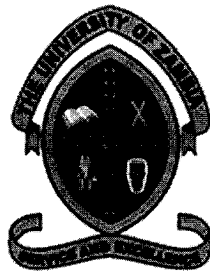


THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

UNDERGRADUATE FINAL EXAM 2018/19

1. LPR 2920: THE LAW OF CONTRACT
2. LPR 2930: LAW OF TORTS
3. LPR 2962: ADMINISTRATIVE LAW
4. LPR 3115: EMPLOYMENT LAW
5. LPR 3920: LAND LAW AND PROPERTY RELATIONS
6. LPR 3930 : COMMERCIAL LAW
7. LPR 3940 : FAMILY LAW AND SUCCESSION
8. LPR 3952 : CIVIL AND CRIMINAL PROCEDURE
9. LPR 4155 : ALTERNATIVE DISPUTES AND RESOLUTIONS



THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

THE LAW OF CONTRACT – LPR 2920

END OF YEAR EXAMINATION – NOVEMBER 2019

DATE: 8 NOVEMBER 2019

TIME: 09.00 - 12.00 HRS

VENUE: SPORTS HALL

INSTRUCTIONS:

1. Answer Four (4) questions, one from each part. Question 1 is compulsory.
2. Time allowed: Three (3) hours plus five (5) minutes to read through the examination paper.
3. This examination carries a total of 60 marks.
4. Candidates are not permitted to bring any statutes into the examination room.
5. Mobile phones, Tablets or any other form of computing or electronic instruments are not allowed in the examination room.
6. Candidates must not turn this page until the invigilator tells them to do so.
7. This subject is for candidates in the 2nd year of the LLB programme.

PART A (COMPULSORY)

Question 1

(a) On 20th October 2019 Mipembe Auctioneers Limited advertised in the Times of Yunza a sale by auction of various vehicles and household goods. According to the advertisement the auction sale was to take place on 25th October 2019 at Mipembe Auctioneers Limited's premises on Kalingalinga Road, Lusaka.

On 25th October 2019, Pinto who was interested in buying a motor vehicle responded to the advertisement and went to Mipembe Auctioneers Limited's premises. At the premises, Pinto was made to pay a refundable deposit of k10,000.00 as a precondition for participating in the bidding for motor vehicles. Pinto was given a bidding number 10.

When an employee of the Auctioneers started inviting bids from the attendees for the Land cruiser VX that Pinto was interested in, the employee did not announce that there was a reserve price, prompting the employee to keep reducing the price until it reached k150,000.00 when there was a bid by an interested buyer. Pinto challenged the bid at k170,000.00 at which price the employee announced that Pinto's bid had been accepted. Pinto was informed by the employee that since it was a Saturday he would be required to go back on the following Monday. Before Pinto left the premises the employee informed him that the Auctioneers needed to confirm the accepted bid price with the seller and would inform Pinto on Monday.

On Monday when Pinto went to pay for and collect the vehicle, the auctioneers declined to receive his money and hand over the vehicle stating that the accepted bid price of K170,000.00 was too low, but if he could increase the amount to K200,000.00 it would be accepted.

Not happy with the turn of events, Pinto has this morning called on you for legal advice on what has transpired.

(a) With the aid of relevant authorities, advise Pinto on his legal position. **[10 Marks]**

(b) You are a research assistant to Mr Justice Mbindo of the Lusaka High Court. There is matter or case before Mr Justice Mbindo involving breach of contract. Mr Justice Mbindo has requested you for a write up on the principles that courts use in assessing and awarding damages following breach of contract.

With the aid of relevant authorities advise Mr Justice Mbindo on the principles that courts use in assessing and awarding damages following breach of contract. **[8 Marks]**

1. Specific performance 2. Quantum Merit

[Total 18 Marks]

Quantum
Merit

Cutler v Powell
Swanper v Hedges

PART B

2. Guta is a 5th year Engineering student at the University of Yunza. You happen to meet Guta at the student centre. Guta is fascinated with your mastery of legal concepts especially in Contract Law. Guta tells you that he has heard that a contract may be discharged under the doctrine of frustration but does not know what this means or entails.

With the aid of relevant authorities, advise Guta on how parties to a contract may be discharged of their obligations under the doctrine of frustration. [14 Marks]

3. You are a Research Assistant to Professor Mbizo. Professor Mbizo is researching on the topic of consideration under Contract Law. Professor Mbizo has requested a write up from you on the subject of consideration which must be supported by relevant authorities. The write up must cover the definition of consideration and the various rules of consideration that have been developed by the courts.

Proceed with your write up.

[14 Marks]

*Signature
previous co
notice*

PART C

4. The tickets for Duba Bus Services Limited are marked:

"For conditions enquire at the ticket office."

The printed conditions at the ticket office exclude liability for all negligence on the part of the bus company and its employees or agents. On 20th October 2019, one of the company's buses was involved in an accident caused by the negligence on the part of the driver.

With the aid of relevant case law, advise the following persons who suffered injury in the accident whether they have claims against the company:

(a) Petros, who usually travels on the bus each week. He was late for the bus and was told by the ticket office staff to buy the ticket at the next stop in Kabwe. [7 Marks]

(b) Mido, arrived at the bus station in Lusaka 30 minutes before departure. He asked for a copy of the conditions but was told by the staff that there was shortage of copies and one could not be found. Mido went on the bus without having seen the conditions. [7 Marks]

[Total 14 Marks]

no claim

claim

5. Sapanoi, a bio-chemistry graduate from the University of Yunza, works for Western Breweries Limited as a chief chemist. His contract of employment provides that if he leaves their employment he:

(a) will not work for any company or enterprise or industry engaged in brewery business in Zambia or elsewhere

(b) will not solicit any of Western Breweries Limited's customers, nor will he divulge any of the secret processes, nor will he set up any brewery business in competition with that of employer.

Sapanoi is considering leaving Western Brewery Limited's employment. He has this morning called on you for legal advice on the extent to which he will be bound by his contract of employment if he leaves employment.

With the aid of relevant case law, advise Sapanoi on the extent to which he will be bound by his contract of employment in case he decides to leave.

[14 Marks]

PART D

✓ 6. (a) With the aid of relevant authorities, discuss the circumstances under which the courts may refuse to enforce an agreement between the parties on the grounds of illegality. [8 Marks]

(b) With the aid of case law discuss the bars to the remedy of rescission for misrepresentation.

[6 Marks]

Gibson v Proctor

[Total 14 Marks]

✓ 7.(a) Kimbo lost his diamond ring and offered k10,000 reward for its return. Deko found the ring and returned to Kimbo when he did not know of the reward. Deko subsequently heard that the reward had been offered and claimed it from it from Kimbo, who refused to pay.

Both Kimbo and Deko have called on you this morning for legal advice on what has transpired.

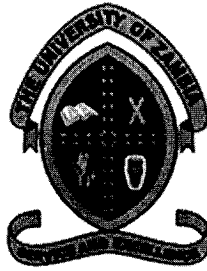
With the aid of relevant authorities, advise both parties on their legal positions. [9 Marks]

(b) Discuss the principles established in Nkongolo Farms Limited v. Zambia National Commercial Bank and Others [2005] ZR.78. *Undue Influence* [5 Marks]

[Total 14 Marks]

TOTAL EXAMINATION MARKS: 60

END OF EXAMINATION



**THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW**

**LAW OF TORTS – LPR 2930
FINAL EXAMINATION
WEDNESDAY 4th NOVEMBER, 2019
TIME: 14 00 HOURS
VENUE: UPPER DINING HALL**

INSTRUCTIONS:

1. Answer **Four (4) questions**, one from each part. Question 1 is compulsory.
2. Time allowed: **Three (3) hours plus five (5) minutes** to read through the examination.
3. This examination carries a total of **60 marks**.
4. Mobile telephones, tablets or any other form of computing or electronic instruments are **not** allowed into the examination room.
5. Candidates are **not permitted to bring** any statutes into the examination room.
6. This subject is for Candidates in the 2nd Year of the LL.B Programme.

PART A (COMPULSORY)

Question 1

In 2000, Mutinta built her dream house on a piece of land in New Kasama, near a chemical processing factory, Bwana Chemicals Limited. At that time, the operations at Bwana Chemicals Limited did not generate any noise, except during certain hours of the day when deliveries were made or when workmen were reporting for work or knocking off.

Sometime in 2016, Bwana Chemicals Limited installed a diesel-powered generator on their premises. This was necessitated by electricity supply rationing occasioned by the effects of climate change, among them, low water levels in the Kariba Dam. Since 2016, the generator has to be switched on for 20 hours on a daily basis if Bwana Chemicals has to meet its processing targets.

Mutinta has since 2018 found the noise from the factory operations intolerable, whenever she is at home. Her efforts to persuade Musa, the Chief Executive Officer of Bwana Chemicals Limited to reduce the noise levels on the premises have been unsuccessful. Mutinta's previous lawyers have written numerous letters to Bwana Chemicals Limited to resolve this problem, to no avail. Mutinta would like to commence legal proceedings and has now approached you for legal advice.

Using relevant legal authorities, write a legal opinion advising Mutinta on the cause of action you would commence to protect her interests. Your legal opinion must include the parties as well as likelihood of success of the cause of action you have identified, and remedies available should the case succeed.

(18 Marks)

PART B

Question 2

Write short explanatory notes using **at least two relevant legal authorities on each** of the following:

- | | |
|------------------------------------|------------------|
| (i) Procuring a breach of contract | (4 Marks) |
| (ii) Nominal damages | (5 Marks) |
| (iii) Passing off | (5 Marks) |

(Total 14 Marks)

Question 3

Using relevant legal authorities, critically discuss the application of contemptuous, exemplary and aggravated damages in the law of torts.

(14 Marks)

PART C

Question 4

On 25th September, 2019, it was reported in various media outlets that 129 residents of Kasama's Mwaiseni area had dragged Kasama Water and the concerned local authority to the Northern Province High Court seeking damages for pain and suffering. The residents stated that they had consumed contaminated water supplied to their homes by Kasama Water and the local authority. According to laboratory tests in possession of the residents, the water was contaminated with a type of bacterium which when ingested by human beings, causes severe illness.

According to the residents, the sequence of events is that after consuming the contaminated water, they started developing various symptoms, the common ones being severe diarrhoea, vomiting and fever. Thereafter, the residents went on to hire private environmental health investigators who submitted a report to the effect that the water source relied on by Kasama Water and local authority was indeed contaminated with the same bacterium that was discovered in drinking water.

You are the in-house Legal Counsel at Kasama Water and your superior, the Chief Executive Officer, Prof. Banja has requested you to write a legal opinion explaining whether Kasama Water is liable or not.

With the aid of relevant legal authorities, write your well- reasoned legal opinion which must outline the cause of action and whether the residents' case has any chances of succeeding.

(14 Marks)

Question 5

Bwale is a 22-year-old boy who has decided that he will no longer be looked after in his parents' home because they are overly controlling. Over the past few weeks, he has identified a local abandoned warehouse. The registered owners of the warehouse, Kaluwecha Limited, moved out several years ago to new premises. The representatives of Kaluwecha Limited had securely locked the premises before they left.

In order to enter the warehouse, Bwale had to remove a heavy metal grill using some tools and eventually broke loose several locks to the two doors. After living in the warehouse for several months, Bwale decided to host a house warming party in the warehouse, and invited a number of local teenagers to celebrate with him.

The party was in full swing when one of Bwale's friends, Kyra, decided to go out to the balcony to smoke. As Kyra walked onto the balcony, the old rusted, rickety rail collapsed under her weight. Kyra fell down the building from a height of about 20 metres and broke her left leg.

Kyra has now approached you for legal advice. Using relevant legal authorities, write a well - reasoned legal opinion outlining whether the cause of action you have identified has any likelihood of success.

(14 Marks)

PART D

Question 6

Mwandi is a large- scale farmer near Chisamba, in the Lusaka Province of Zambia. He owns thousands of hectares of land where he grows tomatoes, flowers and maize. He also rears several herds of cattle. In order to support his farming activities, Mwandi has built three (3) large dams on his farm. The largest dam is located on a slope, supported by a soil mound on one side. One day, the soil mound starts leaking and huge volumes of water flow down the slope, flooding the entire neighbouring village. Several homes and property are damaged and two people suffer serious personal injuries.

Mwamba is the representative of 28 villagers whose homes, property and livelihoods are completely destroyed by the flood. The 28 villagers are inclusive of the 2 who only suffered serious personal injuries, but no other damage. Mwamba has now approached you for legal advice.

Using relevant legal authorities, write a well- reasoned legal opinion in which you advise Mwamba on the likelihood of him and his fellow villagers succeeding in the cause of action you have identified.

(14 Marks)

Question 7

On 25th January 2019, Dokiwe, a seventh- year law student, put up an undated poster on the Law Students' Association (LAW) noticeboard, announcing that:

“The LAW Treasurer is not to be trusted – he is a twisted, greedy and mafia- style administrator”

The noticeboard is located in the busy corridor of the Law School and is accessible by numerous people from different walks of life. On 30th June, 2019, Hlekiwe, another law student, took a photo of the notice on her mobile phone and uploaded it onto her Facebook page. It has since remained on her page as at today. Hlekiwe also shared the photo of the notice on various WhatsApp groups.

On 25th August, 2019, Kondiz was elected as LAW Treasurer, taking over from Boyd. As at 25th September, 2019, the notice was still on the LAW noticeboard, despite the election of new office bearers.

Last week, you met Kondiz in the university premises and he mentioned to you that he was totally distressed because his phone would not stop ringing. All the people who had been congratulating him on his recent election were alarmed at the allegations against him. Boyd on the other hand had remained unworried as he was no longer the LAW Treasurer.

Using relevant legal authorities, advise both Dokiwe and Hlekiwe as to their possible liability in tort towards Kondiz.

(14 Marks)

END OF EXAMINATION



THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

ADMINISTRATIVE LAW – LPU 2962

FINAL EXAMINATION

DATE: 4TH NOVEMBER, 2019

TIME: 14:00 – 17:00 HOURS

VENUE: SPORTS HALL

INSTRUCTIONS:

1. Answer **Four (4) questions**, one from each Part. question 1 is compulsory
2. Time Allowed: **Three (3) hours plus five (5) minutes** to read through the examination paper.
3. This examination paper carries a total of **60 marks**.
4. Mobile telephones, tablets or any other form of computing or electronic instruments are **not** allowed into the examination room.
5. Candidates **are permitted to bring** into the examination room the constitution of Zambia, the Local Government Act and the Lands Tribunal Act, 2010.
6. This subject is for candidates in the 2nd year of the LLB programme.

PART A

Question 1 (compulsory)

Mark is a journalist with one of the daily tabloids called Somone. He is responsible for writing the editorial comments for the tabloid. His country has been undergoing constitutional review process which he has been following closely. As the process seemed protracted, the Minister of Legal Affairs decided to bring an end to it by presenting the constitutional bill to parliament for enactment and the constitution was duly enacted. In the meantime, the general populace was for the idea that the constitution should be adopted through a constituent assembly. Mark who was also not happy with the enactment wrote in his editorial comment for the 10th of July, 2017 as follows:

“This government and its minions so called MPs is just rubbish. The National Assembly is full of dull people, they are all grade 7 failures who have become MPs through cheap caderism. They are full of nonsense. One wonders if there are any normal people present in that National Assembly that they can honestly enact such a constitution without consulting the people....”

On 18th July, 2017, a point of order was raised on the floor of the house by MP for Lumpa constituency. The editorial comment was read out with a call for the National Assembly to discipline Mark for contempt of the house. On the same day, Mark was invited to appear before the National Assembly to answer to charges. But he refused saying he was not an MP to go to parliament on what he does not know and so he did not appear. In the dark of night, armed police officers raided his home and arrested him and took him straight to central prison where he was held for a period exceeding seven days. On 27th July, 2017, Mark was brought to the National

Assembly and appeared before a select committee comprising members of parliament who were also ministers in the government. The committee was chaired by the Minister of Legal Affairs who asked Mark two questions: a) what is your name which he stated to be Mark and b) did you write the editorial comment to which he replied yes. At that point, Mark was taken back to prison for an undefined period of time.

The wife to Mark is so distressed and confused about what has happened to her husband. She has heard that you are an expert in administrative law and comes to you seeking legal advice.

- a) With particular reference to the facts of this case and with the help of relevant authorities, advise the wife to Mark on the rules of natural justice and how the rules apply to this case.

(14 Marks)

- b) What should the wife to Mark do to secure the husband's release from prison? (4 Marks)

Total: **(18 Marks)**

PART B

Question 2

There are various sources from which administrative law draws its authenticity.

With the help of relevant authorities, discuss in sufficient detail five sources of administrative law showing their relevance to modern day administration. **(Total: 14 Marks)**

Question 3

With the help of relevant authorities, citing the milestones in the process, discuss the development of the Zambian administrative process post-independence. **(14 Marks)**

PART C

Question 4

James is resident in a village in southern province of Zambia. He has lived there with his family for a long time stretching back to the days before independence. He is bemba by tribe. His life has been peaceful and he and his family have even intermarried with the tongas. He does not perceive himself and his family as foreigners to the area especially that they also speak tonga.

After the 2016 general elections, violence broke out in southern province. It was reported that all non-tonga speaking people were beaten up and had their crop and animals destroyed. They were also told to leave the southern province. James resisted because that is where his life is. He reported the matter to the police who did not do anything about the situation which was getting worse by the day. In the meantime, the headman instructed Moobe to move and occupy a large portion of the land that James owned. The headman also demarcated some portions for his relatives saying he had power to do as he pleased.

James was very upset about this and decided to report the matter to the chief's council. A hearing was held and James was told that there is nothing strange about tongas fighting for their land and that the 'one Zambia one nation' slogan applied in Lusaka. It was further held that the chief was the final authority with regard to land under his chieftom which included the pieces owned by James and that no court had authority to interfere with the chief's ruling. The ruling actually stated at its foot that 'this ruling is final; no institution has authority to deal with customary land in this chieftom'.

You work for the Legal Aid Board and during one of the workshops in the area, James presents the case to you. You decide to explain to James the law relating to his case. You also tell James

that the Lands Tribunal is a court of substantial justice. Further, you draft court documents for filing into the Lands Tribunal which included a summons and an affidavit. In the affidavit you state a lot of issues to prove his case including this paragraph “that James was told by Junza that Moobe is the one who burnt his maize field.”

At the hearing, counsel for Moobe objected to the affidavit saying it was in breach of the rules of evidence and should therefore not be admitted in evidence and the case should be dismissed with costs.

- a) You are the Chairperson of the Lands Tribunal hearing the matter. With particular reference to the jurisdiction of the Lands Tribunal and with the help of relevant authorities, write a well-reasoned ruling on this preliminary issue taking care to explain the role of the Lands Tribunal as a court of substantial justice. **(7 Marks)**
- b) Identify and briefly discuss four advantages of administrative adjudication **(4 Marks)**
- c) List any three administrative mechanisms with their specific specializations used in controlling administrative actions in Zambia. **(3 Marks)**

(Total: 14 Marks)

Question 5

In 2009, Maggie was pregnant with her fourth child. She was attending ante natal care at chawama clinic in Lusaka from the time her pregnancy was about 4 weeks old. The attending medical staff assured her that all was well. On 10th July, 2009, Maggie went to the clinic presenting with onset of labour. The midwife on duty examined her and told her to proceed to the University Teaching Hospital (UTH). The nurse did not explain to Maggie what the issue was but just told her “you have to go to UTH”. Maggie requested for the ambulance to take her there but the nurse told her

that it had no fuel and she had to find her way there. Maggie walked out of the clinic premises and got on to a bus into town to connect to UTH. As she disembarked at the city market bus stop, she gave birth in full view of curious on lookers. Maggie was assisted by some women who were aboard the same bus she disembarked from. They also hired a taxi for her to go to UTH. As the city market bus stop is not a hospital with a controlled environment, the baby died due to exposure.

Maggie is so distressed about this ordeal and comes to you seeking help on what she can do about the nurse and the loss of her baby.

With the help of relevant authorities, advise Maggie on her situation and the chances of success if she decided to take the matter to court. **(14 Marks)**

PART D

Question 6

With the help of relevant authorities, write short notes on the following:

- a) Collateral challenges **(4 Marks)**
- b) Executive Powers **(4 Marks)**
- c) Certiorari **(3 Marks)**
- d) Mandamus **(3 Marks)**

(Total: 14 Marks)

Question 7

Judicial review of administrative actions occupies an important place in public law in Zambia.

To that effect, administrative actions may be nullified by the courts of law on several grounds.

- a) Briefly identify five grounds upon which a person can apply for judicial review of an administrative action. (5 Marks)
- b) With the help of relevant authorities, discuss instances when abuse of power may lead to nullification of an administrative action. (9 Marks)

Total Examination Marks: 60

End of Examination



THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

EMPLOYMENT LAW – LPR 3115

END OF YEAR EXAMINATIONS – NOVEMBER 2019

DATE: 19th November, 2019

TIME: 14:00 – 17:00 hours

VENUE: Sports Hall

INSTRUCTIONS:

1. Answer Four (4) questions, one from each part. Question 1 is compulsory.
2. Time allowed: Three (3) hours plus five (5) minutes to read through the examination paper.
3. This examination carries a total of 60 marks.
4. Candidates are not permitted to bring any statutes into the examination room.
5. Mobile phones, Tablets or any other form of computing or electronic instruments are not allowed in the examination room.
6. Candidates must not turn this page until the invigilator tells them to do so.
7. This subject is for candidates in the 3rd year of the LLB programme.

PART A (COMPULSORY)

Question 1

(a) Fwelu is employed by the Bank of Yunza which he joined in 2010 after his graduation from the University of Yunza. Fwelu has risen up to the position of Assistant Director- Economics. Fwelu is disturbed by some recent developments at work. There have been changes in his job description, he no longer has a personal secretary and the number of subordinates who reported to him has been reduced from seven to two. Fwelu has also been moved to a shared office. As far he knows, he is the only one who is being subjected to this kind of treatment

Fwelu has this morning called on you for legal advice on what has transpired at his work place. With the aid of relevant authorities, advise Fwelu on his legal position. **[11 Marks]**

(b) You are a Research Assistant to Professor Ndozo. Professor Ndozo is researching on the principles which courts in Zambia take into account or into consideration in granting the remedy of reinstatement to a dismissed employee.

With the aid of relevant authorities, advise Professor Ndozo on the principles that courts take into account in granting or refusing to grant the remedy of reinstatement. **[7 Marks]**

[Total Marks 18]

PART B

2. Simon Honeyball, the learned author of the textbook 'Labour Law', makes the following observations on employment contracts at page 67:

The contract of employment is a very dynamic agreement, changing as circumstances alter. Even so, any variation in contractual terms still requires the assent, express or tacit, of both parties and should be supported by consideration.

In view of the above statement discuss the case law that has been generated in Zambian Courts in disputes involving variation of employment contracts clearly bringing out the principle(s) established in each case. **[14 Marks]**

3. Identify and discuss with the aid of relevant authorities, the ways by which an employment contract can be brought to an end in law by both employer and employee in Zambia. **[14 Marks]**

PART C

4. (a) Edna and Airtel are both employed as electricians by Cocu Limited. Edna discovers that Airtel earns K50.00 per hour whereas she is only paid K40.00 per hour.

Edna has this morning called on you for legal advice on her situation. With the aid relevant authorities advise Edna on her legal position. **[7 Marks]**

- (b) Discuss the Supreme Court of Zambia decision in Zambia Consolidated Copper Mines v. Matala [1995/97] Z.R 144 clearly bringing out the principles established in the case. [7 Marks]

[Total Marks 14]

5. With the aid of relevant authorities, advise Huambo Company Limited on the procedure they have to follow in the following two situations:

- (a) The Company wishes to dismiss its Finance Manager for incompetence. [7 Marks]

- (b) The company intends to transfer contracts of employments for twenty of its employees to Dong Feng Company Limited. [7 Marks]

[Total Marks 14]

PART D

6. (a) You are a research assistant to Professor Didi. Professor Didi is researching on Zambia's compliance in domesticating International Labour Organization (ILO) Conventions. Professor Didi has asked you to identify and discuss the core ILO Conventions that Zambia has ratified and/or domesticated.

Identify and discuss the major or core ILO Conventions that Zambia has ratified and/or domesticated. [9 Marks]

- (b) Discuss the common law concept of wrongful dismissal. [5 Marks]

[Total Marks 14]

7. (a) Pinto is a 3rd year industrial relations management student at Mulungushi University. You happen to meet pinto at the Student Centre. Pinto is fascinated with your mastery of legal concepts especially relating to labour matters.

Pinto tells you that he has heard of the terms or concepts of collective bargaining, collective agreement, collective dispute and recognition agreements.

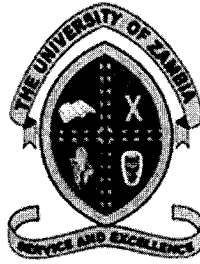
Explain to pinto the meaning of the above terms in the field of labour relations. [9 Marks]

- (b) Define what is meant by the term social security and discuss the forms social security takes in Zambia. [5 Marks]

[Total Marks 14]

TOTAL EXAMINATION MARKS: 60 Marks

END OF EXAMINATION



THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

FINAL EXAMINATION PAPER

LAND LAW AND PROPERTY RELATIONS – LPR 3920

DATE: 22nd November 2019

TIME: 09:00 – 12:00

VENUE: Sports Hall

INSTRUCTIONS:

1. Answer **Four (4) questions**, one from each part. Question 1 is compulsory
2. Time allowed: **Three (3) hours plus five (5) minutes** to read through the examination paper.
3. This examination carries a total of **60 marks**.
4. Mobile telephones, tablets or any form of computing or electronic instruments are **not** allowed into the examination room
5. Candidates **are permitted to bring** the following statutes into the examination room:
 - (i) Lands Act Chapter 184 of the Laws of Zambia
 - (ii) Lands and Deeds Registry Act Chapter 185 of the Laws of Zambia
6. This subject is for candidates in 3rd Year of the LLB programme.

PART A

Question 1 (Compulsory)

Mr and Mrs Sad have been living on a Farm for the past 10 years. They own the farm as joint tenants. Mrs Sad feels that they have now grown old as a couple and they are not able to manage the farm well. Mr. Sad strongly disagrees with his wife and feels that farm management is a very healthy way of living their retired lives. After a long discussion the couple agreed to subdivide the farm and sell half of the total of 50 acreage. Goodbuy, their neighbour, agrees to buy the proposed subdivision for the sum of K150 Million. Before signing the contract of sale, the parties orally agree that Mr. Sad will make the following alterations to the proposed subdivision:

- (a) The underground water tank would be repaired and the pump would be replaced; and
- (b) Structural alterations would be made to the chicken runs so that Goodbuy could do some chicken rearing.

In order to assist Mr. Sad, Goodbuy gives him the plans for the proposed alterations and agrees to supervise the construction company that would be hired to complete the work. In addition, Goodbuy pays Mr. Sad 10% of the purchase price as a deposit and places a caveat against the farm.

After the alternations are completed, Goodbuy is not satisfied with the property and feels that the price is too high and refuses to take possession of the proposed subdivision of the farm. Goodbuy also refuses to remove the caveat.

Using relevant authorities write a legal opinion advising both parties on their legal position.

[Total 18 Marks]

PART B

Question 2

Joseph has a lifelong dream of operating a restaurant and bar serving good local food. For Joseph to do that he needs to invest money which he had inherited from his parents. To realise this dream Joseph approaches his friend Zuzu the possibility of renting Zuzu's property. Zuzu is a registered

lessee of Plot 368 situated on the corner of Cairo and Dundee Roads in Lusaka. The two parties agree that Joseph will rent out the property for a period of 25 years at an agreed rental and a small share in the profits from the business. There is only one problem. For the property to serve as a suitable premises for a restaurant and a bar, Joseph has to invest in remodelling the building. The remodelling involves the following:

- (a) Refitting the current kitchen with state of the art appliances including ovens, special worktops and built in chillers to store food supplies required for the restaurant and the bar;
- (b) Fitting built-in wine and beer storage units; and
- (c) Putting expensive artworks around the walls of the main restaurant.

It is important for Joseph to consider whether the three improvements he is investing in will belong to him and whether he can remove them when the lease agreement between the landlord and the tenant terminates.

Using relevant authorities, write a legal opinion advising Joseph of the status of the three improvements, and whether they can be removed upon termination of the lease..

[Total: 14 marks]

Question 3

Kutoo is a youth with lots of bright ideas and energy. He was brought up by his grandmother in Chief Mathew's area. He has now completed his university degree in agricultural sciences and is married to a young lady from the city. He wants to settle in Chief Mathew's area which is very scenic to start his career in farming. He is sure that his wife, a city lady, would be very happy to jointly own a large parcel of land in the area where he grew up. Kutoo's mother told him that his grandfather was a rain maker in the next chiefdom where she had come from. In fact Chief Mathew's area and the next chiefdom share, the same boundary and the two tribes coexisted peacefully. Kutoo's mother had also mentioned that there was a large shrine where his grandfather had lived and the land around the area is very fertile. She added that the shrine is no longer being used as people no longer believe that his grandfather had rainmaking powers. Kutoo decides to take this opportunity to go back to his ancestral land and convince the village headmen to give him the land that his grandfather controlled as a rain-maker. The headman takes him to the Chief and

Kutoo is given 50 hectares of land including the old Shrine. Kutoo starts clearing the land and brings in his equipment to build his five bedroom house. He also starts to convert the land from customary tenure to leasehold tenure so that the title deeds for his parcel of land is held jointly by him and his wife. Unfortunately, when the house is built up to roof level he meets serious resistance from the community members who force Kutoo to stop clearing the land and building his house. In fact, the community moves into the, unfinished house and the Chief is not able to resolve the dispute since the members of the community feel that the ancestors have been disturbed and therefore the village will have lots of problems. Kutoo on the other hand feels that he has the right to occupy and use the land since he is the owner. Kutoo wants you to assist him resolve this land dispute through the court process.

Using relevant authorities advise Kutoo and state what remedies the court may award him

[Total: 14 marks]

PART C

Question 4

In the forward to the draft land policy, the honourable Minister, Jean Kapata, MP, Minister of Lands and Natural Resources, was reported on 4th March 2018 by Lusaka Times.com, to have stated as follows:

The land policy puts into effect the equality of citizens to land wherever they may be in Zambia. From now, citizens will enjoy similar legal protection of rights and freedoms to own and transact in land, whether or not they are on state land or customary land. The policy has set the context in which the laws governing land will be changed and the way that land will be allocated to Zambians and non-Zambians. This land policy will enable all players in the public and private sectors to plan and efficiently manage this important and limited resource. It will enable the Government and citizens to correct indiscriminate use and poor development practices by promoting orderly management of land.

Discuss the gender aspects in customary and statutory land tenure, in terms of the non-discrimination and equality clause in the Constitution, did in light of the statement made by the minister on the draft land policy.

[Total: 14 marks]

Question 5

The joint statement issued by Transparency International Zambia (TIZ) and Non-Governmental Governance, Elections, Advocacy, Research Services (GEARS) Initiative Zambia ON Forest 27, stated that there are concerns with the demarcation of parts of the protected forest No. 27 in Lusaka. They explain that the government and the relevant authorities must know that the concerned forest forms the headwaters of Chalimbana River front, which flows into Chongwe River. According to GEARS, in light of climate change affecting Zambia, as evidenced during 2017/2018 farming season, the Chongwe and Chalimbana Rivers would dry up if the forest was disturbed in any way. They have demanded the government cancels all certificates of title issued to beneficiaries of plots in the protected forest.

Using relevant authorities write a well-reasoned opinion for the two NGO's, TIZ and GEARS regarding their demand to cancel the certificate of titles issued for plots in Forest 27.

[Total: 14 marks]

PART D

Question 6

The choice of forum between the High Court and the Lands Tribunal to commence litigation and settle land disputes has been brought before the judiciary in several cases. This question was settled by the Supreme Court which stated that the Lands Tribunal Act does not oust the High Court's jurisdiction to hear land disputes as a Court of first instance.

Your client Alan has a boundary dispute with his neighbour, Bwalya, referring to at least three recently decided cases explain to him which forum should his case on a boundary dispute between your client and his neighbour should be commenced. Both parties are owners of statutory land.

[Total: 14 marks]

Question 7

Using relevant authorities write short notes on the following:

- (a) three similarities between Easements and Profits a Prendre;
- (b) the main features of security of tenure;

(7 marks)

(7 marks)

[Total 14 Marks]

TOTAL EXAMINATION MARKS: 60

END OF EXAMINATION



THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW
COMMERCIAL LAW – LPR 3930
FINAL EXAMINATION
DATE: 8 NOVEMBER 2019
TIME: 09:00 -12:00
VENUE: UPPER DINING HALL

INSTRUCTIONS:

1. Answer **Four (4) questions**, one from each Part. Question 1 is compulsory
2. Time allowed: **Three (3) hours plus five (5) minutes** to read through the examination paper.
3. This Examination carries a total of **60 marks**.
4. Mobile telephones, tablets or any other form of computing or electronic instruments are **not** allowed into the Examination Room.
5. Candidates are permitted to bring the following statutes into the examination room:
 - a. The Sale of Goods Act 1893;
 - b. The Hire Purchase Act Chapter 399; and
 - c. The Bill of Exchange Act 1882;
6. This subject is for Candidates in the 3rd Year of the LL. B Programme.

PART A (COMPULSORY)

Question 1

Sunray Limited, a solar geyser manufacturing company, purchases 200 collector panels from Zen Limited at a purchase price of K90,000. The purchase price is to be paid in two equal instalments of K45,000. According to the contract's payment schedule, the first instalment payment falls due on February 1, 2019, and the second and final instalment falls due on March 1, 2019.

On January 30, 2019, Arc, Sunray's chief accountant, uses the company cheque book to draw two cheques for K45, 000 each. The two cheques are drawn on Stanbic Bank Zambia in favour of Zen Limited and are dated February 1, 2019 and March 1, 2019 respectively. Arc leaves the two cheques in a file on Themba's desk with a note that says: "please sign the enclosed." Themba is Sunray Limited's CEO and the only authorized signatory of company cheques. When Themba sees the cheques, he crosses each cheque with two parallel lines but does not sign them.

On the afternoon of January 31, 2019, Themba is admitted to the ICU of CFB Hospital. On February 1, 2019, Arc retrieves the cheque dated February 1, 2019 from Themba's office and signs it, doing his best to reproduce Themba's signature as best as he can. Arc then transmits the cheque to the chief accountant of Zen Limited, Trust, who successfully presents it for payment on February 1, 2019. Two working days later, Zen Limited's account is duly credited with K45,000.

On March 1, 2019, Themba has still not returned to the office. Arc retrieves the second cheque dated March 1, 2019, reproduces Themba's signature, and transmits the cheque to Trust. Shortly after Trust receives the cheque, he receives a death threat on WhatsApp. The threat is from a ruthless loan shark whom Trust owes K40,000. In a panic, Trust drives to Stanbic Bank where he asks to see the bank manager. Trust presents the cheque to the manager, and explains that Zen Limited requires immediate encashment of the cheque to "settle some urgent bills that can only be paid in cash." The bank manager who has dealt with Trust and Zen Limited for over 20 years, cashes the cheque and Trust flees with the cash.

When Themba returns to the office on March 11, 2019, he finds a demand letter from Zen Limited for K45,000. After an interview with Arc, Arc confesses reproducing Themba's signature on both cheques. Themba then phones Piwa, Zen Limited's CEO, to explain that a second cheque of K45,000 was in fact delivered to Trust on March 1, 2019, and that Sunray's account was duly debited with K45,000. After comparing notes about the events of the past few weeks, it dawns on Themba and Piwa that Trust cashed the cheque and fled with the money. Themba and Piwa conclude that Stanbic Bank has been "irresponsible and reckless". Themba and Piwa visit you at your law office to seek a legal opinion on Stanbic's liability.

With the aid of relevant authorities, advise Themba and Piwa on whether Stanbic can be held liable for honouring both cheques.

(18 marks)

PART B

Question 2

Longhaul Transport Limited specialises in the collection and delivery of industrial grade generators within Zambia. Due to the load shedding crisis, business is booming. Since March 2019, Kafue, a 30% shareholder in Longhaul Transport, has held a policy with Piamond Insurance Limited. The insurance policy insures the contents of Longhaul's office premises against theft.

On August 29, 2019 at 02:00 am, an electrical fault sets off a fire which destroys the entrance to Longhaul's office premises as well as some equipment. Seeing the premises wide open, some persons enter Longhaul's premises and ransack the building, helping themselves to everything they can salvage from the destruction of the fire.

Later that morning, Kafue fills out a claim form with Piamond Insurance. You are in-house counsel for Piamond insurance.

With the aid of relevant authorities, write a legal opinion on Kafue's prospects of success.

(14 marks)

Question 3

In February 2019, Shopwrong Limited takes out an insurance policy with Goldman Insurance Company Limited. The policy covers Shopwrong's West Park premises against fire. The policy is valued at K5 million and is valid for a period of 12 months.

Section 5 of the policy document includes the following term: "It is warranted that for the duration of this policy, Shopwrong's premises will be fitted with a fully operational fire detector system."

At 22:07 hrs on May 17, 2019, fire breaks out and destroys Shopwrong's West Park premises. Shopwrong files a claim with Goldman. While investigating the claim, Goldman discovers that on the day of the fire, the fire detector system was temporarily switched off to facilitate routine maintenance work. They further discover that on the day of the incident, Princess, the employee responsible for switching the detector system back on, forgot to do so and went home around 17:00 hrs. Investigations further divulge that around 21:00 hrs that night, Princess realized her oversight and returned to the premises. She switched on the fire detector system at exactly 21:47 hrs.

Goldman's managing director, Worried, knows that a successful claim will sink Goldman, which is in a serious liquidity crisis. She approaches you for legal advice.

With the aid of relevant authorities, advise Worried on whether Shopwrong's claim can succeed.

(14 marks)

Part C

Question 4

- Salama runs a large fish farming business in Lusaka West. The business is going well, but she requires a capital injection of K2 million to fully mechanize her operations and to dam a stream that flows through her farm. Salama approaches XYZ Bank for a loan of K2 million. XYZ Bank inform Salama that while they are willing to loan out the money, they require the following as security: (a) fixed debentures over the assets of the business and (b); a personal guarantee.

To provide the guarantee, Salama sets her sights on her uncle Gullible, a recently retired civil servant who has received his terminal benefits in full. Salama approaches Gullible and asks him whether he would be willing to personally guarantee the K2 million loan. Gullible agrees. Salama asks Gullible to phone XYZ's bank manager and make the undertaking. Gullible does exactly this.

After Gullible's phone call, XYZ prepare a loan agreement advancing Salama K2 million. The securities for the loan are contained in clause 8 which reads in part: "a personal guarantee for K2 million by Gullible". The loan agreement is duly executed by Salama and XYZ bank. Not long after the execution, Salama receives the loan amount. She injects K500, 000 into the business but uses the rest for personal consumption. In due course, Salama defaults on the loan. Notwithstanding several demand letters and phone calls from XYZ, Salama remains in default. Eventually, Salama switches off her phone and moves to Mpulungu. XYZ turn to Gullible for payment.

Gullible approaches you for legal advice. He tells you that Salama told him that the phone call was just for "formality's sake" and that there was "no way" he would be asked to pay anything. Gullible tells you that when he phoned the bank manager to make the undertaking, he never dreamed it would result in "this mess." Gullible tells you that he does not even know what a guarantee is and is scared sick that he will lose the terminal benefits he has spent the last 40 years working for.

With the aid of relevant authorities, advise Gullible on whether his is liable on the loan.

(14 marks)

Question 5

Maputo who lives in Lusaka orders 1,000 Macadamia seedlings from Norris, a tree nursery owner in Chisamba. In the last few years, Norris has established a very successful Macadamia nursery and has over 300,000 seedlings in stock. Maputo places the order over the phone, and tells Norris that he will travel to Chisamba to collect the seedlings "when he finds transport." Later that day, Maputo pays Norris via bank transfer. Three weeks pass, and Maputo has still not collected his seedlings. Norris, who wants to travel to Livingstone on holiday, emails Maputo the following:

"Hi, I am traveling to Livingstone tomorrow and I will be gone for a week. I have asked my workers to put your seedlings aside for you in a safe place. If you come when I am away, ask for Jelita; she will show you where they are. Cheers!"

Maputo who is in some financial troubles, reads the email and sends a two worded reply: "coming tomorrow."

That night, severe torrential rains hit Chisamba and destroy several properties including the enclosure where Maputo's seedlings have been stored. The next day, Maputo is on his way to Chisamba with a borrowed Canter truck. When he arrives at the nursery, Jelita informs him that his seedlings have been destroyed. Maputo immediately gets on the phone with Norris, explains the situation, and asks that Norris direct his workers to quickly load 1,000 seedlings on his Canter as he is in a hurry to return the truck. Norris responds, "If you want 1,000 additional seedlings Maputo, you must pay for them."

In a rage, Maputo hangs up on Norris and calls you, his long trusted lawyer. He instructs you to sue Norris for the full purchase price of 1,000 Macadamia seedlings.

Prepare a legal opinion advising Maputo on his prospects of success in a suit against Norris.

(14 marks)

Part D

Question 6

Write short notes on the following:

- | | |
|--------------------------------------------------------------------|-----------|
| (a) The triangular relationship in finance leasing; | (4 marks) |
| (b) Netting by novation; | (3 marks) |
| (c) The maximum rate of interest in a Hire Purchase Agreement; and | (3 marks) |
| (d) The unilateral nature of a contract of guarantee. | (4 marks) |

(Total: 14 marks)

Question 7

Write short notes on the following:

- | | |
|---------------------------------------------------|-----------|
| (a) Initial payments in Hire Purchase Agreements; | (3 marks) |
| (b) Intangible money; | (4 marks) |
| (c) Gender rating; and | (4 marks) |
| (d) Bearer bills. | (3 marks) |

(Total: 14 marks)

TOTAL: 60 MARKS

END OF EXAMINATION



THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

FAMILY LAW AND SUCCESSION – LPR 3940

FINAL EXAMINATION

DATE: 20TH NOVEMBER, 2019

TIME: 14:00 -17:00 hours

VENUE: UPPER DINING HALL

INSTRUCTIONS:

1. Answer **Four (4) questions**, one from each Part. question 1 is compulsory
2. Time Allowed: **Three (3) hours plus five (5) minutes** to read through the examination paper.
3. This examination paper carries a total of **60 marks**.
4. Mobile telephones, tablets or any other form of computing or electronic instruments are **not** allowed into the examination room.
5. Candidates **are permitted to bring** into the examination room the Marriage Act, the Matrimonial Causes Act, the Intestate Succession Act.
6. This subject is for candidates in the 3rd year of the LLB programme.

Part A (Compulsory)

QUESTION ONE

Mary and John have been married for 15 years this December having celebrated their marriage on 24th December, 2004 at Kitwe Civic Centre. They have three children of the family. Being staunch Catholics, they decided to have their marriage blessed in 2010 at the Chawama parish. The couple has lived in many places and been quite happy in their relationship. John was initially working for bank ABC. In search of greener pasture, he left the bank and joined the mines in 2012. Time to spend with the family eluded him as he was required to be at work most of the time. He worked long hours and would not eat meals with the family as before, he would not spend weekends with them nor would he take holidays with them. Even when at home, he would sit alone working on his laptop to catch up with urgent work. This did not please Mary but she decided to keep quiet about it. Slowly, the couple started to drift apart. Mary was conscious of the fact that the Catholic Church does not allow divorce. But life had really turned for the worst. Life became miserable for Mary and she started looking for a way out of the marriage because it did not match up to what she had enjoyed since they got married.

Mary has heard that you are a lawyer practicing law with UNZA legal practitioners. She approaches you seeking an explanation of the law of divorce relating to her marriage. She also wants to know what her chances of success at court are.

With the help of relevant authorities, advise Mary on the law of divorce relating to her marriage and her chances of success at court. **(18 Marks)**

Part B

QUESTION TWO

In *Hayward v Hayward* [1961] Probate 152, the court stated that “a void marriage can never be converted into a valid marriage as its nature dictates that it has never existed before.”

With the help of relevant authorities, taking into account that the law in Zambia recognizes more than one type of marriage, discuss the grounds that can render a marriage void in Zambia.

(14 Marks)

QUESTION THREE

Musobe, a Lunda man and Maipeo, a Ngoni woman, have been living together for about 15 years and have two children between them. They have acquired a lot of property in various parts of the country. All the properties are registered in Musobe's name. As fate would have it, Maipeo found love messages on Musobe's phone sent by his girlfriend. Maipeo is so angry at this and just wants to leave Musobe. She is not sure on how to go about this and what exactly will happen especially to the property and the children.

With the help of relevant authorities, advise Maipeo on the status of her relationship with Musobe and the law applicable, her rights in the property, the status of the children and what her options are with regard to her situation. **(14 Marks)**

Part C

QUESTION FOUR

Moses was a wealthy man living in Kitwe. His family loved him for his money and as such he always had visitors in the house. His brothers and sisters even though married and working would come to Moses to get money for food and other needs. It was the same with his uncles and aunties both from his mother's and from his father's side. His cousins, nephews and nieces also loved him because he was generous and there was good life at his house. They visited him to get money and other things for their upkeep. School fees were also paid by Moses.

Moses was a married man with four children. Unfortunately one of the children turned out to be a drunkard and a thief who would steal from Moses as well. He even attempted to kill Moses at one time. Moses decided to write a Will long before he passed away. In his Will, he gave gifts to his wife and three children leaving out the cantankerous son who at this time was 28 years old and married with two children.

After Moses died, the Will was read out. His family rose up against the widow claiming she had engineered Moses to leave them out of the Will. The son was also up in arms claiming what he called 'his share' from the estate. The relatives and the son come to you seeking help on taking this matter to court.

With the help of relevant authorities, advise the parties on the issues arising in this case and their chances of success in court. **(14 Marks)**

QUESTION FIVE

Zayelo aged 76 and a retired civil servant was married to Beauty at the time of his death in 2017. He died intestate. They were married in 1994 at the Kitwe Civic Centre. Between them, they had five children namely Bertha born in 1994, Charles born in 1999, Mike born in 2002, Charity born in 2007 and John born in 2013. At the time of the demise of Zayelo, Beauty was three months expectant. At the funeral, Beauty noticed the presence of three children who looked like her husband but did not pay much attention to them. After the burial, Beauty was shocked when it was announced during the family meeting that the deceased had three other children with two different women. Beauty denied the children and did not want to have anything to do with them. The children were Matobo born in 1992, Bebe born in 1996 and Delia born in 1998.

At the time of appointing the administrator, Zayelo's family decided to appoint Matobo as administrator because he was the older one of the children. Beauty was not happy with this.

In terms of property, there was a house in which the family lived which was registered in Beauty's name. There was a small business Beauty was managing of renting out shops at South Gate shopping complex in Lusaka to which she held title. There were 10 shops altogether. The family of the late husband argued that all the property should be shared and that even the three children from outside wedlock should get a share. They stated that the three children from outside wedlock should move into the 'matrimonial home' and enjoy as well since they did not live there when their father was alive. Beauty was also selling tomatoes and vegetables at home to make ends meet. The late husband's family demanded that Beauty should be sharing all the proceeds from the tomato and vegetable business with the children from outside wedlock.

Beauty who has heard that you are an expert in family law is unhappy with what is happening and comes to you for advice.

With the help of relevant authorities, advise Beauty on the law of intestacy and how it relates to her case. Advise her on what action she can take. **(14 Marks)**

Section D

QUESTION SIX

A statutory law marriage has been defined in the celebrated case of Hyde v Hyde and Woodmansee (1866) LR 1 P&D 130 as “a voluntary union for life of one and one woman to the exclusion of all others.”

With the help of relevant authorities, discuss the validity of this definition in the current family law dispensation. **(14 Marks)**

QUESTION SEVEN

Clearly identify and discuss five sources of family law showing their relevance to modern day family law dispensation. **(14 Marks)**

TOTAL EXAMINATION MARKS: 60

END OF EXAMINATION



THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

CIVIL AND CRIMINAL PROCEDURE – LPR 3952

FINAL EXAMINATION

DATE: 4 NOVEMBER, 2019

TIME: 14:00 HOURS

VENUE: UPPER DINING HALL

INSTRUCTIONS:

1. Answer Four (4) questions, one from each part. Question 1 is compulsory.
2. Time allowed: Three (3) hours plus five (5) minutes to read through the examination.
3. This examination carries a total of 60 marks.
4. Mobile telephones, tablets or any other form of computing electronic instruments are not allowed into the examination room.
5. Candidate are permitted to bring the following statutes into the examination room:
 - (a) Constitution of Zambia (as amended) (Cap. 1, Laws of Zambia);
 - (b) Criminal Procedure Code, 1934 (Cap. 88, Laws of Zambia);
 - (c) High Court Act, 1960 (Cap. 27, Laws of Zambia);
 - (d) Penal Code, 1931 (Cap. 87, Laws of Zambia);
 - (e) Protection of Fundamental Rights Rules, 1969;
 - (f) Subordinate Courts Act (Cap. 28, Laws of Zambia);
 - (g) Supreme Court of Zambia Act, 1975 (Cap. 25, Laws of Zambia).
6. Should you choose to answer question 3, ensure that you answer it on the "*Form Subordinate Court Writ of Summons*" that has been provided for this question.
7. This subject is for candidates in 3rd Year of the LL.B. Programme.

PART A COMPULSORY QUESTION

Mr. Patel was violently assaulted by 3 uniformed policemen from Lusaka Central Police station on November 3, 2019 during the course of being investigated for the theft of USD 1,000,000.00 cash from a leading commercial bank located at Lukulu East Shopping Mall. The 3 policemen admitted lacking a search warrant on the occasion, but nonetheless forced their way into Mr. Patel's residence in Woodlands. ZMW 20,000.00 has been spent by Mr. Patel's family to obtain treatment from a prestigious private clinic for the specialised treatment of his injuries.

The State has since written to Mr. Patel to formally refute his claims that the 3 policemen injured him during the arrest. Mr. Patel has sought your legal advice concerning the appropriate legal claim to enable him recover adequate compensation in respect of his said bodily injuries. He has instructed you to file his claim in the High Court at Lusaka so that the extent of his compensation may be fairly assessed. The policemen admit not having obtained a search warrant beforehand but deny being responsible for Mr. Patel's bodily injuries. They instead contend that he fell down while improperly trying to resist lawful arrest for his alleged theft.

On November 4, 2019, another team of three policemen arrested Mr. Patel for the aforementioned crime after using a valid search warrant to search his residence. They recovered USD 950,000.00 cash from his master bedroom. His Zambian wife looked on in distress as the cash was being ferried away into a waiting police van.

Mr. Patel is a known BP and diabetic patient who nearly had a heart attack 3 weeks ago from the selfsame ailments. He has particularly instructed a UK-based barrister, who also holds a valid Practising Certificate from the Law Association of Zambia (LAZ) during the current (i.e. 2019) Legal Calendar; and has strictly insisted on his legal services and none else. However, the lead investigative detective has declined to allow Mr. Patel's UK-based advocate to represent him as counsel insisting that locally-based advocates are sufficient for the purpose which has led to the case being handed over to your principal's law firm. The name of the firm is Messrs. Zambezi River Legal Practitioners. Their luxurious offices are at Rooms 1-20, Lukulu South Shopping Mall, Great East Road; P.O. Box 10000, Lusaka.

The NPA's offices have just been relocated to: NPA Head Office, Stand Number 50000, Independence Avenue, Lusaka. They are adjacent to the Attorney-General's Chambers located at Stand 50001, Independence Avenue, Lusaka.

The case has since been submitted to you to undertake the following tasks:

(a) Settle (*i.e.* draft) a statement of claim in respect of Mr. Patel's claim for the recovery of damages in the sum of ZMW 20,000.00 for his said injuries in the Lusaka High Court. When filed on November 4, 2019, the case shall be civil cause number 6000 filed at the Lusaka High Court for the year 2019. (9 Marks)

(b) Arising from the facts given above, the State has indicated that 100 high-placed commercial bank employees from various Zambian banks will be called to testify against Mr. Patel's alleged crime. This might entail a trial lasting more than 1 full year. The National Prosecution Authority (NPA) has formally indicated that any attempt to release Mr. Patel pending trial might have the

undesirable effect of interfering with the State's witness. That will lead to a trial lasting more than I full due to the high number of witnesses. The NPA has formally indicated that any attempt to release Mr. Pate pending trial might have the undesirable effect of interfering with the State's witnesses. For that reason, the NPA will formally request the presiding court to deny his release while the trial is underway.

Instructions:

- (i) Recommend the appropriate procedure to ensure that Mr. Patel is afforded the critical opportunity of receiving continued home-based treatment while his criminal trial is underway. That measure will reduce the risk posed to his health by a prolonged pre-trial detention due to a lengthy criminal trial. (3 Marks)
- (ii) Draft (1) a **summons**; and (2) supporting **affidavit** to enable you file the appropriate request in the Subordinate Court of the First Class for the Lusaka District in order to ensure that Mr. Patel is released as aforesaid and allowed to receive the desired home-based care for his said ailments. The cause number given to your said application is: **2019/SBC/1010**. (6 Marks)

(Total 18 Marks)

PART B

QUESTION 2

The first and second applicants were arrested on July 16, 2014, while the third applicant was arrested on July 14, 2014. They were all charged with armed aggravated robbery, the allegation being that they robbed the prosecutrix of ZMW 120,000.00 and four packets of hard currency from her bureau de change money-exchange outlet at Lukulu North Mall, Woodlands. On June 8, 2016, all three applicants were committed to the High Court. It was the applicants' contention that since their committal to the High Court nothing had been done in connection with their trial; and that no court has tried them for their alleged crime. They thus contended that they were unlawfully detained and that their continued 5-year detention without trial was arbitrary, capricious, and unlawful.

You serve as a Research Advocate within the Zambian judiciary. The presiding court has asked you prepare a legal opinion in which you:

- (1) Draft the appropriate document charging the accused with the offence; and
- (2) Outline what process is available to the prisoners, if any, to remedy their 5-year pre-trial detention without trial.

(14 Marks)

QUESTION 3

Ms. China Shanghai sold Mr. Zick Zack some equipment used by her at her saloon in Ndola after drawing a contract in that regard at her former advocates' Chambers in Ndola. The equipment

included (a) 1 geyser; (b) 2 adjustable leather barbing chairs; (c) canteen chairs; (d) wall hair driers; (e) 5 luxury mats; (f) metal counter; (g) swing chairs; (h) guest waiting chairs; (i) 1 barbing machine; and (j) big toners. The equipment was worth ZMW 25,000.00.

Mr. Zack covenanted to pay the price in two instalments, beginning with a payment of ZMW 12, 500.00 on October 31, 2015; the balance of which was due exactly a month later. Mr. Zack was given custody of the equipment forthwith on the faith of his said promise. However, he has failed to pay the whole purchase price to date, and thus owes Ms. Shanghai the sum of ZMW 25,000.00.

Ms. Shanghai ordinarily made a profit of at least ZMW 300.00 per day from her salon. Mr. Zack has disputed the validity of the contract; the description of the actual goods sold, and the value thereof. If taken to court, such must be filed in a subordinate court because the amount claimed is comparatively petty.

Ms. Shanghai has since relocated to Lusaka and commenced, on her own, a civil claim to recover her money in the Subordinate Court of the First Class for the Lusaka District. The civil cause number for the case is CRM/CCLSK/001.

The case was poorly drafted by Ms. Shanghai. She has now asked you to (1) settle (*i.e.* draft) the correct Subordinate Court originating process. This process is annexed hereto marked "**Subordinate Court Writ of Summons**" and has been **provided as a separate sheet to be included to your answer booklet**. You must complete the writ of summons by inserting the missing entries so that said claim can be filed in court. The name of the firm instructed by Ms. Shanghai is Messrs. Kafue River Legal Practitioners. Their luxurious offices are at Rooms 1-20, Lukulu South Shopping Mall, Great East Road; P.O. Box 10000, Lusaka.

Therefore, provide the following missing information:

(i) Complete by filling all the **underlined blanks spaces** so that the case is correctly filed and said claim is pursued by the plaintiff in court. Give the process a new cause number of your own.

(8 Marks)

(ii) Discuss the legality of your client's insistence to commence the case before the Subordinate Court of the First Class presided over by the Chief Resident Magistrate at Lusaka due to his renowned efficiency and competence in such contractual matters; and rely on any Zambian precedent that might deal with that issue, after which you must draw the appropriate conclusion concerning the Ms. Shanghai's view to file the case at the Lusaka subordinate courts.

Note that the costs for filing the case are as follows:

Court fees: ZMW 200.00; and

Messenger's fees: ZMW 100.00.

After filing the case anew, the Court Messenger confirms effecting service on the Mr. Zack on November 4, 2019 at 14:00 hrs. Therefore, endorse the originating process, given below, with said confirmation in the **underlined space** reserved for that purpose.

(6 Marks)

(Total 14 Marks)

PART C

QUESTION 4

Compare and contrast or write brief notes as the case may be on the following:

(i) *Nolle Prosequi* versus *Autrefois* acquit. (8 Marks)

(ii) "Not Guilty" versus "Guilty" Plea. (6 Marks)

(Total 14 Marks)

QUESTION 5

With the aid of relevant authorities, critically discuss:

(a) The role of pleadings in a civil action. (7 Marks)

(b) Using relevant leading judicial precedents, discuss the principles applied by the English or Zambian courts to grant an interlocutory injunction as opposed to a final one. (7 Marks)

(Total 14 Marks)

PART D

QUESTION 6

You are a defense counsel hired to defend Mr. Johanes Apimwimbi who has been charged with the offence of theft by public servant. Your client was arrested without a warrant on November 3, 2019 at 14:30 hrs. at a pub in Lusaka East. Because of the huge amount of money allegedly stolen by him, the police have opted to detain him for more than 24 hours in order to "teach him a lesson", so said they, by separating him from his dear family and depriving him of the usual comfort of his luxurious home.

The arresting officer is adamant of the accused's guilt and has gone so far as to require him to post bail bond in the sum of ZMW 150,000.00 failing which, said he, the accused should "rot in the cells". The accused's monthly salary, as a very senior civil servant, is ZMW 15,000.00.

Trial is unlikely to commence due to the deliberate ploy by the arresting officer to purposely delay trial of the case so as ensure that the accused's detention pending trial is prolonged as a punitive measure.

At last, the case has been submitted to the Chief Resident Magistrate's court at the Lusaka magistrate court. Angry at the oppressive treatment suffered at the hands of the police during his 2-week detention, the accused refused to say a word and simply stood still when he was called to plead.

Given the facts above:

(Total 14 Marks)

PART C

QUESTION 4

Compare and contrast or write brief notes as the case may be on the following:

(i) *Nolle Prosequi* versus *Autrefois* acquit. (8 Marks)

(ii) “Not Guilty” versus “Guilty” Plea. (6 Marks)

(Total 14 Marks)

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Given the facts above:

- (i) What remedy is available to Mr. Apimwimbi following his earlier arrest without a warrant and subsequent 2-week detention? **(5 Marks)**
- (ii) What remedy should have been sought for him when the arresting officer demanded bail bond from the accused in the sum of ZMW 150,000.00 cash if he were to be released on bail pending trial? **(5 Marks)**
- (iii) What course of action should be taken by the Chief Resident Magistrate following the accused's deliberate silence when he was called on to take plea against the charge of theft by servant? **(4 Marks)**

(Total 14 Marks)

QUESTION 7

You act for Forest Maamba, who has been served with a default writ of summons issued by the Subordinate Court of the First Class for the Ndola District. The default writ has been issued at the instance of Big Five, a limited company claiming payment of the sum of ZMW 90,000.00, being unpaid remuneration for a contract to provide catering services at Forest Maamba's training school in Lusaka where they were duly procured. Everything concerning the catering services contract was undertaken and completed in Lusaka. Your client is resident in Lusaka and would like you to defend the case on his behalf. He disputes owing the said debt because of the poor quality of the catering services provided by Big Five.

The name of the law firm at which you practice is Messrs. Luangwa River Advocates. Their state-of-the-art offices are at Rooms A-Z, Chipata East Modern Shopping Mall, Great North Road; P.O. Box 100000, Lusaka.

The civil cause number assigned to the case by the Subordinate Court of the First Class for the Ndola District (holden at Ndola) is **CC/PRM/001**.

- (i) Discuss the steps required to defend your client's legal interest(s), if any. **(3 Marks)**
- (ii) Based on your advice in (a) above, draft (a) a summons; and (b) summons required to oppose the case against your client. **(11 Marks)**

(Total 14 Marks)

TOTAL EXAMINATION MARKS: 60

END OF EXAMINATION



THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

END OF THE YEAR EXAMINATION

LPR4155 ALTERNATIVE DISPUTE RESOLUTION

25TH NOVEMBER, 2019

VENUE: UPPER DINING HALL

09:00 – 12:00 HOURS

INSTRUCTIONS:

1. ANSWER FOUR (4) questions, one from each part. Question one (1) is Compulsory.
2. Time Allowed: Three (3) hours plus five (5) minutes to read through the examination paper.
3. This Examination Paper carries a total of 60 Marks.
4. Mobile telephones, tablets or any form of computing instruments are not allowed into the examination Room.
5. Candidates are permitted to bring into the examination Room, the following statutes:
 - (i) The Arbitration Act No. 19 of 2000;
 - (ii) The English Arbitration Act, 1996;
 - (iii) The International Centre for Settlement of investment Disputes Convention.
6. This is for candidates in fourth (4th) year of LLB.

PART: A

Question One (Compulsory)

- (a) The Republic of Zin entered into a Bilateral Investment Treaty (BIT) with the Republic of Coco. Among the clauses of the BIT were:
- (i) Each host state shall give to the investor of the other state fair treatment and the most favoured nation (MFN) status was applicable to each state's foreign investors.
 - (ii) Any dispute arising between the host state and the investor shall be arbitrated by the International Centre for Settlement of Investment Disputes (ICSID), which shall apply the Nations Commission on International Trade Law (UNCITRAL).
 - (iii) The disputes shall not be subject to domestic law.

A corporate entity by the name of Angel Corporation domiciled in Zin Republic invested in the energy sector in the Republic of Coco. The funds were in foreign currency. There was a financial crisis in Coco which led to the domestic currency to lose two hundred percent of its value. The Republic of Coco in quest for political populism insisted that no company would be allowed to charge tariffs based on the United States dollars. This meant huge losses for the Angel Corporation. Angel Corporation declared a dispute, which was referred to ICSID arbitration as the Republic of Coco had consented to arbitration in the BIT.

Can you render an opinion on the status of each party?

(12 Marks)

- (b) A company domiciled in the Republic of Azania was awarded USD40 Million as compensation by an international tribunal. The company sought enforcement against Azania's trading company Omox Oil, which was domiciled in New York United States. Omox Oil was wholly owned by the Republic of Azania. The Republic of Azania resisted enforcement

of the award citing jurisdictional as well as executorial immunity as the company and assets were owned by a sovereign entity.

Render a legal opinion on the legal status of each party. **(6 Marks)**

Total (18 MARKS)

PART: B

Question Two

- (a) Write short explanatory notes on the nature of the negotiation process **(5 Marks)**
- (b) Do you agree that mediation may be facilitative and directive? If you agree, give reasons for your answer. **(5Marks)**
- (c) Discuss the advantages of mini-trial over litigation **(4 Marks)**

Total (14 MARKS)

Question Three

- (a) A multinational mining company has terminated contracts of 2000 employees. The employees believe they have a good case, but are doubtful of what could be the outcome. They are not keen to proceed to a full trial which might involve pre-trial discovery. They fear that if they lost, they may not afford to pay their legal costs and those of their former employer. They have approached you to handle their matter. You have a former classmate at UNZA, who has distinguished herself in employment law practice.

What course of action would you take and why?

(10 Marks)

- (b) Write short notes on conciliation

(4 Marks)

Total (14 MARKS)

PART: C

Question Four

In the early days of arbitration there was unanimity that the arbitration clause was separable from the underlying contract. This legal position is currently contentious. Recently Apex courts both in England and Zambia in some instances have ruled against the separability doctrine.

With the aid of relevant authorities in both countries, discuss the circumstances in which these courts have ruled against the separability doctrine.

Total (14 Marks)

Question Five

The Republic of Azania is going through a serious financial crisis and is unable to subsidise the running of its railway system to the harbour as Azania is landlocked and the railway is the economic life line. To avoid deterioration of the line, the Republic of Azania which wholly owns the line decided to concession the line to BHO Railway systems of South African, which has vast experience in operating railway systems. There are four critical clauses in the Agreement:

- (i) Any dispute arising shall be referred to a panel of three arbitrators;
- (ii) English law is to govern the arbitration;
- (iii) The Republic of Azania can terminate the agreement at anytime;
and
- (iv) Compensation at the obtaining market value of the investment is payable promptly.

When the Republic of Azania learnt that the concessionaire was favouring some exporters in conveying exports to the harbour, the Republic of Azania

terminated the concession. A dispute was declared by BHO and referred to arbitration.

During the currency of the arbitration the chairman of the arbitrator tribunal was appointed as Permanent Secretary in government, but did not resign from the arbitration. He rendered an award condemning the government in damages. The Attorney General called the award a comedy of errors. He asks you as principal state Advocate civil litigation to render a legal opinion on the entire award.

Write an opinion to the Attorney General on the rendered award.

Total (14 MARKS)

SECTION D

Question Six

- (a) You have been appointed an arbitrator in a dispute between two multinationals, who have both chosen the United Nation Commission on International Trade Law (UNCITRAL) model law to govern the resolution of their dispute. Draft an agenda for a preliminary meeting. **(10 Marks)**
- (b) Discuss the concept of 'serious irregularity' as a basis of setting aside an award. **(4 Marks)**

Total (14 MARKS)

Question Seven

- (a) Discuss the concept of party autonomy in arbitration **(7 Marks)**

- (b) What are the advantages of a country signing the New York Convention on the Recognition and Enforcement of Foreign Awards New York 1958 and United Nations Commission on International Trade Law? **(7Marks)**

Total (14 Marks)

TOTAL 60 MARKS

END OF THE EXAMINATION