

THE UNIVERSITY OF ZAMBIA
UNIVERSITY EXAMINATIONS
NOVEMBER, 1992
LAW

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THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - NOVEMBER, 1992

L 110

LEGAL PROCESS

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

ANSWER: ANY FOUR(4) QUESTIONS.

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1. What is Delegated legislation? In your view is this an important source of Law in Zambia?
 2. Discuss the following remedies'
 - (a) Restitution
 - (b) Specific Performance; and
 - (c) ~~Restitution.~~ *Rectification*
 3. Outline the jurisdiction of the following courts:-
 - (a) Local Courts;
 - (b) Subordinate Courts; and
 - (c) High Court.
 4. You have returned to your station upon completion of your certificate in Law course. Your Officer-in-Charge is anxious that other officers who have not taken the course should benefit from your recently acquired knowledge. He wants you to explain to the other officers the important points of the accusatorial system of justice.

Do this.
 5. What do you understand by the term "Judicial Precedent"? Should this be encouraged in Zambia?
 6. Under what circumstances do the courts in Zambia apply rules of African Customary Law?

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA
UNIVERSITY EXAMINATIONS - NOVEMBER, 1992

L 140

CERTIFICATE IN LAW

TIME: THREE HOURS

INSTRUCTIONS: ANSWER QUESTION ONE WHICH IS COMPULSORY
 PLUS ANY OTHER TWO QUESTIONS. THE FOLLOWING
 STATUTES ARE PERMITTED IN THE EXAMINATION ROOM
 CRIMINAL PROCEDURE CODE Cap.160
 PENAL CODE Cap.146
 CONSTITUTION OF ZAMBIA, Cap.1

PLEASE READ THE QUESTION PAPER VERY CAREFULLY
BEFORE YOU BEGIN.

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- Q.1. Discuss the mens rea of a crime paying particular attention to the difference between intention, criminal negligence and recklessness. Give one example of an offence from each type of mens rea listed above. Illustrate the given offence with reference to a decided case.
- Q.2. Describe the process of instituting criminal proceedings against a suspect who has not yet been arrested.
- Q.3. Outline and contrast the offences of theft, robbery and burglary.
- Q.4 Write notes on the following:
- (a) Incest
 - (b) Actus reus
 - (c) Defence of intoxication
- Q.5. What do you understand by the judge's rules. Discuss their importance in a society which recognises basic human rights.

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - NOVEMBER, 1992

L 150

CONSTITUTIONAL LAW

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

ANSWER: Any four questions.

NOTE: The Constitutional Zambia may be consulted

1. Distinguish between a presidential system of government and a parliamentary system of government.
 2. Outline the principal powers and privileges of the Zambian Parliament.
 3. (a) Discuss the distinction between judicial review of legislative action and judicial review of executive action.

(b) Outline the salient features in the case of In re Thomas Mumba [1984]ZR 38
 4. Discuss in detail the case of Feliya Kachasu v. Attorney - General [1967]
 5. Discuss the extent to which the independence of the judiciary is secured and/or limited.
 6. Explain fully what the concept "rule of law" means.
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END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - NOVEMBER, 1992

L 210

LEGAL PROCESS

TIME: THREE HOURS (Plus Ten (10) Minutes for Reading through the Question Paper).

ANSWER: ANY FOUR(4) QUESTIONS.

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1. Discuss the following Equitable remedies and their applicability in the Zambian situation:-
 - (a) Injunctions;
 - (b) Specific Performance; and
 - (c) Restitution
 2. The concept of "Power to the People" is again on the lips of many Zambians with the Local Government Elections just around the corner.

Some people are of the opinion that if uneducated people are elected as Councillors the concept of "Power to the People" will just be a "pipe dream" - in other words - there will be no meaningful development as such Councillors will be unable to positively utilise powers vested in them. On the other hand it has been argued that the Constitution of Zambia provides for the National Assembly to delegate some of its Law-making powers and that there are good reasons for this. Consequently, the argument goes, any person or authority authorised by the National Assembly to use some of its Law-making powers should go ahead and use such powers irrespective of their educational background. A layman wishes to be briefed on the issues of delegated legislation and would like to know in particular why a popularly elected National Assembly should give away some of its Law-making powers and whether or not there are ways and means of controlling the use of such delegated powers.

3. "In any country, the independence of the judiciary is preserved more securely by Constitutional practice than by rules of strict law. The good sense of Ministers, legislators and the judge themselves professional tradition, and the force of public opinion, are surer safeguards than any formal guarantee..... The existence of formal guarantees mould and condition the habits of thought and conduct even where the guarantees are less formal than is generally believed."

Per Professor S.A. de Smith 1953.

The 1991 Zambian Constitution has provisions that deal with the issue of the protection of the independence of the judiciary.

Critically analyse these Constitutional provisions and indicate whether or not in your view these provisions are adequate for the purpose ensuing judicial independence.

4. Zambia is ~~one~~ of the most urbanised countries in Sub-Saharan Africa and yet provisions still exist in the laws of Zambia for the Local Courts, High Court and even the Supreme Court to apply principles of African Customary Law in certain circumstances.

It is a notorious fact that Zambian towns are full of people from various distant parts of Zambia, and even from outside Zambia many who have inter-married, while many young Zambians have been born and bred in town and have never been to the rural areas.

- (a) Discuss the Legal Limitations imposed on the applicability of the African Customary Law, and
 - (b) Whether or not in your considered opinion African Customary Law should continue to be regarded as an important source of Zambian Law.
5. "Ours is an accusatorial and not an inquisitorial system - a system in which the state must establish guilt by evidence independently and freely secured and may not by coercion prove its charge against an accused out-of his own mouth."

Per Justice Frankfurter in ROGERS v RICHMAD 365 vs 534 at 540.

Zambia has adopted the accusatorial system through provisions contained in the Constitution and the Criminal Procedure Code.

Outline the essential safeguards of this system and discuss whether or not in your opinion this system is appropriate given Zambia's political, legal and economic set up.

6 A layman recently attended a High Court session. In the course of the proceedings he listened in amazement when the lawyers started referring to old decided cases. He could not understand how lawyers in Zambia dealing with a case that took place recently should waste time referring to cases decided many years ago.

He wishes to know why lawyers should be allowed to continues refering to old cases.

Advise him on the merits and demerits (if any) of the system of relying on old decided cases.

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - NOVEMBER, 1992

L 230

THE LAW OF TORTS

TIME: THREE HOURS

- INSTRUCTIONS: 1. Candidates may only bring statutes into the examination room.
 2. Answer any four questions.
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1. Mooya and Pasmal are partners in a Law Firm called Mabuyeni Chambers whose offices are located in Indeco House along Cairo Road in Lusaka. Mooya is the Managing Partner. In January 1992 the firm bought a new Honda Accord car, which was given to Pasmal, who did most of the court work for the firm. He was authorised to use it for both his private purposes as well as for business purposes.

In July 1992 Mooya and Pasmal had a very serious altercation over alleged misuse of funds, which culminated in a fist fight. Mooya subsequently wrote to Pasmal purporting to dismiss him from the firm and demanding that he hand back to the firm all the property belonging to the firm, including the car, Pasmal not only rejected the dismissal but also refused to hand over the Honda Accord. On August 27 Mooya told Lusaka Police that the Honda Accord had been stolen. Acting on this false report the police arrested Pasmal in broad-day light along Cairo Road.

He was kept in a filthy cell at Kamwala Remand Prison for a week before being released. Pasmal was charged with theft but the police later withdrew the charge.

Pasmal is very upset about this and comes to you for advice.

2. On September 30, the Daily Inquirer, a mass circulation newspaper, published the following under the headline

"K3 million Land Deal Split for City Councillors Probed"
"The Anti-Corruption Commission yesterday began investigating a report that K3 million slice of the cancelled K15 million Mwembeshi Malting Farm Deal was earmarked for division among a number of Lusaka City Councillors.

This startling development arose after an expose' of the scandal by the Daily Inquirer led to a quick cancellation of the Project. Investigators studying the report of the K3 million jackpot declined to elaborate, but it was learned they would question the ten councillors on the Land

Allocation Committee." Upon investigation the Anti-corruption Commission concludes that there is insufficient evidence on which to prosecute any of the councillors implicated.

Chonta is a councillor on the Land Allocation Committee and is uncensed by the story. His demand for an apology is laughed off by the Daily Inquirer, which challenges him to commence legal proceedings if he so desires.

Chonta retains you as his attorney. Advise him.

3. Chiwaya lives in Kabulonga, an exclusive affluent suburb in Lusaka. He is married and has three teenage daughters.

In the same street is a house used by four young women: Chibesa, Rosalyn, Betty and Jennipher. They solicit for men in nearby streets and bring them to the house.

Chiwaya is very upset about the activities of these women as they not only set a bad example for his daughters but also seriously diminish the value of his house as a residence.

He comes to you for advice.

4. Write brief notes on any two of the following:-

- (a) Control of pollution in Zambia
- (b) Assessment of damages for defamation in Zambia
- (c) The Rule in Rylard v Fletcher
- (d) Occupiers Liability

5. Conceptor is admitted to UTH for an operation on her right leg which has been giving her problems ever since she survived a car accident in January 1992. After the operation she loses all feeling in the leg and cannot use it at all. This is because someone-either the doctor, surgeon or a nurse - has been careless. She cannot identify the person responsible.

Advise her on her rights.

6. "The crude view that the law should take cognisance only of physical injury resulting from actual impact has been discarded, and it is now well recognised that an action will lie for injury for shock resulting through the medium of the eye or the ear without direct contact." (Winfield)

Discuss.

7. Amos a farmer living in Makeni had ^{at} once had a nervous break down a condition which still recurs whenever he is over-excited. A rail line passed through his farm, and one afternoon, a passenger train travelling from the North to the South derailed owing to the negligence of the driver. Amos rushed to the scene of the accident to assist in rescuing some of the passengers who were still trapped in the train. On finding severed heads and other limbs of dead passengers, he suffered nervous shock.

He approached the railway authorities for compensation but was told that his rushing to the scene of the accident knowing that he was highly nervous amounted to contributory negligence. Besides, the risk incurred by the passengers was completely different from that which Amos ran.

Advise Amos.

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - NOVEMBER, 1992

L 240

CRIMINAL LAW

TIME: THREE HOURS

ANSWER: ANY FOUR (4) QUESTIONS.

CANDIDATES MAY TAKE A COPY OF THE PENAL CODE, CAP 146 OF THE LAWS OF ZAMBIA INTO THE EXAMINATION ROOM.

1. X and Y had been living together as man and wife for 10 years even though they had not legally married. One day, X, who had been recently retired from his job was drinking beer at his local pub with his rather rowdy mates when he was informed by one of them that his wife Y, a secretary, had been extending sexual favours to her boss Z. On hearing this, X rushed off to Y's working place and found Y and her boss ostensibly working late in the latter's office. Upon seeing X, Y panicked and quickly headed for the door. X chased her into a nearby street. Y fell down whereupon X kicked her arm. X immediately rushed back to Z's office "to sort him out". On his way to Z's office, X picked up a metal bar which, on reaching the office he savagely threw at Z hitting his head and fracturing his skull in the process. The metal bar also broke the screen of an I.B.M personal computer which was on Z's executive desk.

Z was rushed to the hospital by a good samaritan S, in a car. On the way to the hospital, S's car was hit into with great force by an IFA truck which was being driven by a very drunk soldier who had failed to apply brakes as he approached traffic lights. Z sustained serious internal injuries in the process.

In the meantime X had rushed his wife Y to hospital in a hired taxi. Both Z and Y died on the same day.

Medical evidence showed that Y had a persistent thyrox gland and that such persons could die from a combination of flight or strong emotion and physical exertion. Z's Post mortem was quite inconclusive as to the precise cause of death but nevertheless revealed that either of the two injuries was sufficiently fatal to cause death.

X now stands arraigned for the murder of both Y and Z. He is also indicted for the offence of wilful and unlawful damage to property (i.e. the personal computer). Prepare a thorough legal opinion regarding the position of X both in respect of his criminal liability as well as any

defences that would be available to him and the sustainability of the same.

2. R, a popular blind musician and his wife S organised a 'seviours' drink up on the former's birth day. Both R and S were drinking whisky "on the rocks". The couple were to be joined by a couple of friends later that evening. As R had been drinking at a rather faster rate, he found himself crawling to the bedroom even before the friends had come to join in the fun.

As most of the couple's friends who had come to the function were disappointed on finding that the 'main man' R had gone to sleep, they could not stay long. However, T, a long standing friend of S stayed on. With the encouragement of S, T drank to the point when she could hardly tell where she was. S was not however as drunk as T was. Seeing T in her state, S dragged her into the masterbedroom where R was sleeping in the couple's king-size double bed. S did not switch on the lights in the bedroom she just proceeded to place T in the middle of the bed between herself and R (who was in deep sleep and unaware of what was happening at the time).

In no time, T was in deep sleep.

Sometime in the night R, desiring to have sex with his wife, proceeded to insert his sex organ into T's (who was asleep). Before he could effect full penetration however, T got up, screamed and pushed R off her body.

The following morning T reported what had transpired to the police. Both R and S were arrested.

Advise R and S as regards the possible criminal charges that would be preferred against them (if at all) and the sustainability or otherwise of any defences either or both of them would raise.

3. "The offence of bigamy is one example of laws which are sometimes totally strange once transported from England to Zambia - and once they are applied to indigenous Zambians. In England, polygamy is a totally unacceptable state of affairs" Commissioner Ngulube (as he then was) in The People v Nkoma (1978) ZR. 4.

In the light of the above observation, do you think the law of bigamy should be retained on the statute book in its present form?

4. Tembo carried out some repairs on Mwamba's car. The total cost of all repairs was K10,000. For some 10 months, Mwamba was unable to pay Tembo the agreed sum of K10,000.

Chanda, and Sitali who were Tembo's friends went to Mwamba's house one evening without Tembo's knowledge. They removed a battery and wheels from Mwamba's car, all valued at K50,000. The items were delivered to Tembo's house for safe keeping whilst Chanda and Sitali looked for a customer. Sitali told Tembo that the battery and the wheels belonged to his uncle.

A day after the items were delivered, the police raided Tembo's house and recovered the battery and the wheels. Tembo, Chanda and Sitali were arrested.

What offence(s) did they commit?

5. X entered a shop to buy a box of matches worth K50. He handed a K100 note to the cashier. The cashier, mistakenly thinking that X had given her a K500 note gave him (X) K450 instead of K50 as change.

X walked out of the shop smiling broadly and thinking about how to spend the K450.

Unknown to him, the shop's security guard was pursuing him. Across the road the security guard confronted him and asked him to accompany him back to the shop. X then gave the security guard a violent kick on his leg and ran away.

Three hours later, the police found X at a local bottle store, drunk and arrested him.

What offence(s) did X commit?

6. Would you agree with the following propositions:

- (a) "all killings -whether they be reckless, negligent or intentional should be murder".
- (b) "Provocation, intoxication and diminished responsibility are utterly redundant as defences to criminal liability".

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA
UNIVERSITY EXAMINATIONS - NOVEMBER, 1992

L 250

CONSTITUTIONAL LAW

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

ANSWER: QUESTION ONE and any three other questions

NOTE: Candidates may consult the Constitution of Zambia

1. "The executive and parliament make the law, and the law must be interpreted by the Judiciary so that you and I should be free. To have real justice we must leave the judiciary independent."

- former President Kaunda in 1969

With reference to this statement discuss fully the extent to which the independence of the judiciary is secured and/or limited.

2. Discuss the methods employed by the executive in subordinating the legislature. Cite relevant instances if and were necessary.
3. (a) Distinguish between judicial review of legislative action and judicial review of executive action.

(b) Outline the salient features in the case of In re Thomas Mumba [1984]ZR 38

4. The honourable Minister of Justice, Dr. Chilikwa was a nominated member of Parliament. On August 5, 1992 he resigned as an MP. The President has nominated to parliament Professor Preamble Maningi and appointed him Minister of Justice. It has however come to light that Prof. Maningi was in 1990 convicted by a Magistrate's Court for being in possession of obscene literature. He was sentenced to six months imprisonment suspended for one year.

Discuss the constitutionality of his appointment.

5. Outline the composition, functions and powers of the commission for Investigations in Zambia and other legal and extra-legal factors relevant to its effectiveness. In your view, if that body is maintained in its present form, will the change to multi-party constitutional system make it more effective, less effective or have no effect? Give reasons for your answer.
6. Outline the principal powers and privileges of the Zambian Parliament.

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - NOVEMBER, 1992

L 320

LAND LAW

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

ANSWER: TWO QUESTIONS FROM PART "A" AND THREE QUESTIONS FROM PART "B"

PART A

1. Former President Kaunda and his two old time friends namely Messrs Irwin and Revered Mutale were running a trust for the promotion of the Junior Engineers and Technicians Society (JETS) in Zambia. The trust "owned" and maintained investments in property. Specifically, the trust owned the multi-million kwacha Woodgate building in the centre of Lusaka which they leased out to several companies and individuals.

Recently, Revered Mutale (one of the trustees) died in a road accident in Lusaka. Consequent to this death, President Kaunda, in his capacity as chairman of the board of trustees, appointed Mr. Sleep, husband of his long time secretary Gloria Sleep, to the trust. Mr Sleep was also the caretaker of the building.

Meanwhile, the trustees decided to sell Woodgate house in order to deposit the money in long term investments. President Kaunda explained that this was necessary because the caretakers' health was poor and that in any case, deposit investments was, at prevailing rates, more profitable than the returns from rent. They sold the building at K100 million.

However, the personal representatives of Revered Mutale's estate and relatives were angered by the decision to sell Woodgate house and the addition of Mr. Sleep to the trust. They argued that they should have been consulted before the building was sold and that in any case, the administrator of the estate of Revered Mutale should have been added to the trust other than Mr. Sleep.

Discuss the legal issues raised and advise the parties
(20 Marks)

2. "Notwithstanding anything contained in any other law or in any deed, instrument or document..... no person shall subdivide, sell, transfer, assign, mortgage, charge or in any other manner whatsoever encumber, or part with the possession of his land or any part thereof or interest therein without the prior consent in writing of the President." (Section 13 (2) of Act No. 20 of 1975, Cap 289)

(a) With the help of decided Zambian cases, assess the legal implication of this provision on the rights of the transferee in State land, Trustlands and Reserves. Explain the procedures for acquiring land in the three "tenures" and indicate the stage(s) at which Presidential Consent becomes necessary.

(b) Compare and Contrast the requirements for Presidential consent to the registration requirements under Section 4 of the Lands and Deeds Registry Act.
(20 marks)

3. The National Milling Company, the manufacturers of bread and other flour products, have been told by government to localise the production of wheat. Wheat is the main raw material in the production of bread. In the past, wheat was largely imported. Due to scarce foreign exchange, government has since discontinued the allocation of foreign currency to the milling company.

The National Milling Company (NMC) concluded a joint venture with Daimler Bakeries, a multinational company based in Germany, to grow wheat in Zambia on a large scale for both domestic consumption and export. The government welcomed this development as it was in tandem with the privatisation programme being implemented in other sectors of the economy. It undertook to help secure a vast piece of land for the project.

Two weeks after conclusion of the joint venture agreement, the ministers of Agriculture and Lands took NMC officials to the area near the Mwembeshi settelite station west of Lusaka. They quickly organised a meeting with local MMD officials at which 54 farmers in the area attended. The two ministers explained that the purpose of their meeting was to inform them that cabinet had decided to re-enter their plots and farms (all 53) with immediate effect. These pieces of land would be leased to the NMC and Daimler Bakeries to enable them grow wheat.

The farmers could not believe what they were being told. They were caught unawares. They put question after question to extract further details about this "strange" development. In particular, they wondered whether the action was legal in view of their constitutional right to property and the fact that they all had title deeds for their plots and farms. At this point, the two ministers asked the Commissioner of

Lands, who was with them, to explain the legal position. The Commissioner of Lands explained that the compulsory acquisitions would be legal as there was power to do so. He said each of the farmers would be compensated for their improvements at the rate of K10000 per acre. However, those who had not yet built houses on their land would not be compensated even if they may have wall fences or used the farms for farming or pasturage. He also said that letters of notifications of the intended reposessions had already been prepared by his office and would be served to each of the farmers the following day.

The farmers rejected both the decision to acquire their farms and the proposed compensation. They argued that even if they were to concede to the acquisitions, some of their properties were worth much more than the proposed K10000 per acre rate of compensation the Commissioner was proposing. However, the Commissioner maintained that he was the only authority on determining the rate of compensation payable and that the law did not provide other relief to aggrieved party.

The following day, the notices were served with a copy of a letter from the President addressed to the Minister of Lands in which he (the President) is directing the Minister to respossess all the 53 farms on the grounds that it is "necessary" to do so in order to promote development. The notices were accompanied with a cheque to each of the farmers who had houses on their farms but not those who were not "qualified". On getting the letters, the farmers marched to the President at State House to protest and surrender their MMD cards. The President offered to revise upwards the amount of compensation by doubling the rate per acre. The farmers rejected this and the meeting broke down.

You are a newly qualified advocate practising in UNZA Chambers. The farmers, through their five representatives, have retained you to "fight" their case.

- (a) Identify and discuss the legal issues in the matter.
- (b) Advise the farmers on their next course of action and prepare the relevant arguments for them. (20 marks)

PART B

4. Write short notes on the following:

- (a) Cujus est solum, ejus est usque.
- (b) The Right of Foreclosure
- (c) Contingent interests (20 marks)

5. Compare and Contrast

- (a) Free Tenures with Unfree Tenures
- (b) Contractual licences with Licence coupled with interest
- (c) Equity of Redemption with the Equitable Right to Redeem (20 Marks)

6. Discuss the legal nature and extent of the concept of "Planning Permission" in Zambia Law. Assess its compatibility to the "squatters title" at law and speculate the implication on planning of the Housing (Statutory and Improvement Areas) Act Cap. 441. (20 marks)
7. Analyse the main currents of thought with regards to ownership, acquisition, enjoyment and disposal of land under customary or traditional land tenure system. Which one do you think best represents the Zambian case? (20 marks)
8. Examine the scope of the Rule Against Perpetuities at Common Law and assess its implications in Zambian law. (20 marks)
9. (a) A covenant is a promise under seal, i.e. contained in a deed. Discuss the basic principles concerning the enforceability of covenants relating to land. (20 marks)
- (b) Mutinta works for a large transnational firm, Interchem, as General Manager. As the firm could not provide suitable accommodation, she looked for a house commensurate with her position. She saw an advertisement in the Times of Zambia which read:

"Accommodation offered, 6 bedroomed executive type house with swimming pool, very near city centre, along Great East Road. Long lease preferred."

Mutinta went to inspect the house which was owned by Yusuf Mia. Mutinta agreed to take a 30 year lease. The agreement was that the landlord would retain possession of a structure adjoining the premises which was to be used as a stable for Yusufs horses. Mutinta paid one years rent in advance and immediately took possession. However, no lease agreement was prepared. After three years, Mutinta, worried by that state of affairs, consulted his lawyer, Musaluke, for advice. Musaluke advised Mutinta not to worry as her occupation of the house was conclusive of the subsistence of a valid lease and that, therefore, a formal deed was unnecessary.

Yusufs horses in the stable were making so much noise that Mutinta's nocturnal repose was always disturbed. She now approaches you to terminate the lease on the grounds you deem legal and fit.

Analyse the merits and demerits of your clients case and advise accordingly. (20 marks)

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - NOVEMBER, 1992

L 340

ADMINISTRATIVE LAW

TIME: THREE HOURS

ANSWER: QUESTION 1 AND THREE OTHERS.

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

1. The Constitution of Zambia Ct No. 1 of 1991
2. The Industrial Relations Act, 1990 and all amendments thereto
3. The Interpretation and General Provisions Act. CAP 2 of the Laws of Zambia.

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1. (Compulsory) Ms X a firebrand member of the Women's Lobby Group applied to the Lusaka Licensing Authority for a licence to run a small business under the Trades Licensing Act CAP 707 of the Laws of Zambia. Ms X meticulously followed the procedure for her application.

On the night before the meeting of the Licensing Authority was to take place to consider applications, Ms X met Mrs Y (who, unknown to Ms X, was a member of the Authority) at her club. After both Ms X and Mrs Y had drunk a couple of pints of mosi lager, Ms X revealed to Mrs Y that she had applied for a trader's licence to enable her operate a small business venture adding that she had been finding it impossible to make ends meet on her paltry salary.

On hearing this, Mrs Y immediately turned blue and told Ms X that the licence she was seeking could not be issued to "women lobbyists" who (in her words) "are hell-bent on fanning trouble amongst our innocent women-folk and are considered to be anathemas in the eyes of our new government".

When the Licensing Authority met, Mrs Y participated in the proceedings and vigorously opposed Ms X's application on the ground that the issue of such a licence would operate against the public interest. Section 15 (1) (e) of the Trades Licensing Act CAP. 707 of the Laws of Zambia enacts thus:

"..... a Licensing Authority may, in its discretion, refuse

to issue a licence if it is satisfied...

- (e) That the issue of such a licence would operate against public interest".

The Licensing Authority has rejected Ms X's application. Ms X has approached you for your well-thought-out legal opinion. She informs you that she was not given an opportunity to appear before the Licensing Authority to say something on my own behalf or answer any objection". She also avers that no official reason was given to her for the rejection of her application.

Tender your thorough legal opinion and also advise (giving reasons) as to whether your opinion would be any different if section 15 had contained the following proviso:

"..... provided that the decision of the Licensing Authority shall not be called in question in any court of law".

2. "Administrative law and administrative power should be friends and not enemies".

Per Wade H.W.R. ADMINISTRATIVE LAW (1988)

Critically examine the above statement.

3. (a) Does the enactment of section 77 of the Industrial Relations Act No. 36 of 1990 to the effect that:

"Any person aggrieved by any award, declaration, decision or judgment of the (Industrial Relations) court may appeal to the Supreme Court on any point of law or any point of mixed law and fact....." defeat the RAISON D'TRE of Zambia's Industrial Relations Court having regard to the various arguments for and against the development of a system of specialised administrative tribunals?

- (b) In the light of the case law on the finality of the decisions of tribunals, discuss the possible grounds upon which section 77 (above) would be invoked.

4. The Cynic Says:

"It is no more difficult to justify regulations by such bodies as the University of Zambia Council in theory than it is possible to do without them in practice".

Are you a Cynic?

5. An English judge suggested more than two decades ago that the observance of the rules of natural justice does

not necessarily depend upon whether proceedings are labelled 'judicial', 'quasi - judicial', 'administrative', or 'investigatory', but rather upon the characteristics of the proceedings.

Is the foregoing proposition reflective of the present state of the law as portrayed in decided cases in:

(a) England?

(b) Zambia?

6. (a) Compare and contrast the doctrines of substantive and procedural Ultra-Vires under English and Zambian Law.
- (b) "The distinction between errors within and without jurisdiction is (as Lord Wilberforce observed in the ANISMINIC case) a crucial distinction which the court has to make".

Do you agree?

7. An English Court of Appeal judge, Lord Justice Woolf, made the following testimonial in a lecture dubbed "the Harry Street Lecture" delivered in 1986:

"I find it difficult to believe that there has been any other period of our legal history where a sphere of law has developed in such a rapid and exciting manner as administrative law over the period since I started practice".

Critically discuss this testimonial in the light of the Zambian experience todate.

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA
UNIVERSITY EXAMINATIONS - NOVEMBER, 1992

L 350

FAMILY LAW

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

INSTRUCTIONS: (i) Answer any FOUR questions
(ii) All relevant and unmarked statutes may be brought into the Examination Room.

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

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

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

- (a) Advise Inonge as to whether she can succeed and what course of action she should take.
- (b) Would it make any difference if the house belonged to Mabvuto and Inonge jointly?
2. (a) "Unhappiness in marriage is not a ground for divorce." per Baron D.C. in the case of Somanje V Somanje (1972) Z>R> 301 at p. 310.

Discuss the statement in the light of the ground for divorce.

- (b) "Desertion is not the withdrawal from a place but from a state of affairs."

per Lord Merrivale, P. in Pulford v Pulford (1923) P. 18 at p. 21.

Using cases as illustrations, discuss the correctness or otherwise of the statement.

3. (a) State and explain five common terms found in separation agreements.

- (b) Ben and Wendy were married under the Act in 1980. Three years later, Wendy committed adultery and Ben obtained a decree of judicial separation on that ground. He left her and started living with another woman, Susan, who he intended to get married to.

Realising Ben's intentions, Wendy invited him to a house party and under the influence of alcohol seduced him. Wendy conceived and gave birth to a baby boy, Mutale. Ben, however, never resumed cohabitation with Wendy and his argument was that his marriage to her has been terminated by the decree.

Wendy is now contending that Ben is still her lawful husband and his relationship to Susan is merely adulterous. Alternatively, the decree of judicial separation had been discharged by the conception and birth of Mutale.

Advise her.

Comment on the Legitimacy of the boy Mutale.

4. Jackson was served with baked beans and salads in one of the Lusaka Hotels one morning. He suffered from mild pains all over his body. At the hospital, they traced the ailment to the baked beans. One result of this condition was that Jackson became allergic to human contact and this meant that he could no longer have sexual relations with his wife. Now she wants to sue the manufactures in negligence.

Can she sue? Why or why not?

5. Lord Penzance defined marriage as a 'voluntary union for life of one man and one woman to the exclusion of all other' in Hyde v Hyde (1866)

Discuss. How far does this definition fit in African Customary Law marriage?

6. Write notes on two of the following:-

- (a) Bride Price.
- (b) 'Adultery' as a fact situation.
- (c) Non - consummation of marriage.
- (d) Kumalo v Kumalo (1974) S.J.Z. 77

7. Mutale's beauty enchanted many. Isaac and Mutale went through a ceremony of marriage before the Kasama District Registrar of Marriages. This was possible after a long and expensive courtship. But even before the ceremony was gone through, Isaac began to hear rumours. A friend reported that he had spotted her at the ante-natal clinic in the queue after which she was driven off in a Mercedes Benz sports car. Isaac was surprised because only a week had passed since the ceremony of marriage. A few days later, Isaac started to scratch all over his genitals. Obviously embarrassed he secretly went to see a private medical practitioner for a condition which the doctor said can be transmitted between members of the opposite sex. Isaac's elder sister could not take it any longer saying that she had advised against the whole thing. She took him to a lawyer for the purposes of ending the whole mess. She explained that the only reason why Mutale had agreed to his proposal was that their aged father was a wealthy man but that Isaac was a spoilt young man who had turned to alcohol and was now an alcoholic. He had been to Chainama Hills Hospital once and there the doctors were not happy with his condition. Forgetfulness and absent mindedness were the major findings. At the time of the ceremony of marriage Isaac was in fact drunk, she said.

Can Isaac end this marriage? How?

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA
UNIVERSITY EXAMINATIONS - NOVEMBER, 1992

L 410

JURISPRUDENCE

TIME: 3 HOURS (PLUS 10 MINUTES TO READ THE QUESTIONS)

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

1. What is law?
2. Assess fully the contribution of a theory of natural law to the development of libertarian democracy of the western countries.
3. Presidential elections have just been held in the Republic of Zambiri. One of the three losing aspiring candidates for the position of president, Kaoma, is not satisfied with the conduct of the elections. He decides to challenge as null and void, the declaration that Mutesa has been duly elected President of the Republic of Zambiri, having scooped the majority of the votes.

Before the court has reached its decision, Mutesa is sworn in as President and congratulatory messages begin to pour in from different parts of the world.

In the court's ruling, a few months later, Kaoma's legal arguments are recognised as being valid. The court though, decides not to rule in Kaoma's favour because of the consequences that would follow such a decision. The court argues that rather than apply legal rules for their own sake, it is better to preserve the social and political fabric of society.

Deciding in Kaoma's favour would mean chaos as the country had already settled to normality after the somewhat violent elections.

Comment on the decision of the court in relation to the thinkings of one or two of the schools of thought in Jurisprudence.

4. "Law, in any given society represents the evolution, of the common consciousness of the people."

Do you agree with this view? How would you reconcile the statement with the current law in Zambia?

5. "With the attainment of a classless society, law and the state will disappear."

Why does Karl Marx make the above statement or why does he think law and the state will not be necessary in a classless society?

6. Mwilunda, a self proclaimed born again Christian, has expressed disgust at the re-introduction of beauty contests in the Republic of Zintu. He argues that the practice of parading half nude in front of audiences is against the standards of morality of the right thinking persons of the Republic of Zintu. He insists the law should ban this retrogressive conduct. Pensulo, a friend of Mwilunda, not a christian himself, disagrees with him saying that everyone is free to do what they think is good for them. Mwilunda should simply stay away from watching beauty contests and allow those who want to do so, to do so in peace. Whose argument would you support, keeping in mind the issue of the legal enforcement of morality?

7. Comment comprehensively on two of the following:-

- (a) Law and social change.
- (b) The lack of a consensus in the definition of Law.
- (c) The relationship between Law and Justice.

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - NOVEMBER, 1992

L 430

INTERNATIONAL LAW

TIME: THREE HOURS

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

STUDENTS MAY BRING INTO THE EXAMINATION ROOM, THE VIENNA CONVENTION ON THE LAW OF TREATIES.

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1. An insurgency begins in the remote mountain areas of Mzulu state. The insurgent chieftain is colourful and immensely popular with the foreign mass media. The insurgency is presented by the press to the world as very apt to succeed. As a result fifty (50) states recognize the insurgents as the de jure government of Mzulu state, and this causes a severe flight of capital from Mzulu state that slows its rate of development from 6% to 1% per year, resulting in an estimated national accounts loss of one billion American dollars. The Mzulu state defence forces easily puts down the insurgency and then sues the 50 states that recognized the insurgents as the de jure government of Mzulu state for the above amount in damages. What would be your opinion as one of the judges of the International court of Justice before whom the matter has been brought.
 2. Concisely discuss the subjects of international law and explain the position of each such subject in the international legal system.
 3. "When an authority designed to adjudicate exclusively between states is in question it is plain that the source of jurisdiction can only be found in consent by the parties to resort to the tribunal. There exists no superior power capable either in fact or in law of creating a jurisdiction or imposing resort to it."

Discuss the above statement in relation to the so called compulsory jurisdiction of the International Court of Justice.

4. Phiri and Mwale, both nationals of Zambia carry poisoned bread to Zimbabwe, with the intention that Mgodo, a Zimbabwean national eats it. They succeed to deliver the bread to Mgodo who eats it and dies. Before they leave Zimbabwe, they are arrested and charged with murder. Does Zambia have any grounds for objecting to Zimbabwe assuming jurisdiction over the case?

5. Militant Zambian students studying in London entered their Embassy situated in central London to deliver a petition protesting the unprecedented rise in the price of mealie meal in Zambia. After they had staged an overnight "sleep in" embassy officials requested British police to come to the Embassy. Several police officers, headed by an Assistant Superintendent, entered the Embassy and held discussions with the High Commissioner who then gave the Assistant Superintendent a formal written request asking the police to enter the Embassy and eject the students from the premises. The High Commissioner, in the presence of the police, asked the students to leave within five minutes. When they refused to depart they were placed under arrest and physically carried from the Embassy.

The students are now appearing in a London court and you are the presiding magistrate. They contend that British police had no authority to enter the Zambian Embassy and arrest Zambian nationals for a crime committed within the confines of the Embassy. Examine the relevant international custom and treaties in order to ascertain the nature of the issues here involved and pronounce a verdict.

6. Discuss the material sources of international law and explain how each one of them contributes to the formation of international legal principles.
7. John Austin, an English writer on Jurisprudence considered international law as not true law but a code of rules of conduct of moral force only. What is your view about Austin's thinking?

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - NOVEMBER, 1992

L 450

INTERNATIONAL TRADE AND INVESTMENT LAW

TIME: THREE HOURS

ANSWER: FOUR (4) QUESTIONS
QUESTION 1 IS MANDATORY

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1. Kozo lives in Zambezi state but is a national of Limpompo state. He has applied for a patent for the invention he has discovered in Zambezi state. Kozo's application for a patent was lodged on 30th December, 1980. His patent was issued in March, 1981 in Zambezi state. Meanwhile in Limpompo state, Moono also filed an application for a patent for his new invention in November, 1980 and he was granted it in February, 1981. By 1985 Moono had put his patent to use and was selling and exporting products of his patent to Zambezi state. Kozo thinks that the product manufactured in Limpompo by Moono incorporates his patented technology and has come to you for a legal opinion. Both Zambezi and Limpompo are members of the Paris Union created by the Paris Convention for the protection of Intellectual Property, 1883.

Write the legal opinion for Kozo.

2. To what extent do the articles of the International Monetary Fund relating to its purposes and purchases from the General Resources account reflect the aspirations and idiosyncratic nature of developing economies like Zambia?
3. Analyse the functions of the Investment Centre under the Investment Act 19 of 1991 relating to scrutiny and monitoring of foreign investment.
~~Technology Transfer Agreements in terms of s. 17(1)(f) of the Act.~~
4. Analyse features of the Lome Convention which assist in stabilising international commodity trade.
5. Outline the process and methods of negotiations for tariff reduction under the Generalised Agreement on Tariffs and Trade Agreement (GATT) viz-a-viz the Most Favoured Nation clause analysing their suitability for the needs of developing countries.

6. You are the Legal Counsel for the Non-Aligned Movement (NAM). Write a brief for the Secretary General of the Organization on the legal aspects of the New International Economic Order (NIEO).
7. Write briefly on each of the following:-
 - (a) A Producer Cartel
 - (b) Convention on the settlement of Investment Disputes between states and Nationals of other states.

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - NOMBER, 1992

L480

INDUSTRIAL LAW

TIME: THREE HOURS

INSTRUCTIONS:

1. THIS QUESTION PAPER CONTAINS TWO SECTIONS, A AND B ANSWER QUESTION NUMBER 1 FROM SECTION A AND ANY OTHER THREE PROVIDED THAT AT LEAST ONE OTHER QUESTION IS ANSWERED FROM EACH SECTION.
 2. TIME ALLOWED IS THREE (3) HOURS PLUS TEN MINUTES TO READ THROUGH THE QUESTION PAPER
 3. CREDIT WILL ONLY BE GIVEN FOR CLARITY OF PRESENTATION, USE OF RELEVANT AUTHORITIES AND IDENTIFICATION OF THE LEGAL ISSUES INVOLVED.
 4. EXCEPT FOR QUESTION NUMBER 1 WHICH CARRIES 30 MARKS ALL QUESTIONS CARRY EQUAL MARKS.
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SECTION A

(Answer question No. 1 and at least one other from this section)

1. Moses was employed on permanent and pensionable terms of employment by EDIT & CO LTD. Moses was employed as a driver. In June 1990 Moses applied for thirty five days leave which he was granted. During his leave Moses was arrested by the police on a charge of theft of a motor car. When leave ended, Moses could not return to work as he was in police custody and his employer wrote a letter suspending him from employment.

Two weeks later the employer wrote another letter in the following terms:

Re: Termination of Service

Dated 20 July, 1990

We refer to our letter of 12th July 1990 suspending you from employment following your failure to report for work after leave. The Management has now taken a decision to terminate your services from 7th July 1990 being the day when you were supposed to resume work. Management wishes to further state that while aware that you have been in police custody it is not intended to wait for the court's verdict before taking action.

The termination of employment is done pursuant to clause

18.7 of Joint Industrial Council Agreement.

Yours faithfully,

signed

R. Khoswe
for/EDIT & CO. LTD.,

Clause 18.7 referred to above stated as follows:

"An employee who shall absent himself from work for a period in excess of seven days without reasonable explanation shall be deemed to have left the employer's service without notice"

Under clause 24 of the same agreement there was a provision that either party was entitled to terminate the agreement by giving notice of thirty days.

When Moses was taken to court he was acquitted. He now wants to know whether the action taken by his employer was in order.

With the aid of decided cases advise Moses. (30 marks)

2. Lazarus has been employed by the Zambia Institute of Economic Consultants as a telephone operator. He, together with his other colleagues, feel that they are being exploited by the employer and this they have attributed to the absence of a Union at their work place.

Lazarus has particularly been active in organising dark corner meetings without the knowledge of management for the formation of a trade union. This is always done during lunch time. Management has become aware of this and calls Lazarus to confirm or deny these reports. When Lazarus remains quiet management takes a swipe at him warning him that he would be dismissed if he continued with such activities. He is told that anyone who wants better pay should resign. This is repeated at a meeting for all the staff. A week later management puts up a circular on a notice board indicating that it is an offence for its employees to organise or belong to a trade union.

When Lazarus reads this circular he decides to confront management but is dissuaded by his colleagues and management hears of it. Afraid that he might be dismissed Lazarus writes a letter of resignation to management. Two weeks pass without him receiving a response from management and writes another letter withdrawing his letter of resignation.

Two days later Lazarus receives a letter of summary dismissal. No reasons are given.

He now approaches you for an informed advice on the legal issues involved (23 marks)

3. Discuss the following cases in the context of the scope of the doctrine of restraint of trade in contracts of employment:
- (a) NORDENFELT v MAXIM NORDENFELT GUNS AND AMMUNITION Co. [1894] A.C. 535
 - (b) ESCO PETROLEUM LTD v HARPER'S GARAGE (STOURPORT) LTD [1968] A.C. 269; [1967] 1 ALL E.R. 699. (23 Marks)

SECTION B

(Answer at least one question from this section)

4. LOWLAND is a member of the International Labour Organisation. Over the years it has been troubled over the most appropriate trade union structure for the country. LOWLAND does not want to violate any of the conventions it has ratified or Recommendations. The government of LOWLAND does not also want a weak trade union movement and believes that the best structure would be that based on the principle of one union in one industry.

You have been engaged by the government of LOWLAND to advise on its international obligations with regard to the conventions and Recommendations of the International Labour Organisation and the role of the Committee of Experts on the application of such conventions and Recommendations especially those concerning Freedom of Association and the Right to organise. (23 marks)

5. To what extent are you in agreement with the assertion that trade union development in Northern Rhodesia (as Zambia was called before Independence in 1964) was hindered rather than encouraged by the colonial government? (23 marks)
6. It is often suggested that a prices and incomes policy of any country has a bearing on industrial relations law and practice. To what extent has this been true to Zambia? (23 marks)

END OF EXAMINATION