

THE UNIVERSITY OF ZAMBIA
UNIVERSITY EXAMINATIONS – 2001-2002
FIRST SEMESTER EXAM PAPERS
SCHOOL OF LAW

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| 1. | L111 | - | Legal process |
| 2. | L141 | - | Introduction to criminal law |
| 3. | L151 | - | Constitutional Law I |
| 4. | L211 | - | Legal process |
| 5. | L221 | - | Law of contract |
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| 7. | L241 | - | Criminal law I |
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| 19. | L431 | - | International law |
| 20. | L451 | - | International trade law |
| 21. | L461 | - | Introduction to intellectual property and competition Law |

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**THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW**

FIRST SEMESTER FINAL EXAMINATIONS APRIL, 2002

L. 111 - LEGAL PROCESS

TIME : 3 HOURS [Plus 5 minutes to read through the paper].

- INSTRUCTIONS: (I) **QUESTION ONE IS COMPULSORY.** All students must Answer **QUESTION ONE PLUS ANY OTHER THREE QUESTIONS.**
- (II) ONLY RELEVANT AND UMARKED STATUTES MAY BE BROUGHT INTO THE EXAMINATION ROOM
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QUESTION ONE

One of your colleagues at work has been nicknamed 'Machaya' because of his tendency to fight with anyone who annoys him. Unfortunately Machaya is also a wife beater. One day after suffering severe injuries to her face and body due to Machaya's blows, she decides that enough is enough. She files a criminal complaint at the nearest police station and sues for divorce in the Local Court. Machaya knows that you are presently at UNZA taking the Certificate in Law programme. He asks you to advise him as to his criminal culpability because as far as he knows customary law allows a man to beat his wife. Since he married his wife under customary law, he also feels that he should have no obligation to pay alimony, maintenance or share the household property with his wife after divorce. Advise him on both the criminal and civil aspects of his case. Your advice should make reference to the Local Courts Act and to any relevant cases.

QUESTION TWO

Describe the powers of the Subordinate Court.

QUESTION THREE

Write a coherent statement which includes and links the following words:

- a) res judicata
- b) summons
- c) appeal
- d) testimony
- e) adjudication

What process is described by the statement as a whole?

QUESTION FOUR

From your understanding of *Kaniki v Jairus* 1967 S.J.Z 92, indicate the following:

- a) the material facts of the case
- b) the decision of the court
- c) the ratio decidendi of the case

QUESTION FIVE

Choose any ONE of the following rules and explain its meaning. Support your answer with at least one Zambian case:

- a) Literal rule
- b) Golden rule
- c) Context rule

QUESTION SIX

Write short notes on any TWO of the following:

- a) a bill
- b) backbenchers
- c) the speaker's mace

QUESTION SEVEN

Outline the key attributes of a good legal system.

*****END OF EXAMINATION*****

THE UNIVERSITY OF ZAMBIA

APRIL, 2002 UNIVERSITY EXAMINATIONS

[L.141 INTRODUCTION TO CRIMINAL LAW]

QUESTION ONE: [COMPULSORY]

Choose two of the following topics and make brief comments on them:

- a) ' **Ignorantia juris quod quisque scire tenetur non excusat.**

This Latin maxim, when translated into English means that ignorance of a fact excuses, but ignorance of the law does not excuse. This principle was more clearly stated in the case of **Bilbie v Lumley [1802] 2 East, 469**, in the following words:-

Every man must be taken to be cognisant of the law, otherwise there is no knowing of the extent to which the excuse of ignorance might be carried. It would be urged in almost every case.

This being the general legal position of ignorance in Law, would you say that there is any situation where an accused person would plead ignorance of the Law as a defence? If your answer to this question is in the positive, frame an example of a statutory criminal offence to which an accused would successfully plead ignorance of the Law.

- b) The rule that in a criminal trial the prosecution bear the burden to prove the charge against the accused beyond all reasonable doubt was formally laid down in the case of **Woolmington v D.P.P.[1935] A.C. 462 HL**. Explain the mistake which the Judge made in that case which prompted the Appeal court to make this legal proposition. If the accused advances any defence to an offence, he is also required by criminal procedural law to adduce evidence to establish his defence. How is this burden called?

Would you say that this burden placed on the accused is a form of shifting of the burden of proof onto the accused from the prosecution?

- c) Cite the statutory provision in the Criminal Procedure Code which talks about '**autrefois acquit**' and '**autrefois convict**'. But also quote the words of the Penal Code provisions which permit the re-trial of an accused for the same offence for which he has already been tried.

Question 2:

Compare the defence of insanity with that of Diminished Responsibility, bringing out all their distinctions and similarities. Cite at least one Zambian case and one foreign case where insanity was raised as a defence. [Two authorities required].

Question 3:

Discuss the legal position in Zambia of persons who act in concert and commit a criminal offence. Are they punished equally or differently if their roles in the crime were different? Cite at least one decided Zambian case to support your answer.

Question 4:

An intoxicated offender can advance the defence of intoxication at his trial.

Discuss, very briefly, the nature of this defence and in what type of cases it is available. Cite at least one precedent to support your answer.

Question 5:

Write brief notes on two of the following:-

- a. Methods of bringing an accused person before court
- b. The justification for Retribution as a principle of punishment
- c. The defence of necessity.

Question 6:

Chilufya Mwaba and Thandizani Banda, who are both residents of Chipata Town, in the Eastern Province of Zambia, sneaked out of the Zambian border and stole one goat and three sheep from a village in Malawi. They killed the three animals whilst in Malawi and sold the meat. With the proceeds of the sale they bought clothes and household groceries. They were not prosecuted in Malawi. When they returned to Zambia, the Zambian police, acting on a tip from members of the public, have arrested the two men for theft of the three animals. In your considered legal opinion, on what legal basis have the Zambian police arrested Mwaba and Banda? Cite the relevant provisions in any of the Zambian statutes.

Would your answer be different if the two men had been prosecuted for the offence of stock theft in Malawi, and had served their sentences, and were later arrested in Zambia for the same?

Question 7:

Most homicides are unlawful and criminal. However, there are a few circumstances which render homicides to be lawful and not punishable. Briefly discuss two sets of circumstances in which killings of humans ~~persons~~ are punishable, and two sets of circumstances in which killings are not punishable. Cite at least one hypothetical case in each pair of these circumstances.

THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW

FIRST SEMESTER EXAMINATION: APRIL 2002

L151: CONSTITUTIONAL LAW 1

TIME: THREE (3) HOURS

INSTRUCTIONS: Answer Question One (1) and any other Three (3) Questions

1. Isabel Phiri has just been admitted in the Law School and she is very excited about this development in her life. She has been making inquiries about the various courses being offered in the Law School. She has come to you as a law student and wants to know why it is necessary to study L151. Please advise her.
2. James Banda is a fellow police officer in the Zambia Police Service. Unlike you he has had no opportunity to pursue the Certificate in Law programme. He has, however, decided to make use of your knowledge of law. He wants to know from you what the phrase: "Judicial review of legislative and administrative actions" means.
3. ✓ Charles Mwanza has been admitted into the Law School of the University of Zambia to pursue a Certificate in Law. He has borrowed your notes in L 151. He wants to be ahead of the class, when the programme finally starts. He has come across the term "constitutionalism" in your notes, but has failed to understand what it means. He has come to you and he wants you to explain to him what it means.
4. Astridah Chisha has keen interest in constitutional matters. She has discovered while browsing through the Constitution of Zambia that the executive power of the Republic is vested in the President, the legislative power in the legislature and then there is the judicature, which exercises the adjudicative power. She wants to know why the drafters of the Constitution made such an arrangement. Please advise her.
5. ✓ Moses Phiri is a friend of yours and wants to test your knowledge of Constitutional Law. He wants you to explain to him what "supremacy of the constitution" means. Explain to him.
6. John Mackenzie is a police officer based in London. He is in Zambia to help in the training of Zambian police officers at Lilayi Police Training School. He has learnt

that you are a police officer just back from the University of Zambia pursuing a Certificate in Law. He has also learnt that one of the courses you studied is Constitutional Law. He wants to know the differences, if any, between the Zambian Constitution and the British Constitution. Explain to him.

7. John Banda is a police officer who has been transferred from Lusaka to Chilubi Island by the Inspector General of Police. According to him he has been transferred because, contrary to the instructions from the Inspector General of Police, he arrested and charged the son of a well-known powerful Minister, with the murder of a schoolgirl. Before he can decide on what to do next he wants to know whether there was anything wrong in what he did.

----- End of Examination -----

**THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW
FINAL EXAMINATIONS MARCH 2002**

L211 - LEGAL PROCESS

TIME: 3 Hours plus 10 minutes to read the examination paper

INSTRUCTIONS:

(i) QUESTION 1 IS COMPULSORY. ALL STUDENTS MUST ANSWER QUESTION 1 PLUS ANY OTHER THREE QUESTIONS.

(ii) ONLY RELEVANT AND UNMARKED STATUTES MAY BE BROUGHT INTO THE EXAMINATION ROOM

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1. Fred Mukristu is the president of Zambia Enterprises Limited and financially very well off. He is personally worth several hundred million dollars. Fred has been married to his wife Venus for twenty years and is well and truly sick of her. He decides to obtain a divorce. Since he married Venus under customary law, he institutes proceedings in the Lusaka Boma Class A Local Court. Fred considers himself too superior to appear before the court. He arranges for his nephew to file suit and obtain the divorce. Venus refuses to attend the hearing but to her consternation, the matter is heard and concluded in her absence. Recognising Fred's standing in society, the local court justice Mr Deadwood Hachipopola was only too eager to grant the divorce. Venus appeals to the High Court for Zambia raising both procedural and substantive issues.

What are her arguments? On the basis of your understanding of the Zambian legal system advise her as to the chances of success. Your answer should identify the provisions under the High Court and Local Court's Acts, which can be used to support her appeal. **(25 marks)**

2. Write short notes on each of the following:

- a) *Kasote v The People* 1977 Z.R. 75
- b) *Munga v Zambia Railways Board* 1974 Z.R. 259
- c) *Kaniki v Jairus* 1967 S.J.Z. 92 **(15 marks)**

3. Read the case below very carefully. Applying your newly acquired skills on precedents, find and explain:

- a) the ratio decidendi
- b) the obiter dicta
- c) what was “distinguished”

MOTOR HOLDINGS (Z) LTD v RAJ RAMAN SCZ Judgment N0. 17/2001

This judgment is a ruling on a motion moved by the respondent. When we heard the motion, we denied it and said we would give our reasons later. This we now do.

On 8th November, 2000, a panel of three Judges heard the appeal in the case and this was in keeping with Section 3 of the Supreme Court of Zambia Act, CAP. 25, which in Subsection 1 ordains that the Court should sit with an odd number of Judges being not less than three. The panel in question consisted of Ngulube, CJ, Chirwa, JS and the late Muzyamba, JS. After the hearing but before delivery of the judgment, the Court suffered the grievous loss of Justice Muzyamba who expired. In keeping with a longstanding practice of this Court, the judgment of the Court if it would have otherwise been a single unanimous judgment or the individual judgments where at least two Judges are agreed, is delivered as one by the majority. This is what we did in this case.

The respondent brought a motion colourably under our slip rule, that is Rule 78, alleging unspecified accidental slips or omissions. At the hearing, Counsel abandoned that line of argument without advancing a single submission. Instead, he dealt with a proposition advanced in the motion to the effect that where one of three Judges who heard an appeal dies before the judgment is delivered, the remaining two Judges are deprived of the necessary quorum and therefore lack jurisdiction to render a judgment by the majority. This startling proposition was said to be supported by the case of *Kelly and Company – v-Kellond (1)*. Counsel relied on the following observation by Lord Esher M.R., at page 572:-

“This Court is composed of six members, and if at any time a decision of a lesser number is called in question, and a difficulty arises about the accuracy of it, I think this Court is entitled, sitting as a full Court, to decide whether we will follow or not the decision arrived at by the smaller number”.

A perusal of the Master of the Roll’s preceding and subsequent remarks shows that the point – which Counsel here has missed – was that the Court of Appeal was there discussing the principle of stare decisis which is still followed to date. The Court of Appeal follows its own previous decisions unless resiled from for very good cause in a subsequent case. They were not discussing any question of sitting to reverse or vary a final judgment already delivered. Most certainly, they were not discussing what should happen when one of the Judges who heard an appeal dies before judgment is rendered. It was suggested that a rehearing should ensue as a matter of course. While this may be inevitable where the remaining Judges are evenly divided – (such as one against one; two against two; and so on)-no rehearing can be necessary when a majority of the Judges are agreed and even assuming had the deceased Judge been alive he would have dissented. The suggestion that the majority cannot carry the day flies in the teeth of the law, the very Section 3 of the Supreme Court of Zambia Act cited by Counsel who relied

on Subsection 1 which requires an uneven number to sit, not being less than three. In Subsection 2, it says: -

“(2) The determination of any question before the Court shall be according to the opinion of the majority of the members of the Court hearing the case”

The Subsection is an exact and complete answer to Counsel’s submissions. It follows therefore that in the event of the death of a Judge who was one of the three members of an appellate Court which heard a case, a rehearing must take place only if the remaining two do not agree and hence there is a deadlock. If the remaining two agree, they constitute the majority and their decision is the decision of the Coram. We consider that our approach is the correct one and that it has some support from paragraph 726 of Vol. 10, Halsbury’s Laws of England, 4th Edition; where examples are given in the notes of a judgment written by a deceased Judge being adopted as his own and delivered by a colleague who sat with him; and an example of a case being sent for rehearing where two remaining Judges did not agree.

It was for the foregoing reasons that we rejected the motion which, as it turned out, was not even under Rule 78 any more. Costs follow the event. **(15 marks)**

4. Compare and contrast the relevance of the following sources of law in Zambia:

- a) International law
- b) Christianity **(15 marks)**

5. What is the precise meaning of each of the following:

- a) per curiam
- b) All E.R., Q.B.D., A.C., R.&N., W.L.R.
- c) lawyer **(15 marks)**

6. Describe the complete process of enacting legislation in Zambia. **(15 marks)**

7. You have just completed your first semester in the school of law. You are convinced that the present legal system is in dire need of urgent reforms. The Law Development Commission would like you to suggest one amendment to the laws, which would ensure that the major difficulties with the system are eliminated with one stroke of the pen so to speak. What amendment would you propose and why? **(15 marks)**

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA
UNIVERSITY FIRST SEMESTER EXAMINATIONS – APRIL, 2002
L221
LAW OF CONTRACT

TIME: **THREE (3) HOURS**

INSTRUCTIONS: **ANSWER QUESTION ONE(1) AND ANY OTHER THREE
(3) QUESTIONS**

1. From time to time Andrew sold surplus stock from his Jesmondine warehouse after advertising it in the *Lusaka Tribune*. On May 31st the following appeared in the *Lusaka Tribune*:

“For sale; two new video recorders – a Sony vh5 at a reserve price of K1 million and a Phillips 1011 at a reserve price of K800,000.00 : Bids can be submitted on Saturday 3rd June between 14:00hrs and 16:00hrs at Andrews warehouse in Jesmondine. Sale subject to Andrews standard terms and conditions. The highest bidder will be the lucky one.”

At the warehouse was a box marked “bids for today’s sale items” and on the Wall was a poster setting out Andrew’s “terms and conditions.” One of the terms provided:

“All offers for sale items will be considered up to the close of business on the Monday following the day for submitting bids on these premises.”

Another term provided:

“This sale is a matter of honor only and no legal action may be brought.”

Belinda, having seen the advertisement, telephoned Andrew on 2nd June and offered him K1.3 million for the Sony vh5. Andrew accepted the offer immediately and arranged the following advertisement to appear in the *Lusaka Tribune* of 3rd June:

“Owing to unforeseen circumstances Andrew has been obliged to replace the Sony vh5 with a Sumsung 205 in today’s sale.”

Charles who did not see the second advertisement, placed a bid in the box at 14:00hrs on 3rd June, offering to buy the Sonyvh5 for K1.2 million. David

placed a bid in the box soon afterwards offering to buy the Phillips 1011 for K1million. Neither Charles nor David read Andrews terms and conditions. Each of their bids was the highest in the box for the respective items.

On Tuesday 6th June, Emily met Andrew and offered him K900,000.00 for the Phillips 1011 saying that she needed it as a present for her parents. As the parents were friends of Andrew, he accepted this offer.

Advise Andrew on his legal position with regard to Charles and David.

2. John ran a taxi business in Kitwe. In June 1998, he entered into a 3 year agreement under which he hired a number of vehicles from Motor Leasing Limited at a rental of K1 million per month. In January 1999 a government subsidy scheme made public transport much cheaper and more services were available. Taxi use declined substantially.

Because of John's resulting financial difficulties and because he was a valued customer, Motor Leasing Limited and John entered into a "supplementary agreement" in February 1999 which provided for a reduction of 20 per cent in the rental "for 12 months in the first instance until the demand for taxis improves."

For three weeks in November 1999 there was a public transport strike in Kitwe which was a bonanza for taxi owners. The improvement was short lived and December figures showed that taxi demand had not otherwise picked up.

In January 2000, Motor Leasing Ltd told John that the rental arrangement was being continued for a further 12 months at the lower rate as long as some adjustment was made for the November strike. John's lawyers wrote to Motor leasing Ltd informing them that such a proposal was unacceptable and that John was not prepared to continue with the hiring arrangement unless the rent reduction continued. Reluctantly Motor Leasing Ltd agreed to the extension.

In May 2000 another public transport strike occurred and Motor Leasing Ltd gave John four weeks notice, to expire on 26th June 2000, that the full rental would be charged thereafter. The transport strike ended on June 2nd and John's business showed no signs of improving once public transport was back on the road. Accordingly, John told Motor Leasing Ltd that, as far as he was concerned, the arrangement would continue at the reduced rate until January 2001. Motor Leasing Ltd replied that it was going to sue for the difference between the original rent and the reduced rent for the entire period from February 1999.

Advise John.

3. Gale wished to acquire a vehicle for use in her business. She hired one from fleet Financing Limited at a monthly rental of K2million for a period of three years. The contract contained a “replacement option” whereby Gale could obtain a new vehicle for a further three years of the “same or equivalent new model from the manufacturers.”

The option contained the following terms:

“Increased price

The rental price will increase by the percentage increase in the price of the new model compared with the old as at the date of the inception of the hiring period.

Increased parts and repairs

The amount of the rental will also be increased if the average cost of repairs and parts in the industry has increased by more than 10 per cent over the increase in the cost of the vehicle over the hire period. In calculating the increased rental one quarter of the hire charge will be deemed to represent the cost of repairs and parts.”

It was also stated that a hirer wishing to exercise the option should return an attached slip by the due date (which in Gales case was 31st March) indicating whether or not the hirer was taking up the offer.

During March Gale had various conversations with Harry, Fleet Finance Ltd’s manager, about the rental under a new hiring of the manufacturers new model of the vehicle she was using. Because the rental figures mentioned were so high, Gale returned the slip indicating her intention not to exercise the option.

When the alternative arrangements she had in hand for a replacement car seemed to fall through, she telephoned Harry on 29th March and told him she intended to take up the option. Harry told her to send in a letter headed “Acceptance of new hiring arrangements”, and stating that “the assessment of the amount of the rental was to be left to the discretion of Fleet financing Ltd.” Gale posted this letter on Friday 31st March but it was not delivered until Monday 3rd April.

On 4th April Harry posted a form to Gale setting out a figure of K2.8 million as the “rental due on replacement vehicle as per standard option formula.” He asked Gale to return her vehicle to the Fleet Finance Depot where her replacement vehicle was available.

Also on April 4th Gale heard that her alternative arrangements for a vehicle were after all satisfactory and she immediately drove the vehicle to the Depot, delivering with it a letter declining to take a replacement vehicle from Fleet Finance Ltd.

Advise Fleet Finance Ltd on whether a new contract exists between itself and Gale for the hire of a replacement vehicle.

4. Ron and Betty had been married for 10 years when they separated (5 years ago). During their marriage they had lived together in a house on a Lusaka property. Ron was the registered proprietor of the property. He had bought the house prior to meeting Betty. Upon separating, however, Betty remained in the house while Ron moved to Ndola where he lived in an apartment and worked in a high paying legal job. While in Ndola, Ron continued to pay the rates and to meet the mortgage repayments in respect of the Lusaka property. Two years ago, Ron wrote Betty saying that although he did not want to resume a relationship with Betty (as Betty felt likewise with respect to Ron) he did think it would make "good economic sense" if he and Betty began cohabiting again so that they could pool their economic resources to their mutual benefit. He said that if Betty allowed him to move back and live in the Lusaka house on a permanent basis and to cooperate with him as his "economic partner" he would 'put the house into her name so that it would be hers upon his death.' Although very reluctant to give up her financial freedom, Betty phoned Ron and agreed to his proposal. On the faith of this agreement, Ron resigned from his high paying job in Ndola, gave up his apartment and moved back to the Lusaka property. Ron and Betty opened joint bank accounts and lived as economic partners. They shared grocery, electricity and telephone expenses; they contributed in equal shares to re-carpeting the entire house and to building a solarium. Ron, however, continued to pay the rates and to make the mortgage repayments on his own. But at no time after his return did Ron and Betty live as husband and wife. They chose to live in separate parts of the house and only spoke to each other when necessary. Ron, however, did not bother to put the house into Betty's name. Two months ago Ron died suddenly. Relying on the legal title, Ron's executors have brought proceedings to eject Betty from the house.

Advise Betty

5. What implications does the doctrine of promissory estoppel have for our understanding of the binding nature and the enforcement of promises? Use decided cases to illustrate your answer.

6. Chanda is a client of your firm. He has told the senior partner of the firm the following facts;

“Last month I wanted to buy a race horse for my wife and so I went to the Town and County Auctions and there had a look at a horse called *Hot Flash* which was owned by Mwanza, a horse dealer. I knew that hot flash was sired by *Swan song* and that he was considered a very good coming horse and had won many races. When I inspected Hot Flash I noticed he had a slight running of the nose and thought it was a cold, and remarked to Mwanza that I had overheard one of the stable hands say that there was something wrong with the horses breathing. Mwanza said rubbish!!! There is nothing wrong with the horse at all. If there was I would soon tell you.” Some time afterward we agreed a price of K25 million and we agreed that delivery of the horse should occur on October 18th (a month later) when property in the horse should pass. Time was to be in all respects of the essence –i.e. we both agreed that I had to be ready to pay on that date. We went off to the sale rooms and reduced our agreement to writing. The contract set out in the usual way the price, the description of the property sold (“Hot Flash, a racehorse”), the time for delivery and payment, and the parties. But it made no mention of the oral assurance as to the soundness of the horse. At the time I thought it was odd, but I did not want to reopen the bargaining because I thought I had a good buy. After we had signed the agreement we went to the Holiday Inn for a beer. Then Mwanza said to me, “look, if anything is wrong with Hot Flash you can bring him back to me and the deal will be off. I can’t be any fairer than that.”

That night I did not sleep too well. All that money and a horse with a dripping nose. What if the breathing defect was serious? Had I made a bad buy? In the morning I rang Mwanza and insisted that my vet be allowed to inspect Hot Flash. Mwanza said no and referred me to our contract which said nothing as to the soundness of the horse. He thought therefore that it was quite irrelevant what my vet thought. I guess I lost my temper and threw up my contact. I told him what he could do with the wretched horse. Mwanza just listened, said nothing and hung up. I heard nothing more about it and thought the whole deal was off. But last week (i.e. on October 19th) I got a letter from Mwanza’s Lawyer saying that they are suing me for breach of contract. Then I read in the paper that they had resold Hot Flash and that the new buyer recently discovered an obstruction to Hot Flash’s left nasal passage, and it is extremely doubtful whether he will be able to race again. I phoned up Mwanza’s lawyer and asked him to comment on this and he said his clients position is that “my wrongful anticipatory renunciation waived the need for them to show that they were ready and willing to perform at the time of performance so that Hot Flash’s present condition is quite irrelevant.”

The senior partner of your firm, requests you to advise him on the legal issues and the possible options open to Chanda.

7. (i) On September 15th Jack agreed to buy from Paul a cargo of dung-beetles which had been shipped aboard Paul's ship the 'Bucket o' Rust', expected at Durban on 24th September. Unknown to both parties, the dung beetles had already been sold by the captain of the 'Bucket o' Rust' as they were about to die from heat exhaustion. Owing to a scarcity of dung-beetles, the market price had risen sharply by 24th September and Jack brings an action against Paul for damages. What are his chances of success?
- (ii) Both Ken and Mulenga think that Mulenga's sculpture is by Mwiiinga, a world renowned artist, and worth over \$10,000.00. Acting under this impression Ken agrees to buy it from Mulenga for \$10,000.00. In fact the sculpture is by an upcoming artist with the same name and worth only \$500.00. What remedies are available to Ken who now realizes his error.

Would your answer be any different if Ken alone thinks that the sculpture is by the renowned artist and Mulenga realizes that Ken is buying under that impression?

THE UNIVERSITY OF ZAMBIA
FIRST SEMESTER EXAMINATIONS - APRIL, 2002

L. 231 – LAW OF TORTS

TIME : THREE HOURS [Plus 5 Minutes to read through the Question Paper].

INSTRUCTIONS: ANSWER QUESTION ONE AND ANY OTHER THREE QUESTIONS.

QUESTION ONE : [This is a Compulsory Question]

Damiano Chidumbo is a Tenant on Plot 888, Nsansa Road, residential stand, in Chililabombwe on the Copperbelt. The registered owner [or Landlord] of the house is Nemulanda Nshaliko. After residing in the house for three years, Damiano has decided to turn the house into a night club, and has erected a bill-board at the entrance which reads 'AUTHENTIC HEAVEN.'

The doors of this Night Spot are opened to the public from 18:30 hours to 03:00 hours in the small hours of the following day, everyday from Monday to Friday. On Saturdays and Sundays the place is open to the public all night long, from 18:30 hours to 06:30 hours of the following day. All kinds of music are played there, including the heavy and noisy rhumba and soul music beats.

Three residents in the neighbourhood, whose houses are all less than 200 metres away from 'Authentic Heaven' have taken legal action against both the Tenant and the Landlord for a court order to either force them to abandon running a Night Club at the house or reducing the business hours to three and half hours from 20:00 hours to 23:30 hours.

- a. Indicate and explain the tort which Damiano Chidumbo is alleged to have committed against his three neighbours. State whether the tort is of a public or private nature.
- b. Is it the occupier [Tenant] or Landlord who is generally liable to a third party for this kind of tort when committed on the premises?
- c. In what two circumstances can the Landlord be liable for a tort committed on his property?
- d. In the celebrated case of ST. HELENS SMELTING CO. V TIPPING [1865] II HL. 642, the court enumerated the factors that had to be considered before arriving at a decision as to whether the tort named in [a] above has been committed. Name and explain any four of these factors.
- e. State whether the tort you have named in [a] above is actionable 'per se'.

QUESTION TWO:

What are the three ways in which trespass to land can be committed; and, in the process of your discussion, state:

- i) Whether it is the Tenant or Landlord who has the capacity to sue and be sued in trespass.
- ii) The meaning of 'mesne profits'.
- iii) The viability of the defence of 'jus tertii' in trespass to land.

QUESTION THREE:

The general remedy for most actions in tort is an order for damages. There are, however, cases where monetary recompense would not adequately atone or ameliorate the harm caused to the plaintiff.

Briefly discuss two extra-judicial remedies that a plaintiff may resort to, besides an award for damages. Explain each remedy clearly.

QUESTION FOUR:

In 1865 the house of Lords, when hearing an action in torts, was unable to determine whether the tort was in negligence, trespass or nuisance. As a result, they formulated an entirely new tort, to which they attached strict liability. Discuss the essence of this new tort and name two main defences to it.

Support your answer with at least two authorities.

QUESTION FIVE:

KAMBOLE and HAMACHILA are next door neighbours in LINDA Compound, South West of Lusaka. Kambole is a road-cleaner in ChaChaCha Road, Lusaka town centre, whereas Hamachila is a Senior Human Resources Manager at the Ministry of Agriculture and Natural Resources Headquarters. Hamachila also owns a small-holding in Mapatizya west in Southern Province, where he keeps 83 head of cattle.

Due to the wide disparity in their social-economic positions, their relationship was not cordial. One day in January, 2002 Kambole decided to 'fix' Hamachila by falsely reporting him to the Police that he was trafficking in 'super Tombwe', a euphemistic name for cannabis or Indian hemp. This drug is also known by various other names in Zambia, such as 'the weed,' 'ibange,' 'chamba,' 'mbanje,' or 'rastafarian communion.'

As a result of the report, Hamachila was arrested by Chawama Police, detained in police cells for four days, undergoing intensive interrogations. On the fifth day, he appeared before a magistrate's court at the Boma in Lusaka, charged with 'illegally trafficking 'in

‘cannabis sativa lin.’ Trial took place and Hamachila was acquitted of the offence. Kambole was one of the witnesses against Hamachila. Hamachila, who is now a distressed person, has approached you for advice as to what he could do to clear his name of the blemish placed on it by Kambole.

What are the elements of the tort, if any, that has been committed against Hamachila?
What remedy would you advise Hamachila to seek?

QUESTION SIX:

Write brief notes on any three of the following topics:

- a. ‘De minimis non curat lex’.
- b. An immuendo. Give an example.
- c. Absolute privilege. Give two examples.
- d. ‘A defamatory statement’.
- e. Vicarious liability.

QUESTION SEVEN:

Citing the relevant decided authorities, discuss the relevance of malice and motive in the Law of Torts. In your argument, consider the position of malice in the tort of malicious prosecution, and in the defences of Truthfulness.’ ‘ fair comment,’ and justification in the tort of defamation. You may cite appropriate authorities.

*******END OF EXAMINATION*******



THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW

UNIVERSITY EXAMINATIONS - MARCH, 2002

L. 241 – CRIMINAL LAW - 1

TIME : THREE HOURS [PLUS 3 MINUTES OF
READING THROUGH THE QUESTION
PAPER]

INSTRUCTIONS :
QUESTION ONE IS COMPULSORY

Answer Question [1] and any other [3] Questions.
The Penal Code, the Criminal Procedure Code and the
Republican Constitution may be brought and referred to in
the Examination Room.

Question One (Compulsory):

Mark Phiri and his wife Beauty Bwalya had lived a very unhappy married life for six years, from 10th January, 1995 when they went through their marriage ceremony up to 15th October, 2001, when Beauty Bwalya died of gun-shot wounds. Through out the duration of their marriage, Mark was in the habit of going out on heavy-drinking and debauchery sprees for some days, without providing for his wife Beauty and their two small children, Aggie, aged four and Bupe, aged two years. As a result of that irresponsible conduct by Mark, both his children were malnourished and developed a food-deficiency disease called 'Kwashiorkor'.

On the night of 15th October, 2001, Beauty invited Derrick Nyati to her house, to keep her company for a couple of hours before Mark Phiri returned home after midnight as he usually did. Sadly, on that fateful day of 15th October 2001, Mark unprecedentedly returned home early, at 22:45 hours, after taking only two pints of Castle beer, and was only slightly drunk.

He usually imbibed an average of nine to thirteen pints of Castle beer each evening. Upon arrival at his house, he found his wife Beauty and Derrick '**flagrante delicto**'. Without talking to either of them, Mark pulled out his pistol from his left hand side jacket pocket and shot dead both his wife Beauty Bwalya and her lover Derrick Nyati. Both died instantly and their bodies were taken to the local morgue.

Mark has now been charged with two counts of murder, and has advanced two defences of provocation and intoxication to each charge. Briefly discuss the essence of each of these defences and state whether both or only one of them is a valid defence to Mark in the circumstances. Support your answer with one or more precedents.

What offence or offences are there in the Penal Code, CAP 87 of the laws, which Mark committed when he failed to provide for his unemployed wife and children? Cite the relevant provisions in the Code.

QUESTION TWO:

Chilufya Mwaba and Thandizani Banda, who were both residents of Sesheke District in the Western Province of Zambia, sneaked out of the Zambian border and entered Namibia, where they stole two cows. They slaughtered the two animals and sold the meat in Namibia itself. With the proceeds of the sale they bought clothes, tinned food stuffs and electronic goods.

Before they could return to Zambia, however, they were arrested by the Namibian Police and charged with stock theft. They were convicted of this offence and served their sentences of five years imprisonment with hard labour in Namibia itself. When they returned to Zambia, the Zambian Police at Sesheke again arrested them for stock theft and will be tried within the next six months.

What provisions are there in Zambian Penal Code which:

- 1) State that no one be tried twice for the same offence?
- 2) State that a Zambian who commits a crime outside Zambia may be prosecuted in Zambia if the act is also a crime in Zambia?

Explain the meaning of the phrases of '**autrefois acquit**' and '**autrefois convict**.' Cite the relevant sections in the Criminal Procedure Code.

QUESTION THREE:

Discuss, citing at least one decided case, the Zambian law concerning punishment for confederate offenders. Do they all have to be charged with the same offence, or others may be arraigned on different charges? Explain the circumstances under which any of such confederates may receive different sentences.

QUESTION FOUR:

Discuss any two theories of punishment in criminal proceedings. State the rationale for and the criticisms against each theory.

QUESTION FIVE:

Write brief notes on three of the following topics:

- a. *Offences of specific intent and offences of basic intent.
Give hypothetical examples.*
- b. *Accessories after the fact. Cite example.*
- c. *Ignorantia juris quod quisque scire tenetur non excusat.*
- d. *Two defences that negate 'mens rea' when successfully pleaded.*

QUESTION SIX:

Distinguish the defence of '**Diminished Responsibility**' from that of '**Automatism**'. Support the discussion of each defence with a precedent.

QUESTION SEVEN:

Write brief notes on each of the two categories of inchoate offences. Which group contains offences that do not require proof of '**mens rea**'.

Give one hypothetical example for each of the two categories.

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATION - APRIL, 2002

L. 241 - INTRODUCTION TO CRIMINAL LAW – 1

TIME : THREE HOURS [Plus 3 minutes to read through the paper].

INSTRUCTIONS: **Question One B Compulsory.** Answer the Penal Code, the Procedure Code and the Republican Constitution may be brought referred to in the examination room.

QUESTION 1: [COMPULSORY]

Simasiku, Bwalya, Hang'andu, Mwale and Mujimanzovu, all residents of Chawama Township in Lusaka set out to rob the SHOPRITE Supermarket in Mazabuka on the night of a Saturday. The idea of robbing the shop was mooted by Chisenga who did not take part in the robbery, but merely advised the five youngmen that their life-style would considerably change for the better after the projected operation. Simasiku was the driver of the get-away vanette at the scene of the robbery, Bwalya and Hang'andu, who had an AK 47 rifle each, were the security officers who covered Simasiku, Mwale and Mujimanzovu. Mwale held the ladder placed against the shop's wall-fence which Mujimanzovu used to scale over the wall into the shop precincts, where the goods they planned to steal were stored.

Having broken into the shop, Mujimanzovu hauled the goods, which were mostly electronic goods, and handed them over to Mwale, who loaded them into the vanette. Four days later all the six men were arrested by the Mazabuka Police who charged them with burglary and theft. Indicate the role played by each one of the six accused persons in the commission of the crime, citing the relevant penal code provisions in support of your answer.

Indicate also which of these six men could be charged with a separate offence instead of the charge of burglary and theft, contrary to Section 265 and 301 of the Penal Code. Name the separate offence.

In a few lines explain the '**doctrine of common purpose**' in the Zambian Criminal Justice System, citing at least one Zambian or foreign precedent where this doctrine was applied.

Question 2:

In the case of *D.P.P. v Morgan* [1982] A. C. 341 [or 1 ALL ER, 161,] Lord Simon said: “ By the crimes of basic intent I mean those crimes whose definition expresses or implies a mens rea which does not go beyond the actus reus.”

- a. Explain the meaning of ‘crimes of specific intent’ and ‘crimes of basic Intent’, naming at least one offence for each category. State the main distinction between the two categories.
- b. The Latin maxim ‘**actus non facit reum, nisi mens sit rea**’ when translated into English means that an act does not make a person legally guilty unless his mind is legally blameworthy [*Younghusband v Luftig* [1949] 2KB. 354]. But there are criminal offences in which proof of mens rea is not necessary. Explain why accused persons get convicted in such offences where mens rea is not proved against them, naming two of such offences.

Question 3:

Both Insanity and Diminished Responsibility are valid defences to the charge of murder. In order to negative mens rea on their part, what do accused persons establish in each of these two defences?

What ingredient in the essential elements of these two defences makes them to be interrelated? Refer to one decided case in respect of each defence.

Question 4:

How do you understand theories of: [i] Deterrence and [ii] Rehabilitation in relation to punishment in criminal proceedings? Cite any one provision or more provisions in the Penal Code associated with the principle of reforming the offender rather than exacting vengeance on him? Adherents of these two theories disapprove the theory of Retribution. What is their main criticism against Retribution?

Question 5:

Tom Bwalya and Mubita were bitter foes at Munali Secondary School where they were class-mate from Grade eight in January 1986 up to Grade twelve in 1990. They both left Munali in December 1990. For the past ten years Tom has lived in Kitwe and Joseph has been in Livingstone.

On 15th December, 2000, the two men met on a lonely footpath between the University of Zambia and the Mtendere Township in Lusaka at 19:30 hours. Taking advantage of the cover of darkness, Joseph, the bigger of the two men,

decided to exact his revenge on Tom for the disparaging remarks Tom had said to him in 1988 and 1989. Without saying a word, he pulled a knife from his jacket pocket and stabbed Tom three times on the left side of his chest, piercing Tom's heart twice. Tom died instantly. The two men had not exchanged any words at that spot at all, not even greetings.

When charged with murder, Joseph pleaded the defence of provocation. Discuss the elements of this defence of provocation and state whether it is available to Joseph in this case, giving reasons for your answer. Cite one or more authorities to support your answer.

Question 6:

Chilufya Mwaba and Thandizani Banda, who were both residents of Sesheke District in the Western Province of Zambia, sneaked out of the Zambian border and entered Namibia, where they stole two cows. They slaughtered the two animals and sold the meat in Namibia itself. With the proceeds of the sale they bought clothes, tinned food stuff and electronic goods.

Before they could return to Zambia, however, they were arrested by the Namibian Police and charged with stock theft. They were convicted of this offence and served their sentences of five years imprisonment with hard labour in Namibia itself. When they returned to Zambia, the Zambia Police at Sesheke again arrested them for stock theft and will be tried within the next six months.

What two provisions in the Zambian criminal procedure code prohibit the prosecution of an accused person twice for the same offence? If Mwaba and Banda had evaded prosecution in Namibia, under what provisions in the Zambian Penal Code would they have been prosecuted?

Question 7:

Write brief notes on any **three** of the following topics:

- a) Transferred malice in criminal law, giving a hypothetical case.
- b) The two main categories of inchoate offences.
- c) Excusable and Justifiable homicides, giving lucid illustrations of each type.
- d) The two main methods of bringing an accused before court to answer criminal charges.
- e) Two principles of sentencing [not theories of punishment].

**THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW**

UNIVERSITY EXAMINATIONS MAY, 2002

L. 242 – CRIMINAL LAW

TIME : **THREE HOURS** [Plus five Minutes to read the Question Paper].

INSTRUCTIONS: Answer **Question ONE** and **Any** other **THREE Questions**. Clean copies of the Penal Code and the Criminal Procedure code may be brought into the Examination Room and Referred to.

QUESTION 1: [COMPULSORY QUESTION]

Comment on **ALL** the following three sets of circumstances:

- a. Njoya Banda is married with two children, whose ages are both below 8 years. He is a heavy alcohol drinker and fails to adequately provide for his family. As a consequence of his irresponsible behaviour, his first born son, Njoya Junior, has died from **Kwashiorkor** , a disease in children caused by under-nourishment. The other son may die at any time due to the breakdown of his immune system, caused by malnutrition. His wife is also shabbily dressed in rags and is severely emaciated.

The wife has reported their plight to the victim support unit of the Zambia Police Service at the Lusaka Central Police Station. What offences, if any, are, likely to be preferred against Njoya Banda under the Penal Code?.

- b. Dr. Barnabas Banda is an eminent surgeon at the Kitwe Central Hospital, who was assigned to operate on Mary Bwalya to remove a cancerous tissue from her breast. Owing to the Surgeon's negligent performance, Mary died on the operation table in the Theatre. The Police have arrested Dr. Banda and are now searching the Penal Code for the appropriate offences to be preferred against the Surgeon.

Assume you are a State Lawyer in the Ministry of Legal Affairs and have been requested to assist the Police in suggesting what criminal charges they should prefer against Dr. Banda . Which two sections in the Penal Code deal with this situation and what is the maximum penalty?

- c. "Human life is precious and sacred. Consequently, all homicides, whatever description, and without exception, are unlawful and punishable."

This statement was made by a law lecturer to his criminal law class. Does this statement represent the correct legal position of punishment for homicides? Discuss it.

QUESTION 2

On 15th November, 2000, Jumbo and Tambo attacked Wapambamba at his residence in Ibex Hill Residential Area of Lusaka, and stole his T.V. set and computer. In the process of the robbery, Jumbo shot Wapambamba in the stomach, lodging a pistol bullet therein. Wapambamba did not die. In May, 2001, Jumbo and Tambo were prosecuted on the charge of aggravated robbery, contrary to section 294 of the Penal Code and sentenced to the mandatory minimum 15 years imprisonment with hard labour.

On 21st March, 2002, Wapambamba died in hospital from a complication caused by the pistol bullet in his stomach. The Surgeon at the University Teaching Hospital had declined to remove the bullet on the ground that it was in a delicate part of the body and that the operation on the stomach would have caused instant death to the patient. On hearing of Wapambamba's death, the Police have re-arrested the two convicts, Jumbo and Tambo, and have now charged them with the murder of Wapambamba, contrary to section two of the Penal Code. Discuss the legality of this second prosecution of the two men for the same offence.

What provisions, both in the Penal Code and in the Criminal Procedure Code, relate to subsequent prosecution of an accused for the same offence for which he had already been prosecuted? Besides the double-prosecution difficulty, what other legal hitch regarding the elements of murder would the prosecution encounter during the proceedings?

Would you agree with the argument by the accused's defence lawyer, on causation of death, that the victim of the robbery died because of the surgeons' refusal to operate on him and remove the bullet from the stomach?

QUESTION 3

Chintomfwa Mukote, aged 77 years, has left his village and lives it rough, as a recluse or hermit, in a valley, 25km from the nearest village. He is not adjudged a mental patient. His brother's daughter, aged 17, occasionally visits him and brings him food from the village. Each time she visits him, they engage in sexual intercourse, with her free consent.

On one occasion when the same brother's daughter visited him, he asked her to stay with him for a week so that he could kill a duiker for her to take to the village. He shifted the location of his residence 5km away.

A search was mounted and the hermit was arrested and charged with the following offences:

- a. Incest, contrary to section 159 of the Penal Code.
- b. Abduction of a woman contrary to Section 135 of the Penal Code.
- c. Being a rogue and vagabond, contrary to Section 181 of the Penal Code.

In your opinion, will all the three charges, be proved against the accused? If not all, which one, or which two of them will be proved against Chintomfwa? Give reasons, [The question of his mental state is not in issue].

QUESTION 4

Write brief notes on any **THREE** of the following topics:

- a. The distinction between Infanticide and Abortion.
- b. The distinction between affray and an assault, citing the relevant provisions.
- c. The distinction between the offence of being a common nuisance under Section 172 of the Penal Code and being a rogue and vagabond under Section 181 of the Code.
- d. The distinction between forging and uttering a document.

QUESTION 5

Bigamy is an offence in Zambia, and is basically created by Section 166 of the Penal Code. Chinondo Kasongo of Musuku Village in Kaputa District in Northern Province, went through a traditional marriage ceremony according to Tabwa customary law, with Kamunshi Wakaele in October, 2000. In January, 2002, he went through a second marriage ceremony, under the Marriage Act, Cap. 50 of the Laws of Zambia, with Beauty Uwasoma.

After receiving a complaint from Kamunshi Wakaele, the Police have charged Chinondo Kasongo with Bigamy. Bearing in mind provisions of Section 166 of the Penal Code and Section 38 of the Marriage Act, Cap. 50 has Chinondo Kasongo committed bigamy?

Illustrate your answer. Section 38 of the Marriage Act implicitly describes the legal equality of statutory and customary marriages.

QUESTION 6

Aaron is so desperately desirous of rushing to Monze within ten hours to pick his seriously ill mother and have her admitted in the University Teaching Hospital in Lusaka. She has been diagnosed as likely to die within 24 hours if not attended to by the expert at UTH, Lusaka. He has no car of his own, and he realizes that by using a public bus or train he cannot make it in 10 hours.

He sneaks in Hangoma's garage and forces open Hangoma's car door and drives it to Monze, leaving a note which read 'your car will be returned.' Hangoma reports the theft

of his car to Lusaka Police. The next day, Aaron secretly returns the car to its owner, after successfully transferring his ill mother from Monze Hospital to University Teaching Hospital in Lusaka.

After investigations, Aaron is arrested and charged with theft of the car. Do you think this charge of theft will succeed? If you do not agree, what charge in the Penal Code, if any, is the correct one for Aaron's behaviour? Cite it correctly.

QUESTION 7

Explain the offence of theft by finding, stating the distinction between this offence and that of ordinary theft. In your answer state clearly at what stage the element of 'taking' is done, and the position of the element of 'consent' of the owner of the property or item that is picked up by the accused.

*******END OF EXAMINATION*******

GOOD LUCK

THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW

FINAL EXAMINATION

FIRST SEMESTER: APRIL 2002

L251: CONSTITUTIONAL LAW

TIME: THREE (3) HOURS

INSTRUCTIONS: Answer Question One (1) and any other Three (3) Questions.

1. Isabel Phiri has just been admitted in the Law School and she is very excited about this development in her life. She has been making inquiries about the various courses being offered in the Law School. She has come to you as a law student. She wants to know why it is necessary to study L251. Please advise her.
2. You are a police officer who has just finished studying L251 and a fellow police officer has come to you for advice. He has explained that on 12 April this year he had completed investigations involving the disappearance of over US\$ 1,000,000 at the Bank of Zambia. According to his findings he had irrefutable evidence that one of the Ministers was involved in the scam. He made his decision to arrest the Minister and informed his superior officer, who also examined the evidence and came to the same conclusion. His superior officer has, however, advised him that the matter has been presented to the President by the Inspector General of Police. The President has appointed a special tribunal, which will look into the allegations against the Minister and recommend the punishment if the allegations are proved. Your friend wants to know whether this was in order. Advise him.
3. On 12 January 2002 Moses Kaunjika, leader of one of the opposition parties was picked up by three officers who identified themselves as officers from the Office of the President and acting on the instructions of the President. The relatives have made inquiries and have been told by the officer in charge of the case that Mr. Kaunjika was being kept at some undisclosed location in Solwezi. He was being detained because he had shown no respect for the President. He did not stand still

when the President's motorcade was on its way to the airport. The family wants to know from you whether this was in order. Please advise them.

4. One of the recommendations of the Mwanakatwe Constitutional Commission was that a Constitutional Court should be established in Zambia. The Government's response was that there was no need for such a court and instead recommended the creation of a Constitutional List, similar to the Commercial List, which has since been established. The Government, with the help from the British Government, has enlisted the help Mr. John Smith, a Judge of the High Court of England, to help in the creation of the List. Judge Smith, having obtained his academic qualifications in England, has very little understanding of the constitutional order in Zambia. You have been assigned as his assistant and he has asked you to prepare a brief on the extent of the jurisdiction of the High Court for Zambia in constitutional matters and the basis of that jurisdiction. Prepare such a brief.
5. The Republic of Mwanzagala has a constitution similar to that of Zambia. The People's party has just won a landslide victory in the 30th March Presidential and Parliamentary elections. The new President has declared in his inauguration speech that he will ensure that there is constitutionalism in the country. The leader of the main opposition party does not believe in the President's representations on constitutionalism. He has come to you and wants to know some of the things that the new President can do to undermine constitutionalism, which he must look out for. Please advise.
6. Gilbert Mudenda is a Zambian who has just returned to Zambia after his studies at Oxford University in the UK where he obtained his degree in law. He has enrolled at the Zambia Institute of Advanced Legal Studies (ZIALE) since he wants to be admitted to the Zambian Bar. Having studied in the UK he is surprised that in Zambia unlike in the UK the constitution is supreme. He wants to know how the supremacy of the constitution has been secured in Zambia and the consequences, if any, of abolishing this concept. Please advise him.
7. Section 20(1) of the Lands Act reads:

There is hereby established a Lands Tribunal.

Section 22 of the Act also reads:

The Tribunal shall have jurisdiction to-

- (a) inquire into and make awards and decisions in any dispute relating to land under this Act;
- (b) to inquire into, and make awards and decisions relating to any dispute of compensation to be paid under this Act;
- (c) generally to inquire and adjudicate upon any matter affecting the land rights and obligations, under this Act, of any person or the Government; and
- (d) to perform such acts and carry out such duties as may be prescribed under this Act or any other written law.

A non-governmental organisation, which is committed to ensuring that there is transparency and good government has made representations to the President that the two sections should be repealed in that they violate the concept of separation of powers.

The President has asked the Attorney General to advise on the matter. You work in the Attorney General's Chambers and you have been asked to prepare a brief in response to the representations advising the President on the matter. Prepare such a brief.

----- End of Examination -----

**THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW**

FIRST SEMESTER EXAMINATIONS- APRIL, 2002

L.311 LAW OF EVIDENCE

TIME: **3 HOURS** [Plus 5 minutes to read through the Paper]

INSTRUCTIONS: **ANSWER ANY FOUR QUESTIONS**
 EACH QUESTION CARRIES 17.5 MARKS

QUESTION ONE:

“ The importance of the presumption of innocence is such that, apart from insanity and express statutory reversals of the burden of proof, there should be no erosion of this principle.” Discuss. [17.5 marks]

QUESTION TWO:

A confession was made to the Police in a Police Station following protracted periods of questioning without adequate refreshment breaks, during which various ill-defined threats were made to the accused by his interrogators. Discuss, illustrating your answer with cases. [17.5 marks]

QUESTION THREE:

Kabwe and Kosam were jointly charged with theft from Stan’s House. Kabwe has two previous convictions for fighting in public. Kosam has recently been dismissed from his job for insubordination.

Can counsel cross-examine on these matters if:

- i) Kabwe admits that he had been in Stan’s House on the day in question, but it was because they were having a homosexual relationship.
- ii) The Police allege that Kabwe made a confession during questioning at the Police Station. Kabwe denies this, saying the Police are lying.
- iii) In his evidence in chief [i.e. during examination in chief] Kosam says he has never previously been charged with an offence.

QUESTION FOUR:

Discuss the significance of the following cases with respect to corroboration.

- a) Shawama v The People [1985] ZR
- b) Chimbo & Others v The People [1982] Z R 20 [SC]
- c) Machobane v The People [1972] ZR 101 [CA]
- d) Sakala v The People [1972] ZR 35

QUESTION FIVE:

The exceptions to the rule against hearsay are so numerous that much of the relevant law is concerned not with the exclusion but with the admissibility of hearsay as evidence.

Discuss.

[17.5 marks]

QUESTION SIX:

Sodom is on trial for attempted buggery [sexual offence] of three [3] boys, Adam, Ben, and Cain who are aged 8, 11 and 15. The three [3] boys all give evidence at the trial that Sodom, a Scout Leader at an annual scout event approached them in their respective tents in the early hours of the morning, invited them for tea in his tent and when each went he attempted to commit buggery with them.

Sodom denies these allegations and says that he called the boys to his tent because they had been smoking in their tents. He alleges that they have colluded and made up the stories.

The prosecution wishes to use the evidence of each of the boys to confirm the evidence of the others and wishes also to bring the evidence of three [3] other boy scouts who allege that similar events took place at the previous annual scout camping, although no actual attempts of buggery took place. Discuss.

[17.5 marks]

QUESTION SEVEN:

Outline the rules of law which deal with the actual mechanics of evidence during the course of a trial, what questions may be asked of a witness in examination in chief, cross examination and re-examination; and to what effect.

*****END OF EXAMINATION*****

**THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW**

UNIVERSITY FIRST SEMESTER EXAMINATIONS, MARCH, 2002

L.321 – LAND LAW & PROPERTY RELATIONS

-
- TIME** : **THREE HOURS** [Plus 5 Minutes reading through the paper]
- INSTRUCTIONS** : YOU ARE ALLOWED TO USE UNMARKED STATUTES. YOU WILL SCORE HIGHER MARKS IF YOU ARE ABLE TO REFER TO AUTHORITIES.

ANSWER QUESTION **ONE** AND ANY OTHER **THREE**.

QUESTION ONE:

- a. Since Land and Chattels are treated differently by the law and since a chattle may, by being affixed to land, become part of the land, it is necessary to have a test to determine whether or not such a change has taken place.

With the aid of decided cases discuss the above statement. **[22 marks]**

- b. You are an associate in the prestigious firm of Messrs Imikendu Mbayi Mbayi and partners. This morning your old client from Chavuma Mr Salivaji Sakuwaha has called on you at your chambers. Mr Sakuwaha tells you that he was appointed as executor and Trustee of the estate of his late nephew Sandu Chinyama deceased. Mr. Sakuwaha show you the will reproduced below.

***THIS IS THE LAST WILL OF ME SANDU CHINYAMA of plot 250,
Lusaka which I make on this 12th day of September, 2001.***

1. *I revoke all former wills and other testamentary dispositions Made by me.*
2. *I appoint my Uncle Salivaji Sakuwaha of Chavuma in the North Western Province of Zambia to be the executor and Trustee of this my will.*
3. *I wish to be buried at Libonda village, Kalabo next to and on the Southern side of my late mother's grave.*

4. *I give to my dear wife Mbololwa Sandu my shares in the property Known as Stand 5012 which I jointly own with my business partner Menda Menda.*
5. *I give to my son Lubasi house number 15 Limulunga Road, Mongu for his life term and on his death to my lovely daughter Maipepi.*
6. *I give to my dear wife Mbololwa Sandu plot 2050 Lusaka during her life to have a life interest in the property and during her widowhood, on condition that from the moment she re-marries her life interest will lapse and cease to exist and she must then immediately vacate the family residence and leave it for my said children namely Lubasi and Maipepi and all other children I may have who shall own the property in equal shares.*
7. *I give my 50% shares to my sister Mbingala Sandu in plot 6240, Lusaka in which my brother Saviye Sandu owns the other 50%.*
8. *I give my house number 15 Sinazongwe Road, Kabwe to my nephew Mubita when he attains the age of 40 years.*

IN WITNESS WHEREOF I **SANDU CHINYAMA**

have signed my name the day and year first before written.

SIGNED by the above named)

SANDU CHINYAMA)

as and for his last Will in the)

presence of us both being) [signed]

present at the same time who)

in his presence have signed)

our names as witnesses)

FIRST WITNESS:) [signed]

.....)

SECOND WITNESS) [signed]

.....)

Mr. Sakuwaha wants to be advised about the validity of this will. Advise him.

[12 marks]

QUESTION TWO:

Write short notes on the following:

- a. Notice – under the doctrine of bonafide purchaser
- b. The doctrine of part performance
- c. Section 4 of the statute of frauds 1677
- d. Common Law Restrictions on ownership and enjoyment of land
- e. The sources of Landlaw in Zambia.

QUESTION THREE:

- a. The theory of the English common law is that all land is held of the King who is the Supreme Feudal lord.

Discuss. In your discussion you should relate the Theory to the system of land holding in Zambia.

- b. Kitwe properties Limited [KPL] are the owners of Ganerton Estate, a tower of blocks comprising 45 self contained flats let on monthly tenancies. During the past year KPL have received various complaints from the tenants of the block alleging among other complaints the lack of lighting on the stairs and defective lifts. KPL have denied liability for any of these defects pointing to the absence of any express covenant on the part of the landlord to repair and/or maintain the block and lifts. The tenants have threatened legal action against KPL. You are an advocate in the firm of Messrs Kitwe Partners and this morning the General Manager of KPL has called on you for legal advice on the threatened legal action.

Advise him on the merit of the intended legal action. **[11 marks]**

QUESTION FOUR:

- a. In October, 2002 Likezo borrowed K20,000.00 from Standard Chartered Bank Zambia Limited secured by a mortgage of Likezo's farm situated in Lusaka West. Likezo has now fallen into arrears with his payments due under the mortgage. The mortgage property is worth more K45 million where as the amount outstanding to date is K37 Million.

You are the legal Counsel for the Bank and this morning your General Manager has approached you concerning Likezo's default. He wants to generally know about the remedy of sale under the mortgage.

Advise him as to the source of the power of sale and the precautions that must be taken before sale in order to avert any legal action against the bank.

[11 marks]

- b. Discuss the Supreme Court decision in MAY VIJAYGIRL GOSWAMI AND DR MOHAMMED ANWAR ESSA AND COMMISSIONER OF LANDS SCZ APPEAL NO. 49 OF 2001.

[10 marks]

QUESTION FIVE:

Compare and contrast

- a. A Fee simple from a fee tail
b. A lease from a licence

- c. A Licence coupled with an interest from a contractual Licence
- d. A tenancy in common from a Joint Tenancy
- e. A vested in possession from a vested in interest

[12 marks]

QUESTION SIX:

Discuss the essential requirements for the existence of an Easement.
How does an Easement differ from a Licence?

[22 marks]

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS – 2003

L331

COMMERCIAL LAW 1

Time allowed: Three hours (plus 10 minutes to read the paper)

- Instructions:**
1. Students may take in the examination hall and consult clean, unmarked copies of any relevant statute.
 2. The paper is divided into 3 sections. Candidates must answer **question 1** and at least **one question from each section**. Note that question 1 will constitute a question answered from section A.
 3. In all candidates must answer four (4) questions.

SECTION A

- Q1. Careful ^TTembo asked a friend of his, Miserable ^ABanda, who was from a fairly well to do family, to help him buy a second hand car from Dedan Kimathi Road, opposite the Customs and Excise Offices, Lusaka. Although Miserable Banda was not a mechanic, he had a fair knowledge of motor vehicles since his father has had several motor vehicles ever since Miserable Banda was born. In fact the oldest motor vehicle was bought in 1980, two years before Miserable was born.

Careful Tembo, on the other hand, had no knowledge whatsoever of motor vehicles. Although Careful Tembo was six years younger, he got on with Miserable Banda like a house on fire.

Careful indicated to Miserable that the car should not have been involved in a traffic accident. On arrival at the place where vehicles were sold on Dedan Kimathi Road, Miserable recommended a Mercedes Benz Car, C220 which was being sold by Foloko Chola. He had notice that the fender on the right hand side of the vehicle had been spray painted and the grill was not entirely in position, but made no inquiries. In response to a specific question, Miserable stated that the car had not been involved in a traffic accident. Careful purchased the car for K40 million. He later discovered that the vehicle had in fact been involved in a road accident and was not roadworthy. Furthermore, it was discovered that Foloko Chola sold the vehicle as pledgee. Although the records showed the absolute owner as Mwangope, the vehicle had been stolen from Kalidas.

Consider the legal issues raised and advise Careful Tembo.

- Q2. "Liabilities are not to be forced upon people behind their backs any more than you can confer a benefit on a man against his will" per Bowen LJ in Falcke v. Scottish Imperial Insurance Company (1886) 34 Ch. 234 at 238.

With reference to other decided cases, critically assess the statement in light of the law as it stands today.

SECTION B

- Q3. "The Hire Purchase Act in Zambia was intended to protect consumers from exploitation by unscrupulous traders."

Critically analyse this statement with reference to the provisions of the Hire Purchase Act, pointing out what mischief and possible mischief the Act was intended to cure.

- Q4. (a) Chiseche bought six hundred cases of canned beef from Ifosi through Mechantex Commodity Brokers but failed to pay for them immediately. The goods were kept by the Brokers in their warehouse pending payment by Chiseche. Chiseche went and sold the goods to Kambani who gave him a bill of exchange to enable him get the goods from the Broker's warehouse and arrange for their transportation. Chiseche pawned the goods to Chimba. Kambani wishes to sue for the recovery of the goods from Chimba.

Advise the parties as to their legal positions.

- (b) What principle of law was involved in Overbrook v. Glencombe (1974) 3 All ER 511?

- Q5. Write short notes on the following:

- (a) passing of property in hire purchase contracts
- (b) *res perito domino* under the Sale of Goods Act
- (c) Acceptance by attornment under the Sale of Goods Act
- (d) Ramalpa Clauses

SECTION C

- Q6. Mambazo contracts to sell to Kabazo 1000 tons of Chalimbana groundnuts "5% more or less" at seller's option on the basis of a sample provided to be delivered in instalments of 200 tonnes and to be packed in 50Kg bags labeled "chalimbana peanuts".

The first lot delivered conformed in all respects with the sample but was packed in 50kg bags labeled "Chalimbana beanuts". Kabazo rejected this lot.

The second lot delivered was to all appearances in conformity with the sample but did in fact contain a toxic substance which was not discoverable on any visual examination of the sample. As the groundnuts were not, after all, harmful for consumption in small quantities, Kabazo accepted it, but offered to pay less than the contract price for them.

The third lot delivered proved to be unsuitable for use in making peanut butter as the fat content was low but was perfectly good for ordinary consumption as peanuts. Furthermore, the consignment was of 250 tonnes. Kabazo rejected this lot.

The fourth lot was delivered to Zambia Haulage for onward delivery to Kabazo but did not reach Kabazo as the truck carrying the consignment was hijacked on the way.

The fifth lot was delivered way beyond the time stipulated in the contract.

Advise the parties on their legal position.

Q7. "In the development of our law, two principles have striven for mastery. The first is for protection of property; no one can give a better title than he himself possesses. The second is for the protection of commercial transactions; the person who takes in good faith and for value without notice should get a good title."

With reference to decided cases, and appropriate statutory provisions, critically evaluate this statement.

-END-

**THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW**

FIRST SEMESTER, FINAL EXAMINATIONS, ACADEMIC YEAR 2001/2002

L. 341 ADMINISTRATIVE LAW - 1

DATE: 15TH APRIL, 2002

TIME: 3 HOURS: 14:00-17:00

ANSWER ANY FOUR QUESTIONS.

QUESTION 1: What is power? And what role does it play in crystallising the purpose of administrative Law? [17.5 Marks].

QUESTION 2: Write brief notes on three of the following:

- a. Welfare state
- b. Zambianisation
- c. Supervisory functions of the communications Authority.
- d. Secondary Legislation
- e. Lord Greene
- f. D.C. M. yardley.

QUESTION 3:

" Section II [i] A securities exchange that is dissatisfied by a direction of the Commission under section ten may, within thirty days after the direction is given, appeal to the Minister." (Securities Act – Cap 354). What would be the legal consequence[s] if an appeal is lodged by the Securities Exchange after 35 days from the date when the direction was given, on the ground that the delay was due to the death of its President? [17.5 marks]

QUESTION 4:

What are the defects of the traditional notion of the "Separation of Powers"? Be sure to support your argument.

QUESTION 5:

" I have no hesitation to endorse and confirm that the Attorney - General's understanding of Section 8 of the Act truly represents the proper construction of the Act and treat with due respect the Commission's interpretation of the Act as fanciful, if not engaging on a frolic of their own." Per Bweupe J [as he then was];

- a] Name the case, and the Act referred to in the quotation.
- b] Why did the Court describe the Commission's interpretation of the Act as "fanciful"? [17.5 marks]

QUESTION 6:

Licences and permits are mechanisms for generating revenues as well as the Control of certain activities entrusted to the licence – and permit –holders in order to safe- guard public interests. Carefully explain. [17.5 marks]

QUESTION 7:

Decentralisation as envisioned by the UNIP government was to ensure greater Dispersion of power, to achieve administrative efficiency and effectiveness, and to institutionalise accountability. To what extent is this proposition defensible? Be sure to provide some concrete examples. [17.5 marks]



UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

UNIVERSITY FIRST SEMESTER EXAMINATIONS JANUARY, 2001

L351 HUMAN RIGHTS LAW 1

TIME: 3 HOURS (Plus 5 minutes reading through the paper)

- INSTRUCTIONS:**
1. Following un-marked documents allowed into Examination Hall:
 - (a) The African Charter on Human and People's Rights 1981.
 - (b) Part iii of the Constitution of Zambia 1991 (as amended 1996).
 2. Write your Computer No., course code and course Title on all answer papers. **Do not** write your name.
 3. Answer **Q.(I)**, consisting of five parts, in section 1 and Choose **three** additional questions from section ii. (In all you are expected to answer **Four** Questions).
-

SECTION 1

Answer All: Do not spend more than **40** minutes...

Q.(1)

- (a) Médiateur de la République. **Explain** [4 marks]
- (b) List all non-derogable rights as contained in the constitution of Zambia 1991 (as amended 1996). [4 marks]
- (c) Give me three common characteristics between the Losi of the Western Province of Zambia and Azande of the Equatoria Province of the Southern Sudan. [5 marks]
- (d) The exploitation of young persons is prohibited in Zambia. Give **four** different categories of the prohibited exploitation. Who are these "young persons"? [3 marks]
- (e) The positivists role in the development of human rights may be described as modest. Explain in less than 65 words. [3marks]

[19 Marks]

SECTION II

Answer **three** questions:

Q.(2) It has been fashionable to make claim of a dichotomy between the civil and political rights (articles of ICCPR) as being declarations of rights, and the economic, social and cultural rights (articles of ICESCR) as constituting declarations of aspiration. Is such a dichotomy relevant today? Illustrate with particular reference to position of any developing nation (or nations) [17 marks]

Q.(3) Pre-colonial acephalous African societies had no centralised political authority. They were chaotic, barbaric and isolated by inter-clan warfares. They had no concept of what human rights are, and had no respect for human rights and fundamental freedoms. Answer briefly, arguing in favour of, or against, the above proposition(s). Make specific reference to one acephalous group in East Africa and another in West Africa.

[17 marks]

Q.(4) The Constitutions of Zambia (1991 as amended 1996) and Senegal (1963) contained Bills of Rights. There are major differences between the Bills of Rights of the two constitutions. List **10** such differences. Select one of these differences and explain its impact on the promotion and protection of human rights in Zambia, or Senegal as the case may be.

[17 marks]

Q.(5) The African Charter on Human and People's Rights (1981) may be criticised for a number of reasons. Critically examine three main shortcomings of the African Charter that you consider as constituting serious impediments to the promotion and protection of human and people's rights in Africa.

[17 marks]

Q.(6) "Human rights cannot be realistically and adequately protected without an independent judiciary functioning under the rule of Law". Discuss. Support your arguments by citing two cases **only**. One relevant case from Zambia and the other from another jurisdiction.

[17 marks]

Q.(7) Answer (i) or (ii):

- (i) Universalism vs. Relativism (1998) HZR 1002. Assuming that the above case is pending before the Supreme Court of High-zone Republic in which the applicants are contesting the findings of the Lower court in favour of the cultural relativists in respect of human rights. It is to be noted that five of the nine justices of the Supreme Court are known for being staunch advocates of the universalist concept of human rights. Evaluate the likely outcome of this appeal.

[17 marks]

- (ii) The "Good Samaritan" [Luke 10:25 – 27] came upon a victim of a brutal assault, a total stranger to him, lying "half dead" on the side of the road. He did not pass him by on the other side as the Priest and Levite had done earlier. He bound up the stranger's wounds, transported him to an Inn and prepaid the bill. We can refer to the Priest and Levite as "Bad Samaritans" who had failed to come to that strangers' aid.

Keeping in mind our discussions on philosophical aspects of human rights: Briefly describe what is common between the "Good Samaritan" and the "Bad Samaritan".

And List three characteristics of this "Bad Samaritan".

[17 marks]

END OF EXAMINATIONS

THE UNIVERSITY OF ZAMBIA

UNIVERSITY FIRST SEMESTER EXAMINATIONS- APRIL 2002

L 351

INTERNATIONAL AND REGIONAL HUMAN RIGHTS LAW

TIME: THREE (3) HOURS

INSTRUCTIONS:

- 1. THERE ARE TWO SECTIONS IN THIS PAPER. IN SECTION A, CANDIDATES MUST ANSWER QUESTION ONE AND ONE OTHER QUESTION. IN SECTION B CANDIDATES MUST ANSWER TWO QUESTIONS.**
 - 2. CANDIDATES FOR THIS PAPER ARE ALLOWED TO BRING INTO THE EXAMINATION ROOM CLEAN AND UNMARKED COPIES OF INTERNATIONAL AND REGIONAL HUMAN RIGHTS DOCUMENTS.**
-

SECTION A- ANSWER QUESTION 1 AND ONE OTHER QUESTION

QUESTION 1

You are a lawyer in the Department of International Law and Agreements of the Ministry of Legal Affairs of Zambezia and just returned from pursuing your master's degree in human rights law from a reputable European university.

The Government of Zambezia plans to accede to the International Covenant on Civil and Political Rights (ICCPR) and the First Optional Protocol. However, the Government is not comfortable with some of the provisions in the Covenant and the Protocol and is intent on entering reservations on selected provisions. In particular, the Government does not want persons on death row to make use of the individual complaints procedure in the First Optional Protocol. Zambezia has in recent years been plagued with a high crime rate and its capital, Lusakaburg, ranks as one of the top ten murder capitals in the world. Zambezia's economy is heavily dependant on tourism and the Government is desperate to repair the country's dented reputation in order to revive the tourist industry. A recent amendment to the Penal Code made capital punishment mandatory upon conviction of manslaughter, murder, aggravated and armed robbery and other serious crimes.

The Attorney-General, Dr. Rights Nsambu, has been asked to advise Government on the question of reservations made to international human rights instruments, in particular the ICCPR. Dr. Nsambu has instructed the Department of International Law and Agreements to prepare an opinion and your Head of Department has in turn delegated the task to you as the human rights law expert in the Department. Dr. Nsambu wants the job done by the time he returns from the 58th Session of the Commission on Human Rights in Geneva.

Prepare your opinion, clearly stating what the Human Rights Committee has stated on the question of reservations to the ICCPR, including reference to case law in which the issue has been discussed. (40)

QUESTION 2

- (a) There are two organs within the United Nations human rights protection and promotion system with very similar names, viz., the Commission on Human Rights and the Human Rights Committee. Explain the differences between them in so far as (i) their origin (ii) their place in the institutional structure and (iii) their respective competences, are concerned. (12)
- (b) With regard to their mandate and functions, state each institution's advantages and disadvantages so far as the protection of human rights is concerned. (8)

QUESTION 3

Your client, Scribe Kachepa, wants to request the Human Rights Committee to consider his case. He is a citizen of Ruritania, a country which has ratified the International Covenant on Civil and Political Rights and its Optional Protocols. Your task is to draft a communication in accordance with the requirements laid down in the First Optional Protocol, including an article-by-article identification of the rights allegedly violated, and address it to the Human Rights Committee, C/o The Centre for Human Rights, United Nations Office, Palais des Nations, CH-1211 Geneva 10, Switzerland.

Your client is a freelance journalist in Ruritania and he specializes in stories about public figures and national events. Kachepa has frequently prepared well-documented features, always including the full names and identity of the persons involved. In this particular case, Kachepa's story dealt with the alleged misconduct of four well-known individuals who had set up and run a secret organization called 'Incognito' with the stated purpose of influencing the public and private fortunes of its members and their friends in society. The story alleged the practice of secret rituals within 'Incognito', including blood sacrifices. The story was published on the front page of 'Rumors', the most widely

circulated newspaper. The four individuals concerned held high and powerful positions in government, a political party, a church and a private bank. These individuals sued Kachepa and 'Rumors' and argued before the High Court that the journalist's action had violated their freedom of association and their right to privacy, as well as religious privileges, and that the story would seriously hurt their hard earned honour and reputation unless the courts were to throw it and provided for compensation. Based on a decision of the Supreme Court in an earlier case, in which it was decided that journalists must respect public figures and not 'disparage their reputations in public, the High Court ordered Kachepa and 'Rumors' to immediately withdraw the story, publish an apology and pay US\$ 5000 to each complainant as compensation.

Kachepa has instructed you to prepare a detailed complaint to the Human Rights Committee, citing all relevant provisions with respect to the rights and freedoms that may have been violated with respect to him as a result of the decision of the High Court and the reasons why, in the circumstances, his story was justified and did not amount to defamation of the individuals concerned. Proceed. (20)

QUESTION 4

- (a) The Universal Declaration of Human Rights is described in its Preamble as "a common standard of achievement for all peoples and all nations". In the context of the legal, moral and political arguments that have been advanced since its adoption by the United Nations General Assembly in December 1948, state the prevailing general opinion at international law on the status of the Universal Declaration. (12)
- (b) Briefly state and explain the general principles on which the Universal Declaration of Human Rights is founded? (8)

SECTION B- ANSWER TWO QUESTIONS

QUESTION 5

- (a) Describe in as much detail as possible either:
 - (i) the African system of human rights (15) or
 - (ii) the European system of human rights (15)
- (b) What are the advantages of a regional system of human rights when compared to the universal system? (5)

QUESTION 6

The State Reporting Procedure is usually described as the most important monitoring mechanism within the United Nations human rights system. Describe what state reporting is and the functions that it serves. (20)

QUESTION 7

Describe in detail and, in both cases, state the advantages and disadvantages in the promotion and protection of human rights of:

- (i) the 1235 Procedure; (10) and
- (ii) the 1503 Procedure. (10)



The University of Zambia

SCHOOL OF LAW

UNIVERSITY SECOND SEMESTER DEFERRED/ SUPPLEMENTARY EXAMINATIONS

L352: HUMAN RIGHTS LAW IN ZAMBIA

INSTRUCTIONS:

TIME: THREE (3) HOURS (plus 5 minutes to read the question paper)

ANSWER: FOUR (4) QUESTIONS

NOTE: Only unmarked statutes may be brought into the Examination Room.

-
- Q.1. Some scholars have posited that the concept of human rights is relative and cultural specific.
- Discuss critically.
- Q.2. Evaluate the performance of the Organisation of African Unity (OAU) in the promotion and enforcement of human rights in Africa.
- Q.3. Compare and contrast the constitutional provisions relating to emergencies in Zambia and South Africa. Which one is more protective of individual rights and freedoms?
- Q.4. Discuss some of the major weaknesses of the Zambian Bill of Rights.

Q.5. The Zambian courts have had occasion to pronounce on the scope of the power of detention.

With the help of relevant authorities discuss the limitations, if any, the courts have put on the detaining authority's discretionary power to detain.

Q.6. Discuss the function and purposes of freedom of expression in a democracy.

**THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW**

FIRST SEMESTER EXAMINATIONS – APRIL, 2002

L.411 - JURISPRUDENCE

[CLASSIC AND TRADITIONAL THEORIES OF JURISPRUDENCE]

TIME : THREE HOURS [Plus 5 Minutes to read through the Paper].

INSTRUCTIONS:

1. Statutes are allowed in the Examination Room.
 2. **Answer FOUR Questions, ONE from each Section.** There are four Sections.
-

SECTION A

QUESTION 1

What are the essential ingredients of norms crystallising into law, thereby acquiring a prescriptive pattern.

Discuss with reference to various schools of jurisprudence.

QUESTION 2

Paton has observed of the functional school of Jurisprudence:

“Law is defined not as a set of logical propositions but in terms of official action. Law is what courts [or other officials] do not what they say. Until a court has passed on certain facts, some realists argued, there is no law on the subject yet in existence, for the opinion of lawyers is only a guess as to what the courts will decide.”

[paton on Jurisprudence, 3rd Ed. Clarendon Press, at p. 22]

Does this adequately reflect what the Concept of law is?

Discuss in relation to other schools of Jurisprudence.

SECTION B

QUESTION 3

Of the nature of the concept of possession under English Law, Dr D R Harris has had this to say:

“ It is the thesis of this essay that the English decisions preclude us from laying down any conditions, such as physical control or a certain kind of intention, as absolutely essential for a judicial ruling that a man possesses something. A theory which postulates physical control and interaction of one kind or another as the basic ingredients of possession must include artificial glosses or fictions to cover the actual English decisions.”

“ Possession under English Law,” Oxford Essays in Jurisprudence, A. G. Guest [Ed] at p.69.

Evaluate and discuss this observation.

QUESTION 4

Two guests occupied separately the same room at Luangwa Lodge on two consecutive days. The first guest on the first day used the bathroom and saw a wallet in which were two pieces of diamond worth ZK 2 Billion. He however, did not take away this wallet but put it back where it was lying. The second guest on the second day used the same bathroom and saw the same wallet. In this latter case the guest took the wallet to the owner of the guest house who confessed having no knowledge of the wallet and its contents but undertook to report the matter to the police. The owner of the Lodge occupied permanently one room in the Lodge. The police reported back much later that the owner of the wallet could not be traced.

A dispute has now arisen as to ~~wa~~ who should have possession of the diamonds between the owner of the Lodge and the two guests.

Resolve the dispute as to who should possess the diamond.

SECTION C

QUESTION 5

Honore', A.M, in his Liberal Concept of Ownership, has had this to say about the universality of the Concept:

“ If ownership is provisionally defined as the greatest possible interest in a thing which mature systems of law recognise, then it follows that, since all mature systems, admit the existence of ‘interest’ in ‘things’, all mature systems have, in a sense, a concept of ownership.”

[see Honore’ in Oxford Essays in Jurisprudence, opt cit atp.108.

Discuss what constitutes ownership in a mature legal system, illustrating its universality.

QUESTION 6

What is the relation between the Concept of Ownership and the Concept of Possession and are the two concepts distinguishable?

Discuss.

SECTION D

QUESTION 7

M is an employee in a public statutory body. It is a term of the contract of service that such employee could, after a minimum of ten years service in any other statutory body ending up in this statutory body, switch from permanent conditions of service to a fixed term of contract, upon which the employee was automatically entitled to payment of gratuity. Upon applying for this facility to the Director of Human Resources, the said Director refused to recommend the same to the Managing Director. The reason given for this stand is that grant of the facility was the employer’s privilege and subject to the employer’s discretion.

What jural relations emerge from this case and what should be the outcome should litigation be contemplated by M.

QUESTION 8

- [a] Discuss jural relations between power and immunity; right, duty and privilege.
- [b] Discuss the jural relations involved in making of a will.

QUESTION 9

The Republic of UNZA is a Christian Nation but the Ruling Socialist Party wants to introduce a Bill, allowing abortion. The Church is opposed to this

Bill and so is the Opposition United Party. The United Party has instructed its members of Parliament to vote against the Bill and they are insisting on Party discipline. And the constituents in Munali constituency held by the United Party have petitioned their Member of Parliament Honorable Bonzo to vote against the Bill.

When a division was called for on the Abortion Bill Honorable Bonzo decided to defy both his Party and the Constituents and voted in favour of the Bill.

Both the Party and the Constituents want Honorable Bonzo expelled from the Party and vacate the seat in Parliament.

Give a reasoned legal opinion on the subject.

THE UNIVERSITY OF ZAMBIA

UNIVERSITY FIRST SEMESTER EXAMINATION, APRIL 2002 L. 421 THE GENERAL PRINCIPLE OF THE LAW OF BUSINESS ASSOCIATIONS

INSTRUCTIONS

TIME : THREE HOURS [PLUS 5 minutes to read through the paper].
ANSWER FOUR QUESTIONS: Question ONE is COMPULSORY.

You may bring in CLEAN Partnership Act of 1890, The Registration of Business Names Act and The Cooperative Societies Act.

Question 1: COMPULSORY [25 MARKS]

Kangwa, Mutale, Banda and Sakala formed a Partnership to carry on business trading as Kabangwe Garage which dealt in selling and repairing of motor vehicles. The Partnership appointed Kangwa as a salesman. Kangwa was responsible for the purchases of the Partnership. **Unknown** to Mutale, Banda and Sakala, Kangwa was carrying on a side trading business for himself alone.

Tikambilane Enterprises Limited. the suppliers of motor spare parts to Kabangwa Garage were also **unaware** of the fact that Kangwa was carrying on his business separate from the Partnership because he used to purchase for the Partnership. However, Kangwa started getting stocks on credit account and he subsequently defaulted to pay K100,000,000.00 [One Hundred Million Kwacha].

Tikambilane Enterprise Limited continued to give him the stock without questioning believing that it was for the Partnership business.

After sometime, the Partnership business was insolvent, and the three partners namely Mutale, Banda and Sakala were surprised to find listed among its debt K100,000,000.00 (One Hundred Million Kwacha) which the were not aware.

Tikambilane Enterprise Limited is threatening to sue partners for the debt. Mutale, Banda and Sakala after questioning Kangwa who was entrusted as the salesman of the partnership to purchase on its behalf admitted to carrying on a side business.

However, Tikambilane Enterprises Limited is insisting that the partnership is also responsible for K100,000,000.00 [One Hundred Million Kwacha] debt.

You have been retained by Tikambilane Enterprises Limited as their Legal Counsel. Write your legal opinion.

Question 2:

[15 marks]

Discuss briefly the following:-

- a. Whether a person who becomes a partner of existing firm is liable for a debt incurred before he became a partner?
- b. Whether a retired partner is liable for a debt incurred subsequent to his retiring?
- c. Whether a retired partner is liable for the partnership debt incurred while he was a partner?

Question 3:

[15 marks]

Discuss fully the principle that “ **All Partners are entitled to be heard**”.

Question 4:

[15 marks]

- a. Described briefly various forms of Business Associations available to a person in Zambia who is intending to start a business. **[5 marks]**
- b. Write brief notes on the following:-
 - i] Sole Proprietor
 - ii] Firm
 - iii] Partnership
 - iv] Company limited by shares
 - v] Business**[10 marks]**

Question 5:

[15 marks]

- a. Describe briefly in your own words the procedure for registration of a Co-operative Society.
- b. What is “ patronage bonus”
- c. What is Cooperative union or Federation?
- d. Discuss briefly the effect of registration of a Cooperative Society?
- e. Discuss briefly the duties and obligations of the members of the Board of Directors of a Cooperative Society?

Question 6: [15 marks]

- a. What was the major reason which lead to the establishment of a **Committee of Inquiry on small Firms in United Kingdom.**
- b. Describe briefly the findings of the **BOLTON COMMITTEE.**

Question 7: [15 marks]

“ Ordinary partnerships are by law assured and presumed to be based on mutual trust and confidence of each partner in the skill, knowledge and integrity of every other partner. As between the partners and the outside world [whatever may be their private arrangements between themselves], each partner is the unlimited agent of every other.....” per Sir W. M. James L. J. in Baird’s Case [1870] L. R. CH APP. 725

With suitable illustrations, critically discuss the above quotation.

**THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW**

UNIVERSITY FIRST SEMESTER EXAMINATIONS, APRIL, 2002

L. 431 – INTERNATIONAL LAW

TIME : **THREE HOURS** [Plus 5 Minutes to read through the Paper].

INSTRUCTIONS: I] CANDIDATES MAY bring into the Examination Room
 **UNMARKED COPIES OF ANY INTERNATIONAL
 TREATY.**
 II] ANSWER QUESTION ONE AND ANY OTHER THREE
 QUESTIONS.

1. In reference to concepts such as self-determination, State Sovereignty, State Responsibility and Use of Force, evaluate the merits and de-merits of the following real life situations:
 - a. the capture of panama's former Head of State, Noriega, by the USA and the subsequent trial and conviction of Noriega in the USA. **[20 marks]**
 - b. USA's Military response to the September 11th 2001 attacks on the World Trade Centre in New York and the Pentagon in Washington DC. Was the military action taken by the USA against Afghanistan justified? If so, under what aspects of public international law? **[20 marks]**
2. Is International law true law? Discuss, making reference to commentaries from publicists and evidence from customary international law, state practice and treaty law. **[40 marks]**
3. As a source of international law, custom presents a number of theoretical difficulties. In particular, it remains problematic that behaviour which is inconsistent with a recognized rule of law may be characterized as either unlawful or, potentially, relevant state practice in the formation of a new rule of law. In addition, the supposedly consensual character of international law is put in doubt by doctrines such as acquiescence. **[20 marks]**

Discuss.
4. [a] " Every state has a sovereign right in international law to decide on its own whether or not to embark on deep sea-bed mining." **[10 marks]**

Discuss.

[b] On what basis can a state claim jurisdiction over foreign nationals?
Discuss the scope of this jurisdiction in the contiguous zone. **[10 Marks]**

5. Article 34 of the Vienna Convention on the law of Treaties provides that: “ A treaty does not create either obligations or rights for a third state without its consent.”

Discuss this principle with reference to a variety of treaties including the Charter of the United Nations, and the Law of Sea Convention 1982. **[20 marks]**

6. a. Show the extent to which the position of the individual as an object of international law has undergone changes since the end of World War II. **[10 marks]**

b. Distinguish between:

i) pacta sunt servanda and jus cogens **[5 marks]**

ii) de facto and de jure recognition **[5 marks]**

7. Critically examine provisions on the interpretation of treaties in the Vienna Convention on the Law of Treaties 1969, and demonstrate whether or not customary international law has crystallized in this area of jurisprudence. **[20 marks]**

***** END OF EXAMINATION *****

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

UNIVERSITY FIRST SEMESTER EXAMINATIONS, APRIL 2002

L451 – INTERNATIONAL TRADE LAW

TIME: THREE HOURS (Plus 5 minutes to read through the paper)

INSTRUCTIONS: CANDIDATES MAY BRING INTO THE EXAMINATION ROOM UNANNOTATED COPIES OF THE URUGUAY ROUND OF MULTILATERAL TRADE AGREEMENTS, LOME CONVENTIONS, COTONOU AGREEMENT AND COMESA TREATY.

NO OTHER MATERIALS ARE PERMITTED

ANSWER QUESTION ONE AND THREE OTHERS

QUESTION ONE

- (a) “Zambia should temporarily withdraw from Comesa for a period of one year to facilitate the resolution of the problems that have arisen in the country’s trade with other Member States, the Zambia Association of Manufacturers (ZAM) has suggested. Zambia spokesman Mark O’ Donnell said it had become clear that the playing field was not leveled in the trade between Zambia and Comesa Member States under the Free Trade Area (FTA) and that certain alternatives needed to be considered to correct this imbalance which was hurtful to Zambia”.

Times of Zambia of Friday March 29, 2002 – Article entitled “Let’s Withdraw From Comesa – ZAM”.

Discuss the trade remedies under both the Comesa Treaty as well as GATT/WTO that a country faced with an imbalance or unfair trade practices may resort to.

In your view is withdrawing from Comesa the solution?

(30 marks)

- (b) Ruritania, a developing country located in Southern Africa is a member of the four previous LOME Conventions and Cotonou Agreement, a successor of the said LOME Conventions, signed on June 23, 2000 between the 77 African, Caribbean and Pacific (ACP) countries and 15 European Union (EU) countries.

Ruritania's economy is heavily depended on revenues generated on exporting of two primary commodities, namely coffee and copper to the EU and other developed countries in the western world. The revenues which Ruritania generates from the export of the said commodities is \$500 million per year. In 2001 due to slow down in the world economy the price of both coffee and copper have drastically gone down, thereby reducing the revenue gained by Ruritania on the export of the said products to \$400 million.

The Minister of Finance of Ruritania, who fears that the loss of revenue from the exports of coffee and copper will have significant effect on the country's 2001 budget, approaches you for advice on what facility, if any, that Ruritania Government can explore under the Cotonou Agreement that can compensate for the shortfall in export income on the part of Ruritania because of price fluctuations.

Please advice.

(10 marks)

QUESTION TWO

The Most-Favoured-Nation (MFN) clause is the cornerstone of the international trade rules embodied in the General Agreement on Tariffs and Trade (GATT).

Discuss the MFN principle and examine the exceptions to the MFN obligation.

(20 marks)

QUESTION THREE

A key rationale of the multilateral trading system is to promote the growth of the economies of all participating countries through the free flow of goods and services. Developing countries in the trading system perceived the trading regime as only existed for the industrialized nations.

Critically examine how the multilateral trading system has tried to accommodate the concerns of developing member countries from its inception in 1947.

(20 marks)

QUESTION FOUR

- (a) Discuss the protective devices a Government can use to restrict imports into the country.

(14 marks)

- (b) Kelvin is a commercial farmer in Mkushi. In 2002 farming season he produces 500,000 bags of maize. Due to drought in most parts of Zambia and in anticipation of maize shortages in the country, the Government of the Republic of Zambia bans the export of maize from Zambia. Kelvin who wants to make a huge profit by selling maize to the Democratic Republic of Congo is infuriated by the Government ban.

Kelvin decides to approach you for advice, as a GATT expert, alleging that the Government ban is in violation of GATT provisions.

Please advice

(6 marks)

QUESTION FIVE

Compare and contrast the two models of trade regulation. In your opinion which model is best suited for a developing country like Zambia?

(20 marks)

QUESTION SIX

- (a) Should regional trade arrangements be welcomed as a step towards global free trade, or should they be condemned as institutions that undermine the multilateral trade system?

(10 marks)

- (b) From the perspective of developing countries, critically analyze the role of regional economic integration in promoting development.

(10 marks)

In your answer make specific references to regional trade arrangements such as Comesa, European Union or any other regional trade arrangements.

QUESTION SEVEN

Critically analyse the dispute settlement procedure under the GATT/WTO system. What were some of the weaknesses in the GATT system and how they have been overcome, if at all, in the WTO system?

(20 marks)

THE UNIVERSITY OF ZAMBIA

LAW SCHOOL

FIRST SEMESTER EXAMINATION: APRIL, 2002

L461: INTRODUCTION TO INTELLECTUAL PROPERTY AND COMPETITION LAW

Instructions – Please read carefully:

1. The duration of this examination is three (3) hours.[Plus 5 minutes to read the paper].
2. The examination consists of seven (7) questions. You are expected to answer four (4) questions inclusive of question four.
3. Use legible ink only. Do not use pencil. Any illegible writing or text will not be credited.

Question No. 1

What is intellectual property?

Describe and explain the different types or classification of intellectual property rights using Article 2(viii) of the Convention Establishing the World Intellectual Property Organization (WIPO), as your guide. (20 marks)

Question No. 2

- a) "A generic term is one that refers, or has come to be understood as referring, to the genus of which the particular product is a species". (*Blinded Veterans Ass'n v. Blinded Am. Veterans Found.*, 277 U.S. App. D.C. 65, 872 F. 2d 1035, 1039 (D.C. Cir. 1989)).
Discuss the import and/or tenor of this dictum with reference to the statutory requisite for a trademark to be distinctive. (10 marks)

- b) Are colour marks registrable as trademarks in Zambia? If so, what is the importance or effect of limitation as to colour and of the absence thereof, if any, with respect to registration or infringement of a mark? (10 marks)

Question No. 3

- a) What is a patent?

Discuss the function, purpose and justification for patent protection bearing in mind the policy underlying the enactment of the Patent Act. (10 marks)

- b) Outline the remedies available to a litigant in a patent infringement suit and examine the principles underlying the award of these remedies. (10 marks)

Question No. 4

Kisi Fanu is a vibrant young professor of *analytical intermingling* in the School of Mingling Sciences at the University of Zambia (hereinafter “the University”). He has just returned from the Massachusetts Institute of Technology (MIT) where he was on a post-doctoral fellowship doing research in furtherance of his ambition to publish his second book. Kisi Fanu has been away for two years.

His debut publication, a pioneering book on *Intermingling Science* was, according to him, written principally to aid in teaching *Intermingling Science* at the University, which had no other academic materials that *intermingling science* students could use. He wrote the book while on annual leave in 1999. At the time of going to press, Kisi Fanu had requested for funds from the University and was informed “the University is not interested in your self-styled vacational exploits of fancy”.

Before he went to MIT, Kisi Fanu taught IS421 (Introduction to *Analytical Intermingling Science*) and IS422 (*Advanced Analytical Intermingling Science*) and used his most cherished book as a prescribed text for both courses. The copyright notice in this self-published edition reads as follows:

Copyright of the Author

© 2000 Kisi Fanu

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Upon his return from MIT, Kisi Fanu discovered that the School of Mingling Sciences had published a second and enhanced edition of his book under the editorship of the new *Intermingling Science* lecturer, Nato Lelefye, which was published by UNZA Press. The copyright credits appear as follows:

Copyright © 2000, 2002 The University of Zambia

© 2000 University of Zambia

Millennium edition

© 2002 University of Zambia

Second edition

All Rights Reserved

Published by UNZA Press

Printed by UNZA Printer

April, 2002 Lusaka

Kisi Fanu was incensed. He approached the Dean of the School of Mingling Sciences who informed him that it was the University's "new deal" policy to own all work produced by members of staff to ensure that, come what may, there is "continuity with change" in the

University notwithstanding changes in personnel. The University Council insisted that Professor Kisi Fanu "has no rights what-so-ever in the book".

Kisi Fanu launched proceedings in the High Court claiming, *inter alia*, injunctive relief "for the University to be enjoined from infringing his copyright in his book", damages and an account of profits. The University counter-claimed for "a declaration that it is the legal owner of the copyright and any other rights, if any or at all, in the book".

In his alternative submissions to Court, Kisi Fanu has referred to two American judicial precedents that he claims preserve what he has termed the "teacher exception". The cases in point, which were both decided by former law professors, are *Hays v. Sony Corp. of America*, 847 F.2d 412 (7th Cir. 1988) and *Weinstein v. University of Illinois*, 811 F.2d 1091 (7th Cir. 1987). In *Weinstein*, Judge Easterbrook opined that the teacher exception "has been the academic tradition since copyright law began".

Justice Preamble Maningi has been assigned to hear and decide this landmark case and you are presently attached to his Chambers as a research assistant on a judicial clerkship facilitated by the Law School under its newly introduced Judicial Support Project. You once overheard the Judge telling fellow Justices at a cocktail party that he is relying on your renowned and prolific research skills and ability to pronounce a landmark decision that will form the bedrock for resolution of future suits of a similar kind.

Write an exhaustive opinion for the Judge addressing all the legal issues in this matter, the basis of which will form his landmark decision. (40 marks)

Question No. 5

- a) With reference to the Zambian Copyright and Performance Rights Act, explain the composition of what may colloquially be termed as the “bundle of rights” of a copyright owner. (10 marks)
- b) What is the concept of originality and the idea/expression dichotomy in copyright parlous? (10 marks)

Question No. 6

- a) Outline the requirements and procedure for obtaining a patent in Zambia. (10 marks)
- b) How do patents as opposed to trademarks, and vice versa, augment and/or ensure competition in the market place and thereby act as instruments of consumer protection for the benefit of the public? (10 marks)

Question No. 7

Imboela, your childhood buddy, has come to visit you and he has a tale to tell. He discovered an unconventional formula for treating a very prevalent disorder among law students called *schizophrenic legalese*. In Imboela's own words, *schizophrenic legalese* was hitherto “not just an incurable social but also mental disorder that caused students in the Law School to think they are all that”.

According to him, the formula has achieved instant popularity and success among University of Zambia students and members of the public who have acquaintances and relatives, especially those with spouses, girlfriends and boyfriends in the Law School who feel that this antidote (though not a drug) could not have come at a better time. Imboela's

formular is packaged under the label "FIX - tame them formula", which he successfully registered as a trademark at the beginning of the year.

Pharmaceutical giant Mongu Chemicals Limited (MCL), market and sell a drug for 'academic headaches' and exam fever called "FICKS THEM taming formula", which is very popular among university and college students in Zambia. MCL's brand name for this drug was registered as a trademark two years ago. MCL has heard about Imboela's formula and think that use of his label infringes their registered trademark. MCL has threatened to sue Imboela if he does not stop using his FIX label.

According to the formal letter of demand addressed to Imboela, MCL will stop at nothing to ensure the expunction of FIX from the register of trademarks once their intended suit is filed in the High Court so that the trademarks register is rectified. They also want to claim colossal sums of money as damages for infringement.

Imboela is in a state of panic and despondency. He recently discovered that you were taking a course in intellectual property law and that is why he has come to see you. He wants to know what his legal position is. Advise him. (20 marks)

– End of Examination –