

**THE UNIVERSITY OF ZAMBIA**  
**UNIVERSITY EXAMINATIONS – 1998**  
**FIRST SEMESTER & SECOND SEMESTER**  
**SCHOOL OF LAW**

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Law 98

**THE UNIVERSITY OF ZAMBIA**

**SECOND SEMESTER FINAL SESSIONAL EXAMINATIONS**

**L142 CRIMINAL LAW SEPTEMBER 1998**

**TIME: THREE HOURS (PLUS 5 MINUTES OF READING THE PAPER)**

**ANSWER: ANSWER FOUR QUESTIONS ONLY**

**(CRIMINAL STATUTES ARE PERMITTED IN THE EXAMINATION HALL.)**

1. On 16th April, 1988, Moonga Mweemba while at a beer party started a quarrel with John Moomba. Mweemba picked an iron bar and struck Moomba on the chest who fell down. The fight was stopped. The on lookers advised Moomba to be taken to the hospital. But being a Jehovah's witnesses follower on religious grounds refused to be taken to the hospital. When he agreed to be taken to the hospital it was too late and he died on arrival at the hospital. Mweemba was arrested and charged with murder.

You are the State Advocate Prosecuting, what case will you present before court on behalf of the state. Discuss with sections of the Act and decided cases.

2. What do you understand by "Malice aforethought" in homicide cases. Discuss with provisions of the Penal Code and decided cases.
3. Unlawful wounding is the same offence as Assault Occasioning Actual Bodily Harm. Discuss.
4. Can you discuss if any criminal liabilities have occurred on the brief facts given below:
  - (a) John Sakala has gone to the Government Nursery where various fruit trees are bred. He has dug out five small trees and was in the process of digging out three more which were in the holes. He is caught by a security guard in his criminal act. The small trees are brought to the police station where you are found. What would be your legal opinion? Sections of the Penal Code to be cited.
  - (b) Mwale Mangani is running a small Zoo with big lizards he collects from various places. One day one of the lizards escapes and he pursues it, while at a distance following this lizard, Mr. Peter Bwalya catches it and hides in

his house. Mangani reports to you as a police officer what would be your legal opinion? With sections of the Penal Code.

5. Give brief facts of the case of **NKABIKA V THE PEOPLE** (1973) ZR 410, and what is its importance to the law of assaults?
6. Mr. Nyambe Monde had forged an Automobile Mechanic Certificate which was awarded to Muyunda Mataa in 1991 from Lusaka Trades Institute and he also forged a Grade 12 certificate of Muyunda Mataa he obtained in 1987 from Kambole Secondary School. He, Nyambe Monde, inserted his names and then presented both to the Personal manager of Amanita Company Ltd. on an interview for a Mechanic. He was therefore employed as a Company Mechanic on the basis of the two academic and professional qualifications. The company later discovers that Monde was not qualified and used forged certificates to gain employment.

The Company Personnel Manager reports to you, and asks whether there is any criminal offence that was committed. What would be your legal opinion? Discuss with sections of the Penal Code.

7. On the 20th July, 1998 George Mambwe was seated in a hut with his wife Joy Nalomba. Nalomba started a story that when Mambwe was away in Copperbelt for duties, she had sexual intercourse with Abel Moonga a neighbour who had given her a wonderful time, and that Moonga was a man compared to Mambwe. She went further to say “she intends to join him as his second wife, after a divorce”. Mambwe picked up an iron bar which was lying on the ground and struck Nalomba who died instantly. Mambwe was arrested and charged with murder by the police. You are asked to defend him. What would be your defence and case prepared on his behalf? Discuss with sections of the Penal Code, and decided cases.

**END OF EXAMINATION**

**THE UNIVERSITY OF ZAMBIA**

**SCHOOL OF LAW**

**UNIVERSITY SECOND SEMESTER EXAMINATIONS - SEPTEMBER 1998**

**L152: CONSTITUTIONAL LAW II**

**INSTRUCTIONS**

**TIME: THREE (3) HOURS (Plus 5 Minutes to read the question paper)**

**ANSWER FOUR (4) QUESTIONS**

**Only unmarked statutes may be brought into the Examination Room**

**QUESTION 1**

Critically discuss the extent and reality of freedom of association and assembly during the one-party state in Zambia. (25 Marks)

**QUESTION 2**

“The introduction of the one-party system of government strengthened the executive President. In Zambia since independence UNIP leaders had always proclaimed their wish to strike a balance between popular participation and central control in the development process. The desired goal was found difficult to achieve in a multi-party system. The one-party system was perceived as a way to achieve that balance regarded as prerequisite for development. Subsequent experience in Zambia showed otherwise”.

M. Ndulo & R. Kent, “Constitutionalism in Zambia: Past, Present and Future”, 40 J.A.L 256 at 257 (1996).

Discuss. (25 Marks)

**QUESTION 3**

What were the factors that led to the dismantling of one-party rule in Zambia in 1991 and how was this effected?

(25 Marks)

#### **QUESTION 4**

With the aid of authorities, discuss the relationship between Parliament and the courts under Zambian law.

#### **QUESTION 5**

What changes were proposed by the Mwanakatwe Commission to strengthen the National Assembly's independence from the executive and how did government react to those proposals? (25 Marks)

#### **QUESTION 6**

The DPP plays a very crucial role in ensuring that the Rule of Law is observed. It goes without saying, therefore, that the person occupying this high office must be a person of high integrity, non-partisan and independent.

- (a) Do you think the provisions relating to the DPP in the current Constitution are adequate in this respect? (12 Marks)
- (b) What changes did the Mwanakatwe Commission suggest to strengthen the office of DPP? (13 Marks)

#### **QUESTION 7**

What are the powers and functions of the Permanent Human Rights Commission in Zambia? What are the differences between the Commission as currently constituted, and as conceived by the Mwanakatwe Commission? (25 Marks).

**END OF EXAMINATION**

L 211

LEGAL PROCESS

TIME: THREE (3) HOURS (PLUS TEN (10) MINUTES TO READ  
THROUGH THE QUESTION PAPER.

INSTRUCTIONS: ANSWER ANY FOUR (4) QUESTIONS. COPIES OF THE  
LOCAL COURTS AND HIGH COURT ACTS MAY BE REFERRED  
TO IN THE EXAMINATION.

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1. The offense of bigamy is one of the laws that have been transplanted from Britain to Zambia, and has received cool reception from the vast majority of indigenous Zambians, especially the rural dwellers. It does not reflect their matrimonial practice.

In the light of the above statement discuss what the law of bigamy is, explaining how a spouse may be guilty of bigamy.

Give another example of the conflict in the interaction of English Law and African Customary Law.

2. Parliament in Zambia has the authority to delegate some of its law-making powers to other authorities or bodies. Define Delegated Legislation and discuss the rationale for this practice. Give two examples of Delegated Legislation.
3. The Adversary System of administering justice is in use in Zambia. Discuss what this system entails including its main features. In your opinion, state whether this system best serves the interests of the Zambian society as a whole, given Zambia's level of social and economic development.

African Customary Law regulates the lives of close to 90% of the African population in Zambia, particularly in matters related to marriage, divorce, inheritance and land tenure. It is, however, clear that under certain circumstances, African Customary Law cannot be enforced by the Zambian Courts. Indicate the circumstances under which African Customary Law cannot be enforced.

State also what law is applied by the local courts in disputes between an indigenous African Zambian and a non-African, and give the reason why these courts apply that law.

Explain how and why Equity developed in England in the way it did, and discuss the impact it has had on common law.

Write brief notes on any three of the following:

- (a) The doctrine of 'Stare Decisis'
- (b) The role of adjudication
- (c) Customs as a source of law
- (d) Literal interpretation of statutes.

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END OF EXAMINATIONS



# **THE UNIVERSITY OF ZAMBIA**

## **SCHOOL OF LAW**

### **L222 - LAW OF CONTRACT FINAL EXAMINATION**

#### **INSTRUCTIONS: ANSWER ANY FOUR QUESTIONS**

**TIME: THREE HOURS**

#### **QUESTION 1**

Mumbi, a UNZA Biology graduate, goes to work for Gator Crocodile Farms after his graduation. His contract of employment provides that if he leaves their employment he will never again work for any enterprise in Zambia or else where, nor will he solicit any of Gator's customers, nor will he divulge any of their secret processes, nor will he set up in competition with Gator Crocodile Farms Limited.

Mumbi is now considering leaving Gator's employment. He comes to you for advice on the extent to which, if he does leave, he will be bound by his contract of employment. Advise him. (25)

#### **QUESTION 2**

Moneymakers Investment, owners of an international hotel in Ndola, contract with Uptown Enterprises to rehabilitate their pool and poolside facilities, including a 100-seat restaurant. Moneymakers plan to reopen the area to coincide with a major trade fair due to be held in Ndola in six months' time.

Uptown work hard to complete the job, but there are many delays. Uptown have construction jobs all over Ndola, and they find it hard to meet their commitments. There are also unforeseen delays, not the fault of Uptown Enterprises, in the import of items for the pool and restaurant kitchen. The work is not complete when the Trade Fair opens. The poolside area is finished and guests can use it, but they cannot swim, as the pool filtration system has not arrived. The restaurant can only operate by bringing in "buffet-style" meals cooked in kitchens elsewhere in the hotel.

Moneymakers refuse to use the poolside facilities or restaurant during the Trade Fair, saying it would damage their reputation for excellence if they opened below-standard facilities. They claim that they have lost many millions of kwacha in revenue from pool use, drinks service and a la carte restaurant meals service. They want to sue Uptown Enterprises for breach of contract. Advise Moneymakers. (25)

### QUESTION 3

- (a) With the aid of case-law, distinguish between fraudulent, negligent and innocent misrepresentation. (10)
- (b) What are the advantages to a plaintiff in invoking S.3(i) of the Misrepresentation Act, CAP 69 of the Laws of Zambia rather than the common law of negligent misrepresentation? Are there any disadvantages? (15)

### QUESTION 4

Miller, an expatriate leaving the country at the end of his contract, advertises his BMW 525 i for sale in the Daily Mail. Chunga comes to see it, and offers K12 million, which Miller agrees to accept. Chunga wants to pay Miller by cheque, but Miller refuses. Then Chunga says "But I am Chunga, the famous TV personality, don't you know me?" and produces a pass purporting to be official entry to the Mass Media Complex. Miller, who made a point of never watching local TV throughout his stay in the country saying it was not worth watching compared to M-Net and CASAT, is impressed. He accepts the cheque, and lets Chunga take the car.

The cheque bounces and Miller learns that Chunga, who has no connection with the real Chunga who does appear on TV, has disappeared after selling the TV set to an innocent third party, Mwape.

Does Miller have any remedy against Chunga and/or Mwape? Advise him. (25)

### QUESTION 5

- (a) Explain, with the aid of case-law, the notions of presumed and actual undue influence. What is/are the legal consequences of the existence of either form? (15)
- (b) Outline, with case law, the situations in which a party is allowed to terminate a contract due to the others breach. (10)

### QUESTION 6

Speedy Construction Company enter into an agreement with GRZ to rehabilitate an existing primary school in Ndola, that has become very dilapidated. The forecast total cost of the project is K120, million. Speedy Construction move on to the site and spend one month on preparatory work. They clear away debris and rubbish, they build a secure wall fence and they remove some internal walls, ready for the rehabilitation work to begin. At the time they move on the site GRZ pays them an advance of 10% of the total estimated costs of the rehabilitation project. Just before the rehabilitation itself begins GRZ announces that it has decided to close the primary school down instead. They will build a new school further out of town in its place. There will be no further need for the rehabilitation project, the funds set aside for it will be relocated, and the work discontinued.

Advise Speedy Construction as to their legal position. (25).

THE UNIVERSITY OF ZAMBIA

UNIVERSITY FIRST SEMESTER SUPP/DEF EXAMINATIONS - 1998

L231

LAW OF TORTS

TIME: THREE HOURS AND TEN (10) MINUTES. TEN MINUTES  
TO READ THE QUESTIONS.

INSTRUCTIONS ANSWER QUESTION ONE AND THREE OTHERS

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1. "... Does the Law of Tort consist of a fundamental general principle that it is wrongful to cause harm to other persons in the absence of some specific ground of justification or excuse or does it consist of a number of specific rules prohibiting certain kinds of harmful activity and leaving all the residue outside the sphere of legal responsibility..." Discuss.
2. Write short notes on four of the following:
  - (a) The distinction between the Law of Tort and the Law of Contract.
  - (b) The relationship between tortious liability and motive
  - (c) Reasonable and reasonable man.
  - (d) Nominate torts
3. "The Law cannot take account of everything that follows a wrongful act. It regards some subsequent matters as outside the scope of its selection because if it were infinite for the Law to judge the cause of causes or consequences of consequences... In the varied web of affairs the Law must abstract some consequences as relevant not on perhaps grounds of pure logic but simply for practical purpose..." Discuss.
4. The University of Zambia employed Mass Works Company Limited who were apparently competent independent contractors to construct a reservoir on the University Farm in Lusaka East, to provide water for the farm. In the course of the construction, Mass Works Company Limited came upon some old shafts and passages on the University Farm. The old shafts and passages communicated with the adjacent mines of Zambia Consolidated Copper Mines Limited (ZCCM) being the neighbours of the University of Zambia. The old shafts and passages

appeared to be filled with earth. Mass Works Company Limited did not block them up and when the reservoir was filled, the water from it burst through the old shafts and flooded the mines of Zambia Consolidated Copper Mines.

Zambia Consolidated Copper Mines instructs you to render a legal opinion. What is your legal opinion?

5. The expression "vicarious liability" signifies the liability which "A" may incur to C for damage caused to C by the negligence or other tort of B.

With the aid of decided cases illustrate the conspicuous sub rules which are employed to establish vicarious liability.

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END OF EXAMINATION

✓ **THE UNIVERSITY OF ZAMBIA**  
**UNIVERSITY EXAMINATIONS SEPTEMBER 1998**

**L232 LAW OF TORTS II**

**TIME: THREE (3) HOURS AND TEN (10) MINUTES 10 MINUTES TO READ  
THE QUESTIONS**

**INSTRUCTIONS: ANSWER QUESTION ONE AND THREE OTHER  
QUESTIONS, QUESTION ONE CARRIES 40 MARKS**

**QUESTION 1**

“Quite careful people often, express definite opinions on social or informal occasions, even when they feel that others are likely to be influenced by them and they often do that without taking that care which they would take if asked for their opinion professionally or in a business connection.”

Per Lord Reid HEDLEY BYRNE AND COMPANY LIMITED Vs HELLER AND PARTNERS LIMITED 1964 AC 465 at p.487.

The Development of the duty to avoid statements causing pecuniary loss is inextricably linked to the troubled history of liability for economic loss in general

**DISCUSS**

**QUESTION 2**

Describe briefly the following:

- (a) Class or group defamation
- (b) Mitigation of Damages
- (c) Compare and Contrast Nominal and Punitive damages
- (d) Defence of fair comment on matter of public interest.

### **QUESTION 3**

“..... The law repeatedly recognises that a man may use his own land without committing a nuisance. It is only if such use is unreasonable that it becomes unlawful”.

Per Winfield and Jolowicz on Tort. **DISCUSS**

### **QUESTION 4**

A Defendant can only be made liable for damages which a reasonable man would foresee might follow from the negligent act.

With the aid of cases discuss the correctness or otherwise of this statement.

### **QUESTION 5**

“Powers of arrest and the police’s complementary crime prevention powers of search and seizure are generally dependant on reasonable cause for relevant suspicion. The adjustment of the conflict between the citizens interest in personal freedom and public interest in efficient enforcement of the criminal is a delicate one”

“Per Harry Street, “Street on Torts” Ninth Edition, 1993 p.97.

### **QUESTION 6**

The Defendants proprietors of the Times of Zambia published in their paper a summary of the members of parliament parliamentary speech to the effect that the member of parliament for Chililabombwe stated in parliament that the head of the Zambia Revenue Authority on the Copperbelt is ineffective because of his close association with tax evaders and riff-rafs. Joe Bwalya is the head of the Zambia Revenue Authority on the Copperbelt. Joe Bwalaya sues the Defendants for libel. What will he have to prove to establish his case. And what possible defence or defences can the Defendants plead?.

**END OF EXAMINATIONS**

**THE UNIVERSITY OF ZAMBIA**  
**SECOND SEMESTER FINAL SESSIONAL EXAMINATIONS**

**L242 CRIMINAL LAW SEPTEMBER 1998**

**TIME: THREE HOURS (PLUS 5 MINUTES OF READING THE PAPER)**

**ANSWER: ANSWER FOUR QUESTIONS ONLY**

**(CRIMINAL STATUTES ARE PERMITTED IN THE EXAMINATION HALL)**

**QUESTION 1.**

On the 20th May, 1998, John Phiri picked a fight with Peter Mangani. During the fight Mangani produced a knife from his pocket and stabbed John Phiri who started bleeding. The fight was stopped by the onlookers, and John Phiri was advised by his relatives to go to Chainama clinic for treatment, but he refused and requested them to tie a bandage over the wound to reduce the bleedings. He requested of them to come early morning on 21st May, 1998 to take him to the hospital.

As arranged the relatives came to his home about 06.00 hours and they picked him to the hospital in a pick-up. On arrival at U.T.H Phiri was pronounced dead due to heavy bleeding. He would have survived if he was brought to hospital 30 minutes or so earlier

Peter Mangani is picked up by the police and charged him with murder. The case is brought before you as a Judge. You write the judgment of this setting out the case for both prosecution and defence, and the result. Discussion must include provisions of the Penal Code and decided cases.

**QUESTION 2.**

On 25th June, 1998 Martin Monde joined other villagers at a beer party, where Muyunda Likando was also present. Monde and Likando had a fight and Monde received a black eye in the process, and the fight was stopped. Then Muyunda Likando left for home. Thereafter, at about 22.00 hours Monde also decided to go home, on his way he decided to settle the score with Likando. He decided

to set fire on Likando's kitchen which was grass-thatched. Not knowing that Likando had a nephew from another village sleeping in there. Likando was awake and he immediately came out of the house and saw Monde running who tripped himself a few metres away. He then caught him and tied him on a tree. The time he tried to help his nephew 'Sitali' was too late. When he was taken to the hospital he was admitted and died two days later. The cause of death was burn wounds.

The police arrested and charged Monde with murder, and brought before you as a Judge. You must write the judgment of the case, with the result of the case. The Discussion must include Provisions of the Penal Code and decided cases.

**QUESTION 3.**

Unlawful wounding and Assault Occasioning Actual Bodily Harm are assaults, but how are they distinguishable from each other? Discuss with Provisions of the Penal Code, and decided cases.

**QUESTION 4.**

Theft by servant is the same as the offence of Theft by Public Servant. Discuss with decided cases and Provisions of the Act.

**QUESTION 5.**

Victor Bwalya had a relationship with Mwamba Bupe for three years and they were planning to get married after Bupe completes her studies from the University of Zambia. On the 10th July, 1998, he had told Bupe that he would be travelling to Livingstone on duty. Unfortunately, the trip did not take place, he decided to visit his girl-friend at the University of Zambia, on 11th July, 1998, a Saturday evening. He arrived at Bupe's room around 20-00 hours and found Bupe with Peter, a student at the University in a very compromising position involving kisses and both were dressed in under wears. He could not believe his eyes and he pulled a knife from pocket and stabbed both to death. He surrendered himself to the police, where they charged him with two counts of murder.

You are asked to defend him on both counts. What defence would you raise and what case will you present on your client. Discussion must include sections of the Act and decided cases as authorities.

**QUESTION 6**

Theft by trick is the same offence as obtaining property by false pretences. Discuss with authorities.



**QUESTION 7**

On 1st August, 1998, Tom Mbewe left his house well secured in Matero township at 14.30 hours. When he came back at about 20.00 hours he met two men at about 20 metres from his house carrying a Television set. They crossed each other when he reached at his house he discovered that his house was broken-into and his television set was stolen.

He raised alarm and followed the two men he had met. They gave chase and got up with these two men at about 100 metres from the house. The two men (John and Mumba) turned on Mbewe, they beat him, until other persons came to his rescue. It was thereafter discovered that the Television set was Mbewe's. John and Mumba were arrested and charged with Aggravated Robbery. They are brought before you as a trial-judge. Give judgment of this case, with the result. Discussion must include provisions of the Penal Code and decided cases.

**END OF EXAMINATION**

**THE UNIVERSITY OF ZAMBIA**

**UNIVERSITY SECOND SEMESTER EXAMINATIONS -  
SEPTEMBER 1998**

**L252 CONSTITUTIONAL LAW II**

**INSTRUCTIONS**

**TIME: Three (3) hours ( plus 5 minutes to read the question paper)**

**ANSWER FOUR (4) QUESTIONS**

**Only unmarked statutes may be brought into the Examination Room**

**QUESTION 1**

One of the most important ways of ensuring that a constitution stands the test of time is that it should be legitimate.

- (a) How does a constitution achieve legitimacy?
- (b) Do you think that the process leading to the adoption of the '1996 constitution' was one likely to create a legitimate constitution that will stand the test of time? (25 marks)

**QUESTION 2**

"In a constitutional democracy political power belongs to the people, and is exercised by the people or delegated to their representatives. Whatever the situation may be, power has defined limits with ground rules which all the members of society are expected to observe. As public power is largely exercised by the executive branch, there is need to ensure that officials of the state comply with the letter and spirit of the law. In this regard, the institution of the Investigator-General or Ombudsman was created as a check on the administration."

- (a) Has the Zambian Ombudsman succeeded in checking executive power since it was created?

- (b) What changes did the Mwanakatwe Commission suggest to redefine and strengthen the office of Investigator General? (25 marks)

### **QUESTION 3**

What are the main differences between the current Human Rights Commission and the one recommended by the Mwanakatwe Commission? (25 marks)

### **QUESTION 4**

Identify and comment on the changes introduced by the '1996 Constitution' with regard to the Executive Branch of government in light of the recommendations made by the Mwanakatwe Commission. (25 marks)

### **QUESTION 5**

Many critics have, since the dawn of the 3rd Republic, dismissed the National Assembly as a mere rubber-stamp of the Executive Branch. Do you agree? If you do, what should be done to strengthen the position of the National Assembly relative to the Executive Branch?  
(25 marks)

### **QUESTION 6**

Kaluba is the President of the Lawyers Committee for Human Rights and Democracy, a Non-governmental Organisation. She is very outspoken in her criticism of politicians, whom she accuses of corruption and lacking commitment to human rights and democracy. Shortly after the National Assembly passes a law which imposes severe restrictions on academic freedom, she issues a statement in the press, condemning the National Assembly for passing the Bill. She denounces the Members of Parliament as being undemocratic and cowards who lack spine to stand up to the machinations of the Executive. She says the National Assembly is a 'rubber-stamp' which dances to the tune of the Executive Branch. Members of Parliament are incensed by this statement and demand that Kaluba should be punished. The Standing Orders Committee summons her to appear before it. She is sentenced to 3 years imprisonment for 'gross contempt' of the House. An opposition MP, Chongo, writes to the Speaker protesting this sentence and disassociating himself from it. He is cited for contempt of the House and the National Assembly. Kaluba and Chongo approach you for legal assistance. Advise them.  
(25 marks)

### **QUESTION 7**

- (a) Critically assess the provisions relating to the election of the President (i.e. qualifications, procedures) under the Independence, One-party, 1991 and 1996 Constitutions (20 marks)
- (b) Which of these do you prefer and why? (5 marks)

### **QUESTION 8**

In what ways is a one party system incompatible with democracy and human rights? Illustrate your answer with examples from Zambia.

### **QUESTION 9**

The independence of the judiciary is cardinal to the protection of human rights and democracy. Any country that is genuinely committed to democracy strives to ensure judicial independence. In what way can judicial independence be secured? To what extent is judicial independence secured in Zambia?

# **THE UNIVERSITY OF ZAMBIA**

## **SCHOOL OF LAW**

### **UNIVERSITY SECOND SEMESTER**

### **DEFERRED/SUPPLEMENTARY EXAMINATION - OCTOBER, 1998**

### **L252 CONSTITUTION LAW II**

#### **Instructions**

1. **TIME:** THREE HOURS (Plus 5 minutes to read the question paper)
  2. **ANSWER:** FOUR(4) Questions
  3. **NOTE:** ONLY UNMARKED STATUTES may be brought into the Examination Room.
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1. With the aid of authorities, discuss the relationship between Parliament and the Courts in Zambia.
2. Many critics have, since the dawn of the 3rd Republic, dismissed the National Assembly as a mere rubber-stamp of the Executive Branch. Do you agree? If you do, what should be done to enhance the position of the National Assembly relative to the Executive Branch?
3. "The idea of a One Party State is antithetical to liberal democracy." Using Zambia as an example, discuss to what extent this statement is true.
4. The Judiciary plays a pivotal role in the protection of human rights and democracy. To what extent is the Zambian Judiciary independent both in law and in fact? Does it have adequate powers to enforce human rights and protect democracy?
5. What were the Mwanakatwe Commission's recommendations regarding the redefinition and strengthening of the Office of the Investigator-General.

**E N D**

# **THE UNIVERSITY OF ZAMBIA**

**UNIVERSITY EXAMINATIONS - AUGUST 1998**

## **L262 FAMILY LAW**

**TIME: THREE HOURS (PLUS 10(TEN) MINUTES TO READ THE QUESTION PAPER)**

- INSTRUCTIONS: 1. ANSWER QUESTION ONE AND ANY OTHER THREE**
- 2. CANDIDATES MAY BRING INTO THE EXAMINATION ROOM CLEAN AND UN-ANNOTATED COPIES OF THE FOLLOWING STATUTES:**
- (a) THE PENAL CODE**
  - (b) THE MARRIAGE ACT**
  - (c) THE INHERITANCE AND SUCCESSION ACT, 1989.**
  - (d) THE ADOPTION ACT**
  - (e) THE MATRIMONIAL CAUSES ACT, 1973**

### **QUESTION ONE:**

In June, 1996, George Mubita, then aged 24 years fell in love with Joyce Shankaya, who was 14 years old, but looked like a woman aged between 18 years and 20 years. They decided to marry under Lenje customary law, but Joyce's parents objected to the proposed marriage and refused to accept the K600,000 bride-price which George had offered to them for their daughter. Nevertheless, the two young persons ignored the dowry element and inter-married. Their friends performed the 'giving-away' ceremony and the couple began to cohabit. The following year, in May, 1997, they converted the customary law

marriage into a statutory one, under the Act. To ensure that Joyce's parents did not hear about their new form of marriage, their statutory marriage was privately solemnised in their house in Chilenje South Township, conducted by George's friend, Chabwera Zulu, who knew nothing about solemnising of marriages, as he was a musician who played for a Lusaka Zam-rock band called the Amayenge Ensemble, as a lead guitarist.

Their friends advised them that since they were already married, the use of a licenced place for the solemnisation of the marriage and the obtaining of the Registrars certificate were not necessary.

In December of 1997 Joyce got wind of George's flirtations with other women. She left George's home and went to live with her uncle in Kitwe, where she gave birth to a healthy baby girl in January 1998. George intends to petition Joyce for divorce on the facts of desertion and to apply to the court for an order for custody of the baby girl. Advise George, *inter alia*, on the legal status of both types of his marriage, and on whether the child is legitimate. Advise him also on his chances of being granted custody order for the child.

**QUESTION 2.**

Kishombe Mujimanzovu died intestate in Solwezi in 1995, survived by a wife, Beatrice, and three children, a boy and two girls. Kishombe's uncle has been appointed as administrator of the late Kishombe's estate. Prior to the distribution of the intestacy, Beatrice would like to know the percentages of her and her children entitlement to the intestacy under the Inheritance and Succession Act, 1989. She would also like to know whether under Zambian general customary law (Kaonde law included) a widow has a legal right to remain in the matrimonial home. Advise her.

**QUESTION 3.**

- (a) State all the requirements (i.e. essentials and formalities) of a valid customary law marriage.
- (b) "Capacity to marry is of little significance in customary law." How valid or invalid is this statement?

**QUESTION 4.**

Briefly explain all the following:

- (a) The significance of the bride-wealth (dowry)
- (b) Lex domicilii, vis-à-vis statutory marriage
- (c) Presumption of statutory marriage

**QUESTION 5.**

(a) Julius Jere and Linda Mwansa who were both aged 20 years in 1993, were married under the Act. Both are domiciled in Zambia. *Since Linda cannot conceive, the couple has decided to adopt a three year old orphan, Mutinta Hamaundu. Explain to them all that they ought to do and know under the Zambia Adoption Act.*

(b) Who appoints the guardian ad litem and what are his duties?

**QUESTION 6.**

In November, 1980, Lute Tembo, a 26 year old woman and unemployed married to Chingumbe Sambondo, a 30 year old man, who worked as a game ranger in the National Parks and Wildlife Service in the Ministry of Tourism. Their marriage was under Marriage Act.

In February, 1983, Chingumbe and five other game rangers went into the Kafue National Park to search and flush out gangs of poachers. Such operations usually lasted about a month or 40 days. This time around, however, Chingumbe and his colleagues did not return home after 40 days. After three months, the government mounted four thorough but unsuccessful search campaigns for the six missing game rangers.

Eight months later, i.e. by October, 1983 a rumour was doing the rounds that the six game rangers had been gunned down by a notorious and merciless gang of poachers from Mumbwa West, dubbed 'The Executioners', and that their bodies were eaten up by lions and hyenas. Lute mourned for her missing husband for the rest of 1983. In 1984 and 1985 she made frantic enquiries from relatives, workmates and friends of her late husband in order to establish the truth of his reported death. The enquiries yielded nothing positive.

Owing to the financial and other hardships that she was going through, she decided to remarry. She got married to Supuni Nchinga in 1993, under the Act. In November 1997, Chingumbe



and his five workmates suddenly reappeared spotting long hair and thick beards. They narrated to all concerned that they had been kept captive for all 14 years, from 1983 to 1997, by a political rebel group which had entered Zambia from a neighbouring country, and mistook them for agents or spies of their government.

Chingumbe is now claiming his wife back. But Supuni Nchinga objects to that claim and argues that he was legally and validly married to Lute Tembo because Chingumbe had been considered dead for 14 years.

Advise Chingumbe as to whether his claim is legitimate and his chances of restoring his marriage. Lute, who still loves Chingumbe, has also asked you about how she can legally leave Supuni's house and return to Chingumbe. Advise her.

**END OF EXAMINATION.**

# **THE UNIVERSITY OF ZAMBIA**

## **UNIVERSITY SUPPLEMENTARY/DEFERRED EXAMINATIONS.**

**OCTOBER, 1998.**

**L. 262: FAMILY LAW**

**TIME:** THREE HOURS (PLUS 10 MINUTES TO  
READ THE QUESTION PAPER).

**INSTRUCTIONS:** ANSWER ANY FOUR QUESTIONS.  
Any of the following statutes may be brought into  
Examination room:

- (i) Marriage Act.
- (ii) Matrimonial Causes Act
- (iv) Adoption Act

### **QUESTION ONE.**

In each of the following circumstances, state the legal status of the marriage and explain, where appropriate, how the aggrieved party may bring the marriage to an end.

- (a) Manda and Fatima were married under the Marriage Act. Unknown to Manda, at the time of the marriage ceremony, Fatima was two months pregnant, impregnated by Musonda. Manda has consulted you for advice on how he can dissolve the marriage.
- (b) Donald Mulenga and Ireen Mutinta went through a ceremony of marriage under the Marriage Act. A few years later serious marriage problems developed. Mulenga unilaterally obtained a divorce certificate from the Chelston Local Court and now lives with Grace Phiri at her flat in Emmasdale. Mutinta has some doubts about the efficacy of the Local Courts divorce decree, and has come to you for advice. She too would like the marriage to end.

## **QUESTION TWO**

State and explain any three of the five grounds which may render a marriage void.

## **QUESTION THREE**

Essentials and formalities of a statutory marriage and those of a customary marriage are basically the same, but there are a few differences. Discuss any three of those differences.

## **QUESTION FOUR**

Alice and Jones Banda were married under the Act in 1992. Alice has not been able to conceive ever since, forcing the couple to decide to adopt a child from the Child-Care And Adoption Society. They have approached you for advice. Advise them <sup>on</sup> all that they ought to know about the law relating to adoption of a child in Zambia. ^

## **QUESTION FIVE**

Write brief notes on both of these two topics.

- (a) The right to consortium.
- (b) The right to the Matrimonial home.

## **QUESTION SIX**

Explain what is meant by 'ancillary relief' and when and by whom such an application can be made.

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**END OF EXAMINATION.**

# **THE UNIVERSITY OF ZAMBIA**

## **UNIVERSITY EXAMINATIONS**

**SEPTEMBER 1998**

### **L321 LAND LAW AND PROPERTY RELATIONS**

**TIME: THREE (3) HOURS AND TEN (10) MINUTES TEN TO READ THE QUESTIONS.**

**INSTRUCTIONS: ANSWER QUESTION ONE AND THREE OTHERS. QUESTION ONE CARRIES 40 MARKS.**

**QUESTION 1** (a) Describe the development of the freehold system of land tenure in England.

(b) Distinguish between freehold and leasehold property. To what extent is the distinction relevant to Zambia.

**QUESTION 2** (a) Describe the development of equitable interest under English law

(b) How does the doctrine of tenure differ from the doctrine of estate

**QUESTION 3** (a) What is a Mortgage and in what ways may it be created in Zambia

(b) What is the equitable right of redemption

(c) How does a Mortgagee enforce his security.

**QUESTION 4** Discuss briefly the following

(a) Joint tenancy and tenancy in common

(b) Peculiar feature of a Mortgage in Zambia

(c) Incidents of ownership of Property

(d) The Doctrine in WALSH Vs LONSDALE

**QUESTION 5** (a) Describe the Common Law rule against perpetuities

(b) What is the purport and effect of the Trusts Restrictions Act Chapter 63, of the Laws of Zambia.

**QUESTION 6** (a) What is a fixture

(b) With the aid of decided cases discuss the tests that are employed to determine a fixture.

**THE UNIVERSITY OF ZAMBIA**

**UNIVERSITY EXAMINATIONS**

**DEFERRED AND SUPPLEMENTARY EXAMINATIONS OCTOBER 1998**

**L321 LAND LAW AND PROPERTY RELATIONS**

**TIME: THREE HOURS AND TEN MINUTES TO READ THE QUESTIONS**

**INSTRUCTIONS: ANSWER QUESTION ONE AND THREE OTHERS**

**Q1.** According to the common law, ownership of land means the right to everything in, on, under or over the land.

Discuss the limitations if any, placed on ownership of land.

**Q2.** (a) Discuss the development of leasehold tenure in England.  
(b) Compare and contrast freehold with leasehold systems of tenure.

**Q3.** Distinguish a joint tenancy from a tenancy in common.

**Q4.** (a) Describe the Rule against perpetuities.  
(b) What is the public policy issue behind the Trust Restrictions Act Chapter 63 of the Laws of Zambia.

**Q5.** John Banda owns a Butchery in Lusaka. However, he decides to sell the Butchery to Patrick Bwalya. John Banda and Patrick Bwalya approach Messrs Ben Zulu and Company to conduct the Conveyance of the property. Messrs Ben Zulu and company duly prepare the Contract of Sale and Assignment. The Contract of the Sale stipulates that vacant possession of the property shall be granted on full payment of the purchase price and ten percent of the purchase price is to be paid on signing of the contract. After John Banda received the ten percent of the purchase price, he decided to remove the cold room which was embedded in the building together with the butcher boy which was fixed on the counter. After payment of the full purchase price, Patrick Bwalya took possession of the property. To his dismay Patrick Bwalya discovered that the cold room had been removed from the Butchery, causing thereby extensive damage to the property. Patrick

Bwalya was further infuriated by the fact that the Butcher boy had been removed from the counter.

Patrick Bwalya decides to approach you for Legal Advice. With aid of decided cases advise Patrcik Bwalya.

**Q.6** Write short notes on the following.

- (a) The right to survivorship
- (b) Distinguish easements from profits
- (c) Equitable right of redemption
- (d) Describe and distinguish feetail from life estate.

# **THE UNIVERSITY OF ZAMBIA**

## **UNIVERSITY EXAMINATIONS**

**SEPTEMBER 1998**

### **L322 LAND LAW AND CUSTOMARY SYSTEM OF TENURE**

**TIME: THREE (3) HOURS AND TEN (10) MINUTES 10 MINUTES TO READ THE QUESTIONS**

**INSTRUCTIONS: ANSWER QUESTION ONE AND THREE OTHERS. QUESTION ONE CARRIES 40 MARKS**

**QUESTION 1.** Previously there were three categories of land in Zambia. Namely, stateland reserves and trustlands. These categories were introduced by the colonial system

- (a) Analyse the nature of rights and interests in these three categories of land.
- (b) In what ways does a reserve differ from trustland both in terms of the concepts and also as regards to the formal rights therein.

**QUESTION 2** Joseph Hantobolo has retired from the Zambia Police Service and has decided to return to his home village in Gwembe, in an area previously designated as a reserve. He has accumulated some capital to enable him venture into a commercial farming. He would like to acquire 500 hectares of land in the same area.

Joseph Hantobolo decides to approach you for advice on the following matters V13;

- (a) The procedure for acquisition of land
- (b) The nature and security of tenure
- (c) The possibility of offering the same land as collateral to a Commercial Bank to enhance his operations on the projected farm.

**QUESTION 3** “.... the policy of the Rent Act was and is to protect the tenant in his name, whether the threat be to extort a premium for the grant or renewal of his tenancy, to increase his rent or to evict him .....”

Per Lord Scarman in *HEREFORD INVESTMENTS LIMITED V LAMBER* 1951 Ch. 39 at p.52.

How has the *Zambian Rent Act* accomplished this purpose. How effective has the *Zambian Rent Act* been in this respect.

**QUESTION 4**

- (a) How do you differentiate a lease from a licence.
- (b) Mulando has travelled from Chisamba to Lusaka to attend a seminar organised by the Law Association of Zambia. The seminar is scheduled to run for a week. Mulando decides to book a room at a local hotel for one week. On the third day of his stay at the hotel he receives a notice requesting him to vacate the room by 08-00 hours the following day because the room had been allocated to a Minister from Brazil.

Evaluate the nature of interest that Mulando has in the room and the cause of action if any, that he may adopt.

**QUESTION 5.**

Discuss briefly the following:

- (a) Rationale for the system of land registration
- (b) Distinguish tenancy at sufferance from tenancy at will
- (c) The caveat facility
- (d) Development Control under the Town and Country Planning Act.

**QUESTION 6.**

- (a) Section 3 of the Lands Acquisition Act chapter 189 of the Laws of Zambia provides that the President may whenever he is of the opinion that it is desirable or expedient in the interests of the republic so to do compulsorily acquire any property of any description.

What is the justification of section 3 of the Lands Acquisition Act, Chapter 189 of the Laws of Zambia?

- (b) Is the Compulsorily acquisition open to challenge in a court of law?



**THE UNIVERSITY OF ZAMBIA**

**UNIVERSITY EXAMINATIONS**

**DEFERRED AND SUPPLEMENTARY EXAMINATIONS OCTOBER, 1998**

**L322 LAND LAW AND CUSTOMARY SYSTEM OF TENURE**

**TIME: THREE HOURS AND TEN MINUTES 10 MINUTES TO READ THE QUESTIONS**

**INSTRUCTIONS: ANSWER QUESTION ONE AND THREE OTHERS**

**Q1.** "... The notion of individual ownership is foreign to native ideas. Land belongs to the community and not to the individual. The title of the native community takes the form of usufructuary right...."

Per **SOBHUZA V. MILLER AND OTHERS** 1926 AC 518

Discuss this statement in light of the Lands Act number 20 of 1995.

**Q2.** Describe briefly the development of the Land Tenure System in Zambia.

**Q3.** (a) Section 6 of the Lands and Deeds Registry Act Chapter 185 of the Laws of Zambia provides inter alia, that any document required to be registered and not registered within the time specified shall be null and void. With the aid of decided cases discuss the judicial interpretation of the phrases "null and void".

(b) What is the rationale for the system of land registration.

**Q4.** " .... The right of eminent domain is another attribute of sovereignty by which the state may appropriate or divest private property whenever the exigencies demand it or according to the usual definition it is the right of taking private property for public purposes and to this the obligation always attaches of making just compensation for the property taken ...."  
Discuss.

**Q5.** “.... if one looks at this ordinance, one observes that where a person lodges a caveat ..... the registrar is forbidden to make an entry on the register having the effect of charging or transferring or otherwise affecting the estate or interest preceded by the caveat.....”

Per SCOTT J CONSTRUCTION AND INVESTMENT HOLDING LIMITED

V

WILLIAM JACKS AND COMPANY LIMITED 1972 Z.R. Page 66.

With the aid of decided cases discuss the circumstances in which a caveat may be registered.

**Q6.** Write short notes on the following

- (a) The Efficacy of the Zambian Rent Act.
- (b) Distinguish between a lease from a licence.
- (c) A Bona fide purchaser for value without notice.
- (d) Development plan under the Town and Country Planning Act.

# THE UNIVERSITY OF ZAMBIA

## UNIVERSITY SECOND SEMESTER EXAMINATIONS - AUGUST 1998

### L332 COMMERCIAL LAW II INSURANCE AND NEGOTIABLE INSTRUMENTS

**TIME: THREE HOURS (PLUS 15 MINUTES TO READ THE QUESTION PAPER)**

**INSTRUCTIONS: ANSWER ANY TWO QUESTIONS FROM EACH SECTION**

1. Mr. Mwansa Kapempula owns the only petrol station on Chilubi Island on lake Bangweulu. His business is entirely dependent upon the patrons of the nearby **TEKA FITALALE PLEASURE RESORT** which is owned by Mama Agness Tafichepa. To safeguard his business interest, Mr. Kapempula decided sometime last year to obtain a policy of fire insurance covering the entire **TEKA FITALALE PLEASURE RESORT**. In June this year the pleasure resort was gutted by fire and burnt the ground. The established cause of the fire an electrical short-circuit. Mr. Kapempula has now lodged a claim with the insurers, Great Insurance Company which refuses to pay.

Advise Kapempula on his chances of winning the case if he decides to sue the insurance company.

2. A contractor had negotiated for several months for the job of building a house for a **Mr. Chinondo**. Before a formal contract was signed, the contractor obtained from **Mutende Insurance Company**, a "builder's risk" policy insuring his interest in the house against loss of fire during the time it was under construction. On July 15, 1998 he signed a formal contract with the owner and began work the following day. Two weeks later a fire loss occurred to the building before it was completed.. After trying to recover on the policy without success, the contractor sued **Mutende Insurance Company** and the case has been brought before you for judgment. With the aid of suitable examples write your judgment.
3. Wireless Phiri and Kondwani Zulu tortuously injured Chikomeni Banda. Upon Banda making a claim, Wireless Phiri's insurers, Perfect Insurance Company, paid the full amount of Chikomeni Banda's claim. The insurance company has not threatened to sue Kondwani Zulu to recover half the amount it paid Chikomeni Banda. What advise would you give to Kondwani Zulu?
4. Chenjelani having procured a policy on his life and paid several premiums assigned it to Mulenga, his friend who had no insurable interest and who agreed to pay the premiums on this policy as speculation on Chenjelani's life. On

Chenjelani's death who is entitled to the proceeds of the policy assigned to Mulenga or Chenjelani's estate. Support your answer with suitable case law.

*-is it Mulenga*

## SECTION B

5. Chibuye issued a document in the sum of K2 million to a dentist for dental work to be performed on him. The document contained the following clause:

“In case of death of maker all payments not due at death are cancelled”.

The Dentist transferred the document to Lay-by-store as part payment for a dental chair he intended to purchase. Chibuye did not receive the promised dental work and is still in serious need of dental care. He therefore wants Lay-by Store to return his document but Lay-by Store contends that it is a holder in due course and as such it is entitled to payment despite the adequacy of the dental work performed.

What advise would you give Chibuye and why?

6. In April this year two cheques drawn by Mutinta and payable to the order of Jomo Holdings were presented to People's Bank. The cheques were drawn against Barclays Bank. Peoples Bank called Barclays Bank for confirmation of Mutinta's credit. After the call, Peoples Bank cashed one cheque for K500,000= and accepted the other as a deposit for K400,000=. Peoples Bank subsequently learned that Mutinta had issued “stop payment orders” on both cheques.

Can People's Bank successfully sue Mutinta? If yes, why? and if not, why not?

7. In relation to negotiate instruments, critically discuss the essential characteristics of
- (i) A holder
  - (ii) A holder *in due course*
  - (iii) A holder for value
8. A church opened a current account with Peoples Bank. The cheques had to be signed by Mwape and Chiti, two elders of the congregation. Bank statements were to be sent to Mwape. Over the span of one year, twenty cheques were issued by Mwape, with Mwape forging Chiti's signature on each of the cheques. The church sued the bank to recover the amount on the forged cheques. What would be the result?

**END OF EXAMINATION**

UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

DEFERRED AND SUPPLEMENTARY EXAMINATIONS

1998

L332

INSTRUCTIONS:

ANSWER ANY FOUR QUESTIONS

TIME: THREE HOURS

1. **PELEKANI BANDA** had an argument with his wife after he left his home. After he left his wife started a fire that damaged the house and some of its contents. **PELEKANI BANDA** filed a claim on the insurance policy that covered the house. The policy was in the name of Mr. and Mrs. **PELEKANI BANDA**. Can **PELEKANI BANDA** coinsured collect on a policy when the jointly insured party, Mrs. **BANDA** started the fire deliberately.
2. **KEN PHIRI** drew a document with the following words:  
  
"I promise to pay to the order of Supreme Furniture Limited K500.000 plus 8% interest every month from 1st November, 1998 for a period of one year".  
  
Can this instrument be considered to be negotiable.
3. In relation to negotiable instruments, discuss the following terms:
  - (a) endorsement
  - (b) special endorsement
  - (c) blank endorsement
4. AMANDA issued a cheque payable to the order of Jomo. Jomo sold the cheque to MWANGALA but neglected to endorse it. At this point, what is MWANGALA's legal status?
5. With the aid of suitable examples discuss the following terms:

- (a) Insurable Interest
- (b) A holder of a negotiable instrument
- (c) A holder in due course

6. MULENGA has invested heavily in the Lusaka Stock Exchange partly because he believes that the President's economic policies will lead to a booming economy. He now desires to take a life insurance policy on the President's life to protect his investment. Does Mulenga have an insurable interest in the life of the President.

# University of Zambia

## School of Law

First Semester Supplementary Examination

L341: Administrative Law

Time: Three (3) Hours

Answer Question **One** and any other **Three** Questions

1. Kenneth Culp Davis, writes:

*Zambian administrative law should be in constant movement to keep up with the changing times. It should be continuously responding to unfolding governmental needs and to rapid advances in understanding of governmental processes not exclusively looking backwards to a stationary and largely outworn conceptualism. Above all, Zambian administrative law needs to be steadily nourished by the practicalities of day-to-day administration in the handling of the newly-developed tasks of positive government.*

Professor Kenneth Culp Davis, Public Law, 1962, at 139 - 142. (Words in italics are mine.)

Critically analyze this statement.

2. Discuss the rationale for delegated legislation and whether modern administration can be conducted without legislative powers being vested in some administrative officers or agencies.
3. The Ministry of Higher Education in conjunction with the University of Zambia administration has embarked on a programme, the first ever since the University was opened in the 1960's, to review the courses offered at the University. The objective is to maintain and where necessary introduce

country approaches the new millennium. One of the courses under review is Administrative Law, which is offered by the Law School to third year law students.

A questionnaire has been given to you as person who has studied Administrative Law. You have been asked to write your opinion on the course that is whether it should continue to be taught or not.

Please prepare your written submissions.

4. Most scholars on administrative law and public administration in Africa are agreed that good governance of Africa's natural, human and institutional resources cannot be meaningfully utilised unless "the old-style public administration is transformed into a developmental, user-friendly, and results oriented management culture."

One of the challenges that has to be addressed is whether it is possible to do away with administrative discretion in a modern administration. Write your brief on this issue.

5. A leading scholar on Administrative law has stated:

The problems of administrative law cannot be understood - indeed, they cannot even be identified - without seeing how the cases are handled by the officers who are handling them, and this means for the great bulk of the cases officers at the rank of principal and below.

Even the judges, who are the architects of the branch of administrative law that this judge-made, cannot possibly understand some of the most important problems of administrative law unless they can be



informed of what is going on in administration. And English judges generally are not so informed. This is one of the several reasons why judge-made administrative law in England seems to me to have an air of unreality about it.

Discuss this statement in the light of what you know about administrative law.

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

# THE UNIVERSITY OF ZAMBIA

## SCHOOL OF LAW

Second Semester

FINAL EXAMINATION

Administrative Law: L342

Time: Three Hours

Instructions: Answer **Question One** and any other Three Questions

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1. Charles Mwila is a legal assistant in one of the law firm in Lusaka, and a week hardly passes without being instructed by one of the partners in the firm to file papers moving the court for judicial review. He has come to you and wants to know, given Zambia's Constitution, whether there is any justification for judicial review.
2. You are a legal practitioner who has established a good reputation for yourself in public law. Mofya has come to your chambers for consultations. His brother Bwalya was picked up and detained by Sergeant Phiri at Lusaka Central Police on 20 June, 1998, to help the police with investigations in a series of armed robberies, which had taken place in Lusaka. On 25 June, Mofya went to check on his brother and he was told by the officer in charge of the investigations that Bwalya had been transferred to Kamwala Police Station. At Kamwala he was told that his brother had been taken to Chipata to help the police in their continued investigations.

Mofya traveled to Chipata where he was told that his brother had been taken back to Lusaka. Mofya went back to Lusaka and saw Sergeant Phiri who told him that he had been misled by Chipata Police and that his brother was still in Chipata. Mofya his confused, he has spent a month shuttling from one police station to another.

On 31 July he met Banda, who happened to have been in the same police cell as Bwalya, who told that there was a strong possibility that his brother was dead. He went on to say that the police had developed the practice of shooting suspects. They believed that taking suspects to court was a waste of time and that very often they are acquitted when represented by a good criminal lawyer.

Mofya has come to you for advice. He does not have the money to retain you since your hourly charge is US\$300. He has some working knowledge of the law. He just wants your guidance on how he can move the court and the relief he can seek from the court given the facts of the case. Please advise him.

3. You are a lawyer in practice and you have been retained by a company based in the United Kingdom to recover the sum of £1.2 million being money due them for goods supplied and received by the Government of the Republic of Zambia. The case has been determined in favour of your client. You have prepared a certificate of judgment in line with the provision of section 21(1) of the State Proceedings Act which, omitting the irrelevant portions, reads:

Where in any civil proceedings ... against the State... any order is made by any court in favour of any person against the State ... the proper officer of the court shall, on an application in that behalf made by or on behalf of that person at any time after the expiration of twenty-one days from the date of the order ... issue to that person a certificate in the prescribed form containing the particulars of the order.

The certificate has been served on the Permanent Secretary Ministry of Finance and his attention has been drawn to section 21(3) of the State Proceedings Act which, omitting the irrelevant portions, reads:

If the order provides for the payment of money by way of damages ... the certificate shall state the

amount so payable, and the Permanent Secretary, Ministry of Finance, shall subject as hereinafter provided, pay to the person entitled or to the legal practitioner acting for such person in the proceedings to which the order relates the amount appearing by the certificate to be due to him together with the interest, if any....

In response the Permanent Secretary has informed you that he cannot pay in that the judgment debt was more than K4 Billion and that the government was not in a position to pay the said amount. If he did then all the civil servants including the police and the army would go without pay for at least two months, which situation would lead to massive unrest throughout the country and he was not prepared to be responsible for such a situation.

The Permanent Secretary has also drawn your attention to section 21(4) of the State Proceedings Act which provides that:

... no person shall be individually liable under any order for the payment by the State, or any public officer as such, of any such money or costs.

The agreement between yourself and your client is that you would receive as your remuneration, 30% of the judgment debt recovered. Prepare a brief for your client explaining how you intend to address this matter.

4. Peter Mpande is a graduate from the University of Zambia School of Mines, who is now working for the Zambia Consolidated Copper Mines. He and his fellow graduates feel that the existing union the Mine Workers Union of Zambia (MWUZ) is not representing their interests in negotiations with management. They have resolved to form their own union: Graduate Mine Workers Union of Zambia (GRAMUWZ). They completed the necessary application forms and presented them to the Labour Commissioner together with other relevant documents for the registration of the union.

The Labour Commissioner wrote to them turning down their application. He pointed out that he could not register the proposed union because there was already another union in the industry representing their interests in the form of MWUZ and in terms of section 9(8)(c) of the Industrial and Labour Relations Act he was not empowered to register another union.

Section 9(8)(c) of the Industrial and Labour Relations Act, omitting the unnecessary words read:

(8) No body registering as a trade union shall be registered

(c) if it purports to represent a class or classes of employees already represented by an existing trade union or are eligible for membership of an existing trade union....

Mpande and his colleagues resolved to challenge section 9(8)(c) of the Industrial and Labour Relations Act on the premise that the said section violated Article 21 of the Constitution which guarantees freedom of assembly and association.

The matter was argued on the basis of the law and their advocate together with the State Advocate in charge of the case on behalf of the government agreed to lodge written briefs on the law.

The Judge who heard the case has traveled overseas for further studies and would not be back for at least a year. The judge proposed to deliver his judgment on his return, but if he managed to write it, whilst away, he would send the judgment to be read on his behalf by another judge.

A week before the Judge's departure the President gave assent to an amendment to section 9 of the Industrial and Labour Relations Act. The only restriction to the formation of a union is contained in section 9(5) which reads:

A group of employees shall not be registered as a trade union under this section--

- (a) Under a name identical to, or by which, any other trade union has been registered or as so nearly resembles such name as to be likely to deceive its own members or members of the public; or
- (b) if it does not comply with the conditions of registration prescribed, in consultation with the Tripartite Consultative Council, under the Act.

No conditions for registration have been prescribed.

Given the above facts Mpande and his colleagues have come to you for advice. They urgently want the matter resolved as the situation at their place of work was rapidly deteriorating with the privatisation of the mines under consideration. They are not prepared to wait for another year before the outcome of their case could be known. They have abandoned their lawyer and decided to retain you. Please advise them on how this issue can be resolved and a union formed, if at all it can be done. They want to know the obstacles they are likely to face in dealing with the Labour Commissioner and how you plan to address them.

5. You are an expert in Administrative Law and you have been approached by the Government to assist them in a project, which involves strengthening the institutions necessary for sustaining democracy and good governance. You have been specifically asked to examine the Commission for Investigations and Parliament as institutions and make the recommendations needed to strengthen them. You are required to provide justifications for your recommendations in light of the broad objective of the exercise.

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

# THE UNIVERSITY OF ZAMBIA

## UNIVERSITY EXAMINATIONS - AUGUST, 1998

### L 362 - CIVIL AND CRIMINAL PROCEDURE

**TIME:** THREE HOURS (PLUS 10(TEN) MINUTES TO READ THE QUESTION PAPER)

**INSTRUCTIONS:** ANSWER QUESTION ONE AND THREE OTHER QUESTIONS. CANDIDATES MAY BRING INTO THE EXAMINATION ROOM CLEAN AND UN-ANNOTATED COPIES OF THE FOLLOWING STATUTES.

- (a) THE SUBORDINATE COURTS ACT.
  - (b) THE CRIMINAL PROCEDURE CODE
  - (c) THE PENAL CODE
  - (d) THE JUVENILES ACT
  - (e) THE HIGH COURT ACT
  - (f) THE CONSTITUTION OF ZAMBIA
- 

**1.(a)** Mukuka Chilufya owns a stall at the Lusaka City Market where he deals in confectioneries. Sixteen months ago an acquaintance of his named Kachenjela Pompwe got some sweets, chocolates and bottles of crushed orange drink on credit, for the fifth birthday party of his only child Mwana-Pompwe. The total cost of the goods collected was K355,000.

Repeated written reminders and a letter of demand from Mukuka to Kachejela, have not yielded any fruitful results. Mukuka has decided to take legal action against Kachenjela to recover his K355,000. But he has forgone interest accrued on the debt.

Both Mukuka and Kachenjela reside in Kabanana Township, north of Lusaka. Mukuka lives at House Number K/899 and his postal address is 36722, Lusaka, Kachenjela lives at House Number K/664 and his postal address is 50081, Lusaka.

You are Mukuka's lawyer and you are about to commence a civil action against Kachenjela for the recovery of your client's K355,000 without interest. Complete the relevant writ of summons, taking the court fees to be K10,000, solicitors costs to be K36,000 and the serving fee to be K5,000. There is no mileage claim.

The hearing will take place in the Subordinate Court of the First Class for the Lusaka District.

Do not forget to sign the writ on behalf of your client, to date it and to indicate your address for service.

- (b) Explain why you have decided to use this writ and not the other type. If Kachenjela has a counter - claim against Mukuka which part of the writ is he required to complete?

2. Patrick Mulevu has signed a building contract with Hampongo Hamangaba in which Patrick agreed to build Hamangaba's house in Ibex Hill area, east of Lusaka within a time limit of six months. Patrick was securing the building materials from 'Builders Paradise Limited' a hardware store located in Chachacha Road, Lusaka.

Builders Paradise Limited had promised to supply Patrick with all the requested building materials within three months to enable Patrick's to complete construction of the house in the agreed period of six months. Builders Paradise Limited, however, failed to honour their promise and took eleven months to deliver all the needed materials. This inordinate delay in supplying the materials to Patrick has given rise to a civil action between Hampongo Hamangaba and Patrick Mulevu where Hampongo is claiming general damages for breach of contract from Mulevu.

Mulevu, the defendant, would like to get either an indemnity or contribution from Builders Paradise Limited. Accordingly, he would like to join Builders Paradise Limited to the suit. Explain fully the procedure of joining a third person to an existing suit between two parties in a Magistrate's Court.

3. Write brief notes on **All** the following:
- (a) Composition Order



- (b) The purpose of pleadings
  - (c) Default procedure in Subordinate Courts
- 4 (a) What are the three ways in which an accused person may be brought before a Subordinate Court. In one of these methods a 'complaint' is sworn before the Magistrate. Explain the purpose of the complaint and state who swears it.
- (b) The Director of Public Prosecutions in Zambia enjoys a considerable degree of independence in the performance of his duties. What provisions in the Constitution confer that independent position on him?
5. (a) In the High Court Civil proceedings are begun in four ways. Mention these four ways and give at least one example of cases commenced by each method.
- (b) As a general rule, after delivering judgment a Judge or a Magistrate is said to be 'functus officio', meaning that his powers over the case cease upon delivery of the judgment. But under both the Rules of the High Court and Rules of the Subordinate Court a Judge or Magistrate is permitted to review his own judgment or order, and may upon review make a different decision from the earlier one. Quote the provisions in both the High Court and the Subordinate Court Acts which give a Judge or a Magistrate revisionary powers.
6. Explain the purpose of each of the following in the Zambian Criminal Judicial System:
- (a) The reading of the Statement of facts in a plea of guilty.
  - (b) The Statement of Offence and the Particulars of Offence in a criminal charge.
  - (c) The 'umpire-like' position of the judge in the adversary judicial system.

**END OF EXAMINATION**

**THE UNIVERSITY OF ZAMBIA**  
**UNIVERSITY OF ZAMBIA EXAMINATIONS**  
**L382 INDUSTRIAL LAW FINAL EXAM**

**INSTRUCTIONS**

1. Time allowed: 3 hours plus 10 minutes to read through the question
2. ANSWER question No. 1 and any other three
3. Relevant statutes are allowed in the examination room provided that they contain no notes
4. Credit will only be given for precision and candid application of the law and analysis.

**ANSWER THIS QUESTION**

**QUESTION 1.** Mbeba Manufacturers Ltd. (MMCO) is a limited liability company that specialises in the manufacturing, packaging and marketing of various products ranging from ammunition, meat, rubber and cotton. MMco has a total workforce of four thousand and eighteen (4018).

MMco employees belong to two different trade unions duly registered by the Labour Commissioner. The unions that exist at the company are the National Union of Meat Processors (NUPM) and the National Union of Plantation Workers (NUPW). Employees at MMco who are engaged in the ammunition segment have not been allowed to join NUPM or NUPW for reasons of eligibility. Apparently there is no other union which they can join in order to safeguard their professional interests. Their application to form a new union to be called the National Union for the Promotion of War (NUPWA) has been lodged with the Labour Commissioner but are skeptical as to its registrability especially that MMco has strongly objected to the unionisation of its employees engaged in the ammunition sector arguing that it is a sensitive area that requires stability.

The Executive committees of NUPM and NUPW have since met to decide whether NUPWA should be supported through industrial action. A decision has been made that all members of the two unions should withdraw their labour from the service of MMco in sympathy with NUPWA's attempts to have the union registered and demanding that the objection filed by MMco should be withdrawn.

The management of MMco has reacted to the threat by terminating the contracts of employment of the entire executive committee's of the two unions and by issuing a strongly worded circular warning all the employees against taking industrial action. A specific warning is addressed to those wishing to follow up the registration of NUPWA stating that those who wish to do so should peacefully resign.

In addition, MMco has indicated its intention to withdraw its recognition agreement with the two unions should the workers proceed on the "illegal activities".

You have been approached by the Zambia Congress of Trade Unions (ZCTU) to which NUMP and NUPW are affiliated to advise on how to proceed with this matter stating as concisely as possible the position of the law on the specific issues raised.

(Assume that both unions have no objection to ZCTU's intervention). (31 marks).

### ANSWER ANY OTHER THREE QUESTIONS FROM THE FOLLOWING

**QUESTION 2(a)** Describe the content and purpose of the law on unfair dismissal (10 marks)

(b) Samson has been employed as a driver by RODCO Enterprises for the past fourteen years. No contract of employment has been signed between the parties during this period although Samson has consistently received his salary at the end of each month.

After fourteen years of service RODCO Enterprises verbally inform Samson that his employment has been terminated arguing that no notice or reason can be given as there was no contract signed between them. Advise Samson (13 marks).

**QUESTION 3(a)** To what extent are the rules of natural justice applicable during the process of dismissing an employee in Zambia? (13 marks).

(b) In your own words describe the process of settling collective disputes through conciliation under the Industrial and Labour Relations Act (10 marks).

**QUESTION 4** The decisions of the courts as to inducing breaches of contracts of employment, Civil conspiracy and picketing exposed trade unions to a number of serious risks which were multiplied a thousandfold by the decision in the Taff Vale case. Discuss (23 marks)

**QUESTION 5** With the aid of decided cases explain how legally effective collective agreements may be instruments from which the rights

and duties of the parties to contracts of employment may be derived. (23 marks)

**QUESTION 6**

Write short notes on any three of the following:

- (a) an order for reinstatement versus a finding that a dismissal was null and void
- (b) the unitary versus the conflict theories of industrial relations.
- (c) implied versus express terms of a contract employment
- (d) collective bargaining and the right to strike (7-8 marks each)

**END OF EXAMINATION**

**THE UNIVERSITY OF ZAMBIA**  
**UNIVERSITY OF ZAMBIA EXAMINATIONS**  
**L382 INDUSTRIAL LAW**  
**DEFERRED/SUPPLEMENTARY EXAMINATION**

**INSTRUCTIONS**

1. Time allowed: 3 hours plus 10 to read through the question paper.
2. Answer question No. 1 and any other three.
3. Relevant statutes are allowed in the examination room provided that they contain no notes.
4. Credit will only be given for precision and candid application of the law, and analysis.

**ANSWER THIS QUESTION**

- Question 1.** Discuss the implications of a master and servant relationship in an Employment relationship at common law and under the Employment Act, Cap 268 of the Laws of Zambia (31 marks).

**ANSWER ANY OTHER THREE QUESTIONS FROM THE FOLLOWING**

- Question 2.** "The nature and character of trade unions are such that they cannot but have and pursue objects which are in restraint of trade."  
Discuss this statement in the context of the immunities the law has granted to trade unions and the extent to which these are effective (23 marks).
- Question 3.** (a) Clearly distinguish between unfair dismissal and wrongful dismissal. (10 marks).
- (b) Discuss the scope of discrimination on the ground of social status by virtue of section 108 of the Industrial and Labour Relations Act,

Cap 269 of the Laws of Zambia (13 marks)

4. Write concise notes on any three of the following:  
Constructive dismissal

Essential terms of a contract of employment

Legal enforceability of collective agreements

Individual versus collective disputes under the Industrial and Labour Relations Act, Cap 269 of the Laws of Zambia. (7-8 marks each).

5. Briefly and succinctly outline the procedures for the registration of a trade union, the purposes for which such a union may be recognised as well as how and why such registration may be cancelled (23 marks).

6. "It is not absolutely necessary that contracts of employment should be in writing in Zambia". Critically discuss the above statement (23 marks).

JURISPRUDENCE II - MODERN LEGAL THEORY

TIME: THREE HOURS, PLUS FIVE MINUTES TO READ THE QUESTIONS.

ANSWER: QUESTION NO. 1 AND ANY OTHER TWO QUESTIONS

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You must answer Question No. 1 (It is worth 50% of the final grade).

1. Precious Tresha, a member of the Ndebele tribe was born in Mutare (Umtali), Zimbabwe (S. Rhodesia) in 1958. Precious was educated at missionary boarding schools in Zimbabwe and eventually received a degree from a university in England.

In 1982, Precious moved to Zambia from Zimbabwe with her parents. The family lived on the outskirts of Lusaka in a compound inhabited by members of their tribe. Ms. Tresha had been looking forward to the move to Zambia in order to escape the memories of her unfortunate life in Zimbabwe. Specifically, Precious had dreamt as a child of a Christian wedding. However, in 1980 according to her parents wishes, she married a man under Ndebele customary law who, six months later, died in a minibus accident.

In 1984, Precious secured a job as a Marketing Analyst for Telecel in Lusaka. With her new employment, she moved to a lovely apartment block where persons of many differing tribes lived. She made new friends and joined the Assemblies of God Church in Northmead. She once again dreamed of marrying in the church one day.

One evening, in 1990, Precious met Stanley Sibanda, also a member of the Ndebele tribe and headman of a small village outside of Kariba. They met at Spur Leisure Land in Lusaka and fell in love, forming an association. The following morning, Stanley swore his undying love for Precious and promised to marry her as soon as he returned from his job which was as a cook on a merchant vessel that was to sail around the world delivering Zambian copper. They held each other close, kissed and said their good-byes. Precious was very sad but secure in her faith that Stanley would return one day.

As fate would have it, nine months after their oath of love and fidelity, Precious gave birth to a healthy baby boy whom she named Stanley, Jr. Now with a son, Precious found it difficult to survive on her meagre salary from Telecel, so she approached Stanley's parents in hopes of receiving financial support for their grandson, Stanley, Jr. Stanley's parents refused to offer any assistance to Precious as they denied that their son, Stanley, was the father of the child. In fact, they told Precious that Stanley already was married to another woman.

Precious was grief stricken and decided to drown her sorrows in a bottle of kachasu. Unfortunately, Precious drank so much that she died of alcohol poisoning. Her child, Stanley, Jr., was subsequently raised by Precious's parents on the outskirts of Lusaka in the Ndebele compound.

In 1995, four years after the birth of Stanley, Jr., Stanley returned from his voyage at sea. He had become very concerned when the letters from Precious had stopped after their first year apart but he remained very much in love. So, he set out in search of his beloved, Precious. Eventually, he contacted Precious's parents to find out her whereabouts. Precious's parents informed Stanley of the death of Precious. Moreover, they called Stanley, Jr. to the door and said, "Look, grandson, here is your father who broke your mother's heart and killed her." The child ran screaming back into the home.

Stanley Sibanda was devastated but also ecstatic at discovering he had a son. After one week, he withdrew his life savings (a substantial sum) and began negotiations with Precious's parents for custody of the child. However, Precious's parents refused the offer of lobola and would not grant custody of Stanley, Jr. to his father.

Stanley sued the grandparents in a Lusaka Local Court for custody of the child. The local court followed Nkomo v. Tshili (1973) ZR 102<sup>1</sup> and denied custody to Stanley. Stanley appealed to the High Court of Zambia which upheld the local court's decision. Finally, Stanley appealed to the Supreme Court of Zambia. During these proceedings, Stanley made several attempts to maintain contact with his son, but was refused visitation by Precious's parents. However, Stanley was able to see and talk with Stanley, Jr. several times on his way home from school.

You are the Chief Justice of the Supreme Court of Zambia who has been charged with the task of writing the majority opinion in the above appeal to determine who will have custody of Stanley, Jr. You are aware of the Supreme Court decision in Nkomo v. Tshili<sup>2</sup>, and your judicial obligations thereto, as well as the following laws and decisions governing precedent:

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<sup>1</sup> You are to assume for the purposes of this question that Nkomo v. Tshili is a SUPREME COURT DECISION, not a High Court decision.

<sup>2</sup> See supra note 1. In this case, the Court held, in addition to other holdings, that lobola is defined in Ndebele Customary law as:

1. "When a man marries he pays money or its equivalent to the parents of the bride. The effect of this is that the man takes over completely the guardianship of the bride from her parents.
2. The man has an association with an unmarried girl and as a result the girl conceives. Bad feelings are created between the man and his family on the one hand, and the girl and her family on the other. The man then would pay money or property equivalent in value to the money to normalise and harmonise the strained relations between the families.
3. In a case falling under (2) above, if the girl bears a child the man may want to take custody of it. He then pays money or other property to the equivalent value upon which payment he secures the child's custody."



1. The Supreme Court Act, CAP 25, Section 8 of the Laws of Zambia (1995).<sup>3</sup>
2. The rule in Young v. Bristol Aeroplane Co Ltd (1944) KB 718, (1944) 2 ALL ER 293.
3. Davis Jokie Kasote v. The People (1977) ZR 75 (SC)<sup>4</sup>.
4. Abel Banda v. The People (1986) ZR 105 (SC)<sup>5</sup>.

Finally, you are also conversant in all other applicable laws and decisions studied in class.

In an effort to achieve justice in deciding this dispute and making use of your understanding of precedent, statutory interpretation and custom, write the majority opinion.

You must answer two of the next three questions (each question is worth 25% of the final grade).

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<sup>3</sup> CAP 25, Section 8 states:

“The jurisdiction vested in the [Supreme] Court shall, as regards practice and procedure, be exercised in the manner provided by this Act and rules of court:

Provided that if this Act or rules of court do not make provision for any particular point of practice and procedure, then the practice and procedure of the Court shall be-

...(ii) in relation to civil matters, as nearly as may be in accordance with the law and practice for the time being observed in the Court of Appeal in England.”

<sup>4</sup> The Supreme Court of Zambia held:

“This court, being the final court in the land, adopts the practice of the House of Lords in England as set out by Lord Gardner in the Note reported at (1966) 3 ALL ER 77. Lord Reid puts the position in this way in Knulier v. DPP at p. 903:

‘I have said more than once in recent cases that our change in practice no longer regarding previous decisions of this House as absolutely binding does not mean that whenever we think that a previous decision was wrong we should reverse it. In the general interest of certainty in the law we must be sure that there is some very good reason before we so act.’”

<sup>5</sup> The Supreme Court held:

“Put simplistically in order to have certainty in the law decisions of courts should be consistent and should not be so readily changeable as to make it uncertain at any given time what the law is on a given issue. In order to uphold this principle therefore past decisions should not be exploded for the sole reason that they are wrong. Courts should stand by their decisions even if they are erroneous unless there be a sufficiently strong reason requiring that such decisions should be overruled. As this Court held in Kasote v. The People

‘The Supreme Court being the final court in Zambia adopts the practice of the House of Lords in England concerning previous decisions of its own and will decide first whether in its view the previous case was wrongly decided and secondly, if so whether there is a sufficiently good reason to decline to follow it.’”

2. “Self-creation through labour [is the] primary factor in history and ideas and concepts - political, philosophical, or religious - through which men interpret this activity [are] secondary.”  
- McLellan, Marx (1975).

“[D]o not preach morality at all.”  
- K. Marx, F. Engels, The German Ideology.

“Inscribe on the banners: from each according to his ability, to each according to his needs.”  
- K. Marx, Critique of Gotha Programme.

Critically discuss and analyse Marxist legal theory making use of the above three quotations. Include in your response a thorough understanding of Marxist views of the law, the state, morality and justice.

3. On 31st August, 1998, President Frederick Chiluba issued the following directive, with immediate effect, to all Ministers of Government in accordance with his powers under Part IV, Sections 46(1)<sup>6</sup> and (3)<sup>7</sup> of the Constitution of Zambia (as amended 1996):

I, Frederick Chiluba, as President of the Republic of Zambia and in accordance with my powers therein, am cognizant of and deeply saddened by the invidious effects of past and present gender inequality and *de facto* discrimination suffered by women in Zambia. In order that Zambia may right her wrongs and achieve justice, I do hereby declare and direct all Ministers of Government to take affirmative action towards eradicating sexism and gender inequality in all government employment practices. To this end, I do hereby declare and direct all said Ministers to consider gender as a factor in hiring practices for purposes of determining those qualified for employment, thus, by the year 2005, the work force in the Government of Zambia shall be comprised of 51% women.

Critically analyse and discuss including relevant case law whether justice will be achieved through the corrective method ordered by the President in this directive.

4. Alfred Zulu, a heterosexual and President of ZIMT, along with 10 other individuals who are heterosexual, homosexual and/or bisexual, have filed an application for registration of their organisation, the Zambia Gay and Lesbian

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<sup>6</sup> Section 46(1) states: “There shall be such Ministers as may be appointed by the President.”

<sup>7</sup> Section 46(3) states: “A Minister shall be responsible, under the directions of the President, for such business of the Government including the administration of any Ministry or Department of Government as the President may assign to such Minister.”

Association (ZamGALA) with the Registrar of Societies in accordance with section 6, Societies Act, CAP 119, The Laws of Zambia (1995).

The Constitution of ZamGALA filed with the application for registration reads:

“The Zambia Gay and Lesbian Association (ZamGALA) is an organisation of individuals who support and defend the civil and human rights of sexual minorities in Zambia. The organisation, in compliance with any and all laws of Zambia, seeks to:

- disseminate information on issues confronting sexual minorities;
- provide counseling to members of the organisation as well as the community-at-large;
- raise funds for economic support of sexual minorities displaced by discrimination in our society; and
- end all forms of heterosexist discrimination so as to achieve justice and equality under the law for everyone regardless of sexual orientation.”

As the Registrar of Societies, you must decide whether or not this organisation can be registered as a society in Zambia pursuant to sections (8)<sup>8</sup> and (9)<sup>9</sup> of the Act. You are aware that this decision must be just as it will have a controlling effect upon the liberty of Zambian citizens. Determine the outcome of ZamGALA’s application for registration as a society. Include in your response the reasons for your decision and how justice will be achieved in light of the theories of justice espoused by H.L.A. Hart, Lord Devlin and John Rawls.

GOOD LUCK!!!

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<sup>8</sup> Section 8 states:

“The Registrar may refuse to register and shall not exempt from registration any society where it appears to him that such society has among its objects, or is likely to pursue or to be used for, any unlawful purpose or for any purpose prejudicial to or incompatible with the peace, welfare or good order in Zambia, or that the interests of the peace, welfare or good order in Zambia would otherwise be likely to suffer prejudice by reason of the registration, or exemption from registration of such society.”

<sup>9</sup> Section 9 states:

“The Registrar shall refuse to register and shall not exempt from registration any society where-

(a) it appears to him that the terms of the constitution or rules of such society are in any respect repugnant to or inconsistent with the provisions of any law for the time being in force in Zambia: ”

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THE UNIVERSITY OF ZAMBIA  
UNIVERSITY FIRST SEMESTER DEF/SUPP EXAMINATIONS - APRIL 199

L. 421

PRINCIPLES OF THE LAW OF BUSINESS ASSOCIATION

TIME: THREE (3) HOURS

INSTRUCTIONS: ANSWER FOUR (4) QUESTIONS

1. Discuss the powers of the Registra of Societies in relation to democratic control of a Cooperative Society by its member
2. Analyse the mechanisms put in place for the control of statutory corporations and the effectiveness of these mechanisms.
3. Discuss how the Cooperative Society in operation mitigates the ills of capitalism.
4. Discuss how a Partnership is wound up including how distribution of assets is done.
5. Analyse the differences in carrying out business through a Cooperative Society and through a Partnership.
6. A Partnership can only be liable for Partnership debts. Discuss.

END OF EXAMINATION

# **THE UNIVERSITY OF ZAMBIA**

**END OF SECOND SEMESTER EXAMINATION - COMPANY LAW (L422)**

**TIME: THREE (3) HOURS (PLUS 5 MINUTES TO READ THE PAPER**

**ANSWER ANY FOUR QUESTIONS**

**STUDENTS MAY CONSULT UNMARKED COPIES OF ANY RELEVANT  
STATUTES.**

1. BRIEFLY DEFINE THE FIDUCIARY DUTIES OF DIRECTORS IN A COMPANY LIMITED BY SHARES.
2. ELABORATE ON THE VIEW THAT A PUBLIC COMPANY LIMITED BY SHARES IS THE MOST IMPORTANT DEVICE DESIGNED TO FACILITATE THE RAISING OF CAPITAL FROM THE PUBLIC AND ENTRUSTING IT TO MANAGERS THEREBY ENABLING THE PUBLIC TO SHARE IN THE PROFITS OF THE ENTERPRISE.
3. THE CONCEPTS OF LIFTING THE VEIL AND ULTRA VIRES ARE AKIN TO EACH OTHER. DISCUSS THESE CONCEPTS WHILE CLEARLY DISTINGUISHING BETWEEN THEM.
4. COMPARE AND CONTRAST THE TWO METHODS OF VOLUNTARY WINDING UP OF THE COMPANY.
5. BRIEFLY DISCUSS EACH OF THE FOLLOWING TERMS:-
  - A) A DEBENTURE
  - B) A PROMOTER
  - C) A STOCK EXCHANGE
6. DEFINE A SPECIAL RESOLUTION AND IDENTIFY AND DISCUSS ITS VARIOUS FUNCTIONS.

**END OF EXAMINATIONS.**

**UNIVERSITY OF ZAMBIA**

**SCHOOL OF LAW**

**DEFERRED AND SUPPLEMENTARY EXAMINATIONS**

**L422**

**INSTRUCTIONS: ANSWER ANY FOUR QUESTIONS**

**TIME: THREE HOURS**

1. Outline and discuss the differences between a company limited by shares and a partnership.
2. Strictly one cannot be an agent for a principal not yet in existence. To what extent if any has this been altered by S.24 of the Companies Act, Act No. 26 of 1994.
3. Write short notes on the following:
  - (i) redeemable preference shares
  - (ii) share warrant
  - (iii) share certificate
4. To what extent if any are sections 22 and 24 of the Companies Act of assistance to members of the public who may have dealings with companies incorporated in Zambia under the Companies Act.
5. What are three types of resolutions that may be passed by a company in a general meeting? How do they differ procedurally and with regard to the type of business conducted?
6. Briefly define the fiduciary duties of Directors in a company limited by shares.
7. Briefly outline the statutory provisions which a public company limited by shares under the companies Act must comply with for it to be incorporated.

**END OF EXAMINATION**

THE UNIVERSITY OF ZAMBIA

UNIVERSITY FIRST SEMESTER DEF/SUPP EXAMINATIONS - APRIL 1998

L 451

INTERNATIONAL TRADE LAW

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

INSTRUCTIONS:

1. CANDIDATES MAY BRING INTO THE EXAMINATION ROOM THE GENERAL AGREEMENT ON TARIFFS (GATT).
  2. CANDIDATES ARE REQUIRED TO ANSWER ANY FOUR QUESTIONS.
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1. The most widely debated principle in the GATT is the Most-Favoured Nation Clause. The general effect of this principle is "the maintenance at all times of fundamental equality without discrimination among all the countries concerned".

Many commentators have expressed the view that no matter how valid this principle may be in trade relations among equals, it is neither an acceptable nor adequate concept for governing trade between countries with unequal economic power.

Comment on this view.

2. Analyse the most important features of any two of the following:
  - (a) International Commodity Agreements
  - (b) Producers' Associations
  - (c) The United Nations Common Fund
3. Discuss how the GATT seeks to control the use of quantitative Restrictions by its member countries.
4. Countries highly dependant on exports of primary commodities face special problems on international commodity markets.

Discuss

- (a) the special problems faced by these countries
- (b) measures that have been undertaken by the international community to solve these problems.



5. TANGO has just concluded a trade agreement with ZAMBEZIA in which the two nations agree to accord each other duty free imports. TANGO is a member of GATT but ZAMBEZIA is not. ZAMBIA, a member of the GATT asks TANGO to extend similar terms on Zambian exports to TANGO as those accorded to products originating from ZAMBEZIA. TANGO refuses pointing out that ZAMBEZIA is a newly independent state which needs to be assisted in a practical manner and further that ZAMBEZIA is not a member of GATT. Zambia has now taken the matter to GATT contracting parties, saying that as a result of the TANGO-ZAMBEZIA trade agreement, Zambian exports to TANGO have suffered a reduction.

Discuss the issues involved and the likely result.

6. Discuss how the GATT seeks to deal with
- (a) the problem of subsidies, and
  - (b) administrative barriers to trade.
7. Discuss fully the benefits that ACP countries stand to gain in their association with the EEC under the Lome Convention.

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END OF EXAMINATION

**THE UNIVERSITY OF ZAMBIA**

**UNIVERSITY SECOND SEMESTER EXAMINATIONS - AUGUST 1998**

**L452 INTERNATIONAL INVESTMENT LAW**

**TIME: THREE (3) HOURS PLUS FIVE MINUTES TO READ THE QUESTIONS**

**INSTRUCTIONS: STUDENTS MUST ANSWER FOUR (4) QUESTIONS INCLUDING QUESTION ONE (1) WHICH IS COMPULSORY. STUDENTS MAY CONSULT CLEAN COPIES OF ANY STATUTES OR ARTICLES OF AGREEMENT/ASSOCIATION OF THE IBRD, IMF AND IDA**

**QUESTION ONE (COMPULSORY)**

Substantial markets, food infrastructure and communications, as well as effective investment codes, are some of the key factors for attracting foreign investors. Zambia's privatisation and liberalisation processes have sought to make Zambia as attractive as possible to foreign investors. In fact law reforms have included amendments to the land tenure laws to enable investors to hold title, liberalising the currency market and rolling back the state from industry, trade and commerce. Many people, however, argue that these reforms have not attracted substantial or real investment. In their opinion, what has taken place is a process of disinvestment which is turning Zambia into a market for investments taking place in other parts of the sub-region and further afield. Do you agree? Explain in the context of regional sources of finance and the aspirations of the New International Economic Order and the Charter of Economic Rights and Duties of States? How can we strengthen Zambia's position as well as investment opportunities? (25 marks)

**QUESTION TWO**

Write notes on the following:

- (a) Institutional theory of investment.
  - (b) The H.I.P.C Initiative.
  - (c) The New York Convention of 1958.
- (15 marks)

### **QUESTION THREE**

You are the new legal adviser to the Minister of Finance. She is in the process of preparing the public investment programme for 1999. She would like to ensure that the sourcing and management of external sources of funds for this programme are in full compliance with the relevant legislation in Zambia. Prepare a brief review of the relevant laws explaining their importance or justification. (15 marks)

### **QUESTION FOUR**

Compare and contrast the funding provided by the IMF and the IBRD for development purposes. To what extent do these institutions exceed their legal mandate and begin to interfere with the political governance of a member country? You may use Zambia's relationship with these institutions, to illustrate your answer. (15 marks)

### **QUESTION FIVE**

Shoprite Checkers, which has been operational in Zambia for three years now, has decided to open a branch in every rural district headquarters. According to the new Director of the Investment Centre, they are not entitled to any incentives or other benefits because not only are they not a rural enterprise, but they are merely a commercial outlet for South African goods. Make a detailed assessment of the Investment Act of 1993 and indicate whether the Director's response is legally justifiable. (15 marks)

### **QUESTION SIX**

James Banda is a very enterprising employee of Business Machine Services Company Limited which designs computer software. In his spare time, such as during the lunch hour, Banda likes to work on his own projects. One day during the lunch hour, he comes up with a programme which can ensure that all computers will be able to retain memory beyond the year 2000. The programme is of interest to all software manufacturers worldwide and worth billions of Kwacha. Banda rushes off to the Ministry of Commerce and registers his invention and offers to sell it to Business Machine Services Company Limited at the market price. The company claims that the invention belongs to them since Banda was using company computers at the time of his invention. Advise Banda. (15 marks)

### **QUESTION SEVEN**

"The Convention on the Settlement of Investment Disputes provides a guarantee to foreign investors that any disputes arising in Zambia will be determined in a neutral forum". Discuss within the context of international principles governing investment dispute settlement as well as applicable Zambian legislation. (15 marks).

**END OF EXAMINATION**

**THE UNIVERSITY OF ZAMBIA**  
**UNIVERSITY EXAMINATIONS**  
**INTRODUCTION TO INTELLECTUAL PROPERTY AND**  
**COMPETITION LAW**

**L461**

**TIME:        THREE HOURS AND TEN MINUTES TO READ THE**  
**QUESTIONS**

**INSTRUCTIONS:        ANSWER QUESTION ONE AND THREE**  
**OTHERS**

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1.     “..... A question may be asked how does such a legally created Monopolistic exclusive property right fit in with the free market ideal of perfect    imperfection....” Perfect per Jon Holyoak and Paul Torremans Intellectual Property Law Butterworths London 1995.  
  
Discuss this statement.
2.     “ ..... Intellectual property rights play an important role in the economic life in this age of technological innovation. Their existence can be justified on an economic basis with other factors offering further support ....” Per Jon Holyoak and Paul Torremans.  
Discuss the validity or otherwise of this statement.
3.     Write short notes on the following
  - (i)    Service Marks

- (ii) Moral Rights
  - (iii) Patentability
  - (iv) Similarity of Trademarks
4.
    - (a) Discuss the importance of the element of distinctiveness in the context of trade mark law.
    - (b) Discuss the importance of the obligation to use a trade mark.
  5.
    - (a) Patrick Chileshe recently completed building a very beautiful residential house. During the course of a visit at one of the suppliers of his building materials he noticed a bundle of bid documents displaying his recently completed building on <sup>the</sup> cover of the bid documents. Infuriated by this discovery Patrick Chileshe decides to approach you for professional advice. Please advise.
    - (b) Christine Phiri, a member of staff in the History Department at UNZA has recently completed her Doctor of Philosophy programme at the University of Zambia in History. In view of her well researched and documented thesis, she has decided to approach a publishing house to publish the same for sale to members of the public. However, she is uncertain about the legality of her intended move. She decides to approach you for professional advice. Please advise.
  6.
    - (a) Describe the remedies that are available in Intellectual Property Law for infringement.
    - (b) What are the peculiar features or aspects of these remedies.

**END OF EXAMINATION**