

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS OCT/NOV 1995

SCHOOL OF LAW

1. Certificate in Law -----	L 110
2. Criminal Law -----	L 140
3. Constitutional Law -----	L 150.
4. Contracts -----	L 220
5. Law of Torts -----	L 230
6. Law of Tort Deferred -----	L 230
7. Criminal Law -----	L 240
8. Criminal Law Deferred -----	L 240
9. Constitutional Law -----	L 250
10. Constitutional Law Deferred -----	L 250
11. Property Law and Successful -----	L 320
12. Commercial Law -----	605584 L 330
13. Administrative Law -----	L 340
14. Administrative Law Deferred -----	L 340
15. Family Law -----	L 350
16. International Law deferred -----	L 430
17. The Law of Business Associates -----	L 420
18. Jurisprudence -----	L 410
19. International Trade and Intelligent Law -----	L 450
20. Industrial Law -----	L 480
21. Taxation -----	L 490
22. Human Rights Law -----	L 630

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - OCTOBER/NOVEMBER 1995

L 110

CERTIFICATE IN LAW

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

ANSWER: ANY FOUR (4) QUESTIONS

1. The adversary or accusatorial system of justice is enshrined in the Constitution of Zambia and under this system, the Judge is expected to behave as an Umpire of a game to ensure that the game is played according to the rules. He is not expected to take an active part in the calling and questioning of witnesses.

Given Zambia's state of economic and social development do you consider this system to be suitable and practical for Zambia?

2. In Zambia African Customary Law regulates the rights and liabilities of most Zambians living in rural and urban areas respectively, particularly in matters related to marriage, divorce, inheritance and land holding.

However under Zambian Statutory Law African Customary Law can only be enforced by Courts of Law under certain circumstances.

Discuss the circumstances under which African Customary Law is enforceable and when it cannot be enforced.

3. The subject of judicial independence is always under discussion particularly in times of political crisis. It is argued that without judicial independence democracy cannot thrive. You have just returned to your station and your colleagues wish to be appraised on the provisions of the law which deal with judicial independence.

Discuss, indicating whether or not in your opinion judicial independence exists in Zambia.

4. English Law is enforceable in the Courts of Zambia thirty-one years after independence. Outline the legislation which allows this state of affairs to continue and the reasons why this is so.

5. The system or doctrine of judicial precedent is used in the Courts of Zambia. What does this doctrine entail and what are the arguments given in its favour?
 6. What is delegated legislation?
-

END OF EXAMINATION

5. The system or doctrine of judicial precedent is used in the Courts of Zambia. What does this doctrine entail and what are the arguments given in its favour?
 6. What is delegated legislation?
-

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - OCTOBER/NOVEMBER 1995

L 140

CRIMINAL LAW

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

ANSWER:

QUESTION NUMBER ONE IS COMPULSORY IN ADDITION ANSWER ANY OTHER THREE (3) QUESTIONS.

THE PENAL STATUTES ARE PERMITTED IN THE EXAMINATION HALL

1. (a) If a police officer does not arrest a person or the offence is the one which he/she cannot do without a warrant of arrest. How can such a charge be instituted before court? Give appropriate sections of the Criminal Procedure Code.

(b) What are the limitations of magistrates on imposing imprisonment terms:
 - (i) Magistrate Class II
 - (ii) Resident Magistrate; and
 - (iii) Magistrate Class I
2. Describe carefully the facts and decision of the case of The People V Kabika, (1973) ZR 410 and show its importance to the law of assaults, especially Section 250 (b) of the Penal Code.
3. "In Modern Societies criminals get involved in criminal activities due to social and economic hardships which should be taken into consideration when imposing a sentence on a convicted person, as a way of helping the society and the convict."

In terms of theories of punishment and sentencing what does the above statement conceive to be the purpose of punishment for a crime, and which penalties under the Penal Code are associated with this theory?
4. Choongo died of neglect and starvation in the house of Mr. Banda, an uncle to Choongo. In what circumstances can Banda be successfully prosecuted, and what criminal offences if any? Would the offence differ if Choongo was above 15 years old?

5. Tembo was playing a guitar at a party and there came his friend Mbewe who was shouting that Tembo did not know how to play the guitar. Tembo then pushed Mbewe who fell on a stool that was lying around and died. You are asked to give a legal opinion as to what would be an appropriate charge on which Tembo is to be prosecuted.
6. What is the actus reus of theft? Discuss with decided cases and Sections of the Penal Code.
7. Mr. B. Bwalya was suffering from gonorrhoea for about three (3) weeks and did not seek for medical treatment. One day while he was still suffering from the same disease, decided to visit Joy, his girlfriend living in Matero. He incited Joy to have sexual intercourse with him without disclosing his sickness to her. Joy consented to have such a relationship. Thereafter Joy contracted the said disease and medical examination confirmed that it was a recent infection of on or about the time when she had sexual intercourse with Bwalya.

The Police intend to charge Bwalya with assault occasioning actual bodily harm or unlawful wounding. They ask you to give them a legal opinion whether these are appropriate charges.

Can you give your legal advice together with reasons for or against, and support your advice with decided cases.

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA
UNIVERSITY EXAMINATIONS - OCTOBER/NOVEMBER 1995

L150

CONSTITUTIONAL LAW

TIME: THREE HOURS (PLUS 10 MINUTES TO READ THE QUESTION
ANSWER: FOUR (4) QUESTIONS. ANSWER ONE QUESTION FROM EACH
 OF THE THREE SECTIONS.
NOTE: ONLY UNMARKED STATUTES MAY BE BROUGHT INTO THE
 EXAMINATION ROOM

1. Clearly, the United States Constitution's Bill of Rights and subsequent amendments to the constitution protect and guarantee certain individual and human rights by prohibiting government infringement (and in limited cases, private infringement) of these rights. The United States Constitution, however, also creates certain institutional safeguards of these rights, i.e., Federalism, separation of powers, balance of powers and judicial review.

Discuss these four constitutional concepts and explain how each serves to ensure individual and human rights in the American system.

2. (a) Briefly outline some of the differences between the Northern Rhodesia Constitutional order of 1911 and that of 1924.

 (b) Briefly discuss the objectives of the Constitutional changes of 1959 and the mechanisms embodied within the constitutional arrangement designed to achieve these objectives.
3. Discuss critically the system of representative democracy during one-party rule in Zambia. How democratic and participatory was it from both the legal and practical point of view?

SECTION B

4. The Zambia Breweries plant in the industrial area of Lusaka is raided by a gang of four masked bandits who get away with K20 million Kwacha and 50 crates of Mosi. The police arrive at the plant after 30 minutes but they find that the bandits have vanished. Two days later, the police acting on a tip from a member of the public, raid a house in Chaisa Township. They break down the door around midnight and pick up Chezelani whom they detain to "help with investigations." While in detention Chezelani is denied food, interrogated continuously for three days and told that if he does not co-operate with the police his wife and daughter will disappear. After three days he confesses to having taken part in the robbery. He leads the police to garden township where they recover K5 million and 20 crates of Mosi.

Chezelani appears in court for the 1st time after two weeks in police custody. He is denied bail and his trial lasts three and half years because of frequent adjournments at the request of the prosecution. He is not represented by Counsel because he is too poor to afford one and the Legal Aid Department cannot spare one for him. The Court convicts him of aggravated robbery on the basis of his confession to the police, and sentences him to 2.5 years imprisonment. He comes to you for advice. Advise him.

5. Following the arrest of a popular opposition politician riots break out in various parts of the country. The President declares a state of emergency under Article 30 of the Constitution. He then promulgates emergency regulations under the Emergency Powers Act which empower him, inter alia, to detain people without trial. He proceeds to detain a number of people. Chongwe is detained for allegedly dealing in rhino horns and failing to pay Income Tax to the ZRA.

Malata is detained for inciting fellow students "to hate the government by accusing it of incompetence and corruption."

The two detainees approach you for legal advice. Advise them.

6. With the aid of relevant authorities discuss the role and importance of freedom of expression in a democracy. To what extent is freedom of expression guaranteed by the law in Zambia?

SECTION C

7. Consider the Mwanakatwe Draft Constitution and the government's response thereto vis-a-vis:
 - (a) the status, powers and functions of independent investigative commissions.
 - (b) the Parliamentary Ombudsman.
8. The government justifies its rejection of the proposed Draft Bill of Rights on the ground that it adds nothing of substance to the 1991 Bill of Rights and that it amounts to nothing but a mere reformulation and reorganization of existing rights. Discuss.

END OF EXAMINATION

UNIVERSITY OF ZAMBIA

UNIVERSITY DEFERRED EXAMINATIONS JANUARY/FEBRUARY 1995

L 220

THE LAW OF CONTRACT

INSTRUCTIONS:

TIME: 3 HOURS

ANSWER ANY FOUR QUESTIONS

THE STUDENT HAS FIVE MINUTES TO READ THE QUESTION PAPER

Q 1. An advertisement appeared in the Weekly Post of
10th January, 1995 as follows:

Car for sale. Price K1.7 million.

Please phone Chileshe at 260226 Lusaka.

Tembo phoned Chileshe and expressed willingness to buy the car. Chileshe invited him to go and inspect the car at her home. Tembo went and inspected the car on 12th January 1995. He was satisfied with the condition of the car. However, he only had K1.5 million. He told Chileshe that she could consider the car sold if she reduced it to K1.5 million. However, Chileshe said she was already selling it cheaply as it was and could therefore not reduce the price. She, however, promised to hold it until 18th January 1995 to enable Tembo raise the balance.

The following day Tembo sees a similar car in Sundat Showroom priced at K3 million. He decided to travel to the Copperbelt at once to recover a debt of K400,000 from Katele. Katele manages to pay him K250,000 on the evening of 17th January 1995. Tembo tries to phone Chileshe the whole morning of the 18th January. However, the line is constantly engaged. He therefore decides to send a telegram to Chileshe at 12.30 hours which states;

" It's a deal. I have secured the full

K1.7 million and will pay you tomorrow morning."

However the Post Office only deliver this message at 9.00 hours the next morning. Meanwhile Mutale who had responded to the advertisement after Tembo, had been anxiously waiting for Tembo to fail to raise the money. At 8.30 hours Mutale had taken K1.7 million to Chileshe and paid for the car. Tembo arrives at Chileshe's premises at 9.05 hours just in time to see Mutale driving the car away.

Tembo wants to know whether he can bring an action for breach of contract against Chileshe. Advise Tembo. (25 marks)

2. James is a Bank Manager at Grindlays Bank. His cousin Mwape knows that he tends to be careless when under pressure or in a hurry. Mwape is aware that James is rushing to a Board Meeting when he asks him whether he can be Mwape's referee for a job application at Prudence Bank. James agrees. Mwape thrusts a form in front of James and asks him to sign in the space provided. James notices that it is headed Prudence Bank and signs. It turns out that the form is for a loan application for K5 million kwacha and James signed in the space for the guarantor. Mwape uses the loan to buy himself a one way ticket to London and some foreign currency. He has no intentions of coming back. The Bank seeks to recover the money from James.

- (a) Advise James (13 marks)
- (b) Would your answer be different if Mwape had instead gotten his illiterate friend Mayase to sign the form? (12 marks)

Q 3. Amanda owns a bakery and bakes bread on the premises. She sells approximately 2000 loaves of bread a week. Her customers buy the bread mainly as a breakfast food and keep asking her to sell fresh milk also. Amanda decides to venture into selling fresh milk for a year on a trial basis. She decides to enter into a contract with Belinda a dairy farmer who produces the rich and creamy renowned garneton milk.

The contract is in the following terms:

QUALITY: Pure fresh garneton milk

QUANTITY: 1000 litres per week in crates of 20 half litre packets.

DELIVERY: Every Monday morning

PRICE: K200 per litre

CONTRACT PERIOD: 1st January 1995 - 31st December 1995

1000 litres of garneton milk is delivered every Monday in January 1995. Amanda's customers are very pleased. The milk which Amanda resells for K200 per half litre packet is always sold out. Because of the availability of milk, Amanda records an increase in her bread sales to 4000 loaves a week. Amanda is considering increasing her milk order. However, February is not so happy. In the second week of February no milk is delivered at all. In the first week of March, half the milk delivered is Dairy Produce milk and for the whole month of April all the milk delivered is sour. Amanda sells it as Mabisi for K100 per packet although if she had bothered to churn it into cheese she would have been able to sell it for the equivalent of K200 per packet. The first Monday in May is the last straw when Belinda delivers the milk in milk churns instead of packets. Amanda sends the milk back with a message that no more milk should be delivered as the contract was at an end. Advise parties on all relevant matters including the quantum of damages if any. (25 marks)

Q 4. Consider whether in any of these situations A has a cause of action.

- (a) A finds a stray cow which he takes to his farm. He cannot immediately trace its owner so he keeps it and feeds it for 20 days. His total expense for looking after the cow is K10,000. B the owner of the cow who has been looking for it eventually finds it with A. A presents B with the K10,000 bill. However, B simply walks away with the cow thanking A profusely for his generosity. ($6\frac{1}{4}$ marks)
- (b) B stole money belonging to A. B used the money to buy a car for C. B died without leaving any assets behind. C thereafter promised to turn over the car to A but has now changed his mind stating that he has no legal obligations towards A. ($6\frac{1}{4}$ marks)
- (c) Mrs. A was accused by her employer B of having embezzled some money belonging to B. A fearing that his wife might be involved in a scandalous trial agreed to pay the money alleged to have been embezzled by his wife to B. It was subsequently proved that it was C another employee of B that stole the money. B has refused to refund the money to A. ($6\frac{1}{2}$ marks)
- (d) A common wall divided the properties of both A and B. The wall was threatening to fall down. So A went ahead and demolished it and erected a new one at the cost of K20,000. B promised to give him K10,000 for his work but has now refused to do so. ($6\frac{1}{4}$ marks)

- Q 5. Write short notes on the following:
- (a) Distinction between agreement and contract
 - (b) Discharge of contracts
 - (c) The importance of the principle of intention to create legal relations
 - (d) Important invalidaliting or vitiating events in the law of contract. $(6\frac{1}{4}$ marks each)
- Q 6. Certain categories of persons are by law incapable, to some degree, of binding themselves in contract. By reference to at least three such categories, discuss the scope of this incapacity. (25 marks)
- Q 7. It is said that freedom of contract is a fallacy. Discuss.
(25 MARK)
-

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - OCTOBER/NOVEMBER 1995

L 220

CONTRACTS

TIME: THREE (3) HOURS

INSTRUCTIONS:

1. Read the questions carefully and plan out your answers before you begin writing. The times listed next to each question are merely suggestions as to how you should budget your time.
 2. Answer all parts of Questions No. 1 and No. 2. For Question No. 3, answer either Part (A) or Part (B).
 3. Assume only those facts set forth in the hypotheticals. If in a particular sub-part to a question you are asked to assume certain facts, only assume those facts for that particular sub-part to the question.
-

Q1. (60 MINUTES)

Maxwell is an up-and-coming wood sculptor living in Lusaka. Andre is a distributor of Zambian art who meets Maxwell at a trade show in Lusaka on November 1. Andre is very impressed with Maxwell's sculptures and he tells Maxwell that he would like to be the sole distributor of his sculptures in and around Lusaka for the next 10 years. Andre explains to Maxwell that the way he conducts business is that for each sale he makes, he takes a 10 percent commission. Maxwell accepts Andre's offer to sell his sculptures, but only on the condition that he is able to cancel the agreement at any time. Maxwell and Andre formalize their agreement in a Distributorship Agreement and include a clause in the agreement allowing Maxwell to withdraw from the contract at any time.

Andre immediately begins soliciting sales of Maxwell's sculptures by visiting a number of art shops around Lusaka and showing the proprietors of those shops pictures of Maxwell's sculptures. One month later, on December 1, Maxwell calls Andre's office and leaves a message with his secretary stating that he is discouraged by the fact that Andre has failed to sell any of his sculptures and has decided to exercise his right to terminate the Distributorship Agreement. The following day, Andre learns of Maxwell's message but decides that Maxwell cannot be serious and decides that he if he can just sell one of Maxwell's sculptures,

Maxwell will change his mind about terminating the Distributorship Agreement. That afternoon, Andre visits Barbara's Artifacts, located in the Safari Hotel in Lusaka, and shows the shop's owner, Barbara, the pictures of Maxwell's sculptures. Barbara tells Andre that Maxwell's work is very unique and she wishes to purchase ten of the sculptures and will pay the quoted prices. That day, Andre enters into a contract (the "Sales Agreement") with Barbara, on behalf of Maxwell, for the sale of the ten sculptures. Just before Barbara and Andre sign the Sales Agreement, Barbara questions whether Andre has the authority to sign such an agreement on behalf of Maxwell and Andre assures her that he does. According to the Sales Agreement, Andre promises to deliver the ten sculptures to Barbara within 5 days and Barbara promises to pay Andre the full amounts upon delivery.

After leaving Barbara's shop, Andre stops by Maxwell's studio and excitedly informs him of the sales to Barbara. Maxwell is enraged and says to Andre, "You had no right to sell my sculptures. I cancelled your authority to do so on December 1 and I am, therefore, not bound by any contract you have entered into with Barbara." Maxwell refuses to deliver the sculptures to Barbara.

- A) Assume that Barbara wishes to sue Andre and comes to your law office seeking your representation in such a lawsuit. Advise Barbara as to what cause(s) of action she would have against Andre, her chances of success for each cause of action, and what remedies are available to her for each cause of action.
- B) Assume that Barbara also wishes to sue Maxwell for breach of the Sales Agreement. Will she be successful in such a lawsuit?
- C) Assume that Maxwell, upon learning of the sales of ten of his sculptures to Barbara, decides to ratify the Sales Agreement. Furthermore, assume that when Andre visits Barbara on December 2, he does not disclose that the sculptures were done by Maxwell but leads Barbara to believe that the sculptures are his own. Finally, assume that Maxwell delivers the sculptures to Andre but Andre refuses to deliver them to Barbara because he has gotten a better offer from someone else. Discuss the effect of Maxwell's ratification of the Sales Agreement and whether Barbara can successfully sue both Andre and Maxwell for breach of the Sales Agreement.
- D) Assume the same facts set forth in (C) and further assume that Barbara only chooses to sue Maxwell for breach of the Sales Agreement. Can she successfully do so even though Maxwell has already delivered the sculptures to Andre?

- E) Assume that Maxwell never terminates the Distributorship Agreement and just before Andre enters into the Sales Agreement with Barbara, Maxwell becomes insane and Andre knows of this unfortunate fact. Assume, however, that Barbara has no knowledge that Maxwell is insane when she signs the Sales Agreement. Is Maxwell liable to Barbara for breach of the Sales Agreement?
- F) Assuming the same facts set forth in (E), discuss and analyze whether Maxwell will be liable to Andre for the commission on the sales of the ten sculptures, as required by the Distributorship Agreement.

Q2. (60 MINUTES)

Luis owns a large commercial building (the "Building") on Cairo Road in Lusaka. The Building has remained vacant for a number of years. Thomas, an entrepreneur, is interested in leasing the Building, opening a restaurant and brewing beer on the premises which he will serve in the restaurant. Luis and Thomas enter into a Lease Agreement on January 1, 1996 which provides, among other things, that: (i) the term of the Lease Agreement will be for 5 years, beginning on January 1, 1996; (ii) the rent shall be KW 20 million per year, payable in quarterly installment of KW 5 million on the first day of January, April, July and October of each year; (iii) Luis, as landlord, shall be responsible for all ordinary wear and tear on the Building.

Thomas enters the Building on January 1, 1996, pays the first quarterly rental payment and begins renovations. On February 1, 1996, Thomas opens for business and his home-brewed beer is a big success with his patrons. Unknown to Thomas, however, Zambian law requires that any person brewing beer on a commercial premises must have a license issued by the Ministry of Alcohol. Zambian law declares that it shall be illegal for anyone to brew beer on a commercial premises without a license. Thomas never obtained a license.

On March 1, 1996, Luis sells the Building to Alfred and their Sales Agreement provides that Luis' rights and liabilities under the Lease Agreement shall be assigned to Alfred (hereinafter the "Assignment").

On April 1, 1996, Thomas, who has no notice of the sale of the Building or the Assignment, sends a check to Luis in the amount of KW 2.5 million with a letter stating that he is having financial difficulties and can, therefore, only pay half of the April rental payment at this time. Thomas states, however, that he will pay the other half of the April payment as soon as he has the financial resources to do so. In his letter, Thomas also requests that Luis fix the roof of the Building which has been leaking for over a month and which is preventing Thomas from serving customers in one section of the restaurant.

Luis never forwards the KW 2.5 million (paid to him by Thomas on April 1) to Alfred. On May 1, Alfred sues Thomas for the full amount of the April rental payment. In his suit against Thomas, Alfred asks the Court to declare that the Lease Agreement is terminated and discharged and requests that the Court award appropriate damages. In defense of Alfred's action, Thomas argues that he owes no money under the Lease Agreement because the Lease Agreement is illegal and therefore, void ab initio. In the alternative, Thomas counterclaims against Alfred and asks the Court to award him damages resulting from the leaking roof which neither Luis or Alfred have repaired.

- A) Discuss and analyze whether Alfred will be successful in his lawsuit against Thomas. Keep in mind the defense of illegality raised by Thomas. Be sure to include in your answer a discussion and analysis of whether the Assignment is valid and, if it is, whether Alfred can obtain a discharge from the Lease Agreement and/or what damages are recoverable by him.
- B) Discuss and analyze whether Thomas will be successful in his counterclaim against Alfred? Can Thomas sue Luis for breach of the Lease Agreement?

Q3. (60 MINUTES)

Answer either Part A or Part B.

PART A

In Hadley v. Baxendale (1854), the Court of Exchequer stated that:

"Where two parties have made a contract which one of them has broken, the damages which the other party ought to receive in respect of such breach of contract should be such as may fairly and reasonably be considered either arising naturally, ie., according to the usual course of things, from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties, at the time they made the contract, as the probable result of the breach of it."

Identify and discuss this rule set forth by the Court in Hadley and identify and discuss other instances in the common law of contracts where courts have formulated and applied doctrines or rules under the guise of implementing the supposed intention of the parties. Are the courts, in such cases, really implementing the intention of the parties or are they merely acting independently and imposing a solution that seems reasonable and just? Explain.

PART E

In Tatem Ltd. v. Gamboa (1939), the English Court stated that:

"If the foundation of the contract goes, either by the destruction of the subject-matter or by reason of such long interruption or delay that the performance is really in effect that of a different contract, and the parties have not provided what in that event is to happen, the performance of the contract is to be regarded as frustrated."

Discuss the doctrine of frustration, its operation and effect, and discuss and identify other instances in the common law of contracts where courts have formulated and applied doctrines or rules under the guise of implementing the supposed intention of the parties. Are the courts, in such cases, really implementing the intention of the parties or are they merely acting independently and imposing a solution that seems reasonable and just? Explain.

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - OCTOBER/NOVEMBER 1995

L 230

LAW OF TORTS

TIME: THREE HOURS

INSTRUCTION: ANSWER QUESTION ONE AND ANY THREE OTHERS

- Q1. The Press Association of Zambia (PAZA) have claimed that the Law of Libel in this country prohibits to a greater degree investigative journalism.

With the aid of authorities discuss the extent to which this claim is correct and/or justified.

- Q2. Discuss the liability of D in any three of the following situations:

- (a) P and D were having a boxing match. Infuriated by P's hard blow D hit P hard on the face. P started bleeding from the mouth and he fell flat on the ground. While P was on the ground D gave few more hard blows on his back.

The referee managed to separate the two with some difficulty. P sues D for damages.

- (b) P requested D for a ride in his car. P knew at the time that D was very drunk. Due to the rash and negligent driving of the car an accident took place and P was injured. P sues D to recover damages.

- (c) D submitted an article to the Weekly Post. In the said article he described P as an incompetent Lawyer who was not worth being on the roll of Legal Practitioners.

The day after publication of the said article D retracted the allegation and apologised profusely.

- (d) P was taking a leisurely stroll along the pavements of Cairo Road. Just as he was walking past D's Fancy Boutique, a barrel of water fell on him and injured him as it had slipped from one of D's workmen, who were undertaking renovations to D's Fancy Boutique building.

- Q3. "The Law of Nuisance does not regard trifling inconveniences; everything is to be looked at from a reasonable point of view."

ST HELEN'S SMELTING COMPANY

VS

TIPPING (1863)

Discuss with the aid of decided cases the factors that are taken into account in determining whether or not a nuisance has been committed.

- Q4. Write short notes on any three of the following viz:

- (a) The rule in Rylands and Fletcher
- (b) The Doctrine of Vicarious Liability
- (c) The Defence of Inevitable Accident
- (d) The Remedy of an Injunction

- Q5. (a) Describe and discuss the essentials of the tort of deceit.

- (b) Honourable N Z Muyongwe is the Minister of Finance in the government of the Republic of Zambia. On 22nd August, 1995, he was invited by the Economics Association of Zambia to deliver a lecture on "The state of the Financial Sector in the Economy." During the course of the lecture he was requested by Mr. P Mutangama a managing partner in the firm of PAT MAT Associates to comment on the financial soundness of Kembe Bank Limited where the firm was maintaining an account.

The enquiry, Mr. P. Mutangama informed the audience, was necessitated by the fact that lately it was been rumoured that as a result of the perceived poor performance of Kembe Bank Limited by the Central Bank and the general public, the Bank might be closed.

Honourable N.Z. Muyongwe assured Mr. P. Mutangama, that the Bank was financially sound and that he did not foresee the Bank being closed. As a result of the said assurance, Mr. P. Mutangama decided to continue maintaining the firm's account at Kembe Bank Limited.

On 1st September, 1995, Honourable M.Z. Muyongwe called a press conference at which he announced the closure of Kembe Bank Limited due to its poor performance.

Mr. P. Mutangama infuriated by the turn of events, decides to sue Honourable M.Z. Muyongwe in respect of the assurance made by the Honourable Minister of Finance that Kembe Bank Limited was sound.

With the aid of decided cases advise Mr. P. Mutangama the chances of succeeding in his claim to recover damages from Honourable N.T. Muyongwe.

- Q6. Mr. B. Zulu was employed by Lundazi District Council on 1st November, 1970, as a Senior Administrative Officer. On 1st January, 1995, he was served with notice of retirement. Mr. B. Zulu was entitled to K6,000,000=00 in terminal benefits.

Furthermore, Mr. B. Zulu was according to his conditions of service entitled to free accommodation until after all the dues including repatriation benefits to the place of choice within Zambia were paid to him.

However, due to liquidity problems facing the council, his employer was not able to discharge its indebtedness in a single transaction. Consequently on 1st February, 1995, Mr. B. Zulu was paid a part-payment in the sum of K4 000 000=00.

However on 20th July 1995, and prior to settlement of the balance of K2 000 000=00, Mr. B. Zulu was evicted from the council house and his personal effects were removed from the council house.

Mr. B. Zulu contracted a transporter to transport his personal effects to Lusaka where he had sought alternative accommodation. Unfortunately Mr. B. Zulu did not secure his personal effects properly on the vehicle. As a result his stove and refrigerator were extensively damaged.

Mr. B. Zulu has decided to commence legal proceedings against Lundazi District Council in the High Court at Chipata for the recovery of the following:

- (a) General damages for unlawful eviction
- (b) Special damages in the sum of K850,000=00 in respect of damage to the refrigerator.
- (c) Special damages in the sum of K500,000=00 in respect of the damage to the stove.

With the aid of decided cases advise Mr. B. Zulu the chances of succeeding in his claim to recover the aforementioned damages from Lundazi District Council.

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY DEFERRED EXAMINATIONS - JANUARY/FEBRUARY 1995

L 230

LAW OF TORTS

TIME: THREE HOURS

INSTRUCTION: ANSWER ANY FOUR QUESTIONS OF THE FOLLOWING

- =====
1. Write concise notes on the following supported by appropriate decided cases
 - (a) Doctrine of Res Ipsa Loquitur
 - (b) Vicarious Liability
 - (c) Place of Motive in the Law of Torts

 2. "... The object of a civil inquiry into cause and consequence is to fix liability on some responsible person and to give reparation for damage done. The trial of action for damage is not a scientific inquest into a mixed sequence of phenomena or an historical investigation of the chapter of events. It is a practical inquiry..."

Discuss.

 3. Andrew Simangaliso recently graduated from the faculty of Mass Communication. He was appointed on the staff of Times of Zambia on 2nd January, 1995. Upon being appointed and during his orientation he was advised by the Editor-in-Chief who has been practising journalism the last twenty years that the current legal regime does not permit investigative journalism. Consequently, he advised Andrew Simangaliso to be cautious in the execution of his duties.

Critically analyse the validity or otherwise of the Editor-in-Chief's advice.

4. Samson Banda recently acquired an estate in Matero Area which accommodates several manufacturing concerns. Among the manufacturing concerns is a copper smelting company. The vapours emanating from these works proved injurious to trees located on Samson Banda's estate. Samson Banda approaches you for advice.

What advice would you render in the circumstance.

5. (a) What are the essentials of the tort of deceit.
(b) Mulando, a business lady, receives an order for K10,000,000:00 worth of goods from Muyongwe. Since Mulando is doubtful about Muyongwe's financial standing he telephones Malungo whom she knows had dealings with Muyongwe and asks her if Muyongwe is financially sound. Malungo replies "Muyongwe is all right".

In fact Muyongwe owes Malungo K800,000:00 but Malungo does not realise this as his monthly accounts have not yet been made. Mulando supplies the goods on the strength of Malungo's statements but is never paid for them as Muyongwe is insolvent. Mulando becomes despondent and asks for your legal advice.

Advise her accordingly.

6. "... We think that the true rule of Law is that the person who for his own purposes brings on his lands and collects and keeps there anything likely to do mischief if it escapes, must keep it in at his peril and if he does not do so, is prima facie answerable for all the damage which is the natural consequence of its escape..."

With the aid of authorities discuss.

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - OCTOBER/NOVEMBER 1995

L 240

CRIMINAL LAW

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

ANSWER:

QUESTION NUMBER ONE IS COMPULSORY IN ADDITION ANSWER ANY OTHER THREE (3) QUESTIONS.

THE PENAL STATUTES ARE PERMITTED IN THE EXAMINATION HALL.

1. (a) Tipezenji was brought before Mr. James Banda, a Resident Magistrate charged with murder contrary to Section 200 of the Penal Code, in that she had killed her husband by shooting at him. Mr. Banda read the charge to her and asked her whether she pleaded guilty. Tipezenji admitted the charge and all the facts which were read to her. Mr. J. Banda then found her guilty of murder on her own admission and convicted her. He thereafter sentenced Tipezenji to death.

Tipezenji approaches you for legal advice and she wants you to appeal on her behalf to the High Court against her conviction.

Can you give your grounds of appeal and appropriate Sections of the Criminal Procedure Code, you are relying on.

- (b) Under what circumstances can the High Court or Supreme Court reduce or increase a sentence imposed by a trial court, as provided under Section 353 of Criminal Procedure Code? Please discuss with cases.
2. Describe carefully the facts and decision of the East African Case of R V THUKU, and show its importance to the law relating to provocation.
3. "The pain from punishment must exceed the pleasure obtained from the criminal act, then man's will determine for him the desirability of non-criminal conduct."

Which theory of punishment is reflected and advocated in the above statement? In your discussion please indicate penalties under the Penal Code, you feel are associated with this theory.

4. Mutale, Bwalya and Tembo were on their way home from Kalipinde Night Club and met Peter who was with Judy, his girlfriend coming from the opposite direction.

Mutale, Bwalya and Tembo agreed among themselves to attack Peter and not Judy. They started assaulting Peter who fell down unconscious, and then Tembo ran after Judy. Tembo caught up with Judy and thereafter a forced sexual intercourse against her will.

Peter was left lying there and was later taken to UTH for treatment. He died after a few days and medical evidence attributed the cause of death to the injuries inflicted during the assault.

The police seek your legal advice as they intend to jointly charge them all with murder of Peter and secondly rape of Judy. Consider the criminal liability of all three relating to the charge of murder and that of rape.

5. Dimba one Friday afternoon left his working place earlier than normal and passed through a Bar in town, where he met an old schoolmate. They started drinking beer up to 17:30 hours. He left for home and when he was about 200 metres away from his house, he saw a car parked at his house and Mary his wife was standing by the driver's door. The driver was Ben, her elder brother who had passed by on his way to Kitwe from Monze. Ben without knowing that Dimba was coming drove away and Mary went in the house.

Dimba entered the house and said to Mary, "Who was that man with a car, you have now decided to bring your boyfriend at my house, because I am poor and cannot afford to buy one." Before Mary could reply, Dimba slapped her and kicked her with his shoe. He rushed, in his bedroom to fetch a pistol and failed to get it. He then went in the kitchen and got an iron bar. He hit Mary with the iron bar several times on her body. Thereafter their neighbours stopped the fight. They advised Mary to go to the police who could take her to the hospital. She declined and stated that it was too late and she will do that in the morning. The medical evidence confirmed that if medical attention was sought in the earliest opportunity, she would have survived and died of internal injuries.

Discuss Dimba's criminal liability and any possible defence(s) that could be raised. Use cases to support your arguments.

6. Mbewe was fighting with Phiri, and thereafter, Mbewe picked a spanner and hit Phiri on the head with it. Phiri sustained some injuries.

The police intend to charge Mr. Mbewe with assault occasioning actual bodily harm or unlawful wounding. They ask you to give them a legal opinion whether these are appropriate charges.

Can you give your legal advice together with reasons for or against, and support your advice with decided cases, and Sections of the Penal Code.

7. How do you distinguish Theft by Servant from Theft by Public Servant? Use decided cases and Sections of the Penal Code?

END OF EXAMINATIONS

THE UNIVERSITY OF ZAMBIA

UNIVERSITY DEFERRED EXAMINATIONS - JANUARY/FEBRUARY 1995

L 240

CRIMINAL LAW

TIME: THREE HOURS

INSTRUCTIONS:

Please answer question one which is compulsory plus three other questions. Question 1 carries 40 marks while the other three carry twenty marks each.

The following clean statutes are permitted in the examination room:

Penal Code, Cap. 146
Criminal Procedure Code, Cap. 160
Constitution of Zambia, Cap. 1

=====

- Q1. Outline briefly the various theories of punishment taking care to indicate their positive or negative aspects. Please support your discussion with decided Zambian cases to illustrate the main punishments available under the Penal Code.
- Q2. Define the term assault in the technical sense and compare this definition to that pertaining under Sections 247 and 248 of the Penal Code.
- Q3. Write notes on
- a. R. v. FC (a Juvenile) 2 NRLR 185
 - b. actus reus
 - c. alibi
- Q4. Mens Rea is a very important element of most offences. Define what it is and the different forms that it takes. Conclude your answer with an explanation as to why it is not required in some types of offences.

- Q5. Bully a mojo has been dating Innocent a fresher for six months and has been continuously asking her to have sex with him. However, she has refused. One day he gives her some brandy in a cup of coffee which renders her incapable of fighting off his advances and he finally manages to have sex with her. Can Innocent file a complaint of rape which will stand up in court? Discuss.
- Q6. Discuss with the help of decided cases, the law regarding the offence of manslaughter paying particular attention to situations where it is perpetrated by one spouse against another.
- Q7. You have been requested by the Director of Public Prosecutions to write an opinion on the offence of treason. Indicate whether it is necessary to have such an offence in our laws particularly since the return of multi-party politics. Please support your views with some decided cases.

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - OCTOBER/NOVEMBER 1995

L 250

CONSTITUTIONAL LAW

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

ANSWER: FOUR (4) QUESTIONS. YOU MUST ANSWER AT LEAST ONE
QUESTION FROM EACH OF THE THREE SECTIONS.

NOTE: ONLY UNMARKED STATUTES MAY BE BROUGHT INTO THE
EXAMINATION ROOM.

SECTION ONE

1. (a) Briefly outline some of the differences between the Northern Rhodesia constitutional order of 1911 and that of 1924.

(b) Briefly discuss the objectives of the constitutional changes of 1959 and the mechanisms embodied within the constitutional arrangement designed to achieve these objectives.
2. When comparing the contents of the United States constitution and the proposed Zambian constitution, one of the most glaring differences is that the Bill of Rights contained in the U.S. Constitution is drafted in very general, vague and non-specific terms while the human rights provisions in the proposed Zambian Constitution are very specific and detailed. Discuss why the U.S. Constitution's Bill of Rights were drafted in such a way, its advantages and disadvantages and discuss how certain individual rights not expressly guaranteed or protected by the U.S. Constitution have come to be guaranteed and protected in the United States over the past 205 years.
3. Clearly, the United States' Bill of Rights and subsequent amendments to the Constitution protect and guarantee certain individual and human rights by prohibiting government infringement (and in limited cases, private infringement) of these rights. The United States Constitution, however, also creates certain institutional safeguards of these rights, i.e., federalism, separation of powers, balance of powers and judicial review.

Discuss these four constitutional concepts and explain how each serves to ensure individual human rights in the American system.

SECTION B

4. "One-party government has tended in almost every case to produce one-man rule. Since it imposes a Unity of purpose among the government, the assembly and the party, the leader becomes the political power in the country..."

B.O. NWABUEZE, CONSTITUTIONALISM IN THE EMERGENT STATES,
159 (1973)

Discuss this statement in light of Zambia's experiences with one-party rule from 1972 to 1991.

5. Banda, Bwalya and Chibundi belong to various Human Rights NGOs. The government has recently published a White Paper reacting to the Report of the Mwanakatwe Constitutional Review Commission. In the White Paper the Cabinet rejects the Commission's unanimous recommendation that the new constitution should be adopted by a Constituent Assembly and a national referendum. The NGOs are outraged by this government position and decide to mobilize public opinion in favour of a Constituent Assembly. Banda, Bwalya and Chibundi apply to the police for a permit to hold a public rally as required by Section 5 of the Public Order Act. The permit is granted by Inspector Mooka (the regulating officer).

The Minister of Home Affairs instructs the Inspector General of Police to cancel the permit. The police comply with the Minister's order. They issue an announcement on Radio and TV cancelling the rally on "security grounds".

The Minister of Information and Broadcasting instructs the State-owned press not to cover the activities of the NGOs as "State-owned media should not be used to attack the government."

A petition drafted by the NGOs urging the government to listen to the people on the issue of the Constituent Assembly is banned by the President using the powers under Section 53 of the Penal Code. Banda, Bwalya and Chibundi approach you for legal advice. Advise them.

6. "In all countries it is recognised that constitutionalism has to be limited by the exigencies of an emergency, since an emergency implies a state of danger to public order and public security, which cannot adequately be met within the framework of governmental restraints imposed by the constitution. Nonetheless it has to be accepted that emergencies pose a threat to constitutional government."
- B.O. NWABUEZE, CONSTITUTIONALISM IN EMERGENT STATES
174 (1973)

- (a) Critically assess the scope of the powers of the government vis-à-vis emergencies under Zambian law.
- (b) What role has the judiciary played in mitigating the harshness of detention without trial in Zambia.

SECTION C

7. The government justifies its rejection of the proposed Draft Bill of Rights on the ground that it adds nothing of substance to the 1991 Bill of Rights and it amounts to nothing but a mere reformulation and reorganization of existing rights.

Discuss.

8. Consider the Mwanakatwe Draft Constitution and the government's response thereto vis-à-vis:
- (a) the scope of presidential power
 - (b) the idea of separation of powers

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY DEFERRED EXAMINATIONS - JANUARY/FEBRUARY 1995

L 250

CONSTITUTIONAL LAW

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

INSTRUCTIONS:

1. ANSWER FOUR (4) QUESTIONS

2. ONLY UNMARKED STATUTES MAY BE BROUGHT INTO THE EXAMINATION
=====

- Q1. Discuss the concept of Representative Democracy. To what extent was representative democracy achieved during the Second Republic?
- Q2. Sausande is the President of an opposition party called the Republican Party (RP) and is an implacable opponent of the government. He describes the government as a bunch of crooks and dealers. Because of his vitriolic attacks against the government the Minister of Information directs the state-controlled media not to cover him. Furthermore, the Minister of Home Affairs instructs all police stations in the country not to grant Sausande permits to address rallies. Sausande's applications for permits to hold rallies in Lusaka, Kitwe, Kasama and Chipata are subsequently turned down by Regulating Officers on "security grounds". The state-owned media also stops giving him coverage.

Advise Sausande on his legal position.

- Q3. What role do courts play in Zambia vis-à-vis the protection of human rights and democracy? Do you think the courts are vested with sufficient independence to be able to discharge their functions impartially?
- Q4. Uncle Barry, a notorious criminal, is arrested and charged with theft of household property valued at K10 million at gun-point. He is acquitted of the offence because of insufficient evidence. He is then served with a presidential detention order under Regulation 33(1) of the Preservation of Public Security Regulations.

He receives grounds of detention after 15 days which state that -

"It has been found necessary to detain you because of your involvement in aggravated robberies, which have become common in Zambia."

The grounds of detention are in English, which Uncle Barry cannot read.

Uncle Barry comes to you for Legal advice. Advise him.

- Q5. "A remarkable feature of presidential government in Commonwealth Africa is the extent to which it incorporates elements of the Westminster Parliamentary system. Indeed it may justifiably be said that vital elements from the latter system are the superstructure upon which presidentialism in Commonwealth Africa is built."

B.O. Nwabueze, Presidentialism in Commonwealth Africa
37 (1974)

To what extent is Nwabueze's statement applicable to the Third Republic in Zambia?

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - OCTOBER/NOVEMBER 1995

L 320

PROPERTY LAW AND SUCCESSION

TIME: THREE HOURS PLUS TEN MINUTES TO READ THE QUESTIONS

INSTRUCTIONS:

READ THE QUESTIONS CAREFULLY. YOU ARE ALLOWED USE OF STATUTES.

ANSWER: QUESTION ONE AND ANY THREE.

1. The new Land Act:

- (i) repeals the three Colonial Orders in Council that introduced state lands, reserves and trust land. In addition, the Act repeals the Gwembe District Orders, Section two of the Western Province Act, 1970, the latter which vested all land and interests therein in Western Province in the President as reserve land as well as the Repeal of the Land (Conversion of Titles) Acts, 1975 and 1985;
 - (ii) recognises customary tenure in order to allow for its continuation;
 - (iii) provides for the conversion on application, of customary tenure.
- a) Critically analyse the nature of land rights and interests in trust land and reserves as well as the systems for their protection. To what extent does the new Land Act, 1995 increase or reduce the system of protection of the rights and interests in stateland and customary land.
 - b) How does the new Act legalise the landmarket and show how this is likely to conflict with customary law?

2. According to Challi's (1911) a fee simple "Is the most extensive in quantum and the most absolute in respect to the rights which it confers of all estates known to law. It confers the lawful right to exercise over, upon, and in respect to, the land, every act of ownership which can enter into imagination, the right to exercise over, upon, and in respect to, the land, every act of ownership which can enter into imagination."

Discuss the theory of freehold tenure underlining the main advantages in relation to leasehold tenure.

3. The perception that customary systems provide weak security of tenure is behind the attempts by the State to substitute its own guarantee to land rights for those under custom in the belief that State rights provide greater security and incite greater investment and improvements in land.

(Hansungule K.M. (1995), "The Second Land Bill: A Legal and Policy Perspective)

Critically analyse the rights and interests in land under customary systems and show how customary law assures the individual security of tenure.

4. Shortly before he died, John called together his children, brothers, mother and other relations. After they assembled, he began distributing his property. He gave most of it to his friends and his wife whom he married under customary law though he had not yet paid the full bride price. In some cases, he wrote down messages and even letters to the people to whom he had donated his property, though in most cases, he did so orally. His wife of only six months was given two houses but gave nothing to his ex-wife Anna of 33 years, now a divorcee.

Anna, the ex-wife had seven children by John, with the youngest being only two years old. John said nothing about any of his children including the three school going youngsters and the two year old baby. As he went about sharing out his assets, John, who regarded himself as one of the most orthodox traditionalists, cited heavily from traditional practices. He said that his wishes should be carried out after his death. However, he did not write out a formal will. On the fifth day of his announcements, he died.

One of the properties he gave away was a 99 year leasehold. This should have gone to a friend, Michael, whom he met during his primary school education.

a) Critically analyse the role of the Intestate Succession Act, 1989, in the administration of intestates. Explain the respective right of spouse, children, mother and dependants in the above case.

b) When is a will valid under the Will's and Administration of Testate Act, 1989? To what extent does the Act make provisions where the testator's dispositions may have been unreasonable?

5. (a) How do you differentiate a lease from a licence?

(B) Kachepea owned a house in Mtendere which he leased to Sangwapo. However, no express terms were put in the lease. One day Sangwapo quarrelled with Kachepea's cousin who had come to visit. Thereafter Kachepea started cutting off water and electricity supply in a bid to frustrate Sangwapo. At times, Kachepea would make rowdy noise in the night so that Sangwapo could not sleep.

Now, Sangwapo contends that Kachepea has derogated from his obligations as a Landlord.

(A) Advise Sangwapo as to his right.

(b) Analyse the protection a tenant enjoys under both the Rent Act, 1972 and the Landlord and Tenant (Business Premises) Act, 1971.

6. With the help of decided authorities, discuss the concept of planning under the Town and Country Planning Act. In what ways would a landowner be required to delay his activity until after permission was granted and examine the principles underlying the decision to grant or refuse such permission.

7. "... a mortgage can never provide at the time of making the loan for an event or condition on which the equity of redemption shall be discharged and the conveyance absolute."

Lord Macnaghten - In *Reeve v. Lisle* [1902] AC 461

Discuss.

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - OCTOBER/NOVEMBER 1995

L 330

COMMERCIAL LAW

TIME: THREE HOURS (PLUS 5 MINUTES READING TIME)

ANSWER: FOUR QUESTIONS. ANSWER AT LEAST ONE QUESTION
FROM EACH PART.

STUDENTS MAY BRING INTO THE EXAMINATION ROOM CLEAN COPIES OF
ANY RELEVANT STATUTES.

PART I

- Q1. Sinclair Quinton-Hogg is an advocate of the High Court for Zambia having been admitted to the Bar ten years earlier. Quinton-Hogg has decided to resign from his employers, where he was Vice President in charge of the Legal Division. He has formed a Law Firm where he is the sole partner and the name of the Firm is known as Sinclair Quinton-Hogg and Associates.

Three months after formation of the firm, he employed two young lawyers as associates of the firm. Six months after formation of the firm, a motor vehicle was purchased for use in the firm and it was insured with the local branch of Hollandia Insurance Company. The policy was comprehensive in the name of Sinclair Quinton Hogg and Associates. The vehicle is insured for K10 million (Ten million Kwacha). This policy has the usual terms and conditions including those relating to under-insurance. At the time Quinton-Hogg was effecting the aforesaid insurance policy, he was asked to fill in a proposal form which, inter alia, had this question: "Have you ever been prosecuted or convicted of the offence of careless driving?" In answer to this he had written "No". He did not disclose the fact that at one time Lusaka Central Police Traffic Section had charged him for careless driving. The police, however, had not proceeded with the charges which had been subsequently dropped. Six months after the purchase of the vehicle, Quinton-Hogg was involved in a car accident whilst coming home from a party. He subsequently lodged a claim with Hollandia Insurance Company asking to be compensated. The assessors of Hollandia Insurance Company estimated the cost of repairs to the car as being K5 million.

The market value of the car at the time of the accident was now K20 million.

When the underwriters scrutinised the claim, they repudiated the claim. In the alternative, they stated, without prejudice, that they could only pay him half of the estimated claim.

Could the Insurance Company successfully repudiate this claim in court or would Quinton-Hogg succeed in recovering the full loss of K5 million? Discuss.

Ganizani Phiri, an accounts clerk in Chibwenzi Ltd was in charge of preparing virtually all payments to persons who dealt with the company. On 12th July, 1995, Ganizani prepared a payment requisition which indicated that Halupepe Hamudebwe, a carpenter who was well known to the company and who had performed work for it in the past, was entitled to payment in the sum of K500,000 for work done to the Company's warehouse the previous day. An uncrossed cheque in that sum was drawn in the name of Hamudebwe and attached to the voucher. The Managing Director and the Secretary, who were the signatories to the Company's account signed the cheque without question since Hamudebwe was a well known provider of services to the Company.

Ganizani who knew Hamudebwe's signature very well carefully endorsed the cheque in favour of his girlfriend Melody. Melody kept the cheque in her handbag which was unfortunately snatched at Kulima Tower Bus Stop by Swiftfinger Brown. Swiftfinger then forged Melody's signature and endorsed the cheque to Careful Tembo in settlement of a debt. Careful Tembo presented the cheque at the drawer's bank (i.e. Meridien Bank) at 14.05 hours on 14th July, 1995. The Bank closes at 14.00 hours.

Hamudebwe was found dead in his workshop by police on 11th July, 1995. Publication of his name was withheld until 13th July, 1995 when his next-of-kin had been notified. The post mortem conducted on 13th July, 1995 revealed that Hamudebwe must have died at least four days previously.

Upon hearing of Hamudebwe's death, the Managing Director of Chibwenzi Ltd instructed that payment be stopped in respect of the cheque to Hamudebwe. A fax was sent to the Bank on 14th July, 1995 stopping payment, but was only seen before the bank opened to the public on 15th July, 1995.

Consider the legal issues involved, and advise The Managing Director of Chibwenzi Ltd at Meridien Bank as to their rights.

- Q3. Nkumba Farms contracts to sell to Mwale's Natural Foods Ltd, 10 tonnes of highest grade maize from its silos in Kapiri Mposhi. The agreement is that Nkumba will send the maize to Mwale in Lusaka as and when required but will ensure that all the maize is delivered by 28th February, 1995. Delivery is to be in Nkumba's own lorry and at no additional cost. The contract price is K1.5 million kwacha per tonne.

On 15 February, after some three tonnes have been delivered Nkumba informs Mwale that a lorry carrying a further $\frac{1}{2}$ tonne of grain for delivery has been destroyed by fire after an accident on the Great North Road. Nkumba says Mwale will have to bear the loss. Mwale is furious at this and faxes Nkumba the same day "Regard your behaviour as outrageous: We refuse to accept any more deliveries." The market price of high grade maize on that day is K1.45 million per tonne and on 28th February, 1995 it is K1.43 million per tonne.

Advise Mwale as to his legal position.

PART II

4. Critically argue the case for the repeal of the Hire Purchase Act, Cap 691 of the Laws of Zambia and set out some proposals for reform.
5. "If of two innocent persons, viz., the owner of the goods and the innocent purchaser, one has to suffer, it should be the person who, by entrusting the fraudulent person with goods, entrusted him with the insignia of ownership or apparent authority.

Discuss.

6. Discuss the legal issues arising in the following cases:

- a) Luxor (Eastbourne) Ltd V Cooper [1941] A.C. 108
- b) Mahesan V Malaysia Government Officers Cooperative Housing Society Ltd [1978] 2 WLR444
- c) Bolton Partners V Lambert (1889) 41 Ch D 295
- d) Yonge V Toynbee [1910] 1 KB 21J

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA
UNIVERSITY EXAMINATIONS - OCTOBER/NOVEMBER 1995

L 340

ADMINISTRATIVE LAW

TIME: THREE HOURS (PLUS 10 MINUTES READING TIME)

ANSWER: QUESTION ONE (1) AND THREE OTHERS

NOTE:

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

1. The Constitution of Zambia Act No.1 of 1991.
 2. The Interpretation and General Provisions Act No.27, Cap 2 of the Laws of Zambia.
 3. The Industrial and Labour Relations Act No. 27 of 1993.
 4. The Commission for Investigations Act, 1991.
 5. The Inquiries Act.
 6. The Service Commissions Act, 1991.
-

THIS QUESTIONS IS COMPULSORY AND CARRIES 40% OF THE MARKS

- Q1. X Limited are a road transport company who have been carrying on the business of transporters in several countries in Southern and Central Africa including Zambia for sometime. In the month of August 1995, one of X Limited's South African-bound trucks which was carrying cargo originating from Zambia was detained at a South African town and subsequently searched by the South African drug squad on suspicion that the truck's Zambian driver by the name of Kangachepe was involved in illegal trafficking in "mandrax". In consequence of the search, a consignment of between 8000 - 9000 tablets of suspected mandrax was found hidden in the air-cleaner of the truck in question. Kangachepe was immediately arrested under a South African Law relating to drugs and other psychotropic substances pending his criminal prosecution.

The arrest and impending prosecution of Kangachepe received wide publicity in the Zambian Press including 'The Times of Zambia'. The case of Kangachepe was brought to the attention of the Zambian Minister of Transport by the country's Road Traffic Commissioner who, in his subsequent Press Release announced that:

"Considering Zambia's concern about drug trafficking, I have been directed (by the Minister) not to renew X Limited's road licence..."

Following this decision, X Limited appealed to the Road Service Appeal Tribunal in accordance with the provisions of the Roads and Road Traffic Act.

In upholding the decision of the Commissioner, the Tribunal Chairman noted that

"It is the duty of the Courts to discourage transborder trafficking in drugs"

The Managing Director of X Limited Mr. Sebente has approached you for legal advice. He has drawn your attention to the following provisions of the Roads and Road Traffic Act which you must assume are the only relevant provisions of the law:-

- Section 155 "(1) Subject to the provisions of this Act, the Commissioner may grant to any (person) applying therefor a road licence... and ... may vary the provisions of (such) a licence..."
- Section 155 "(5) In exercising his discretion to grant or refuse to grant or vary a road service licence in respect of any route or area, the Commissioner shall have regard to the following matters:-
- (a) that the applicant is a citizen of Zambia;
 - (b) the suitability of the route on which a service may be provided under the licence;
 - (c) the extent to which any route or area in respect of which the application is made is already served by rail, road or other form of transport;

- (d) the extent to which rail or road transport might be adversely affected and any representations which may be made in that behalf;
- (e) the extent to which the proposed service is necessary or desirable in the public interest including the provision of adequate, suitable and efficient services and the elimination of unnecessary and uneconomic services;
- (f) the needs of Zambia as a whole in relation to traffic and the co-ordination of all forms of transport;
- (g) the payment of reasonable wages and observance of proper conditions of service in respect of the drivers and conductors of the applicant;
- (h) the reliability and financial stability of the applicant;
- (i) the facilities at the disposal of the applicant carrying out vehicle maintenance and mechanical repairs;
- (j) any previous convictions of the applicant for any offence against the provisions of this Act;
- (k) the number of vehicles possessed by the applicant in relation to the demands of the service for which a licence is sought;
- (l) whether the applicant's main source of livelihood is or is intended to be derived from the business of operating public service vehicles;
- (m) in the case of a person who holds or has held a road service licence, the manner in which he has operated the service or services authorised by such licence;

and shall take into consideration any objections or other representations which may be made by persons who are already providing transport facilities.....or by any local authority in whose area such services or any part thereof are to be provided, or by any member of the public within the area in respect of which the application is made or any part thereof.

The onus of proof that there are grounds for any objection shall lie on the objector."

Section 155 "(6)

The Commissioner may grant a road service licence subject to such conditions as he may think fit and may attach to a road service licence such conditions as he may think fit and may from time to time vary such conditions in such manner as he may think fit. Compliance with provisions of this Act and of any regulations made thereunder and adherence to the rates and fares fixed and laid down in respect of any service shall be implied conditions of the road service licence under which that service is operated."

Section 155 "10(a)

A road service licence may be revoked or suspended in whole or in part or its terms or conditions may be varied by the Commissioner on the ground that any condition subject to which the licence or a variation was granted has not been complied with."

"Provided that the Commissioner shall not revoke, suspend or, subject to the terms of this sub-section, vary such a licence unless owing to the frequency of the breach of the conditions on the part of the licence holder or to the breach having been committed wilfully, or to the danger to the public involved in the breach, the Commissioner is satisfied that the licence should be revoked, suspended or varied."

"(b) The issue of a road service licence may be withheld or cancelled by the Commissioner if any of the conditions subject to which such licence was granted are not complied with."

Mr. Sebente wishes that you give him a comprehensive opinion reflecting

- (a) what course(s) of action(s) he may now take;
- (b) the remedy(ies) he should pursue and the reasons therefor and
- (c) the likelihood of success in respect of the said remedy(ies).

Write an opinion for Mr. Sebente.

- Q2. "The concept of Local Government is a paradox. It presupposes a central authority to which it is to some extent subordinate but from which it is to some extent free and independent."

Keith Davies LOCAL GOVERNMENT LAW (1983)

Discuss and illustrate the above assertions with specific reference to the development of the institution of local government in Zambia since the country's attainment of independence in 1964.

- Q3. Discuss and illustrate the various principles that govern the amenability to judicial review of administrative authorities in England and Zambia. Are there any similarities and/or differences in the manner that the principles you have identified have been addressed by English and Zambian Courts?

- Q4. X, a Rastafarian, had, for a long time been incensed by what he had been viewing as "poor representation of Jah people" in the National Assembly of Zambia. Accordingly he and his "brothers and sisters in Jah" decided to form their own political party which was to constitute the 'political home' of all Rastafarians. The party was to rejoice under the name of the 'Rastafarian Redemption Organisation' (RRO) and was to be registered under the Societies Act, CAP 105 of the Laws of Zambia.

X and his "brothers" and "sisters" completed all the relevant forms and submitted them together with the proposed party's constitution to the office of the Registrar of Societies for the purpose of registration in accordance with the requirements of the Societies Act.

The Registrar of Societies refused to register the RRO as a political party citing Section 8 of the Act which provides that:-

"S.8. The Registrar may refuse to register... any society where it appears to him that such society... is likely to pursue or be used for any unlawful purpose or for any purpose prejudicial to or incompatible to 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... of such society."

In his letter refusing to register the RRO, the Registrar stated, inter alia, that to register RRO as a political party would amount to supporting "the consumption of dagga and other psychotropic substances which constitute the uniting factor for all Rastas."

Completely outraged by the Registrar's refusal, X decided to exercise his right of appeal to the Minister of Home Affairs in accordance with Section 16 of the Act which states:

"S.16. Any Society... which is aggrieved by the refusal of the Registrar to register such society... may appeal against such refusal to the Minister."

X's wish was to make his appeal orally and in person. This was denied to him by the Minister who insisted that he could only accept X's written appeal. Accordingly, X reluctantly tendered a written appeal which, in the event, was unsuccessful.

X has approached you with the complaint that the Minister had denied him justice by his refusal to hear his oral appeal in person.

(a) Advise X as regards

- (i) the Minister's refusal to hear his oral appeal and
- (ii) the Minister's decision confirming the Registrar's decision. What remedy or remedies should X pursue and why?

(b) Assuming section 16 above had the following additional words after 'Minister': namely "whose decision shall be final and conclusive" would your advice under (a) above be any different? Give your reasons for your advice.

Q5. Is delegated legislation a necessary evil? Give reasons for your answer.

Q6. The Industrial and Labour Relations Act No. 27 of 1992 has introduced a number of innovations pertaining to the functions of the Industrial Relations Court among which are the following:-

- (a) the requirement for the court to deliver its judgement within 60 days from the date of hearing a complaint.
- (b) the availability of the right for any person aggrieved by the decision of the Industrial Relations Court to appeal to the Supreme Court of Zambia.
- (c) the ^{retention} ~~apparent omission~~ of the provision in the repealed Industrial Relations Act 1971 to the effect that the Industrial Relations Court was to be concerned more with the doing of "substantial justice between the parties appearing before it" as opposed to "a strict adherence to the rules of evidence employed in civil and criminal proceedings in the High Court".

Having regard to the arguments for and against a system of administrative tribunals, assess whether and how the above innovations will impact on the Industrial Relations Court as a fountain of administrative justice in Zambia.

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY SUPPLEMENTARY/DEFERRED EXAMINATIONS - JANUARY 1996

L 340

ADMINISTRATIVE LAW

TIME: THREE HOURS

ANSWER: ANY FOUR (4) QUESTIONS

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

1. The Constitution of Zambia Act No. 1 of 1991
 2. The Interpretation and General Provisions Act, CAP 2 of the Laws of Zambia.
 3. The Industrial Relations Act No. 27 of 1993
 4. The Commission for Investigations Act, 1991
 5. The Service Commissions Act, 1991
-

Q1. "It is a popular misconception that judicial review is only available to challenge decisions made by the Courts, government or statutory bodies. This is not the case. Judicial review proceedings may, in certain circumstances, be used in relation to decisions made by a range of public, private and voluntary organisations. It is an increasingly useful means of challenging decisions made in both the public and private sectors".

QUOTED FROM: LAW TALK, Newsletter of the New Zealand Law Society dated 12.06.95.

Do you agree with the assertions quoted above? Illustrate your answer with the aid of suitable case-law from Zambia and any other jurisdiction with which you are familiar.

2. Compare and contrast the Zambian case of JACKSON V A-G [1979] Z.R and the English case of RIDGE vs BALDWIN (1963).
3. Write comprehensive notes on the following:-
 - (a) Certiorari and Mandamus
 - (b) The contribution of the case of RIDGE v BALDWIN (1963) to the development of Zambian administrative law.

Q4. What is the relevance and significance of the following to students of Zambian administrative law:

- (a) Administrative discretion
- (b) Local Government
- (c) Commissions of Inquiry

Q5. In what circumstances are bodies other than Courts of law bound to observe the rules of natural justice? Illustrate your answer with the aid of appropriate case law.

Q6. Is administrative law a necessary evil?

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - OCTOBER/NOVEMBER 1995

L 350

FAMILY LAW

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

INSTRUCTIONS:

- (i) Answer FOUR questions - at least one question from each of the two parts.
 - (ii) All relevant and unmarked statutes may be brought into the Examination room.
-

PART I

1. Charlotte and Mundia, both aged 24, were married under the Act after complying with the necessary statutory conditions and procedures. Charlotte's parents never gave their consent to the marriage as they were insisting they could only sanction a customary law marriage. Six months later, the two, therefore, married under Tumbuka Customary Law, and consent was given by Charlotte's parents. Mundia paid K400,000 as bride price.

Mundia discovered that his wife could not conceive and he thus decided to divorce her. He wrote a letter to that effect to Charlotte's parents and this was copied to her. She moved out of the matrimonial home. He has now fallen in love with Kasimbi whom he intends to marry under Lozi Customary Law.

Charlotte is not happy with the arrangement arguing that as far as she is concerned they are still married.

Advise Mundia and Charlotte as to their legal position.

2. "The capacity to marry is of little significance under Customary Law"

Discuss the validity of this statement in relation to:

- (i) The decision of Justice Woodman in the case of R v Chinjamba (1949) NRLR.
- (ii) The requirements of a valid customary law marriage.

3.

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

Can she sue? Why or why not?

PART II

4. Ben, recently divorced, intends to institute proceedings for custody of his two daughters aged four and six respectively. He wants to know the relevance of the following factors when the court grants custody and care and control:

- a) the sexes and ages of the children;
- b) his ability to provide a comfortable home for the girls;
- c) the fact that his wife had deserted him and abandoned the children and he was in no way to blame for the break up of the marriage;
- d) the mother's wish to bring up the children in a religious home;
- e) the question of the mother's access to the children considering that she had abandoned them with their father.

Advise Ben as to how the courts treat the above factors.

5.

Musonda ordered his wife to leave the matrimonial home. They were married under Customary Law. For five years, Musonda has complained about his wife's failure to conceive. On several occasions, he had advised his wife to seek treatment to cure her barrenness, but she had refused arguing that her husband was to blame for her failure to conceive.

Mrs Musonda has returned to her husband's village with her uncle to have their crops in the field shared. She claims that her husband's conduct amounts to divorce. However, Musonda insists that they are merely separated.

Assume that you are an assessor in a local court hearing this dispute. What would be your advice and why?

6. Matumbo and Linda, both aged nineteen (19) years, married under the Act. Since Linda cannot conceive, they have decided to adopt three (3) years old Masebo, an orphan, the child of Kasisi.

Advise them as to their chances of adopting Masebo and the procedures to be followed. Who appoints a Guardian ad litem and what are his duties?

7. In 1990 Thandiwe married Sangwapo under the Marriage Act, Cap 211. In 1991, a baby girl was born, but to Sangwapo's surprise a "coloured". Sangwapo protested and told Thandiwe that the child could not be his. After beating her, Thandiwe confessed that the child was that of James Baker, a man who had been her boy-friend since their marriage. The child was named Anita Baker. Nevertheless Sangwapo accepted the child as his own and both he and Thandiwe treated it as their own.

Another child, a boy was born to the couple in 1994. It was named Sangwapo Junior.

Shortly after the birth of Sangwapo Junior, Sangwapo's behaviour changed. He started coming home late and sometimes sleeping out. He told Thandiwe he had found a beautiful girlfriend and that he would "fix her" for her unfaithfulness with Baker. Thandiwe protested and threatened to leave the matrimonial home unless Sangwapo stopped seeing his girlfriend. This did not change Sangwapo's behaviour. Instead he started spending weeks away from home, coming home at weekends only to deliver his clothes for his wife to wash. In addition, Sangwapo frequently beat up Thandiwe, and on one occasion he beat her so badly that she had to be hospitalised for two weeks.

- a) Thandiwe has petitioned for divorce. What are her chances of success, if any?
- b) Thandiwe has also applied for maintenance of the two children by Sangwapo. Sangwapo, however, has contested her application in relation to Anita on the ground that she is not his child.

Advise Sangwapo on the possible outcome of his concern.

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY SUPPLEMENTARY/DEFERRED EXAMINATIONS - JANUARY 1996

L350

FAMILY LAW

TIME: THREE HOURS

ANSWER: ANY FOUR QUESTIONS

1. The Matrimonial causes Act, 1973 of England is applied in Zambia under the provisions in the High Court Act of Zambia, Cap 45 making the law of England 'for the time being in force' the law of Zambia in matrimonial causes.
 - (a) Consider the desirability of this arrangement and
 - (b) Give arguments for and against extending the maintenance and property provisions of the Matrimonial Causes Act to marriages contracted under Customary Law if such an arrangement were to be proposed.
2. In Zambia, the advent of colonialism brought with it a dual legal system with imported English Law on one side and the Local Customary Law on the other. In marriage law a person has a choice of marrying either under customary law or under Statutory Law.
 - (a) Briefly contrast the requirements of a valid customary law marriage with those of a statutory marriage.
 - (b) What do you think are the main reasons why most Zambians, especially men, prefer to contract marriages under Customary Law.
3. Lord Penzance defined marriage as a 'voluntary union for life of one man and one woman to the exclusion of all others' in Hyde V Hyde (1866). Discuss. How far does this definition fit in African Customary Law marriage?

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

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

5. Sangwapo and Jane having been married under the Marriage Act, Cap 211 for almost two years had never slept together. Sangwapo fell ill and the disease left him sexually impotent. He failed to see a Doctor who his wife had arranged for him. The reason was basically because of shyness and embarrassment as he was known to be a 'casanova' in the neighbourhood. Whilst Sangwapo was still bed-ridden, however, the couple had made an arrangement to the effect that in the event of 'anything' happening to either of them after the illness, neither of them would seek to have the marriage annulled on any ground whatsoever.

Jane has petitioned for the annulment of the marriage on the grounds of Sangwapo's wilful refusal. Advise Sangwapo.

Would it make any difference if it was Sangwapo who had petitioned relying on his own incapacity?

6. Brian, aged 23, was unmarried and lived in Kalundu. One day, whilst on a drinking spree at Chainama Hotel, he met Tina and they fell in love. They spent a night at Tina's house in Kaunda Sqaure. Whilst there Brian met Mercy, a 10 years old illegitimate daughter of Tina. The young girl looked hungry and dirty and it was evident that the mother could not support her. Brian felt pity for the girl and decided to adopt her. Adoption orders were granted by a High Court judge who sympathised with the girl. Thereafter Brian took care of Mercy and educated her.

Mercy, now 19 years of age, intends to get married under the Act to Manda, a School teacher. She has been advised by a friend that consent of the parents is necessary. She asked for Brian's consent which he gave. However, Tina disapproves of Mercy getting married at that age

since she wants her to go to University and study medicine. She, thus, approached the Registrar of marriages to lodge a caveat.

Mercy is determined to marry Manda at all costs and has approached you for help.

Advise her fully.

7. The decision in the case of *Muyamwa V Muyamwa* (1976) Z.L.R. 146 has been criticised as wrong interpretation of the relevant sections of the Marriage Act, Cap 211 regarding capacity to marry.

Concisely explain the issues involved in the *Muyamwa* case. In your opinion, what do you think should have been the correct decision and why?

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - OCTOBER/NOVEMBER 1991

L 410

JURISPRUDENCE

TIME: THREE HOURS, PLUS TEN MINUTES TO READ THE EXAM.

ANSWER: QUESTION ONE AND ANY OTHER THREE QUESTIONS.

Question No.1 is Required

1. The Republic of Zamuda has just passed a law compelling all motorists to wear seat belts when driving their vehicles. Failure to do so would result, upon conviction, in a penalty of a mandatory prison sentence of ten years with hard labor.

Mutinta, a student of law immediately condemns the law on two grounds. First, the only purpose for which law can be rightfully exercised over any member of a civilized community against his or her will is to prevent harm to others. To pass such law for his or her own personal good, either physical or moral, is not sufficient warrant. The new law is only meant to prevent harm to oneself and not to prevent harm to others. Second, punishment is inappropriate and disproportionally related to the offense and smacks of glaring injustice. There is no justice achieved through the sentence when the offense was so petty.

Luke, on the other hand, (another law student), disagrees with Mutinta. He argues that the new law is meant to reduce the incidence of serious accidents and fatalities which in the long run cost the nation colossal sums of tax payer money in hospital bills, lost wages and income, and more policing. Additionally, the harm to the families directly affected by these accidents is catastrophic. Luke also argues that the type of punishment a law doles out is not the correct criteria for determining good law.

With reference to the Hart-Devlin debate, and the concepts of law and justice, state comprehensively which argument above, if any, you agree with.

PLEASE SELECT THREE OUT OF THE NEXT SIX QUESTIONS

- Why does Austin refuse to attribute the quality of law to International Law, and instead calls it International Positive Morality? State whether you agree with his arguments.

THE UNIVERSITY OF ZAMBIA
UNIVERSITY EXAMINATIONS - OCTOBER/NOVEMBER 1998

L 410

JURISPRUDENCE

TIME: THREE HOURS, PLUS TEN MINUTES TO READ THE EXAM.

ANSWER: QUESTION ONE AND ANY OTHER THREE QUESTIONS.

Question No.1 is Required

1. The Republic of Zamuda has just passed a law compelling all motorists to wear seat belts when driving their vehicles. Failure to do so would result, upon conviction, in a penalty of a mandatory prison sentence of ten years with hard labor.

Mutinta, a student of law immediately condemns the law on two grounds. First, the only purpose for which law can be rightfully exercised over any member of a civilized community against his or her will is to prevent harm to others. To pass such law for his or her own personal good, either physical or moral, is not sufficient warrant. The new law is only meant to prevent harm to oneself and not to prevent harm to others. Second, punishment is inappropriate and disproportionally related to the offense and smacks of glaring injustice. There is no justice achieved through the sentence when the offense was so petty.

Luke, on the other hand, (another law student), disagrees with Mutinta. He argues that the new law is meant to reduce the incidence of serious accidents and fatalities which in the long run cost the nation colossal sums of tax payer money in hospital bills, lost wages and income, and more policing. Additionally, the harm to the families directly affected by these accidents is catastrophic. Luke also argues that the type of punishment a law doles out is not the correct criteria for determining good law.

With reference to the Hart-Devlin debate, and the concepts of law and justice, state comprehensively which argument above, if any, you agree with.

PLEASE SELECT THREE OUT OF THE NEXT SIX QUESTIONS

2. Why does Austin refuse to attribute the quality of law to International Law, and instead calls it International Positive Morality? State whether you agree with his arguments.

3. Before anthropology enabled researchers to inquire more closely into the very nature of law, Western jurisprudence regarded societies which knew no written law with a condescending attitude. Western notions of law refused to acknowledge that these societies had "law" because they lacked many qualities that Western societies had.

Give an account of the qualities which Western Jurisprudence deemed to be lacking in the so-called "primitive" or "simpler" societies. What did Professor Max Gluckman's research show in relation to these notions?

4. Write comprehensive notes on two of the following and give practical examples:

- i) The conflict between law and politics
- ii) Is Law necessary?
- iii) The Legal Nature of a Revolution

5. "The law is not so much what the legislature enacts but what the judges decide. The judge takes the place of the Austinian sovereign and the judicial decision takes the place of legislation."

Please comment on this view and contrast it with the Positivist idea as to what law is.

6. "Law and legal institutions should not be imposed on a nation. A code, especially one based on foreign inspiration, is unthinkable. Law and legal institutions should be a collection of a people's history, culture and deeds."

Which jurisprudential thinker expressed this view? With such view in mind, assess the position of the present Constitution of Zambia and those that have gone before it since Independence. Is Zambia able to come up with such Constitution as would reflect this notion, assuming that previous Constitutions have not?

7. What were the goals of the Sociological School of Jurisprudence? Did it succeed? Explain.

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - OCTOBER/NOVEMBER 1995

L 420

THE LAW OF BUSINESS ASSOCIATIONS

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

INSTRUCTIONS:

1. STUDENTS MUST ANSWER QUESTION 1 AND ANY OTHER THREE QUESTIONS, AT LEAST ONE QUESTION FROM EACH OF SECTIONS A, B AND C. IN ALL STUDENTS MUST ATTEMPT FOUR (4) QUESTIONS.
 2. STUDENTS ARE ALLOWED TO BRING INTO THE EXAMINATION ROOM AND TO CONSULT CLEAN, UNMARKED COPIES OF THE COMPANIES ACT NO. 26 OF 1994, THE COOPERATIVE SOCIETIES ACT, THE PARTNERSHIP ACT, THE PRIVATISATION ACT AND ANY OTHER RELEVANT STATUTE.
-

Q1. COMPULSORY

Chibwenzi Limited was incorporated on 1st February 1995. The Articles of the Company restrict the business of the company to the exportation of scrap metal to the Republic of South Africa and other neighbouring Southern African countries. The Articles also provide inter alia, that:

- (a) "No person shall be appointed as director of the company unless he or she holds at least 10,000 shares in the company."
- (b) "The Board of Directors shall have all the powers of management of the company and each member of the Board shall have the power to exercise such powers on behalf of the Board."
- (c) "The Board shall adopt its own procedure."

The shareholders in the company are Mutafe and his younger brother Musavu who hold between them 17000 fully paid shares of K1 each. Mutafe is employed by one of the newly privatised former parastatal companies under conditions which do not allow him to be director in any other company. For this reason, Mutafe decided to have his wife Melody and Musavu as directors. Incidentally Musavu and Melody are age mates and former classmates. They were both a decade and a half younger than Mutafe. Little wonder that they get on like a house on fire.

By the end of March, 1995, Chibwenzi Limited had commenced business. The first truckload of scrap metal was scheduled to leave Zambia at the end of the third week of April. The 1000 tonnes of scrap metal was to be delivered to Metal Trade International Limited, a South African company, under a contract signed by Melody as director. The truck that was to deliver the scrap metal was contracted from Katundu Haulage Limited under an agreement signed by Musavu as director.

Melody was expecting their first child sometime at the end of May, 1995. She, therefore, decided to take leave from all company engagements. Someone had to take her place as director. On the 14th April 1995, the eve of Mutafe's thirty-second birthday, Mutafe managed, during a drinking session, to persuade his good friend Mujoza to temporarily take over from his wife as director until she returned to work. Mujoza agreed and Musavu was notified accordingly.

Before the truck contracted to deliver the scrap metal left for South Africa as scheduled, Mujoza managed to strike a more lucrative deal on behalf of the company to supply scrap metal to a Zairean company at a higher price, which would in turn to export it to Europe via South Africa. He, therefore, without Musavu's knowledge, wrote to Katundu Haulage Limited cancelling the contract of carriage signed by Musavu on behalf of the company. He entered into a fresh contract with Kutenga Transport Limited to transport the scrap metal to Zaire.

The scrap metal was duly delivered to the Zairean company which failed to make payment to Chibwenzi Limited as per contract. As a result Kutenga Transport Limited has to date not been paid and has already filed a specially Endorsed Writ in the High Court claiming the transport charges against Chibwenzi Limited. Katundu Haulage Limited has written a letter of demand and threaten to sue Chibwenzi Limited for breach of contract.

On the 26th May, 1995, Melody delivered. On the same day, she was served with a Writ of Summons issued for and on behalf of Metal Trade International Limited claiming specific performance of the contract. Melody was cited as first defendant in the Writ and Chibwenzi Limited as second defendant. Two days later, Mutafe heard that the Zairean company to which the scrap metal had been delivered had infact long been deregistered. He wrote a letter to Mujoza relieving him of his directorship forthwith.

Discuss the various legal issues that arise and how they may be resolved.

(31 marks)

Section A

- Q2. (a) Nkwilimba, a permanent secretary in the Ministry of Finance, was nominated as a shareholder in a parastatal company called KIPCO. The Articles of the company did not make the holding of public office a condition precedent for holding shares in the company. Early this year, Nkwilimba was dismissed from the civil service on account of his political activity. Reading through a copy of one of the local newspapers, he saw an article to the effect that KIPCO has made a huge gross profit for the first time in many years. He approaches you for advice on whether he can now claim his dividend and if so how he should proceed. He further would like to know whether his shares in the company will devolve to his personal representatives upon his demise.

Advise.

(13 marks)

- (b) Discuss the rules for determining the existence of a partnership in Zambia.

(10 marks)

- Q3. (a) "The Co-operative Societies Act, 1970 is an outdated piece of legislation that does not adequately address the needs of the changed economic and business environment in Zambia."

Discuss.

(11½ marks)

- (b) Executive appointments in Zambian parastatal companies incorporated under the Companies Act have been criticised as not being in accordance with the ordinary rules of company. Do you agree with this observation and how have the courts dealt with this question?

(11½ marks)

Section B

- Q4. (a) "It is a very strong thing indeed to prevent shareholders from holding a meeting of the company when such a meeting is the only way in which they can interfere if the majority of them think that the course taken by the directors in a matter intra vires of the directors is not for the full benefit of the company...." per Cotton L.J. in ISLE OF WRIGHT RAILWAY v. TAHOUDIN (1833) 2 Ch. 320.

Taking into account any material provisions of the Companies Act, briefly assess the extent to which, if at all, this observation holds true today.

(12 marks)

- (b) Compare and contrast the liquidation of a cooperative society and the liquidation of a company under the Companies Act.

(11 marks)

- Q5. Careful Banda, a polygamist, operated a grocer's shop under the name Milile Grocery. He decided to retire on account of old age. He is 71 years old. Upon retirement, he handed over his business to his only sons Miserable, born to his second wife Gwendoline in 1976 and Kabiki two years younger, born to his last wife Precious. Careful Banda decided to retain his investment in the business in order that he receives a share of the profits.

Advise whether Careful, Miserable and Kabiki can legally form a limited partnership in which Careful is a sleeping partners. If so discuss the consequences with regard to liability for the firm's debts, and also the management of such a partnership. If not, discuss an alternative business arrangement other than a limited liability company that would be suitable and the consequences with regard to liability and management.

(23 marks)

Section C

- Q6. (a) Mojo Investors Limited is a company incorporated in Zambia under the Companies Act, 1994. It is one of the wholly owned subsidiaries of Bungwe Enterprises Limited. Mr. Sibweni is the Managing Director of Mojo Investors Limited. He is also a shareholder and director of Sibweni Limited, a private consultancy company.

Early this year, Bungwe Enterprises Limited decided to sale its stake in Mojo Investors Limited. Sibweni Limited has expressed its desire to acquire the Company but does not have ready funds to finance the purchase. Mr. Sibweni then approaches you for a legal opinion on whether or not Sibweni Limited can borrow from Mojo Investors Limited to pay Bungwe Enterprises Limited for the purchase of Mojo Investment Limited.
(14 marks)

- (b) Would you say Cooperative Societies have achieved the objectives for which they were introduced?
(9 marks)

27. (a) Write brief explanatory notes on:

- (i) Joint and several liability under partnerships
 - (ii) The Privatisation Trust Fund
 - (iii) Contributories
 - (iv) Derivative actions
- (10 marks)

- (b) What do you see as the major strengths and weaknesses of the Zambia Privatisation Act, 1992. Would you say the Act has so far been effectively used to implement Government policy?
(13 marks)

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY SUPPLEMENTARY/DEFERRED EXAMINATIONS - JANUARY 1996

L 420

THE LAW OF BUSINESS ASSOCIATIONS

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

INSTRUCTIONS:

1. STUDENTS MUST ANSWER Q1 AND ANY OTHER THREE QUESTIONS, AT LEAST ONE QUESTION FROM EACH SECTION.
 2. STUDENTS ARE ALLOWED TO BRING INTO THE EXAMINATION ROOM AND CONSULT CLEAN COPIES OF ANY RELEVANT STATUTE.
-

SECTION A

QUESTION 1 - COMPULSORY

Assume you are a lawyer practicing with Cairo Road chambers, a renown law firm in Lusaka. A client of yours living in England writes you a letter in which he instructs you to incorporate a company for him with limited liability and a share capital of K100,000 divided into 100,000 shares of K1.00 each. The objects of the company are to carry on the business of mining precious stones, to operate a quarry and to sell game meat.

- (a) Explain to your client in writing step by step the procedure involved in incorporating the company. State the information you will require and identify all the documents that you must lodge at the Companies Registry and the documents if any that you would receive from the Companies Registry. Also state the minimum requirements that must be complied with.
(30 marks)
- (b) Briefly advise your client on new changes with regard to the objects clause of companies in Zambia.
(10 marks)

SECTION B

- Q2. (a) Chabwino and Busuma run a partnership called Pulanga Goodies which deals in timber products. The two partners infact have very little in common.

Busuma signed a contract on the firm's letterhead in the name of the firm to supply kapenta to a boarding school. He received payment in advance, which payment was credited to the firm's account.

The firm failed to deliver the kapenta. Later on Busuma pledges the credit of the firm and obtains kapenta from Siavonga Suppliers Limited in order to satisfy the School's order. On the way, however, the kapenta is soaked by heavy unexpected rains destroying all of it. The partnership is now not able to either deliver the kapenta or refund the school. Discuss the liability, if any, of the partners.

(15 marks)

- (b) Briefly discuss the limits of power of the General Meeting.
(5 marks)

- Q3. (a) Critically assess the role of the Registrar of Companies under the new Companies Act, in registration, regulation and deregistration of Companies in Zambia. Use relevant authorities to support your arguments.
(15 marks)

- (b) What are deferred shares?
(5 marks)

- Q4. (a) "A promoter is neither an agent nor a trustee for the Company he promotes but he stands in a fiduciary position towards that Company."

Explain this proposition of law with the help of decided cases.
(10 marks)

- (b) Jere and Jiri formed a partnership some years ago. They agreed that for five years they would not draw any profits from the business but would reinvest all profits made by the firm during that time. The agreement was drawn up by a lawyer from Chakolwa Chambers called Chidakwa, who was drunk at the time and misunderstood his instructions with the result that he inserted a clause in the Articles stating that no profits were to be drawn by either partner for fifty years from the formation of the firm. The five years have now passed and Jere and Jiri have just discovered the error. Are they bound by the erroneous clause? If not, how can they circumvent it? What would be the position if Jere wanted to amend the clause and Jiri wished to enforce the clause as it stands?

(10 marks)

SECTION C

- Q5. What would you say is the best method of privatisation of state-owned enterprises provided for in the Privatisation Act No. 21 of 1992? In your answer, take into account recent developments on the Zambian Securities Market.
(20 marks)
- Q6. (a) What arguments would you make to support the view that a public floatation of shares is a better method of raising capital than a private placement? (10 marks)
- (b) In what respects is a private company limited by shares different from a cooperative society formed under the Cooperative Societies Act?
- Q7. (a) Discuss the various provisions in the Privatisation Act No. 21 of 1992 that are intended to ensure that the privatisation process is done as transparently and as accountably to the Zambian public as possible.
(10 marks)
- (b) Would you say the privatisation of parastatal companies is benefiting the general Zambian populace? Give reasons.
(10 marks)

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - OCTOBER/NOVEMBER 1995

L 430

INTERNATIONAL LAW

TIME: THREE HOURS (PLUS 10 MINUTES READING TIME)

INSTRUCTIONS:

Attempt any Four questions. Candidates are reminded of the need for scholarship, good English, tidiness and orderly presentation in their answers.

Q1. (a) Briefly discuss the following statement:

"In international customary law, the test of bona fide nationality is the sole link between a subject of international law and an individual."

(b) Discuss the meaning of the following:

- (i) The Drago Doctrine
- (ii) The Nationality of Claims Doctrine
- (iii) The Exhaustion of Local Remedies Rule

Q2. Distinguish between 'state succession' and 'succession of governments' and state the different expedients that were adopted by newly emerged states to deal with the question of what treaties they would either recognise or refuse to acknowledge as applicable to them.

Q3. (a) In the law of the sea what is meant by the following terms:

- (i) innocent passage,
- (ii) exclusive economic zone,
- (iii) continental shelf,
- (iv) hot pursuit

(b) What is the permissible maximum breadth of the territorial sea?

Q4. Either:

- (a) Consider the term 'reservations' as used in the law of treaties.

OR

- (b) Is international law a part of the law of Zambia?

Q5. Outline the powers and functions of the UN General Assembly and the UN Security Council and cite some examples of the achievements of each organ in the domain of peace and security

Q6. Examine the significance of Recognition in relation to:

- (a) territorial claims
- (b) changes in the status of subjects of international law and the territorial status quo.

Q7. (a) The Ambassador of Ambazonia is requested by the Ministry of Foreign Affairs of Bangulia to vacate the Embassy premises in three months, as the land is required for the extension of a trunk road. The Ambazonian Ambassador complains that (i) he has no intention of moving the Embassy, and (ii) in any event the time given is not sufficient for the Embassy to find alternative accommodation. At the end of three months, all municipal services controlled by the local authorities to the Embassy are severed, including electricity, gas, water, telephone and refuse collection.

Advise the Ambazonian Ambassador.

- (b) The Lusaka City Police Commissioner telephones the Ministry of Home Affairs that AK 47 rifle shots and cries for help can be heard from the Embassy of Tropicania. He wishes to be advised whether he is entitled to break into the Embassy.

You are the Legal Adviser in the Ministry of Home Affairs. Advise the Hon. Minister of Home Affairs.

Q8. Either:

- (a) Discuss any one method of peaceful settlement of disputes you have studied.

Or:

- (b) (i) Distinguish between: self-defence, self-preservation, self-help.
- (ii) "When differences between states reach a point at which both parties resort to force, or one of them does acts of violence, which the other chooses to look upon as a breach of the peace, the relation of war is set up, in which the combatants may use regulated violence against each other, until one of the two has been brought to accept such terms as his enemy is willing to grant."

Consider the adequacy of this definition of 'war' in the contemporary world.

END OF EXAMINATION

PROF. C. ANYANGWE

THE UNIVERSITY OF ZAMBIA

UNIVERSITY SUPPLEMENTARY/DEFERRED EXAMINATIONS - JANUARY 1996

L 430

INTERNATIONAL LAW

TIME ALLOWED: THREE HOURS (PLUS 10 MINUTES READING TIME)

INSTRUCTIONS: ATTEMPT ANY FOUR QUESTIONS.
CANDIDATES ARE REMINDED OF THE NEED FOR SCHOLARSHIP,
GOOD ENGLISH, TIDINESS AND ORDERLY PRESENTATION IN
THEIR ANSWERS.

- Q1. (a) Consider the arguments for, and against, ad hoc members of the International Court of Justice.
- (b) Consider the legal significance of resolutions adopted by the General Assembly of the United Nations.
- Q2. (a) Explain the rules of international law by reference to which the baseline of the territorial sea is drawn.
- (b) What rights of passage are enjoyed by foreign ships through the territorial sea?
- Q3. Consider the nature and scope of the jurisdiction of a State over the following:
- (a) A foreigner to whom, by mistake, the state exercising jurisdiction has granted a passport and who has committed abroad an offence punishable only if committed by a national.
- (b) One of its merchant ships which is in the port or territorial sea of a foreign State.
- (c) Crimes committed on board an aircraft of its own nationality which is flying over the high seas or a foreign State.
- Q4. What limites, if any, are imposed on belligerents in their treatment of
- (i) wounded and sick members of armed forces,
- (ii) prisoners of war,
- (iii) members of resistance movements in occupied territory.

25. Discuss the meaning and legal significance of the following expressions in international law:

- (i) denial of justice,
- (ii) jus sanguinis,
- (iii) non-refoulement,
- (iv) floating island,
- (v) aut punire, aut dedire.

26. To what extent, if any, has the position of an individual as an object of international law been affected by many treaties since World War I bestowing rights, imposing duties or placing responsibilities on individuals?

27. In Underhill v Hernandez (1897) 168 U.S. 250 Chief Justice Fuller adumbrated the theory that "Every sovereign State is bound to respect the independence of another sovereign State and the courts of one State will not sit in judgement on the acts of another done within its territory." Is this 'act of state' doctrine a rule of international law?

28. On December 1, 1995, the Zambian Government made a declaration:

"recognizing as compulsory ipso facto and without special agreement, in relation to any other State accepting the same obligation, the jurisdiction of the International Court of Justice, until such time as notice may be given to terminate the acceptance, over all disputes arising after December 1, 1995, with regard to situations or facts subsequent to the same date, other than:

- (i) Disputes regarding matters which are essentially within the domestic jurisdiction of the Republic of Zambia as determined by the Republic of Zambia;
- (ii) Disputes regarding which any other party to the dispute has accepted the compulsory jurisdiction of the International Court of Justice only in relation to, or for the purposes of, the dispute; or where the acceptance of the Court's compulsory jurisdiction on behalf of any other party to the dispute was deposited or ratified less than twelve months prior to the filing of the application bringing the dispute before the Court."

On June 1, 1996, the Zambian Government filed an Application with the International Court of Justice charging South Africa with a breach of an Agreement of June 1, 1995, between the two countries whereby the Contracting Parties granted each other most-favoured-nation treatment regarding customs duties. The specific complaint relates to an alleged failure by the South African Government to grant Zambia equal treatment with Zimbabwe which, under a Treaty of February 1, 1996, with South Africa, enjoys a flat rate of 10 per cent ad valorem customs duties regarding all Zimbabwean exports to South Africa. South Africa contests the jurisdiction of the Court.

Discuss.

END OF EXAMINATION

Professor C. Anyangwe

THE UNIVERSITY OF ZAMBIA
UNIVERSITY EXAMINATIONS - OCTOBER/NOVEMBER 1995

L 450

INTERNATIONAL TRADE AND INVESTMENT LAW

TIME: 3 HOURS

INSTRUCTIONS:

CANDIDATES MAY BRING COPIES OF THE WTO, GATT, IBRD, IMF, INVESTMENT ACT 1993 INTO THE EXAMINATION ROOM.

CANDIDATES MUST ANSWER ANY FOUR QUESTIONS.

- Q1. Discuss whether the creation of the WTO has improved the international legal framework for trade. Which aspects in particular strengthen the GATT, and do they have any direct relevance for Zambia?
- Q2. Using a third world perspective, analyse the current debt crisis and discuss the legal responsibility for its amortisation.
- Q3. Compare and contrast the IBRD and the IMF with regard to objective, institutional structure, function and role played in Zambia's economic development.
- Q4. Write notes on
- a. the Uruguay Round
 - b. debt management
 - c. the IDA
- Q5. Make an assessment of the Investment Act of 1993, pointing out the ways in which it benefits Zambia's development objectives as well as, or as opposed to, meeting the needs of foreign investors.
- Q6. Name and outline the structures of two international institutions for the settlement of economic disputes. Describe the international dispute settlement process. Do you know of any case in which this process has been relied upon?

Q7. Discuss ONE of the following:

- a) international trade theory
- b) the international monetary system
- c) investment theory

Take care to include a note on the relevance of the selected theory for Zambia's development.

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - OCTOBER/NOVEMBER 1995

L 480

INDUSTRIAL LAW

TIME: THREE (3) HOURS PLUS 15 MINUTES TO READ THROUGH
 THE QUESTION PAPER.

INSTRUCTIONS:

1. ANSWER question No. 1 and any other three of which questions at least one question must be answered from each section.
2. No statutes are allowed in the examination room.
3. Candidates are reminded that credit shall only be given for clarity in presentation, relevant use of authorities and a demonstration of an understanding of the principles of law involved.
4. Question No. 1 carries 34 marks while the rest carry 22 marks each.

SECTION A

(Question Number 1 and at least one other question must be answered from this Section).

1. Rival Chungu was employed in the Civil Service of the Republic of Zambia in 1980 on permanent and pensionable conditions of service. Section 151 of the Constitution of Zambia, as it then existed, vested the power of appointment and discipline of civil servants in the President although subsection (2) of this section required the President to consult the Public Service Commission in relation to a number of statutory offences.

Under Section 114 of the Constitution the President had the power to give general directions to the Public Service Commission (PSC) in its dealings and subsection (10) of this section empowered the President to remove from the Commission any particular matter which was under consideration by it so that he could deal with it himself. Note that subsection 151 (3) of the Constitution allowed the PSC to exercise the functions of the President in relation to appointment and general discipline. Pursuant to Section 122 of the Constitution which gave the PSC power to make regulations, the PSC made a set of regulations which set out the procedure for and the circumstances in which a civil servant could be dismissed by the commission.

Regulation 36 provided as follows:

"A public officer acquitted of a criminal charge in any court shall not be dismissed or otherwise punished for any charges upon which he has been so acquitted; but nothing in this regulation shall prevent his being dismissed or otherwise punished on any other charges arising out of his conduct in the matter."

Regulation 31 provided that pay withheld should be restored upon acquittal.

Under Regulation 46 it was provided that a civil servant had a right to be heard before any dismissal could be effected.

Rival was charged with the criminal offence of theft by public servant on 1st February 1984. On 18th March 1985 he was acquitted of that offence. During the intervening period Rival was on suspension and on half salary. When he was acquitted the President charged the PSC with the task of determining whether it would be in the public interest to continue to retain Rival as a public servant given that he had been charged with the offence of theft in the public service.

The PSC recommended that Rival be transferred to another government department. The President disagreed with this recommendation and directed the PSC to summarily dismiss Rival.

Rival has now taken legal action against the PSC claiming, inter alia, that his dismissal was void, that he should be paid the remainder of his salary, and that he was entitled to reinstatement.

In the light of decided cases advise the government on the issues that this problem raises. (34 marks)

2. (a) Briefly outline the dispute resolution process in essential and non-essential services under the Industrial and Labour Relations Act, (No.27) of 1993. (8 marks)
- (b) The National Union of Truck and Trailer Drivers (NUTTD) is a duly registered union under the Industrial and Labour Relations Act, (No. 27) of 1993 with Distance Chapora as its national Chairman. In recent weeks Chapora, together with other executive members have been pushing the Association of Truck and Trailer Employers (ATTE) to enter into negotiations for better conditions of service. ATTE has been consistently refusing arguing that in fact ATTE does not recognise NUTTD. Last week the government increased the price of fuel, mealie meal and sugar the result of which was a general call for improved salaries by all the twenty three unions in the country. NUTTD on its part called for a strike by its members who accordingly complied. The entire executive of NUTTD was subsequently dismissed from employment and they seek your advice on what step they should take next. (14 marks)
3. (a) Explain the various incidents of oral as well as written contracts of employment under the Employment Act, Cap 512 of the Laws of Zambia. (8 marks)
- (b) Rosemary was employed by Smart Powder Gun Manufacturers Ltd, a company registered in Zambia and engaged in the manufacturing of explosives and ammunition. Rosemary was employed as a Technical Analyst in the company. Under her contract of employment there was the following term:

"Howsoever a contract of employment may be terminated, a person employed as a Technical Analyst shall not get similar employment within the radius of forty kilometres of the city of Lusaka and within a period of ten years after such termination"

Rosemary has now been dismissed from employment for getting married to Peter who is also employed in the same capacity by Associated Zambia Network of Explosive Productions Ltd (AZ-NEP), a rival company carrying on business five kilometres from the city of Lusaka.

You are a labour lawyer, and Rosemary approaches you for your legal opinion on the matter. (14 marks)

4. (a) In the context of the various theories that have been advanced, discuss the concept of the "Right to Strike." (8 marks)
- (b) In his discussion on the individual employee involved in industrial action Napier outlines the disadvantages with which he or she is faced. Briefly discuss these disadvantages and the extent to which the Zambian statutory law has addressed the issue, if at all. (14 marks)
5. Fondwell Chanda was employed as a Securities Manager on 1st February, 1992 by All Business Corporate Bank Ltd (ABC Ltd). Part of the letter of appointment read as follows:

"You will be on probation for a period of not less than six months. During this period, employment may be terminated by either side by giving one month's salary in lieu of notice. However if your probationary period is successful, you will be confirmed as a permanent and pensionable member of staff..."

The letter of appointment contained further terms some of which were as follows:

"Sick leave will be up to 90 days on full pay and up to 180 days on half pay on recommendation and production of medical certificates from a recognised medical practitioner"

"You will be required to obey all lawful instructions. You will be liable to instant dismissal in the event of incompetence, insubordination or any kind of misconduct"

On 15th June 1994 Fondwell received the following letter from ABC Ltd

Mr. Fondwell Chanda
ABC Ltd
LUSAKA

Dear Mr. Chanda,

Re: CONFIRMATION - SECURITIES MANAGER

It is my pleasure to inform you that it has now been decided to confirm you as Securities Manager with effect from 10th March, 1994.

Following this confirmation, the following will, among others, be your entitlements:

1. Your annual salary will be paid at the rate of K864,656.00 per month
2. You will be entitled to a personal to holder vehicle
3. You will be paid 20% of your salary as inducement allowance
4. You will also be entitled to the following allowances at the existing rates:
 - (a) Furniture allowance
 - (b) Entertainment allowance
 - (c) Housing allowance
 - (d) Water and electricity allowance
 - (e) Telephone allowance
 - (f) Servant allowance
 - (g) Educational allowance up to four children
 - (h) Medical allowances
 - (i) Domestic servant allowance

Be advised that other terms and conditions of employment applicable to you are contained in a document titled "General Conditions of Service" which is enclosed herewith.

We would like to take this opportunity to congratulate you on your well deserved confirmation.

Yours sincerely

Tunnel Siteti Sikiliti Bauleni
DIRECTOR - HUMAN RESOURCES

Today 6th November, 1995 Fondwell approaches you with the following complaint.

He alleges that soon after he was employed his employer has frustrated him in a number of ways. He cites the following examples:

- (a) that after he was employed the employer delayed giving him accommodation
- (b) that none of the allowances mentioned in the letter of appointment has been paid
- (c) that a direct telephone line to his office was removed and given to his junior
- (d) that he was entitled to a furnished house at his former work place from which he resigned after being expressly told by word of mouth that he would be given a fully furnished house, but the same has not been done
- (e) that the employer has used insulting language when addressing him even in the presence of his subordinates.

Fondwell feels that his employer's actions are such that he cannot be reasonably expected to work for the employer and had indeed resolved to leave employment. He has instructed you to issue an appropriate writ before an appropriate court for appropriate remedies, if any.

Fondwell is 42 years of age and he would have retired at the age 70 years, according to ABC Ltd conditions of service.

Advise him.

(22 marks)

SECTION B

(At least one question must be answered from this Section).

6. Zambia, which has not ratified the International Labour Organisation (ILO) Convention No. 87 on Freedom of Association and Protection of the Right to Organise has approached you for advice on the advantages and disadvantages of ratifying this Convention, the ILO policy on the question of trade union strength as well as on the implication of such ratification on trade union structure. What amendments to the Industrial and Labour Relations Act, (No. 27) of 1993 would you suggest? (22 marks)
7. Describe the structure of the ILO and how compliance with its labour standards by member states is monitored. (22 marks)
8. Economic Structural Adjustment Programme (ESAP) currently being implemented in Zambia calls for a deliberate effort on the part of the government to introduce and adhere to positive labour policies for sustainable growth and not contraction of employment opportunities. Discuss.
9. "The rights of women in employment has been a subject of concentrated effort by the ILO. To a very large extent this has been achieved through the adoption of relevant Conventions and Recommendations although individual state practices may be at variance with such standards."

Discuss the above statement with reference to Zambia.
(22 marks)

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - OCTOBER/NOVEMBER, 1995

L490

TAXATION

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

ANSWER: ANY FOUR QUESTIONS

NOTE: CANDIDATES MAY CONSULT THE INCOME TAX ACT AND ANY AMENDMENTS THERETO

1. Mario Ekangaki is a Zairean truck driver. On April 1st, 1995 he crossed from Zaire into Zambia at Kasumbalesa border post with his truck full of copper cathodes destined for Namibia. At the border post he ran into a South African truck driver Lucky Dube who was returning back to Durban in South Africa. Unfortunately Dube's truck had a knock engine and it could not move. Dube begged Mario to tow his truck to Lusaka where it could be repaired. Mario agreed on condition that Dube paid him 800 US Dollars. On arrival in Lusaka on April 5th, 1995 Dube paid Mario the 800 Dollars. In Lusaka Mario sold all of the copper cathodes to ZESCO in order to raise funds for his Zambian mistress who stays in Mandevu Compound. He realized 11,200 US Dollars from that sale. Because of the Ebola virus in Zaire, Mario decided to settle in Zambia. On May 2nd, 1995 he married his Zambian mistress. However on October 27th, 1995 he was declared a prohibited immigrant and was ordered to be deported back to Zaire. The Zambia Revenue Authority however wanted to determine whether he should pay taxes before leaving Zambia.

Citing relevant authorities determine whether or not Mario can be taxed. If he is taxable compute the total tax due from him. Assume that the exchange rate is K1,000 to a US Dollar.

2. (a) Preamble Maningi is a refugee from trouble torn Burundi and is confined to a wheel chair on account of a debilitating bout of polio he suffered when he was six years old some thirty years ago. He arrived in Lusaka on May 10th, 1995 and was employed as a Quantity Surveyor on May 23rd, 1995 with a local firm at a salary of K500,000 per month. On October 31st his employment was terminated on grounds of insubordination.

Calculate:

- (i) his total tax due
- (ii) his average rate of tax

- (b) If from July to October he put in some of overtime and earned an extra K600,000, what is his marginal rate of tax?

3. "Accelerated depreciation is an important incentive often offered as a way of attracting foreign investment as well as stimulating domestic investment."

(a) Is this statement true or false? Give reasons for your answer.

(b) In your view, should accelerated depreciation be encouraged in a developing country such as Zambia? State the arguments for and against.

4. Zambia Chemical Bank Ltd is a Bank incorporated in Lusaka. Its main Shareholder with 50% equity is an Italian company by the name of Andiamo Enterprises Pty registered in Rome. The other shareholders are Dr. Edgar Pavrotti resident in Sicily with 25% equity, Timwenge Co Ltd with 5% equity and Ms Helena Maibuze with 20%.

You have been informed that Zambia Chemical Bank was incorporated with a share capital of 100,000 shares at a par value of K20/share all fully paid up. In fiscal year ending March 1995 the pre-tax profit was K100 million. A dividend of K10/share was declared. Calculate the tax that Zambia Chemical Bank must account for.

5. Kafue River Fisheries Ltd are fish mongers. In fiscal year 1990 they purchased a refrigerated truck at a cost of K47 million. The truck was estimated to have a five year life and an estimated salvage value of K2 million.

Using the Sum-of-the-years'-digits method. Calculate the depreciation in fiscal year 1995.

6. You are an Assistant Deputy Commissioner of Direct taxes at the Zambia Revenue Authority. Your boss, the Commissioner-General, has instructed you to write a policy paper for onward transmission to the Minister of Finance, so that he can use it to defend government's new tax proposals in Parliament.

You are required to give sound arguments on what you consider to be the most feasible way of taxing:-

- (a) fringe benefits
- (b) gifts
- (c) illegally obtained gains.

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

FINAL EXAMINATION PAPER 1995

L630 - HUMAN RIGHTS LAW

INSTRUCTIONS:

1. ANSWER QUESTION ONE AND ANY THREE QUESTIONS
 2. YOU ARE ALLOWED USE OF REGIONAL AND INTERNATIONAL INSTRUMENTS AS WELL AS RELEVANT DOMESTIC LEGISLATION
 3. YOU MUST DEMONSTRATE CLARITY IN YOUR ANSWERS AND BE BRIEF
 4. YOU HAVE THREE HOURS PLUS 40 MINUTES TO READ THE QUESTIONS
-

1. You are a member of a technical team of experts appointed by the African Commission to prepare an opinion on a matter that had that is due to be heard as to merits in the Commission's next sitting. It has already been judged admissible. According to accounts made available to you, an individual communication had been made against the Government of the Islamic Republic by one grassroots NGO operating in Khatoum known as the Human Rights Forum (HRF). The Forum accused Sudan of violating the African Charter and other International human rights instruments through its practice of Islam which is the source of all law and a basis for government institutions and practices. The Forum had argued, in its communication, that conflicts between Universally accepted human rights norms and Islamic law and practice had yet to be resolved. They contended that whereas Sudan eagerly signed the African Charter and later ratified it no effects were made to make the regional standards contained in the Charter part of the domestic law of Sudan which remains predominantly Islamic. The Sudanese government delegation stated that human rights standards in Sudan must be in conformity with Islamic criteria. The delegation argued that cultural differences had to be taken into account in order to interpret compatibility. But the Forum argued that the rights under the Charter were universal and had to be interpreted as such. They pointed out, for example, that the constitution of Sudan recognised four religious groups only i.e Islam, Zoroastrian, Judaism and Christianity but not others emphasising that the Bahai's faith were suffering discrimination because it was considered an illegal faith along with others not listed in the constitution. Further, the Forum identified women as one Social group denied rights under the Islamic Society in Sudan.

The government delegation stated that women were accorded a "special status" in order to provide for "differences by nature" between men and women. In this respect, the government argued that the restrictions on women such as access to employment, education, dress code, family planning, inheritance, etc were differences that were necessary to take account of the differences imposed by nature. As regards to the restrictions on religions, the government argued that there existed relative freedom of faith in Sudan and that it would be unfair to demand the relaxation of all restrictions on religion even if this would harm the Sudanese Society. They pointed out that even in an old democracy like England, the church of England is still the state Church.

Prepare an opinion for the African Commission. Your opinion should be a well reasoned analysis of the relationship between human rights norms in the African Charter and domestic standards in the light of cultural and religious relativities in none - developed societies.

2. "No system of human rights protection has any practical meaning to the victims of human rights violations unless clear procedures exist for the vindication of the guaranteed rights."

International Commission of Jurists, 1992.

- (a) Describe and critically analyse the procedure and system of human rights protection in the African Charter both from the point of view of the state and the individual as "complainants."
 - (b) Would you propose any reforms to improve and enhance the effectiveness of the existing system of protection.
3. (a) How does "State Reporting" differ from "communications" under the African Charter.
Explain what is involved in state reporting and why states are not keen to report.
 - (b) How does the European Convention provide for State reporting?
4. Explain the reasons why Zambia has not incorporated the African Charter in its domestic law. In the light of this, is Zambia subject to the obligations under the African Charter?
 5. A truly African Charter should respect traditions and customs that are judged to be worthwhile and at the same time to be integrated into worldwide and regional rules drawn up the world over in order to promote and protect individual and collective rights.

Sir Dauda Diawara, President of the Republic of the Gambia (1980).

- (a) Critically examine the nature of the human rights standards "welded" in the African Charter describing their scope and content. (You may use one or a sample)

- (b) Is the combination of the first, second and third generation rights in one document an improvement over the existing system or does the departure undermine the protections.
 - (c) What are "peoples rights" in the Charter and how are they enforceable?
- 6.
- (a) What are the main distinctions between the systems of protections of human rights in the European Convention and the Inter-American Convention of Human Rights.
 - (b) Using decided cases, explain how the European Convention has protected Human rights in its various organs. In particular, how does the European System enforce the judgements of the European Court?
7. Analyse the case of the 517 Senegalese nationals who were deported by Zambian authorities and subsequently took Zambia to the African Commission. Closely examine the various arguments the two parties raised in the light of both Zambian law and the African Charter. In your view, which arguments have merit?

END OF EXAMINATION

UNIVERSITY OF ZAMBIA LIBRARY

