

THE UNIVERSITY OF ZAMBIA SCHOOL OF LAW

2009 SECOND SEMESTER

1. L211-LEGAL PROCESS
2. L252-CONSTITUTIONAL LAW
3. L352-NATIONAL HUMAN RIGHTS LAWS
4. L362-CIVIL AND CRIMINAL PROCEDURE
5. L382-INDUSTRIAL LAW
6. L492-TAXATION

THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW
2008/9 SECOND SEMESTER FINAL EXAMINATIONS
2nd March 2009
L 492 – TAXATION

INSTRUCTIONS

1. Answer Question One and any three other questions.
 2. Time: three (3) hours plus five (5) minutes in which to read the question paper.
 3. Question one carries 40% of the total mark while the other questions carry 20% each.
 4. Candidates may consult the Income Tax Act, CAP 323 of the Laws of Zambia.
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Question One

"Mr. Speaker, the Government is committed to providing tax relief to the workers. I therefore propose to increase the PAYE exempt threshold from K600,000 per month to K700,000 per month and provide further relief by adjusting the income tax bands as follows:

Current System

Income Bands	Tax Rate
0 – K600,000 per month	0%
K600,001 – K1,235,000 per month	25%
K1,235,001 – K4,000,000 per month	30%
Above K4,000,000 per month	35%

Proposed System

Income Bands	Tax Rate
0 – K700,000 per month *	0%
K700,001 – K1,335,000 per month	25%
K1,335,001 – K4,100,000 per month	30%
Above K4,100,000 per month	35%

*-S. Musokotwane. Minister of Finance
2009 Budget Address, Para 121,*

Jason Sangwapo is a Primary School Teacher at Twibukishe Primary School in Kitwe at a monthly salary of K1,800,000 per month. He has come to you wanting to know:

- (a) how much extra income he will have in his pockets as a result of the tax relief measures announced by the Minister; and
- (b) His average tax rate before and after the tax changes.

Question Two

Immediately after admission to the on 6th June 2008 Bar Bwalya Hamoba joined a Ndola law firm known as Talktime Lungu & Partners as junior Legal Counsel. His salary was K9 million per month. Bwalya was not amused when he saw that his June month-end pay slip reflected almost one-third of his salary going into tax. Although Bwalya never did taxation at UNZA law school he complained to the firm's accountant that she was incompetent because according to him she was unduly deducting too much tax from his pay. The next month July and the subsequent months Bwalya saw that his pay slip was reflecting only K100,000 per month as tax. Unfortunately for him in December 2008 the firm was visited by Tax Inspectors from the Zambia Revenue Authority. They told Bwalya that he had been underpaying his tax and assessed unpaid taxes with interest and penalties at K26 million. He has come to you stating vehemently stating that it was his employer's

duty to deduct and remit the correct tax to ZRA. He wants you to go and argue this matter at the Revenue Appeals Tribunal. Advise.

Question three

“As a result of the global economic crunch and subsequent job losses on the copperbelt it is only a few Zambians in the formal sector that are bearing the brunt of taxation. A lot of people in receipt of income are not paying their taxes. If we widen the tax net so that there are more people paying tax we can actually reduce the income tax rate so that people can have more money in their pockets”.

-Per famous Zambian political leader

Write a memorandum which government can use as blue print, clearly outlining the ways and means of how to practically get more people to pay tax.

Question Four

Aircraft Katwishi is devout member of the Dreamers Pentecostal Church. He is also a successful poultry farmer. He usually donates generously every Sunday at the church service. His dream has been to become a lay preacher like his eloquent pastor, Bishop Dr Guy Sotambe. Four Sundays ago he told Bishop Dr Guy Sotambe that he was thinking of donating a sum of K25 million to the church. He also hinted that what could persuade him to make up his mind quickly were if the Bishop could make it possible for him to be a lay preacher. Last Sunday the good bishop announced to a stunned church that he had appointed Katwishi as one of the junior pastors of the church. At the end of that church service Katwishi also announced to the stunned church his love gift to the church in the sum of K25 million. The following Monday Katwishi told his accountant that the K25 million was clearly a charitable donation and should be deducted from the gross income in arriving at the taxable income. The accountant knows you and expresses his uneasiness with his boss's instruction. He seeks your expert advice. Advise him.

Question Five

Colonel Mwenya Namukolo is Zambia's deputy Ambassador to the Republic of Peru. He is also a talented pianist. Every Tuesday and Friday he knocks off at lunch hour to teach and give live performances in the Salvador Allende Sports Hall at the University of Peru in the capital city Lima. He receives an honorarium of US \$4,000 per session. Namukolo's boss, the Ambassador, thinks that Namukolo should pay tax to the Zambian government since he does his shows during working hours, time he is supposed to be at work in his office. The two are not even on talking terms. You are required to render a well thought out opinion on whether or not there is any tax liability.

Question Six

Due to the serious global economic crunch the demonstrations by workers belonging to the Federation of Free Trade Unions (FFTUZ) and the Zambia Congress of Trade Unions (ZCTU), government has succumbed to the pressure and decided to re-introduce tax treatment of the family as a unit. You have been appointed a member of the Task Force on Tax Reform in Zambia chaired by your former tax lecturer at UNZA law school. The Chair has requested you to write a brief on what the appropriate tax treatment of the family ought to be in Zambia. Prepare such a brief giving salient features.

\$ **END OF EXAMINATION** \$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$

The University of Zambia

School of Law

2008/2009 Semester 2 Final Examinations

February 2009

Industrial Law- L382

Instructions

1. Maximum time allowed is three (3) hours plus five (5) minutes to read through the paper.
 2. Answer four (4) questions, two (2) from each part, inclusive question one (1) which carries 21 marks.
 3. The rest of questions carry 13 marks each and the total marks for the entire examination are 60.
 4. Clean copies of the Employment Act, the Industrial and Labour Relations Act, and the Minimum Wages and Conditions of Employment Statutory Instruments No. 56 and 57 of 2006 are allowed into the Examination Hall.
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PART 1

Question One

John Tembo is employed by the Copperbelt Mining Company Limited (“**CMCL**”) as a driver under an oral contract. John is non unionised. The government of the Republic of Zambia under its citizenship empowerment programme run by the Citizenship Empowerment Commission (“**CEC**”) lends K1 Billion Kwacha to CMCL for the empowerment of its workers. The obligation to pay the loan to CEC is on CMCL.

CMCL in turn grants all its drivers loans from the K1 Billion to buy trucks. John buys a Volvo truck and trailer. The truck is registered in his own name and he is responsible for its maintenance.

John is however obliged to attend at work at CMCL for at least 48 hours per week as per terms of his contract and to use the truck for ferrying copper ore from CMCL open pit mine to the Leach treatment plant which is 15 KMs from the mine. John earns K310,000.00 per month as his

salary but in addition he is paid K15,000.00 for every hour in excess of 48 hours per week he works as commission.

However since the truck is John's, he is free to use it for any other purposes outside his working hours.

In November, 2008, John was suspended for 3 months for deliberately bashing into the back of a friend's lorry within the mine premises allegedly for driving at a snail's pace. During the suspension, John was only paid half his salaries. However, John did not feel the effect of the loss of half his income as during the suspension, he used his truck to undertake a number of well paying private jobs.

When John returns to work on 2 February, 2009, he is told that because of the low international copper prices, the mine was closed and the contracts of both employees and contractors were terminated.

Zambia Copper Holding Limited ("ZCHL") a 100% government owned company takes over the assets and liabilities including employees of CMCL. John refuses to join ZCHL and asks that he be paid his terminal benefits by CMCL. He is told he is not entitled to any benefits at all and that since he used his own truck, CMCL considered him to be a contractor.

Fully advise John with respect to all legal issues that this situation raises.

21 Marks

Question Two

Mable Chisepo is employed as a security guard at Pamodzi Hotel. On the night of 13 February, 2008, she was on duty when the hotel was hosting an international rumba artist. After the performance was over, Mable took two quick glasses of wine as a result of which she fell asleep. While she was sleeping, thieves broke into the bar she was guarding stealing all the expensive liquor.

She apologised for her mistakes and the General Manager told her that since she had been a good employee, instead of summarily dismissing her, he would send her on four months suspension without pay.

In the meantime, the police who are invited to investigate the theft arrest two other security guards and charge them with theft after bottles of the drinks are found at their homes. Mable is joined to the matter and is charged with aiding and abetting.

The criminal prosecution is concluded within 6 weeks and the two guards are convicted while Mable is acquitted.

Immediately after the acquittal, Mable demands that she returns to work as she is innocent and that she should be paid her wages which were not paid during her suspension.

The hotel has instructed the firm at which you are an intern. Draft an opinion which your principal will rely on as he meets the General Manager of the hotel to discuss the matter.

13 Marks

Question Three

Joseph Biemba is a very talented footballer from the Copperbelt playing for Nchanga Rangers. Zanaco Football Club which has been following the development of Joseph's career in December 2007 finally got its wish when he signed for the club.

Joseph moves to Lusaka and is given a job of a teller at the Zanaco Manda Hill branch. He works in the mornings and trains with the team in the afternoons. Joseph is also given a bank flat in Rhodespark and a VW Golf as a personal-to-holder car.

In February, 2009, the bank discovered that in fact Joseph was not a Zambian national but that of a neighbouring country. The bank which owns Zanaco Football Club decides that it is risky to employ a foreign national in the bank and terminates his contract of employment entailing that Joseph ceased working as a teller and playing football for the club.

Joseph proceeds to issue a writ of summons at the High Court against the bank in which he claims for the following reliefs:

- (i) An injunction restraining the bank from terminating his contract of employment;
- (ii) An injunction restraining the bank from evicting him from the flat and repossessing the car;
- (iii) A declaration that that the termination of his contract of employment was unlawful; and
- (iv) Damages for unlawful dismissal.

You are doing a vacation attachment in the legal department of the bank. Draft a legal brief advising how the bank's legal counsel should react to this court process.

13 Marks

Question 4

Kelvin Hamududu is employed as a physics teacher at a private school called Maluwa High School in Chipata. Kelvin is employed on a two year contract which expires on 27 February, 2009.

Kelvin is the provincial secretary of the Private Schools Teachers Union of Zambia (“PSTUZ”). In November, 2008, Kelvin refused to take up the afternoon part-time class as per terms of his contract arguing that as a union official he needed to have time to attend to union business.

The school considered his refusal to teach the afternoon class as a breach of his contract and after he failed to exculpate himself at a disciplinary hearing, Kelvin was suspended without pay for 3 months with effect from 30 November, 2009.

When Kelvin returns to work on 2 March, 2009, he is told that his contract has not been renewed and that therefore their employer-employee relationship had come to an end.

Fully advise Kelvin as regards the following:

- (i) the legality or otherwise of the actions taken by his employer against him;
- (ii) what cause of action he has against his employer, if any;
- (iii) what remedies he would be entitled to, if any; and
- (iv) what the appropriate forum is, if he decides to issue process.

13 Marks

PART 2

Question 5

At common law, there cannot be specific performance of a pure master servant relationship. Discuss the Zambian legislative and jurisprudential modification of this principle.

13 Marks

Question 6

Article 94(1) of the Zambian Constitution provides:

“There shall be a High Court for the Republic which shall have, except as to the proceedings in which the Industrial Relations Court has exclusive jurisdiction under the Industrial and Labour Relations Act, unlimited and original jurisdiction to hear and determine any civil or criminal proceedings under any law and such jurisdiction and powers as may be conferred on it by this Constitution or any other law.”

Discuss the extent to which other courts have lost jurisdiction to deal with employment disputes in light of the exclusive jurisdiction that has been granted to the Industrial Relations Court.

13 Marks

Question 7

Compare and contrast wrong dismissal with unfair dismissal.

13 Marks

End of Examination



THE UNIVERSITY OF ZAMBIA SCHOOL OF LAW

2009 Second Semester Supplementary Examination

Date: Monday 31 May 2010

Time: 09:00 – 12:00 hours

Course: Civil and Criminal Procedure (L362)

Instructions:

- 1. The question paper is divided into two parts, Part A and Part B. Please note that question 1 under each part is compulsory and carries 18 marks.**
 - 2. Apart from the compulsory questions, answer 1 other question in Part A and another in Part B. A total of 4 questions should be answered.**
 - 3. Apart from the compulsory questions, each question carries 12 marks and the total mark for the exam is 60 marks.**
 - 4. Time: Three (3) hours plus five (5) minutes to read the paper.**
 - 5. Students are allowed to consult the following unmarked statutes in the exam room:**
 - i. Supreme Court Act, Cap 25**
 - ii. High Court Act, Cap 27**
 - iii. Subordinate Court Act, Cap 28**
 - iv. Juveniles Act, Cap 53**
 - v. Adoption Act, Cap 54**
 - vi. Penal Code, Cap 87**
 - vii. Criminal Procedure Code, Cap 88**
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Part A Civil Procedure

Question 1A - Compulsory

You are a legal intern at the firm of Messers XYZ and Associates. The Managing Partner explains the following facts to you:

The law firm is representing a client who is the plaintiff in a civil suit in which he, Frodo Phiri (the plaintiff) is suing Zax Zulu for damages for breach of contract which involved the sum of K30 million. Frodo Phiri told the Managing Partner that Zax Zulu currently resides in Benin in West Africa.

The Managing Partner asks you to write a legal opinion discussing the appropriate court before which to commence the suit, the mode of service of process and the course of action the firm should take in the client's interests.

Write the legal opinion, highlighting the relevant orders and rules.

18 marks

Question 2A

A man comes to the law firm in which you are a prominent lawyer. He explains that he is 25 years old and engaged to be married in 12 months time. He wants to adopt a two year old girl, even though she is his niece. He further narrates that the mother of the child disappeared a year ago and cannot be found and the father of the child, (to whom he is related), persistently refuses to maintain her. Additionally, he explains that he has been told that his bid to adopt the little girl will be unsuccessful because the Supreme Court, which is the only court that handles adoption applications, views men like him as unlikely candidates. He has come to you for advice on the law of Adoption in Zambia.

Advise him on the adoption process in Zambia and his intended adoption application.

12 marks

Question 3A

You are a legal intern at Li, Chan and Donkwe Advocates. The Managing Partner explains that the law firm has a matter in which judgment has been delivered but the consensus among the senior partners is that the law firm should apply for a review of the Subordinate Court judgment. The law firm is representing the defendant Sunshine Shasa.

The plaintiff in the matter is Millennium Tembo. The Managing Partner asks you to draft the appropriate documents.

Draft the appropriate application and the supporting document for review of the Subordinate Court judgment (**invent all necessary details**).

12 marks

Question 4A

Discuss civil appeals from the High Court to the Supreme Court of Zambia, highlighting the relevant law.

12 marks

Part B Criminal Procedure

Question 1B – Compulsory

You are a legal intern in Messers LLB Three and Associates. A client has approached the law firm and the Senior Partner assigns you to the client. The client explains that he is the accused in a criminal matter before the Subordinate Court of the First Class in Lusaka. He further states that he had summons issued for three witnesses and the Magistrate issued a warrant in the first instance for another witness. Of the three witnesses summoned, two of the witnesses responded to the summons, the third witness did not. However, the client discovered that the third witness is severely ill and cannot attend court for a while but is willing to give testimony in any other way if that is possible. The client asks for your advice on this matter, emphasizing that the witness is situated in Chingola and is the most important of the three witnesses.

Advise the client, highlighting the relevant law on the matter.

18 marks

Question 2B

Discuss preliminary inquiries by Subordinate Courts highlighting the applicable law.

12 marks

Question 3B

Discuss the establishment and procedure of Juvenile Courts in Zambia with reference to the relevant law.

12 marks

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA
School of Law

2008/9 Second Semester Final Examination

Date: Thursday 5th March 2009

Time: 09:00 – 12:00 hours

Course: Civil and Criminal Procedure (L362)

Instructions:

- 1. The question paper is divided into two parts, Part A and Part B. Please note that question 1 under each part is compulsory and carries 18 marks**
 - 2. Answer any other 2 questions from either part.**
 - 3. Time: Three (3) Hours plus five (5) minutes to read the paper**
 - 4. Each question carries 12 marks and the total mark for the exam is 60 marks**
 - 5. Students are allowed to consult the following unmarked statutes in the exam room:**
 - i. Supreme Court Act, Cap 25**
 - ii. High Court Act, Cap 27**
 - iii. Subordinate Court Act, Cap 28**
 - iv. Juveniles Act, Cap 53**
 - v. Adoption Act, Cap 54**
 - vi. Penal Code, Cap 87**
 - vii. Criminal procedure Code, Cap 88**
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Part A Civil Procedure

Question 1A - Compulsory

You are a prominent Lusaka lawyer and you have been approached by a client one Rose Banda, trading as ZAMCOM Enterprises, who has requested that you represent her. The facts of the case are that Mrs. Rose Banda in June 2008, in a matter in which she supplied 4 Dell computers worth K3, 500,000.00 each to the Academic Office of the University of Zambia, subject to a Purchase Order dated 13th June 2008. Following which the computers were promptly delivered and accepted by the Academic Office subject to a delivery note dated 15th June 2008. However, to date Mrs. Banda has not been paid despite sending two demand letters for payment.

Being a prominent Lusaka Lawyer:

- a) Identify the appropriate mode of commencing court action and draft the endorsement for Mrs. Banda 's claim; and
- b) draft the affidavit in support to be filed together with the appropriate court process.

18 marks

Question 2A

You act for the Plaintiff James Banda in a matter before the High Court and due to non appearance of the both the Plaintiff and the Defendant Musa Mwenya, on the day on which the matter was coming up for hearing the Judge made an order to have the matter struck off the Active Cause List. You discover upon conducting a search that the matter has been struck off. In the interest of Justice advise your client the appropriate application to be made to ensure that the matter is heard on the merits and

- a) draft the summons for the application; and
- b) draft the order to be made by the court in the event that your application is granted.

12 marks

Question 3A

You are a State advocate under the Attorney Generals Chambers and you realize that the Plaintiff's in the High Court have disclosed letters passing between your office and the your client being the Ministry of Finance and National Planning, in anticipation of litigation, in their Bundles of Documents. Prepare skeleton arguments, with the aid of decided cases, to be filed in court to justify your opposition to the letters being produced.

12 Marks

Part B Criminal Procedure

Question 1B - Compulsory

Following a Preliminary Inquiry under the Criminal Procedure Code, the magistrate found the accused person with a case to answer and now transmits the case record to the High court. As the Director of Public Prosecutions:

- a) Prepare a brief to the newly appointed Judge on the procedure for transmission of case records from the court below to the High court, highlighting the purpose and potential outcomes of a Preliminary Inquiry.
- b) The accused person in the court below was charged for the offence of Rape and Aggravated Robbery. Draft the counts for the two offences, which you as DPP will incorporate in the information to be filled in the appropriate Court.

18 Marks

Question 2B

Distinguish service of court documents in civil matters from service of court documents in Criminal matters.

12 Marks

Question 3B

You have been Principal Resident Magistrate since 2000. On 30th January 2009 an accused person appeared before court on Plea. Once the charge was read out to him the accused person failed to plead and in your opinion the accused failed to plead on account that he was mute by visitation of God. A high court Judge has requested, subject to its' supervisory powers over the subordinate court, that you prepare a brief:

- a) Explaining how you proceeded with the matter and the procedure you followed as prescribed under the Criminal Procedure Code.
- b) Explaining the procedure to be followed on sentencing an accused person who pleads guilty to a charge outlining possible punishments against a convicted person who is a pregnant woman convicted of an offence carrying a mandatory sentence of Death and a convicted person who is a juvenile.

12 marks

Question 4B

Your client Jack Liswaniso has been charged with Aggravated Assault and is remanded in police custody the police have refused to release your client on police bond. However, your client will appear for plea before a magistrate on 10th march 2009.

- a) Prepare your submissions to be filled in court to support your client's application for bail ;
- b) as a Public Prosecutor you have been served with the accused person's application for bail prepare your submissions in reply to be filled in court opposing the application for bail.

12 Marks

THE END

**UNIVERSITY OF ZAMBIA
SCHOOL OF LAW**

2008/2009 SEMESTER 2 FINAL EXAMINATION

17TH FEBRUARY 2009

L352- NATIONAL HUMAN RIGHTS LAWS

Instructions:

Answer question ONE and any other three questions

Each question carries 15 marks

The following documents may be consulted: The Bill of Rights (Part III of the Constitution unmarked, The Human Rights Act No. 39 of 1996; Zambia Police (amendment) Act No. 14 of 1999; The Judicial (Code of Conduct) Act, No. 13 of 1999 and The Commission for Investigations Act Chapter 39, of the Laws of Zambia.

Time allowed: Three Hours plus five (5) minutes reading time.

1. A Zambian woman residing in South Africa and working as a nurse in one of the highly rated hospitals of that country conceives a child out of wedlock. The putative father is a renowned surgeon at the same hospital who has indicated that he has no plans of taking custody of the said child at any given time in the foreseeable future. The Zambian woman whose passport has just expired intends to travel to Zambia for Easter holiday and as such applies for one travel document for herself, but which should include her child as well, with the Zambian Mission in Pretoria. At the Zambian High Commission she is made to swear an affidavit stating that she is the mother of this particular child born out of wedlock before her application can be processed. This she does and proceeds to Zambia for her holiday. While in Zambia her travel document expires and therefore she uses this opportunity to apply for a new passport which should include her child. Upon filing in her application for a new passport she is once again advised to swear an affidavit similar to the one sworn in South Africa at the Zambian Mission. This she refuses to do this time around on the

ground that the requirement is unconstitutional. She then decides to protest by organizing a peaceful assembly of fellow women who have been subjected to such treatment by the Passport Office. The peaceful assembly turns out to be a success and attracts a lot of peaceful protestors. However, while in the procession the protestors are stopped by the police, arrested and are charged under the relevant penal section for protesting without a permit. This action by the Police attracts a lot of attention from various interest groups who strongly feel that the case ought to be defended in the public interest. One such group is a professional body regulated by an act of Parliament which has decided to pursue the case on behalf of the protestors and has gone a step further to offer free legal services to the Zambian woman nurse whose application with the passport office has not been attended to on the ground that it has no accompanying sworn affidavit. A number of legal analysts are of the view that the professional body's standing in these matters is challengeable and might undermine the prosecution of two important questions of public interest.

You have been called upon to prepare a legal brief on the merits of the whole matter using decided cases. Please proceed. **(15 Marks)**

2. In *Fred M'membe & 3 Ors v. The People* (1996) the indictment alleged defamation of the President contrary to section 69 of the Penal Code. The prosecution's case was that the appellants published in the Post newspaper defamatory or insulting matters concerning the President of the Republic with intent to bring him into hatred, ridicule or contempt. At the trial in the magistrate's Court the accused challenged the constitutionality of section 69 arguing that it was in conflict with Article 20 and 23 of the Constitution. The magistrate's court referred this constitutional issue to the High Court for determination. The High Court ruled that no constitutional breach had occurred. The Court ruled that freedom of expression is not absolute but subject to derogations and that section 69 is reasonably required for the sake of public order. The High Court also ruled that the accused in the court below had not shown (i) that their fundamental right to freedom of expression had been contravened and (ii) that section 69 is not reasonably justified in a democratic society. Regarding the issue whether section 69 of the Penal Code conflicts with Article 23 of the Constitution in that it is discriminatory in its effect the Court ruled that matters enumerated in clause 3 of Article 23 are exhaustive and not illustrative and that therefore section 69 is not

in conflict with Article 23. On appeal the Supreme Court agreed with the High Court, dismissed the appeal and ordered the trial in the magistrate's court to proceed.

- (i) Consider the tenor of Article 20 of the Constitution.
- (ii) Who bears the burden of proof under the permissible restrictions in Article 20(3)?
- (iii) Comment on the following statement of Ngulube CJ (as he then was) in reply to appellants' arguments that criminal libel is outdated and has no place in an open and democratic society and that section 69 violates the principle of equality before the law:

"It was also attempted by counsel for the appellants to reduce to the common ranks the central executive authority and first citizen of the country. The election of any person to the office of President, I would have thought to be self-evident, has legal and constitutional consequences, quite apart from any other result. The Constitution itself ordains that he becomes Head of State and of Government, that the executive power of the state vests in him and that he be endowed with the various matters, powers and function described in the Constitution. I do not see how it can be argued that the President should stand before the law equally with the rest of us when, for example, Article 43 grants him immunity from civil and criminal suits while he occupies that high office. If the Constitution itself makes the President not equal to everyone, how can the accused's argument be maintainable? **(15 Marks)**

3. Rights and freedoms cannot be constitutionally guaranteed in absolute terms because "the entrenchment of human rights in the Constitution is merely an attempt to strike a more or less permanent balance between the interests of the individual and those of the state". Going through the specific articles in the Constitution, particularly noting the exceptions thereto, it is to be noticed that these exceptions fall broadly into two classes. Define and distinguish these two classes. **(15 Marks)**.

4. The phrase "Reasonably justifiable in a democratic society" brings the courts into the picture, for it is they who must balance the rights of the individual against the interests of the community in order to determine if the restriction is reasonably justifiable. Using any two Zambian decided

cases discuss the interpretation of the phraseology 'Reasonably justifiable in a democratic society by the Zambia courts'. **(15 Marks)**.

5. The Zambian Government has in the last decade or so developed various mechanisms of promoting and protecting fundamental rights in Zambia. Among these mechanisms are institutional arrangements such as the Human Rights Commission and the Police Public Complaints Authority. Critically discuss the mandates of these two institutions within the context of promoting and protecting human rights outside the traditional court system. **(15 Marks)**

6. Consider the value, if any of the Directive Principles of State Policy as provided for in Part IX of the Constitution and show whether the position would be any different were they to be included in the Bill of Rights. **(15 Marks)**

7. The One-Party State era in Zambia has been said to have affected the full enjoyment of the rights provided for under the Zambian Bill of Rights as formulated under the Independence Constitution. Discuss this statement. **(15 Marks)**

END OF EXAMINATION.

THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW
FINAL EXAMINATION

SECOND SEMESTER – FEBRUARY 2009

L252: CONSTITUTIONAL LAW

INSTRUCTIONS:

1. Answer Four (4) Questions: ONE Question from Each Section.
 2. Question One (1) is Compulsory.
 3. Question ONE carries **26 Marks** and **8 Marks** for each one of the remaining Questions.
 4. You have Five (5) Minutes to read the paper and **THREE (3) Hours** to answer the questions.
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SECTION ONE

QUESTION ONE

Francis Mabonga is a politician facing several counts of corruption before the Principal Resident Magistrate (PRM) Mr. Thomas Banda. He was found with a case to answer and put on his defence. Throughout the course of the trial there has been comments in the media on his case by some of the officers of the Anti-Corruption Commission (ACC). He felt that the comments were undermining his chances of receiving a free and fair trial as guaranteed by the Constitution. He also realised that there was no one other than himself to respond to the comments.

On 1st February 2009, the Director General of the ACC issued a statement that they had summoned Mr. Mabonga to their officers for interviews and possible arrest on some other charges they had been investigating. The following day Mr. Mabonga called a press conference at which he denounced the ACC as an institution, which was being used by his enemies to destroy his political ambitions since he declared his intention to stand as a presidential candidate in 2011 Presidential Elections and that even the

charges he was facing in court were politically motivated. He went on to say that he doubted the independence of some of the magistrates hearing cases of corruption involving other political leaders.

On 13th February 2009, Mabonga appeared before the PRM Thomas Banda for the continued hearing of his case. Before the court could adjourn for the day, Mr. Banda on his own motion asked Mabonga to confirm whether the statements published in the media attributed to him had in fact been made by him. Mabonga responded by saying he was not sure as which statement the court was referring to as he had issued a number of press statements. The Court said that he admitted issuing press statements was enough and asked him to show cause why his bail should not be revoked and for him to be kept in jail until the case was concluded. He further stated that being released on bail was a privilege and not a right and the court had to ensure that whilst on bail Mabonga did not abuse that freedom.

Mabonga was taken aback and he decided to apologise to the court and undertook not to issue any further statements. The Court told him because it had moved on its own motion and in the light of the undertaking given it would not pursue the matter further.

The relevant provisions governing the granting of bail to accused persons is found in the Criminal Procedure Code. Section 123 reads:

(1) When any person is arrested or detained, or appears before or is brought before a subordinate court, the High Court or Supreme Court he may, at any time while he is in custody, or at any stage of the proceedings before such court, be admitted to bail upon providing a surety or sureties sufficient, in the opinion of the police officer concerned or court, to secure his appearance, or be released upon his own recognizance if such officer or court thinks fit:

Provided that any person charged with-

- (i) murder, treason or any other offence carrying a possible or mandatory capital penalty;
- (ii) misprision of treason or treason-felony; or
- (iii) aggravated robbery;
- (iv) theft of motor vehicle, if such person has previously been convicted of theft of motor vehicle.

shall not be granted bail by either a subordinate court, the High Court or Supreme Court or be released by any Police Officer.

(2) Subject to the provisions of section one hundred and twenty-six, before any person is admitted to bail or released on his own recognizance, a bond (hereinafter referred to as a bail bond), for such sum as the court or officer, as the case may be, thinks sufficient, shall be executed by such person and by the surety or sureties, or by such person alone, as the case may be, conditioned that such person shall attend at the time and place mentioned in such bond and at every time and place to which during the course of the proceedings the hearing may from time to time be adjourned.

(3) The High Court may, at any time, on the application of an accused person, order him, whether or not he has been committed for trial, to be admitted to bail or released on his own recognizance, and the bail bond in any such case may, if the order so directs, be executed before any magistrate.

(4) Notwithstanding anything in this section contained, no person charged with an offence under the State Security Act shall be admitted to bail, either pending trial or pending appeal, if the Director of Public Prosecutions certifies that it is likely that the safety or interests of the Republic would thereby be prejudiced.

(5) Notwithstanding anything to the contrary contained in this Code or in any written law, it is declared for the avoidance of doubt that upon a person being convicted or sentenced by a subordinate court and before the entering of an appeal by such person against the conviction or sentence or both, the subordinate court which convicted or sentenced such person or the High Court has and shall have no power to release that person on bail with or without securities.

Section 124 provides:

In addition to the condition mentioned in subsection (2) of section one hundred and twenty-three, the court or officer before whom a bail bond is executed may impose such further conditions upon such bond as may seem reasonable and necessary in any particular case.

Section 125 provides:

(1) As soon as a bail bond has been executed, the person for whose appearance it has been executed shall be released, and, when he is in prison, the court admitting him to bail shall issue an order of release to the officer in charge of the prison, and such officer, on receipt of the order, shall release him.

(2) Nothing in this section or in section one hundred and twenty-three shall be deemed to require the release of any person liable to be detained for some matter other than that in respect of which a bail bond was executed.

Section 126 reads:

(1) The amount of bail shall, in every case, be fixed with due regard to the circumstances of the case, but shall not be excessive.

(2) The court or police officer admitting a person to bail or releasing him on his own recognizance may, in lieu of a bail bond, accept a deposit of money, or a deposit of property, from any person who would otherwise have had to execute a bail bond under the provisions of section one hundred and twenty-three, and may attach to such deposit such conditions as might have been attached to a bail bond, and on any breach of any such condition such deposit shall be forfeited.

(3) The High Court may, in any case, direct that the bail or deposit required by a subordinate court or by a police officer be reduced, or may vary or add to any conditions imposed under the provisions of section one hundred and twenty-four.

When he was arrested in 2006, he was released after signing a police Bond and he bound himself to the following obligations:

To appear before the PRM's Court at Lusaka on the 20th day of March 2006 at 09:00 hours and on any other or subsequent day when required by the Court to answer to the said charge and to be dealt with according to law.

And the said principal party (Francis Mabonga) together with the undersigned sureties hereby severally acknowledge themselves bound to forfeit to the Government of the Republic of Zambia the sums following viz.: the said principal party the sum of K50 million and the said sureties the sum of K50 million each in case the said principal party fails to perform the above obligations or any part thereof.

Mabonga had provided two sureties who also signed the Police Bond. At the end of each appearance the Police Bond was extended to the next hearing date. Mabonga has never failed to attend Court.

Mabonga is convinced that whatever transpired in Court was wrong and in violation of some of his Constitutional rights and freedoms. He has come to you for advice. He

wants to know whether his constitutional rights and freedoms had been, were being or had been violated given what had transpired in Court on 13th February 2009.

Advise him.

26 Marks

SECTION TWO

QUESTION TWO

James Banda is a Zambian pursuing a law degree at one of the universities in the United Kingdom. He has read the Zambian Constitution and is fascinated by Article 1(4) of the Constitution, which reads:

This Constitution shall bind all persons in the Republic of Zambia and all Legislative, Executive and Judicial organs of the State at all levels.

He wants to know how the Constitution binds the legislature in Zambia.

Explain to him

8 Marks

QUESTION THREE

The President of the Republic of Zambia has repeatedly complained about the functions of the office of the Auditor General as constituted in Article 121 of the Constitution. He is particularly unhappy with the Article 121(6) which reads:

In the exercise of his functions under clauses (2), (3) and (4), the Auditor-General shall not be subjected to the direction or control of any other person or authority.

At a news conference held on 1st February 2009, he announced to the nation that before the end of the year he was going to exercise his powers under Article 61 he was going to issue a Statutory Order creating the office of the Comptroller General. Once the office was created the Auditor General was going to be under the control and direction of the Comptroller General who will in turn report to the President.

The Law Association of Zambia is alarmed by this announcement by the President and has called an emergency Council meeting. You are member of the Council with expertise in constitutional law and you have been tasked by the Council to prepare an opinion for consideration by Council on the Constitutionality of the President's plans and what steps can be taken by LAZ to prevent the implementation of the said decision by the President.

Prepare the opinion

8 Marks

SECTION THREE

QUESTION FOUR

John Smith is a British national who has been living in Zambia for the last 20 years. On 10th February 2009, he was arrested by officers of the Drug Enforcement Commission acting on a tip from an informer that he was growing cannabis on his farm in Chisamba. Upon raiding the farm they found cannabis planted in an area in extent of 10 acres in green houses. He was detained at Kamwala Remand Prison pending trial.

The discovery prompted a huge public outcry. Most of the people wonder how a foreigner can with impunity plant such quantities of cannabis. Members of the ruling party gathered and marched to the office of the Minister of Home Affairs and demanded Smith's deportation to his home country.

On 17th February 2009, the Minister issued a warrant for the deportation of Mr. Smith from Zambia pursuant to Section 26(1) of the Immigration and Deportation Act, Chapter 123 of the Laws of Zambia, which reads:

After receiving the particulars under section thirty-three of the Penal Code, in respect of a person who is not a citizen, the Minister (unless the term of imprisonment is set aside on appeal) shall, at the expiration of the sentence, pursuant to a warrant under his hand deport such person from Zambia.

Section 33 of the Penal Code, Chapter 87 of the Laws of Zambia reads:

Whenever a court shall sentence to a term of imprisonment any person-

- (a) who is not a citizen of Zambia; and
- (b) who has been convicted of an offence under this Code, or under any written law other than an offence relating to the driving of a motor vehicle set out in the Roads and Road Traffic Act or in any regulations for the time being in force made thereunder;

the public prosecutor shall forth with, forward to the Minister responsible for home affairs the particulars of the conviction and sentence and all other particulars specified in the Second Schedule.

Smith has retained the firm, where you are a researcher to represent him and one of the partners of the firm has asked you to prepare an opinion on the constitutionality of the Minister's decision to deport Mr. Smith.

Prepare the opinion

8 Marks

QUESTION FIVE

Moses Kaunjika is fascinated by the provisions of Article 28 of the Constitution. He wants to know the possible effects of repealing the said Article from the Constitution.

Advise him

SECTION FOUR

QUESTION SIX

Mwila Mutaba has just graduated with a degree in law from one of the Universities in Australia. He is fascinated by the status that the Zambia Constitution claims for itself, which is captured in Article 1(3) of the Constitution. He wants to know whether there are differences in the manner in which the Courts are expected to interpret the Constitution and the manner in which they are expected to interpret the laws passed Parliament in the exercise of its legislative powers.

Explain to him.

8 Marks

QUESTION SEVEN

Peter Kapasula is a student of political science but he has keen interest in legal issues and he sees some connenctions between politics and the law. One day whilst browsing through your notes on constitutional law he comes across this phrase "Countermajoritarian dilemma". He wants to know what it is and what causes the said dilemma.

8 Marks

Explain to him



THE UNIVERSITY OF ZAMBIA

**SCHOOL OF LAW
EXAMINATIONS 2009/1**

L211 - LEGAL PROCESS

Instructions:

1. Answer 1 question from each part.
 2. Other than question 1 which carries 18 marks each question is worth 14 marks. The total mark for the Examination is 60.
 3. Time: Three (3) hours plus five (5) minutes in which to read the question paper.
 4. NO statutes may be taken into or consulted during the examination.
-

PART A

Question 1

The following is an extract from a judgment. Read it carefully in its entirety.

IN THE SUPREME COURT FOR ZAMBIA SCZ JUDGMENT NO. 8 OF
1999

HOLDEN AT KABWE AND LUSAKA APPEAL NO. 107 OF 1996

(CIVIL JURISDICTION)

B E T W E E N

A.M.I. ZAMBIA LIMITED

APPELLANT

AND

PEGGY CHIBUYE

RESPONDENT

CORAM: NGULUBE. CJ., CHAILA AND MUZYAMBA, JJS

ON 4th November, 1998 and 13th April, 1999

For the Appellant: Mr. N.K. Mubonda of D.H. Kemp and Co.

For the Respondent: Mr. C.M. Ngenda of Christopher Russell and Co.

J U D G M E N T

Ngulube, CJ. Delivered the judgment of the Court.

This case concerned custody of goods for customers. ... The learned trial judge heard the evidence... the learned judge said he was resolving an issue of credibility between two sets of witnesses and accepted the evidence of the respondent and her witness. One ground of appeal argued by counsel challenged this finding of fact....The Supreme Court has evolved and constantly affirmed some definite principles when it comes to reversing a trial court's findings of fact, especially those based

on credibility. Not having had the advantage of seeing and hearing the witnesses at first hand which the trial court has, we do not lightly interfere unless it unmistakably appears that the trial court fell into error and could not have taken proper advantage of seeing and hearing the witnesses at first hand. ... We have not been given any justifiable excuse for reversing the learned trial judge and this alone resolves the appeal....

.....

... Indeed, the cases of SECURICOR ZAMBIA LIMITED v WILLIAM JACKS AND CO. ZAMBIA LTD SCZ Appeal No. 24 of 1990; AILSA CRAIG FISHING CO. LTD v MALVERN FISHING CO. AND ANOTHER [1983] ALL ER 101; GEORGE MITCHELL (CHESTERHALL) LTD v FINNEY LOCK SEEDS LTD [1983] ALL ER 737 and the case of PHOTO PRODUCTION LTD v SECURICOR TRANSPORT LTD [1980] ALL ER 556 which Mr. Mubonda cited are all in point so far as they support the legal proposition under discussion.

In truth, there are no grounds for interfering with the judgment below. The appeal is dismissed, with costs to be taxed if not agreed.

.....
M.M.S.W NGULUBE
CHIEF JUSTICE

.....
M.S. CHAILA
SUPREME COURT JUDGE

.....
W.M. MUZYAMBA
SUPREME COURT JUDGE

List or present in tabular form the fundamental lessons about the structure of our legal system that are evident from the format of the judgment. Each lesson must be explained briefly and justified.

PART B

Question 2

Write Short Notes on two of the following:

- a. Civil law
- b. Islamic law
- c. Roman Dutch law

Question 3

You are a magistrate in the Subordinate Court of the First Class. Before you, is a case on appeal from the Local Court: According to the record of appeal, Wellread Lawyer, the appellant is challenging the decision of the Local Court rendered in accordance with the parties' customary law. The grounds of appeal are that the lower Court misdirected itself when it applied the said customary rule.

Provide a reasoned judgment that upholds the Local Court. Your judgment should deal separately with each of the following:

- 1. Constitutional and statutory status of customary law**
- 2. The dual standard of justice**

PART C

Question 4

You come across the following statement in your legal process textbook.

“Law is made by the people for all the people”

Discuss the statement

Question 5

UNZASU is planning a class boycott to protest against a decision made by the School of Law Board of Studies to enforce the Progression Regulations in the School. The Regulations do not permit a student who has not cleared all the courses required in a particular year of study to proceed to the next year of study. The School Management writes to UNZASU advising that all law students that participate in the boycott will be expelled. UNZASU appeals to Senate claiming that: a. The progression rules should not be applied because

their application will result in injustice, as affected students will lose their GRZ sponsorship and b. Class boycott is a legitimate form of protest. Senate upholds the decision of the School stating that justice demands that a. A rule of law be applied consistently and impartially and b. All disputes are resolved through legal channels.

In a legal opinion rendered to UNZASU state which position is correct.

PART D

Question 6

In *Samuel Miyanda v Raymond Handahu* SCZ Judgment No. 5 of 1994 Ngulube CJ stated as follows:

The fundamental rule of interpretation of all enactment to which all other rules are subordinate is that they should be construed according to the intent of Parliament, which passed the law.

State:

- a. What facts in the case gave rise to the statement and**
- b. Whether this is a complete and accurate assessment of the process of interpreting statutes?**

Question 7

Outline and justify the critical elements that constitute a case summary.

END OF EXAMINATION