish to make is by way of criticism of some remarks of Lord Denning MR which seem to me capable of an erroneous construction of the purpose of the remedy by way of judicial review under RSC Ord 53. This remedy, vastly increased in extent, and rendered, over a long period in recent years, of infinitely more convenient access than that provided by the old prerogative writs and actions for a declaration, is intended to protect the individual against the abuse of power by a wide range of authorities, judicial, quasi-judicial, and, as would originally have been thought when I first practised at the Bar, administrative. It is not intended to take away from those authorities the powers and discretions properly vested in them by law and to substitute the courts as the bodies making the decisions. It is intended to see that the relevant authorities use their powers in a proper manner.

This proposition was cited with approval by the Supreme Court of Zambia in the case of *Frederick Jacob Titus Chiluba v The Attorney General* [2004] ZR 11. Explain how the courts go about to realise the stated objective of judicial review. (14 Marks)

QUESTION SEVEN (14 Marks)

The People's Church is a religious organisation registered in Zambia pursuant to the provisions of the Societies Act, Chapter 119, of the Laws of Zambia, in 1994. On 25th May 2011, one of the members of the Church, who works in the Ministry of Home Affairs, informed Bishop Sangulube, the head of the church, that the Minister had received information that the church was involved in Satanism. The rumours had been investigated and a report presented to the Minister. There was a possibility that the Minister de-register the church but the position would not be known until 1st June 2011.

Bishop Sangulube is deeply disturbed by this information and has come to see you as a lawyer for advice. He is convinced that the rumours about Satanism were being spread by his fellow preachers who were jealous of the rapid growth of his congregation. He tells you that his church was not in any way involved in Satanism.

The relevant provision of the Societies Act, which the Minister may rely upon in making the decision reads:

13. (1) The Minister may, in his discretion, cancel at any time the registration of any society effected under the provisions of section seven if he is satisfied that it is expedient so to do on the ground that-

(a) the society concerned has, in his opinion, among its objects, or is, in his opinion, likely to pursue, or to be used for, any unlawful purpose or any purpose prejudicial to or incompatible with the peace, welfare or good order in Zambia; or

(b) the interests of peace, welfare or good order in Zambia would, in his opinion, be likely to suffer prejudice by reason of the continued registration of such society.

Advise him on the options open to the Church.

----- END OF THE EXAMINATION -----

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

L352 NATIONAL HUMAN RIGHTS LAW EXAMINATION

SECOND SEMESTER FINAL EXAMINATION

Date: 9th May 2011

Time: 14:00 – 17:00 hrs

Duration: 3 hours

Venue: Law Classroom

Instructions:

1. Students are permitted to carry **ONLY** the Constitution of Zambia into the examination room.
 2. Students are permitted 5 minutes to read through the question paper and 3 hours to answer the examination questions.
 3. Students are required to answer question 1 which is compulsory and three other questions of their choice.
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Question 1

In **Fred M'membe and 3 others v. The People (1995-1997) ZR 118 (SC)** the indictment alleged defamation of the President contrary to s. 69 of the Penal Code. The Prosecutions case was that the appellants published in the Post Newspapers Limited defamatory or insulting matters concerning the President of the Republic with intent to bring him into hatred, ridicule or contempt. At the trial in the Magistrates court the appellants challenged the constitutionality of s. 69 arguing that it was in conflict with Articles 20 and 23 of the Constitution. The Magistrates court referred this constitutional issue to the High court for determination. Justice Chitengi in the High court ruled against the appellants. He held that freedom of expression is not absolute but subject to derogations and that s. 69 is reasonably required for the sake of public order.

The appellants then appealed to the Supreme Court arguing that criminal libel is outdated and has no place in an open and democratic society and that s. 69 violates the principle of equality before the law.

Chief Justice Ngulube as he then was responded to the appellants' argument stating:

'It was also attempted [by the counsel for the appellants] to reduce to the common ranks the central executive authority and 1st citizen of the country. The election of any person to the office of President, I would have thought to be self evident, has legal and constitutional consequences quite apart from any other result. The Constitution itself ordains that he becomes head of state and of government, that the executive power of the State vests within him and he be endowed with the various matters, powers and functions described in the Constitution. I do not see how it can be argued that the President should stand before the law equally with the rest of us when for example art. 43 grants him immunity from civil and criminal suits while he occupies that high office. If the Constitution itself makes the President not equal to everyone else, how can the accused's argument be maintainable?'

Do you agree with Chief Justice Ngulube's statement? **Discuss** Chief Justice Ngulube's response to the appellants argument in light of the freedom of expression as envisaged by article 20 of the Zambian Constitution. Additionally, in your discussion, analyse how Chief Justice Ngulube's statement affects other freedoms and liberties guaranteed in the Zambian Bill of Rights.

18 marks

Question 2

Critically **evaluate** the functions and powers of the Zambian Human Rights Commission, highlighting whether in your opinion the Zambian Human Rights Commission contributes to the promotion and protection of Human Rights in Zambia.

14 marks

Question 3

Notwithstanding the Human Rights guaranteed under the Zambian Constitution and international Human Rights treaties to which Zambia is a party, a number of statutes contain provisions that appear contrary to Human Rights norms. **Discuss** one particular statute you have studied, clearly identifying the contentious provisions and demonstrating the extent to which the statute is at variance with Human Rights norms.

14 marks

Question 4

A group of second year students are engaged in discussion: student one says “...according to the case of *Indian Express Newspapers (Bombay) v. Union of India AIR (1986) SC 515* - freedom of expression serves four broad purposes; first it helps an individual to attain self-fulfillment. Second it assists in the discovery of truth. Third, it enhances the capacity of an individual to participate in a democratic society and lastly freedom of expression provides a mechanism by which to establish a reasonable balance between stability and social change” student two says “If that is the case then why has the government of the United States of America opened a criminal investigation of Julian Assange with the intent of charging him under the Espionage Act of the USA for leaking diplomatic cables? In my opinion Julian Assange is exercising his right to freedom of expression and in the process is providing the public with access to information while additionally highlighting Human Rights issues.” Student three says “I think the same can be said of the Chansa Kabwela case. She highlighted a Human Rights issue that was of public concern and was instead charged with distributing obscene material.” student four states “As we all know not all rights are absolute, some rights are subject to derogations and freedom of expression is one such right. On the one hand, Assange via WikiLeaks is publishing documents that are classified as confidential, he is endangering national security and risking innocent lives. Kabwela on the other hand should not have published that photograph, it is contrary to traditional values, there are more subtle ways to highlight Human rights issues – that was a blatant abuse of freedom of expression.” Student five

asserts “sometimes society has to be shocked and even disgusted into action – I do not think one can abuse freedom of expression unless you are defaming someone or instigating violence.”

The students are clearly mixed up and want someone with expertise to explain some of the issues they have raised among themselves. One of the students is a friend of yours and knows that you are a third year student who has just completed a course in National Human Rights Law in which you studied freedom of expression in detail. The five students ask you to explain the function and purpose of freedom of expression in a democracy in light of the Julian Assange and Chansa Kabwela cases.

(a) **Explain** the function and purpose of freedom of expression in a democracy, using cases to underscore your explanation. **10 marks**

(b) Briefly state your opinion on whether Julian Assange and Chansa Kabwela each abused their right to freedom of expression or whether they were each well within their rights, according to article 20 of the Zambian Constitution. **4 marks**

Question 5

Discuss the protection of Human Rights in Zambia during the colonial period using case law.

14 marks

Question 6

In the case of **Christine Mulundika and seven others v. The People 1995/SCZ/25**, the Supreme Court of Zambia held that section 5 (4) of the Public Order Act was not reasonably justifiable in a democratic society, additionally the Supreme Court struck down sections 5 and 7 of the Public Order Act. It is contended that the Public Order Act Chapter 104 of the Laws of Zambia, underwent a major amendment in response to the Supreme Court’s decision resulting in the enactment of the Public Order (Amendment) Act of 1996. Others who have studied the Public Order (Amendment) Act contend that there has been no change.

Discuss the Public Order (Amendment) Act of 1996, stating in your opinion whether it has amended the Public Order Act Chapter 104 of the Laws of Zambia in a substantial manner or not.

14 marks

Question 7

Discuss the form and content of the Zambian Bill of Rights prior to 1991.

14 marks

THE UNIVERSITY OF ZAMBIA
School of Law
2nd Semester 2010/2011
Final Examination Paper – L382: Labour Law

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Date: 24th May 2011: 09:00 – 12:00 hrs

Instructions to the candidates

Time Allowed: 3 (Three) hours

This paper is divided into three sections

Section A: Answer Question One (1) which is compulsory

Section B: Answer any two (2) questions

Section C: Answer any one (1) question

Total number of questions to be attempted is four (4)

Total marks for each question are indicated at the bottom of each question.

Concessions: The students will be allowed to carry a clean copy of the following statutes:

- (i) Employment Act, Chapter 268 of the Laws of Zambia
- (ii) Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia
- (iii) Minimum Wages and Conditions of Employment Act, Chapter 276 of the Laws of Zambia
- (iv) Statutory Instruments number 1, 2 and 3 of 2011.
- (v) The Factories Act, Chapter 441 of the Laws of Zambia.
- (vi) Workers' Compensation Act No. 10 of 1999

Each answer must be supported by relevant authorities

The answers must be written in the answer booklet provided indicating the student's computer number only.

DO NOT OPEN THE PAPER UNTIL INSTRUCTED TO DO SO.

SECTION A: Answer the compulsory question

QUESTION ONE

No Good and Mischief had been in full time employment with Best Railways Ltd since 2000. Their contracts of employment have been oral since inception. They had both held various positions in the company. In 2005 both of them received letters of promotion to the ranks of Locomotive drivers. The promotion was a sign that they had good relationships with the management.

In 2006 the company's management changed hands and various new systems were put in place. The reason for the change was the continual losses sustained by the company. At a brief meeting between the new management and the employees it was resolved that the persons responsible for the losses will be dealt with accordingly by management.

No Good and Mischief knew that time had come for them to cover up their tracks. The duo had been involved in transporting cargo and passengers at a reduced rate and was sharing the money between themselves instead of accounting for it to the company. It was apparent to the other employees that the duo had been conducting their affairs in this manner. In fact to prevent the other employees exposing their schemes the duo decided to pay K1 Million to each of the 7 employees of the company.

In 2007 at the end of the financial year an incident came to light and management commenced investigations against the duo. The incident involved the goods of Cars Transport Limited. The duo had agreed to transport a car for the managing director of Cars Transport Limited in one of their carriages at half the price charged by Best Railways Limited. To the dismay of the duo the managing director was a close friend of the operational and transport officer of Best Railways Limited. The matter was revealed by the managing director when he telephoned Best Railways and asked the operational and transport officer why his cargo had been damaged in transit. The duo in the meantime had destroyed all the documents showing that the cargo has been transported from Tanzania to Zambia. Best Railways suspended No Good and Mischief and charged them with four offences:

- (i) Misuse of company property
- (ii) Failure to account for moneys in the sum of K100Million rightfully belonging to the company
- (iii) Serious misconduct in destroying important documents relating to transporting clients' goods
- (iv) Bribing fellow employees to cover up their misdeeds.

The duo did not cooperate with the investigations officer of Best Railways Limited when he approached them regarding the charges leveled against them. Best Railways Limited passed a resolution at a meeting to summarily dismiss both the employees.

The duo then wrote several letters of appeal to the management for them to reconsider their decision. They were not successful.

No Good has lodged a complaint at the Industrial and Labour Relations Court alleging that he should not have been dismissed and Mischief has decided to apply to the High Court alleging that the dismissal should be declared null and void.

Discuss all the legal issues that can be raised by the employer at the Industrial Relations Court.

(15 marks)

What would be the issues regarding employment that can be argued by Mischief at the High Court.

(15 marks)

[Total: 30 marks]

SECTION B: Answer any 2 (two) questions

QUESTION TWO

- a) Explain five (5) implied common law duties owed by an employee under a contract of service. **(5 marks)**

- b) A business selling fresh fruits and vegetables was owned by a Mr. Veg. He had hired a Mr. Bean as his sales manager. Mr. Bean was a hard worker and he was capable of successfully expanding the business of Mr. Veg. The business vision was to wholesale the commodities to the retailers who would in turn sell to the consumers.

Mr. Bean, working on commission basis spotted an opportunity to earn a lot of money for himself. Using a team of salespersons most of whom were employees of Mr. Veg, he started selling the fruits and vegetables from the vans directly to the consumers at a low price. Mr. Veg has been concerned at the large amount of money being paid out in the form of commission and on several occasions tried unsuccessfully to get Mr. Bean to accept a salary.

After a heated argument Mr. Bean resigned from his position as a sales Manager. He then set up his own business having recruited a number of Mr. Veg's salespersons. Before leaving, they had all familiarized themselves with the customer lists, pricing structures and delivery routes. Mr. Veg's business had suffered dramatically and he decides to sue Mr. Bean and others. His argument to the court was that it was a term of all employment contracts that the employees would not take with them vital secrets and work in direct competition with their former employer after terminating their employment contracts. Although nothing had been expressly stated in the original contracts Mr. Veg argued that it was implied by common law.

Advise Mr. Veg as to whether his contention is valid and write a report of the legal position of Mr. Bean and the other employees

(5 marks)

[Total: 10 marks]

QUESTION THREE

Industrial diseases with reference to factory workers are provided for under Section 78 of the Factories Act and the provision places the responsibility to notify the inspectorate as the occupier of the factory.

Discuss with decided case law how industrial and other diseases at places of worker are covered by the Workers' Compensation Act No. 10 of 1999.

[Total: 10 marks]

QUESTION FOUR

Explain in detail the procedure that can be adopted by unionised employees to settle their disputes with the employer before they can proceed on a legal strike. In what circumstance can the government intervene to resolve the dispute where the employees go on strike illegally? [Total: 10 marks]

SECTION C: Answer any one (1) question

QUESTION FIVE

Explain the following concepts in relation to employment law:

- (a) The similarities between Systems theory and Socialist theory in relation to Zambian labour law. (5 marks)
- (b) The brief facts, decision and legal principle in the case of *Pearson Daka and Others v. Family Biscuits, IRC Application No. 12 of 1984*. (5 marks)

[Total: 10 marks]

QUESTION SIX

- (a) Under Section 108 of the Industrial and Labour Relations Act a complainant can invoke the allegation of discrimination at places of work. This particular section has been relied upon by several employees. Explain the following:
 - (i) How the court has interpreted discrimination on the basis of tribal extraction or social status of the employee.
 - (ii) In order to succeed in obtaining an order of reinstatement what are the gravity of circumstances that the court will consider. (5 marks)
- (b) Discuss the domestication of Convention No. 98 on Application of the principles of the Right to Organise and to Bargain collectively for unionised employment under the Industrial and Labour relations Act Chapter 269 of the Laws of Zambia. (5 marks)

(5 marks)

[Total: 10 marks]

END OF EXAMS

The University of Zambia

School of Law

2010/2011 Academic Year Second Semester Examinations

Jurisprudence II- L412

Instructions

1. Maximum time allowed is three (3) hours plus five (5) minutes to read through the paper
 2. Answer four (4) questions, at least two (2) from each part inclusive question one (1)
 3. All questions carry equal marks
 4. Answer all the selected questions in full
 5. No statutes and or texts are allowed into the Examination Hall
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PART 1

Question One

On or about 12 December, 2010, the Bank of Zambia (“**BoZ**”) in exercise of its powers contained in Banking and Financial Services Act (the “**BFSA**”) took possession of Finance Bank Zambia Limited (“**FBZL**”), a privately owned bank on the basis of unsafe and unsound banking practices on the part of FBZL.

In furtherance of the said powers, BoZ has proceeded to terminate the interests of shareholders in FBZL and is in the process of securing a reputable bank to take over FBZL.

Section 29 of the BFSA being part of the original sections of the Act which came into force in 1994 provides:

“29(1) In this section:

(a) a bank or financial institution formed by an amalgamation, or to which assets and liabilities are transferred, in accordance with a corporate restructuring transaction to which consent has been given by the Bank of Zambia is referred to as "the new entity";

(b) an amalgamating bank, financial institution or financial business transferring assets in accordance with such a transaction is referred to as “the old entity”;

(2) When the corporate restructuring transaction takes effect-

(c) all agreements, appointments, transactions and documents relating to the subject-matter of the transaction and made, entered into, drawn or executed by, with or in favour of the old entity, and in force immediately before the transaction took effect, shall remain of full force and effect and shall be deemed to have been made, entered into, drawn or executed by, with or in favour of the new entity... (Emphasis supplied)

This laterally implies that when a corporate restructuring transaction has taken place, employees of the old entity automatically become employees of the new entity.

On the other hand, the Employment Act, Chapter 268 of the Laws of Zambia which came into force in 1965 in section 35 provides:

“Rights arising under any written contract of service shall not be transferred from one employer to another unless the employee bound by such contract consents to the transfer and the particulars thereof are endorsed upon the contract by a proper officer.”

The BoZ legal counsel who is advising on the restructuring is confused on the apparent contradiction between the 2 provisions and is now not sure as to whether the employees of FBZL all of whom have written contracts will automatically transfer to the new entity in terms of section 29 of the BFSa or will need to give consent in terms of section 35 of the Employment Act.

As a new graduate in the legal counsel's office who has just done interpretation of statutes under the topic of techniques of judicial process in Jurisprudence, using appropriate legal authorities, draft a brief legal opinion for the legal counsel to resolve the apparent contradiction between section 29 of the BFSa and section 35 of the Employment Act.

15 Marks

Question Two

On 15 February, 2011, Peter Banda a successful businessman was arrested by the police for over-speeding. Peter tried to explain to the police officers that he could not possibly have been over-speeding as he had set his state of the art BMW X6 cruise control system at the prescribed speed limit.

This explanation angered the police officers who accused Peter of being arrogant and behaving like a typical "some of us". The police officers proceeded to badly assault Peter and broke his backbone which resulted in him being paralysed from the waist down.

After a long legal battle with the State, Peter is finally awarded K3 billion as compensation by the court. The judgment sum is however not paid by the State for over two years. When he asked his lawyer as to why he was not employing execution measures to recover the judgment sum, he is told that that option is not available and the State will settle the judgment sum as and when it desires.

Peter's lawyer particularly cites section 21(4) of the State Proceedings Act which provides:

"Save as aforesaid, no execution or attachment or process in the nature thereof shall be issued out of any court for enforcing payment by the State of any money or costs as aforesaid, and no person shall be individually liable under any order for the payment by the State, or any public officer as such, of any such money or costs."

Peter is dissatisfied with his lawyer's explanation and approaches Messrs Lex Chambers, a firm of legal practitioners at which you have just been offered your ZIALE internship.

Draft an opinion for Peter explaining how the restrictive provisions of the State Proceedings Act can be reconciled (if at all) with the function of the law for achieving social justice.

15 Marks

Question Three

The 2011 tripartite general elections are again around the corner. A controversy has arisen on Parallel Vote Tabulation (“PVT”) amongst the ruling party, opposition parties and civil society organisations.

The ruling party and some of the civil society organisations argue that the Electoral Commission of Zambia (“ECZ”) is the only institution mandated by the law to conduct elections in Zambia and therefore anyone who engages in PVT would be committing an offence.

On the other hand, the opposition political parties and civil society organisations including the Law Association of Zambia (“LAZ”) have argued that PVT is constitutional law and not at all criminal.

The Constitution of Zambia in article 76 provides:

“(1) There is hereby established an autonomous Electoral Commission to supervise the registration of voters, to conduct Presidential and Parliamentary elections and to review the boundaries of the constituencies into which Zambia is divided for the purposes of elections to the National Assembly.

“(9) During any period when the Presidential and Parliamentary elections are being held, the Electoral Commission shall be responsible for the registration of voters and the conduct of elections in every constituency.”

As an associate member of LAZ who has just studied the relationship between human rights, democracy and the law, draft a short opinion for the LAZ president on the legality and legitimacy of PVT.

15 Marks

Question 4

Your roommate who is studying adult education has a very low opinion about the legal profession. She argues that it has lost its original prestige and there are no longer real lawyers’ jobs available out there.

She has noted and wondered why people trained as lawyers end up being employed as bankers, policemen, military officers and even as farmers.

She has also noted that those who do proper lawyerly work seem to be struggling and use all means possible to survive including dishonest conduct and outright thieving.

Your roommate wonders if lawyers have any role at all in the Zambian society other than “stealing” other people’s jobs and when they do work as lawyers, exploiting the unsuspecting members of the public.

Draft a short memorandum addressing your roommate’s misgivings about lawyers and on whether the lawyers have any role in the Zambian society.

15 Marks

PART 2

Question 5

The Constitution Review Commission chaired by Professor Mvunga which received submissions for the third Zambian Constitution of 1991 noted in its report:

“The Commission would like in the first place to make a general important observation on the relationship between the economy of a country and its constitution. Unless the economy of a country is supportive, no constitution, not even the best one, can provide the desired happiness and development to the people. A prosperous economy therefore, is the necessary facility to a good constitution.”

With this statement in mind, discuss the role of the law as an instrument for economic development in a developing society like Zambia.

15 Marks

Question 6

Using Zambian jurisprudence, discuss the sanctity of the concept of *stare decisis* and the strict principles on which the Supreme Court as the highest tribunal of the land can depart from it.

15 Marks

Question 7

Answer the entire question.

- (a) Section 12 of the Interpretation and General Provisions Act, Chapter 2 of the Laws of Zambia provides:

“Where any written law has been amended by any other written is itself repealed, such repeal shall include the repeal of all those provisions of other written laws by which such first-mentioned written law has been amended.”

Briefly state what the above section means?

- (b) Contrast *obiter dicta* with *ratio decidendi*.
- (c) Briefly explain the *ejusdem generis* rule of interpretation.

15 Marks

End of Examination

UNIVERSITY OF ZAMBIA

EXAMINATIONS

L422 - COMPANY LAW EXAMINATION – May 2011

Instructions

- (i) Answer Question 1 and any other three questions. In all candidates must answer four questions. All questions carry equal marks.
 - (ii) Candidates are allowed to enter the examination room with, and to consult, clean and unmarked copies of the Registration of Business Names Act chapter 389 of the laws of Zambia, the Companies Act, chapter 388 of the laws of Zambia, the Registration of Business Names (Amendment) Act, No. 7 of 2010, the Companies (Amendment) Act, No. 12 of 2010 and any other relevant statute.
 - (iii) Time allowed is three (3) hours plus 5 minutes to read the paper.
-

1. Chipwatanga owned the shares in two registered companies namely, Kilambe Enterprises Limited and Kalambe Dealers Limited. He was also a director and in effective control of both companies. An evaluation of the assets of the two companies was done in December 2009 which placed the value of Kilambe Limited's flagship real asset, an office complex adjoining a modern warehouse facility, at US\$ 1 million. The office complex and warehouse were subsequently sold to Kalambe Dealers for US\$ 300, 000 in May 2010 at a time when the market value of properties in the location of the office complex was rising tremendously. This was owing to increased economic activity following the opening of a new multi - facility economic zone in the neighborhood. In August 2010, Kilambe Enterprises Limited went into liquidation. Having been rightly informed that you are an accomplished corporate lawyer, the Liquidator approaches you for a second opinion on whether or not he could successfully apply for an order declaring Kalambe Dealers Limited to be made a constructive trustee for the proceeds of the sale of the office complex and warehouse. He also desires to know whether or not there was a breach of fiduciary duty on the part of Chipwatanga to Kilambe Enterprises Limited and why.

Using arguments and principles around unlawful return of capital proscribed by the law and the *ultra vires* doctrine, write a suitable opinion supported by relevant authorities.

2. Abednego Njobvu, a supplier of grain, and Barotse Trading Limited were involved in a costly legal action in the High Court for Zambia. Barotse Trading Limited was part of a group of companies engaged in various business activities including insurance, merchant banking and tourism. The group had a total of thirty eight companies. Barotse Trading Limited, and another company, Kiyamina Limited, were the latest addition to the group of companies though their lines of business were milling of roller meal and making of stock feed, respectively.

Owing to the worldwide recession in 2009, the group suffered a serious financial crisis which entailed scaling down operations, transferring of certain business lines from one group company to another, and in some cases closing down entire business operations. This reorganization left Barotse Trading Limited with no assets and crystallized liabilities. It was obvious to Abednego Njovu that in the event that judgment was entered in his favour, Barotse Trading Limited would have no assets to satisfy the judgment debt. He accordingly sought legal advice. An inexperienced advocate advised Barotse Trading Limited to apply for substitution of party under the Rules of the High Court so that another identified solvent group company, possibly Kiyamina, which had just been

capitalised could be substituted as the Defendant instead. A High Court Judge of considerable experience allowed the application but stayed execution on the usual terms and granted leave to appeal.

The matter is now in the Supreme Court of Utopia where you sit as a Judge. Your learned brothers on your panel have requested that you draft a judgment for their consideration.

Execute the assignment.

3. The increase in the sheer volume of statutory provisions which apply to companies has been phenomenal. The 1844 Act which first provided for the incorporated registered company comprised only 80 sections with 10 schedules. The present Companies Act No. 26 of 1994, chapter 388 of the laws of Zambia is made up of at least 402 sections and 4 Schedules, not to mention detailed subsidiary legislation made thereunder, and yet, all this is far from being considered as the complete or even latest word on the law relating to companies in Zambia.

Taking this observation as your point of departure, trace the trajectory of company law from the first Companies Act, explaining the pattern as well as the content in the development of this law so as to validate the observation above.

4. A world renown tile manufacture, Tilex Limited with its registered office in Panama, approached Mabiza and Mabuza and offers them to take up 20% equity in the company. This way, it was believed the company with manufacturing and distribution networks in all continents except Africa would establish its presence on the continent and became a truly global conglomerate. After much thinking and strategizing the duo concluded that the way to go should be first, to set up a special purpose vehicle (SPV) through which any investment between them would be held. Second to capitalize the SPV so as to make it attractive to borrow money from the market and finally to proceed with a private placement *vis a vis* Tilex Limited.

They set out to incorporate Mabuza Limited as the SPV at the beginning of January 2010. The two were to be the directors and shareholders. Their Advocates, Messrs Kalyati Chambers, having prepared all the necessary incorporation documents, confirmed by letter of 8th January 2010 that “all the documents including the declaration

under section 9 of the Act have been lodged with the Registrar and you may therefore proceed to make necessary arrangements to operationalise the company.”

The two thereupon agreed that Mabiza would transfer to the new company, his disused beer hall as part of his contribution to the capital of the company. Mabuza’s construction firm, would undertake the renovation of the beer hall so as to convert it into a modern office complex to be used by Mabuza Limited. Their respective contributions would be quantified and credited to their share account. The disused beer hall was credited at 20% above the value of the valuation price, while the renovation works undertaken were valued at 30% above the actual valuation price. On the 10th January, appropriate contracts were prepared by Kalyati Chambers and signed by each of the two directors on behalf of the company and by each of the two individuals in their capacities as suppliers. On the 14th July 2010, the company which was not fully operational yet, held its first meeting to confirm the directors and pass resolutions adopting all past purchase agreements and proposed contracts to invest in Tilex Limited. A lawyer from Kalyati chambers was present at the meeting and he claimed at the beginning of the meeting that the good news he had brought was that the certificate of incorporation would be signed by the Registrar who was in office that morning after attending a workshop in Siavonga.

In the meeting Mabiza, having changed heart on the ‘benefit’ he was getting from all this, argued that the property transfer contract with the company was void and a fresh contract should now be entered into in which the price of the former beer hall should be increased to 200% of its original valuation price. The company, which now has two additional shareholders and directors, argues that the original contract is valid and binding. At this stage, the Advocate from Kalyati Chambers excused himself from the meeting and disappeared, for good.

You are approached to give an independent opinion.

Advise.

5. Having regard to specific provisions relating to membership, conversion of companies from one form to another, conflict between articles and the Companies Act, formalities for meetings and pre-incorporation contracts, among other, analyse the extent to which you would concur that it is not preposterous to conclude that the Companies Act, chapter 388 of the laws of Zambia is paradigmatic for approbating and reprobating.

6. Explain why the requirements for conversion of companies from one form to another as set out in Division 2.4 of the Companies Act are not uniform, stating in the process whether the requirement of the consent in writing of all members prescribed in some instances overrides resolutions passed by members at duly convened meetings to convert a company from one form to another. In the case of conversion by default of a private company to a public company explain whether if one month after the issue of a relevant notice by the Registrar to a company, the contravention is not rectified the court would make the order applied for by the Registrar if satisfied that the contravention was deliberate but not likely to be repeated.
7. In **Attorney General v Great Eastern Railway Co** (1880) 5 AC 473 Lord Selborne LC remarked that:

“It appears to me to be important that the doctrine of *ultra vires*, as it was explained in that case (*Ashbury Railway Carriage Co. v Riche*) should be maintained. But I agree ... that this doctrine ought to be reasonably, not unreasonably, understood and applied, and that whatever may be regarded as incidental to, or consequential upon, those things which the legislature has authorized ought not (unless expressly prohibited) to be held by judicial construction, to be *ultra vires* ...”

Critically assess the significance and relevance, if at all, of this statement to today's company law in Zambia.

8. Write short notes on any four of the following:
- (a) Whether membership and shareholding are one and the same
 - (b) The relevant contract under the Companies Act
 - (c) The relevance of a Notice of Cessation under the Registration of Business Names Act to a company under the Companies Act.
 - (d) The difference between the registered office of a company and the registered records office of a company.
 - (e) Share warrants.

_____END_____

THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW
2010 ACADEMIC YEAR, 2nd SEMESTER EXAM
L432- THE LAW OF INTERNATIONAL ORGANISATIONS

TIME: 3 hrs (plus 5 minutes to read through the question paper)

ANSWER: FOUR QUESTIONS; QUESTION ONE IS COMPULSORY).

NO STATUTES ALLOWED

TOTAL MARKS: 60

1. a) The mere fact that the majority of States, in voting on a resolution, have complied with all the relevant rules of form can not in itself suffice to remedy any fundamental defects, such as ultra vires, with which the resolution might be afflicted. ICJ, *The 1990 Advisory Opinion on the Legality of the Use by a State of Nuclear Weapons in Armed Conflict*. (14 Marks). **Discuss**
- b) Ethiopia and Eritrea are involved in a dispute concerning the demarcation of borders. Eritrea, which has accepted the jurisdiction of the ICJ brings the matter before the ICJ. Ethiopia has not accepted the jurisdiction of the court

but when it is informed that Eritrea has taken the matter before the ICJ, it decides to argue on the merits of the case. Can the ICJ assume jurisdiction of the case? (7 Marks)

2. a) Because of the war in the Eastern part of the Congo, the General Assembly acting under Article 12 of the UN Charter is asking States to contribute to the peace keeping mission in Congo. Certain States are of the view that they may be asked to contribute to the administrative functions of the UN but not to the non-administrative functions. Write an opinion on whether member States are mandated to contribute to the non-administrative functions of the UN and why. (8 marks)

b) What is the effect of the decisions that have been declared null by the ICJ? (5 marks)
3. General Assembly resolutions, even if they are not binding, may sometimes have normative value. *Bowett, The Law of International Organisations p.276.* (13 Marks) **Discuss**
4. a) Al Bashir, the President of Sudan has been indicted by the International Criminal Court for crimes against humanity and Genocide. Sudan is arguing that it has not signed the Rome Statute of 2002 on international crimes and therefore

the ICC has no jurisdiction over it. Where does the ICC derive its Jurisdiction from? **Discuss** (7 Marks)

b) How effective are institutional acts adopted by international organizations? (6 Marks)

5. a) Libya and China have a treaty which states that in case Libya is in need of arms China will supply such arms as requested. Following the 2011 UN SC resolution 1973 which imposed a no fly zone on Libya (China abstained from voting), Libya has asked for help from China. Is China obliged to uphold the provisions of the treaty? Please give reasons. (7 Marks)

b) Discuss how the settlement of disputes between States and non-State actors has evolved. (6 Marks)

6. 'The problems that are experienced by the AU are well-known; they include political interference by some member states in the organisations' work, as well as significant difficulties in the implementation of the decisions taken in their framework due to the lack of political will on the part of member states.' *Bowett, The Law of International Organizations p. 264. (13 Marks)* **Discuss**

7. What measures have been put in place to ensure that there is accountability among the three organs of the EU? (13 Marks)

END OF EXAM