

2<sup>nd</sup> **THE UNIVERSITY OF ZAMBIA**  
**SEMESTER EXAM PAPER 2002/2003**  
**SCHOOL OF LAW**

- |           |   |   |
|-----------|---|---|
| 1. L 141  | - | Criminal Law and procedure I                    |
| 2. L 152  | - | Constitutional Law II                           |
| 3. L 172  | - | Refugee Law                                     |
| 4. L 222  | - | Law of contract                                 |
| 5. L 232  | - | Law of Torts                                    |
| 6. L 242  | - | Criminal Law                                    |
| 7. L 242  | - | Criminal Law II Specific Offences               |
| 8. L 252  | - | Constitutional Law II                           |
| 9. L 262  | - | Family Law                                      |
| 10. L 321 | - | Land Law and Property Relations                 |
| 11. L 322 | - | Land Law and Customary Systems of Tenure        |
| 12. L 322 | - | Land Law II                                     |
| 13. L 332 | - | -Commercial Law II                              |
| 14. L 342 | - | -Administrative Law II                          |
| 15. L 342 | - | -Administrative Law II                          |
| 16. L 351 | - | International and Regional Human Rights Law     |
| 17. L 352 | - | National Human Rights Law                       |
| 18. L 352 | - | Human Rights Law in Zambia                      |
| 19. L 362 | - | ↖ Civil and animal Procedures II                |
| 20. L 382 | - | Industrial Law                                  |
| 21. L 412 | - | Jurisprudence II (Law and Society)              |
| 22. L 422 | - | Company Law                                     |
| 23. L 431 | - | International Law                               |
| 24. L 432 | - | The Law of International Institutions           |
| 25. L 452 | - | International Investment Law                    |
| 26. L 472 | - | Refugee Law                                     |
| 27. L 620 | - | International Human Rights and Humanitarian Law |

**THE UNIVERSITY OF ZAMBIA  
SCHOOL OF LAW**

**UNIVERSITY SECOND SEMESTER EXAMINATIONS –OCTOBER, 2002**

**L. 152**

**CONSTITUTIONAL LAW - II**

**INSTRUCTIONS:**

**TIME : THREE [3] HOURS [Plus 5 Minutes to read the Question Paper]**

**ANSWER ; FOUR [4] QUESTIONS**

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

---

**QUESTION 1:**

Muntanga graduated from UNZA in 1994 with an LL.B degree and was subsequently admitted to the bar in 1995. She joined the Ministry of Legal Affairs as a State Advocate in 1997. She handled a good number of Civil cases on behalf of the government successfully. When the incumbent DPP, Lombe, resigned, the President nominated Chisuta, a Senior State Advocate, to take over but the National Assembly refused to ratify his appointment. The President's next nominee, Lubinda, was also rejected by the National Assembly. Finally, the President nominated Muntanga, whose appointment was opposed by the National Assembly. But the President stuck to his guns and insisted that Muntanga takes office. Muntanga was sworn in as DPP.

Three months after taking office Muntanga receives instructions from State House to prosecute Chizyuka, an opposition MP who has issued a statement complaining that five people in his constituency have died of hunger. She complies.

Comment on the legal issues arising in this case.

**[25 marks]**

**QUESTION 2:**

During the Second Republic elections for the Presidency were a regular feature of the system. How democratic were these elections both in theory and practice? **[25 marks]**

**QUESTION 3:**

To what extent did freedom of association and assembly exist in the Second Republic?  
**[25 marks]**

**QUESTION 4:**

What factors led to the abolition of one-party rule in Zambia in 1991 and how was this achieved?

**[25 marks]**

**QUESTION 5:**

With the aid of authorities, discuss the relationship between Parliament and the Courts under Zambian Law.

**[25 marks]**

**QUESTION 6:**

Discuss the mechanisms that have been put into place to control Presidential power in Zambia.

**[25 marks]**

**QUESTION 7:**

How does the Law in Zambia secure the independence of the Judiciary?

**[25 marks]**

**END OF EXAMINATION**

**THE UNIVERSITY OF ZAMBIA**

**2001/2002 ACADEMIC YEAR SECOND SEMESTER FINAL EXAMINATIONS**

**L172- REFUGEE LAW**

**INSTRUCTIONS:**

- 1. CANDIDATES ARE ALLOWED TO BRING INTO THE EXAMINATION ROOM CLEAN AND UNMARKED COPIES OF ALL RELEVANT TREATIES AND DECLARATIONS ON REFUGEES AND RELEVANT HUMAN RIGHTS INSTRUMENTS AND STATUTES.**
  - 2. CANDIDATES SHOULD ANSWER QUESTION ONE AND THREE OTHER QUESTIONS.**
  - 3. THIS EXAMINATION IS FOR THE DURATION OF THREE (3) HOURS.**
- 

**ANSWER QUESTION 1 AND THREE OTHER QUESTIONS**

**QUESTION 1**

- (a) To what extent is there a difference between the definition of "refugee" as contained in the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa and the definition in the 1951 Convention relating to the Status of Refugees? (15)
- (b) What developments prompted the need for a uniquely African definition of 'refugee'? (10)

**QUESTION 2**

State and explain the significant development(s) the 1967 Protocol relating to the Status of Refugees introduced to the international protection of refugees? What events inspired the adoption of the Protocol? (25)

**QUESTION 3**

Name the United Nations body specially charged with the international protection of refugees and, also, describe its mandate and functions. (25)

#### **QUESTION 4**

What is meant by the objective and the subjective elements in the criterion "well-founded fear of persecution" in the 1951 Convention on the Status of Refugees? (25)

#### **QUESTION 5**

In as much detail as possible, explain the meaning of the following terms:

- (a) stateless person;
- (b) mandate refugee; and,
- (c) statutory refugee. (25)

#### **QUESTION 6**

In the context of the early definitions of 'refugee', what is meant by:

- (a) the juridical perspective;
- (b) the social perspective; and,
- (c) the individualistic perspective. (25)

#### **QUESTION 7**

State:

- (a) the circumstances in which a person may lose his refugee status; (15)  
and
- (b) the circumstances which may exclude a person from getting refugee status. (10)

**THE UNIVERSITY OF ZAMBIA**  
**SECOND SEMESTER EXAMINATION**

**L222 – OCTOBER 2002**  
**LAW OF CONTRACT**

**TIME:**                      **THREE (3) HOURS**

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

1. George is a proprietor of an up market boutique dealing in exclusive designer products based in Kitwe. He solicited and obtained orders from Thoko an undergraduate student at UNZA of extravagant tastes acting through her colleague Mwansa who is also an undergraduate student at CBU. Mwansa obtained clothes and accessories in excess of K10 million on Thoko's behalf over a two month period. Thoko was at the time she began dealing with George amply supplied with clothing; however she lacked a wrist watch and a backpack both of which were supplied by George at a cost of K4 million being designer articles. During the period that these transactions were taking place, Thoko's father, James, who was also George's customer was kept fully informed of Thoko's purchases by George.

George who has been trying for some time to get Thoko to pay what she owes but without success, comes to you for advice. He informs you that Thoko's friend Mwansa had informed him that she had last seen Thoko at her 18<sup>th</sup> birthday party two days ago. Advise George on the options available to him.

2. (i) Discuss the two heads of the rule in *Hadley v Baxendale* [1854] 9 Exch 341  
(ii) What is the duty to "mitigate loss" and on whom does it fall?  
(iii) What is the object of a quantum meruit claim?
3. Peter a Zambian exporter has contracted to supply a quantity of sewing machines to Dumisani a Sotho importer, who is in business in the western highlands 100 kilometers from Maseru, the Lesotho capital, at an agreed price CIF (cost, insurance, freight). The goods were to be dispatched by May 1<sup>st</sup> 2002. Lesotho, a mountainous country has one port, Ruraport, and normally the goods would be sent inland via Ruraport. After an earthquake in April 2002, the port is rendered unusable due to extensive damage and Peter has to decide whether to have the goods taken overland, which will treble the cost of carriage or treat the contract as discharged. Before he can take any action he comes to you for legal advice.

4. Moses and Kurt are artists who make their living by selling their works at the Sunday Art Show at the beach. One afternoon Kurt said to Moses, “I will swap this statue I am working on, for that (pointing to the canvass on which Moses was working) painting of yours.” Moses replied, “it’s a deal, but the statue is so heavy I think you should deliver it.”

Their face to face meeting ended then without anything further being said. When Moses arrived home, his landlord, Chanda, demanded the rent due. Moses admitted he had no money, but offered to transfer to Chanda the right to receive the statue from Kurt. Chanda agreed, and Moses then stated “all right, I transfer to you my right to receive from Kurt the statue he is currently working on as a total discharge of my obligation to pay the rent now due.” Chanda and Moses reside at the same address.

Soon Moses and Kurt completed their projects. However, Kurt had become very attached to the statue. Kurt and Moses agreed that Kurt could keep the statue and pay Moses K2,000,000.00 for the painting which Kurt did. Chanda learned of this and is determined to have the statue.

Chanda consults you and inquires as follows:

- (i) Did Moses have a contract for the statue with Kurt? **Discuss.**
- (ii) If so, can Chanda compel Kurt to deliver the statue to him? **Discuss.**
- (iii) If Chanda cannot compel Kurt to deliver the statue to him, what obligation if any, does Moses have to Chanda? **Discuss.**

5. Edward purchased the Royal Hotel from George in August 1981. As a condition of purchase George covenanted that he would not ‘for a period of two years from the date of transfer of ownership engage, either directly or indirectly, in the business of hotelier or restaurateur within ten kilometers of the Royal Hotel’. Edward has now heard a rumor that George is going to put his money into a guest house eight miles from the Hotel.

Six months ago Edward engaged Charles as a trainee barman to work in the cocktail bar of the Hotel. This bar, which serves a wide range of unusual cocktails, is very popular with members of the general public as well as the hotel guests and those dining at the Hotel’s restaurant. On entering Edward’s employ, Charles agreed that he would not ‘work as a barman in any hotel, restaurant, club or public house within two kilometers for a period of one year’ after the termination of his employment. Charles’ cousin, who owns a local public house, has offered him a job.

Advise Edward as to whether he can enforce the restraints against George and Charles.

6. (i) With the use of decided cases outline the ways by which an agency relationship may result.
- (ii) Ben is a partner in a law firm. It is agreed by the six partners that only partner Mulenga be in charge of procurement of office supplies, however for procurements in excess of K20 million all the partners should give their prior approval.

Ben enters into three contracts in the firms name to purchase:

- (a) a consignment of tinned fruit for K6million;
- (b) Office equipment valued at K25million, and
- (c) A Mercedes Benz vehicle valued at K80 million.

To what extent are the other partners liable on these contracts.

7. The common law has albeit reluctantly allowed inroads into the privity doctrine. With the use of decided cases discuss the common law mechanisms by which third parties can acquire enforceable rights under a contract.

\*\*\*\*\*



**THE UNIVERSITY OF ZAMBIA  
SCHOOL OF LAW**

**UNIVERSITY SECOND SEMESTER EXAMINATIONS, OCTOBER 2001/2002**

**L. 232 – LAW OF TORTS**

**INSTRUCTIONS**

**TIME : THREE [3] HOURS [Plus 5 Minutes to read the Paper]**

**ANSWER QUESTION ONE AND ANY OTHER THREE QUESTIONS**

---

**QUESTIONS 1 [ COMPULSORY]**

Choose and answer two and only two of the following three questions: numbered [a],[b] and [c]:

- a. Samuel Banda was on duty at his work place at the Maamba Coal Mine in the Southern Province of Zambia when he was informed that his wife Jane had been involved in a near-fatal traffic accident with her car which she was driving on her way to Lusaka. She collided with a truck driver who admitted being negligent. The report to Samuel Banda also stated that Jane was in a comma and was receiving medical and light surgical treatment in the intensive care unit at the University Teaching Hospital [UTH] in Lusaka. Banda traveled to Lusaka to see his wife in hospital.

At the University Teaching Hospital in Lusaka, Banda was allowed by the Hospital Authorities to look at his unconscious wife in the Intensive Care Unit. After staring at the heavily bruised and disfigured face of his beloved wife for one full minute he suddenly went into a trance, fell down to the hospital floor and passed out. He was also hospitalized for one month, but was discharged three months earlier than his wife. Banda, however, subsequently suffered from organic depression and permanent personality disorder. He has retained a lawyer who has filed a legal action against the truck driver on his behalf for damages for the mental harm he has suffered.

Name the branch of the law of torts in which Banda has sued, and indicate how the injury which Banda has suffered is known in the law of torts. Briefly discuss Banda's chance of success in his action, and cite two relevant precedents. Do not forget the fact that Banda did not witness the traffic accident in which his wife was involved.

- b. Name all the four basic elements of the tort of Deceit, giving a brief explanation of each element, and stating one distinction between Deceit and Defamation. Support your answer with two or more decided cases.
- c. When in the law of torts the injury caused to the plaintiff involves a first incident and a '*nova causa interveniens*' the courts are often presented with the problem of ascertaining which of the two occurrences was the actual and effective cause of the damage to the plaintiff. Briefly discuss the test which is sometimes used in deciding whether or not there was a break in the chain of causation. Discuss also, in a few notes, the legal position of liability in multiple causes. You are expected to cite two or more authorities in support of the whole of your answer.

## QUESTION TWO

There is a principle in the law of torts which is a mere rule of evidence and is therefore not a specific tort, which enables the Plaintiff to succeed in his action by simply showing to the Court that he got harmed by a thing that was under the control of the Defendant. He does not need to prove negligence against the Plaintiff. Give the Latin name for this rule of evidence. Besides the two elements that the accident occurred and that the thing was under the control of the defendant, state the two other facts which the Courts consider before they find the defendants liable to the Plaintiffs in the absence of proof of negligence in such cases. Cite two authorities to buttress your answer, stating what the results of the authorities you have cited were.

## QUESTION THREE

What is meant by "Breach of Statutory Duty" ? Why is it difficult for a member of the general public to sue in this tort? Cite one or more decided cases to illustrate to shore up your answer, and to illustrate the essence of the tort.

## QUESTION FOUR

One Sunday evening Kaminamisa Wachilaka got so drunk that he failed to drive his car home and left it parked in the middle of the road at a bend, and staggered home. Early the following morning, before Kaminamisa returned to the road to collect his car, a law-abiding resident whose house was near the spot where the car was left, placed one metal triangle sign and five green tree branches behind the stationary car to warn other motorists of the danger on the road.

But a few minutes later Kankungwe Wachibanda drove his car towards the parked car at a break-neck speed, ignoring all the 'danger – ahead' signs and collided with it, breaking his left leg, which was subsequently amputated. Kankungwe has sued Kaminamisa for damages for the loss of his leg. Discuss the chances of his success in his action, citing two relevant authorities in the course of your arguments, and

stating if the defendant has any defence available to him. Briefly but clearly, discuss the defence if any.

**QUESTION FIVE**

Write brief notes on all three of the following topics:

- a. Liability for '***mansuetae naturae***'. Explain the '***scienter***' rule.
- b. The stage at which the occupier of property is guilty of negligence under the rule in RYLANDS V. FLETCHER [1865] 3 H and C 744, or [1868] L. R. HL 330.
- c. The two-tier proximity rule concerning the relationship between the Plaintiff and the Defendant in tort as formulated by Lord Wilberforce in the celebrated case of ANNS V. MERTON LONDON BOROUGH COUNCIL [1987] A.C. 728 at 751.

**QUESTION SIX**

Before the English occupier 'Liability Act, 1957, was enacted, liability of an occupier to persons coming onto his premises depended on whether the entrants were '***invitees***' or '***licences***'. The 1957 Act simplified the two categories of entrants on premises of others by referring to all of them simply as '***visitors***'. The Act was applied to Zambia before the Country achieved its independence in 1964. Now answer both questions [a] and [b] given here below:

- a[i] Using your own words, and not necessarily the words used in Section 2 of the Act, define a **visitor** in the sense in which the word is used in this 1957 Act. Give two hypothetical examples of a visitor to premises of another.
- ii] In a few lines, discuss who an occupier of land is.
- b] Restate the 'common duty of care' as laid down in section 2 [b] of the 1957 Act referred to above.

**QUESTION SEVEN**

Listed below are five general defences in the law of torts. Pick three of them which you think may be raised by a defendant who is sued in the tort of negligence. Make brief notes on each of the three defences you have chosen. Cite one real or hypothetical precedent for each defence.

THE LIST

- 1. Necessity
- 2. Volenti non fit injuria
- 3. Act of God
- 4. Justification
- 5. Statutory Authority

6. Jus Tertii

.....**END OF EXAMINATION**.....

**THE UNIVERSITY OF ZAMBIA  
SCHOOL OF LAW**

**UNIVERSITY EXAMINATIONS MAY, 2002**

**L. 242 – CRIMINAL LAW**

---

**TIME** : **THREE HOURS** [Plus five Minutes to read the Question Paper].

**INSTRUCTIONS:** Answer **Question ONE** and **Any** other **THREE Questions**. Clean copies of the Penal Code and the Criminal Procedure code may be brought into the Examination Room and Referred to.

---

**QUESTION 1: [ COMPULSORY QUESTION]**

Comment on **ALL** the following three sets of circumstances:

- a. Njoya Banda is married with two children, whose ages are both below 8 years. He is a heavy alcohol drinker and fails to adequately provide for his family. As a consequence of his irresponsible behaviour, his first born son, Njoya Junior, has died from **Kwashiorkor** , a disease in children caused by under-nourishment. The other son may die at any time due to the breakdown of his immune system, caused by malnutrition. His wife is also shabbily dressed in rags and is severely emaciated.

The wife has reported their plight to the victim support unit of the Zambia Police Service at the Lusaka Central Police Station. What offences, if any, are, likely to be preferred against Njoya Banda under the Penal Code?.

- b. Dr. Barnabas Banda is an eminent surgeon at the Kitwe Central Hospital, who was assigned to operate on Mary Bwalya to remove a cancerous tissue from her breast. Owing to the Surgeon's negligent performance, Mary died on the operation table in the Theatre. The Police have arrested Dr. Banda and are now searching the Penal Code for the appropriate offences to be preferred against the Surgeon.

Assume you are a State Lawyer in the Ministry of Legal Affairs and have been requested to assist the Police in suggesting what criminal charges they should prefer against Dr. Banda . Which two sections in the Penal Code deal with this situation and what is the maximum penalty?

- c. "Human life is precious and sacred. Consequently, all homicides, whatever description, and without exception, are unlawful and punishable."

This statement was made by a law lecturer to his criminal law class. Does this statement represent the correct legal position of punishment for homicides? Discuss it.

## **QUESTION 2**

On 15<sup>th</sup> November, 2000, Jumbo and Tambo attacked Wapambamba at his residence in Ibex Hill Residential Area of Lusaka, and stole his T.V. set and computer. In the process of the robbery, Jumbo shot Wapambamba in the stomach, lodging a pistol bullet therein. Wapambamba did not die. In May, 2001, Jumbo and Tambo were prosecuted on the charge of aggravated robbery, contrary to section 294 of the Penal Code and sentenced to the mandatory minimum 15 years imprisonment with hard labour.

On 21<sup>st</sup> March, 2002, Wapambamba died in hospital from a complication caused by the pistol bullet in his stomach. The Surgeon at the University Teaching Hospital had declined to remove the bullet on the ground that it was in a delicate part of the body and that the operation on the stomach would have caused instant death to the patient. On hearing of Wapambamba's death, the Police have re-arrested the two convicts, Jumbo and Tambo, and have now charged them with the murder of Wapambamba, contrary to section two of the Penal Code. Discuss the legality of this second prosecution of the two men for the same offence.

What provisions, both in the Penal Code and in the Criminal Procedure Code, relate to subsequent prosecution of an accused for the same offence for which he had already been prosecuted? Besides the double-prosecution difficulty, what other legal hitch regarding the elements of murder would the prosecution encounter during the proceedings?

Would you agree with the argument by the accused's defence lawyer, on causation of death, that the victim of the robbery died because of the surgeons' refusal to operate on him and remove the bullet from the stomach?

## **QUESTION 3**

Chintomfwa Mukote, aged 77 years, has left his village and lives it rough, as a recluse or hermit, in a valley, 25km from the nearest village. He is not adjudged a mental patient. His brother's daughter, aged 17, occasionally visits him and brings him food from the village. Each time she visits him, they engage in sexual intercourse, with her free consent.

On one occasion when the same brother's daughter visited him, he asked her to stay with him for a week so that he could kill a duiker for her to take to the village. He shifted the location of his residence 5km away.

A search was mounted and the hermit was arrested and charged with the following offences:

- a. Incest, contrary to section 159 of the Penal Code.
- b. Abduction of a woman contrary to Section 135 of the Penal Code.
- c. Being a rogue and vagabond, contrary to Section 181 of the Penal Code.

In your opinion, will all the three charges, be proved against the accused? If not all, which one, or which two of them will be proved against Chintomfwa? Give reasons, [The question of his mental state is not in issue].

#### QUESTION 4

Write brief notes on any **THREE** of the following topics:

- a. The distinction between Infanticide and Abortion.
- b. The distinction between affray and an assault, citing the relevant provisions.
- c. The distinction between the offence of being a common nuisance under Section 172 of the Penal Code and being a rogue and vagabond under Section 181 of the Code.
- d. The distinction between forging and uttering a document.

#### QUESTION 5

Bigamy is an offence in Zambia, and is basically created by Section 166 of the Penal Code. Chinondo Kasongo of Musuku Village in Kaputa District in Northern Province, went through a traditional marriage ceremony according to Tabwa customary law, with Kamunshi Wakaele in October, 2000. In January, 2002, he went through a second marriage ceremony, under the Marriage Act, Cap. 50 of the Laws of Zambia, with Beauty Uwasoma.

After receiving a complaint from Kamunshi Wakaele, the Police have charged Chinondo Kasongo with Bigamy. Bearing in mind provisions of Section 166 of the Penal Code and Section 38 of the Marriage Act, Cap. 50 has Chinondo Kasongo committed bigamy?

Illustrate your answer. Section 38 of the Marriage Act implicitly describes the legal equality of statutory and customary marriages.

#### QUESTION 6

Aaron is so desperately desirous of rushing to Monze within ten hours to pick his seriously ill mother and have her admitted in the University Teaching Hospital in Lusaka. She has been diagnosed as likely to die within 24 hours if not attended to by the expert at UTH, Lusaka. He has no car of his own, and he realizes that by using a public bus or train he cannot make it in 10 hours.

He sneaks in Hangoma's garage and forces open Hangoma's car door and drives it to Monze, leaving a note which read 'your car will be returned.' Hangoma reports the theft

of his car to Lusaka Police. The next day, Aaron secretly returns the car to its owner, after successfully transferring his ill mother from Monze Hospital to University Teaching Hospital in Lusaka.

After investigations, Aaron is arrested and charged with theft of the car. Do you think this charge of theft will succeed? If you do not agree, what charge in the Penal Code, if any, is the correct one for Aaron's behaviour? Cite it correctly.

### QUESTION 7

Explain the offence of theft by finding, stating the distinction between this offence and that of ordinary theft. In your answer state clearly at what stage the element of 'taking' is done, and the position of the element of 'consent' of the owner of the property or item that is picked up by the accused.

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

**GOOD LUCK**



**THE UNIVERSITY OF ZAMBIA  
SCHOOL OF LAW**

**2001/2202 ACADEMIC YEAR – SECOND SEMESTER FINAL EXAMINATIONS**

**L. 242 – CRIMINAL LAW - II : SPECIFIC OFFENCES**

**INSTRUCTIONS:**

**TIME : THREE HOURS**

**DATE : 29<sup>TH</sup> OCTOBER, 2002**

**DOCUMENT: PENAL CODE , CAP 87, CRIMINAL PROCEDURE CODE,  
CAP 88, ALLOWED INTO EXAMINATION HALL**

**ANSWER : FOUR QUESTIONS INCLUDING QUESTION ONE**

---

**QUESTION ONE [COMPULSORY]**

Lord Watkins said, “ It seems clear to us that the complainants, far from being wordly wise, were unquestionably gullible. Having left their former home, they relied implicitly upon the word of the appellant about their requirements in their maisonette. In such circumstances of mutual trust, one party depending upon the other for fair and reasonable conduct, the criminal law may apply if one party takes.....advantage of the other by imposing as a fair charge that which he but not the other knows is.....excessive.”

What are the legal implications of the above proposition[s] as regards offences against property? Cite , at least two cases to illustrate your claim. **[19 marks]**

**QUESTION TWO**

Write short notes on three of the following:

- a. Mwape v The People [1976], Supreme Court
- b. ‘Express’ malice aforethought
- c. Moloney [1985] AC 905, House of Lords
- d. Linekar [1995] 1 Q B 250
- e. Riots

**[17 marks]**

**QUESTION THREE**

“ The Law draws a distinction, in terms more easily understood by philologists than by ordinary citizens, between assault and battery.” Robert Goff LJ.

Discuss. [17 marks]

**QUESTION FOUR**

Lord Salmon said, “ where the act which a person is engaged in performing is unlawful, then if at the same time it is a dangerous act, that is, an at which is likely to injure another person and quite inadvertently the doer of the act causes the death of that other person by that act, then he is guilty of...”

Is this a clear statement of the Law? Substantiate your argument. [17 marks]

**QUESTION FIVE**

“Taking’ in theft under the Penal Code must be factual rather than merely fictional.” Professor Ndulo.

Argue for or against this proposition. Be sure to support your argument. [17 marks]

**QUESTION SIX**

George P. Fletcher says, “ The basic moral question in the Law of homicide is distinguishing between those impulses to kill as to which we as a society demand restraint, and those as to which we relax our institutions.”

Critically evaluate. [17 marks]

**QUESTION SEVEN**

In R v Adomako [1995] 1 AC 171, Lord Mackay said, “...in my opinion the ordinary principles of the Law...apply to ascertain whether or not the defendant has been in breach of a duty towards the victim who has died.”

Explain. Refer to at least two cases in the course of your explanation. [17 marks]

.....END OF EXAMINATION.....

**THE UNIVERSITY OF ZAMBIA  
SCHOOL OF LAW**

**UNIVERSITY SECOND SEMESTER EXAMINATIONS – OCTOBER, 2002**

**L.252 : CONSTITUTIONAL LAW –II**

**INSTRUCTIONS:**

- 1. TIME : THREE [3] HOURS [Plus 5 Minutes to read the Question Paper].**
  - 2. ANSWER: FOUR [4] QUESTION ONLY**
  - 3. PERMISSIBLE MATERIALS : ONLY UNMARKED STATUTES MAY BE BROUGHT INTO THE EXAMINATION ROOM**
- 

**QUESTION 1:**

The Second Republic was characterized as a “one party participatory democracy.” To what extent were the following elections democratic in your view:

- a) Presidential elections?
- b) Parliamentary Elections?

**[ 25 marks]**

**QUESTION 2:**

Some people have described the One-Party Parliamentary as “lively,” and others as a “rubberstamp.” Discuss the extent to which the Cabinet was accountable to the National Assembly during the Second Republic.

**[ 25 marks]**

**QUESTION 3:**

Chitundu is an FDD member of Parliament for Chipangali Constituency. He is an outspoken critic of the New Deal government.

The Law Association of Zambia invites him to address its annual general meeting on the theme, “Accountability and Transparency of government in Zambia.” In his speech, he alleges that corruption is still rife under the New Deal Administration and that the government’s commitment to poverty alleviation is hollow as spending priorities indicate that the Lion’s share of scarce public

resources is going to State House, Parliament and the Ministry of Finance. He alleges that MPs are greedy by demanding to be given car loans of \$45,000 when their constituents are dying of hunger and disease. He alleges further that the President won elections fraudulently and is therefore an illegitimate ruler. The Speech is reported widely in the media. Kombe, the Editor of the Guardian, an Independent daily Newspaper, writes an editorial praising Chitundu for his courage and frankness.

The Vice President raises a point of order in Parliament as to whether Chitundu has not committed gross contempt of the House and also committed treason for questioning the legitimacy of the government. The Speaker convenes the Standing Orders Committee which charges both Chitundu and Kombe with gross contempt of the Assembly and insulting the President. They are both denied a hearing. Chitundu is expelled from the National Assembly with immediate effect while Kunda is committed to prison for four years.

You have been retained as Counsel for Chitundu and Kombe to challenge Parliament's action. Advise

**[25 marks]**

#### **QUESTION 4:**

Cheelo is President of Zambia. He presides over a government which Transparency International ranks as the 11<sup>th</sup> most corrupt government in the world. He is accused of stealing \$5 billion dollars, and of receiving kickbacks on major international loans and contracts. He is also accused of having killed hundreds of Zambians by agreeing to the IMF-WORLD BANK Structural Adjustment Programme, which has devastated the economy and pushed 80% of Zambians into poverty.

Cheelo runs for elections, hoping to win a Second Term of Office but he loses to a UPND candidate, Mazyopa Edwin. Parliament is now controlled by the opposition.

After the official opening of the New Parliament a motion is moved for the lifting of Cheelo's immunity so that he can be prosecuted for his crimes against the people of Zambia. The motion is adopted overwhelmingly. Cheelo petitions the Court for a *writ of certiorari* to quash the decision of the National Assembly, arguing that his rights were violated.

What are the merits and de-merits of this action?

**[25 marks]**

### QUESTIONS 5:

One of the most important powers any Parliament worth its salt has is the **power of the purse**. Would you say the National Assembly in the Third Republic truly has the **power of the purse**? Discuss, with the aid of relevant authorities.

[25 marks]

### QUESTIONS 6:

The central tenet of constitutionalism is **limited government**. Constitutionalism requires that the exercise of power by the government be limited by pre-determined rules. With regard to presidential powers, how does the Republican Constitution attempt to limit the President's vast powers? If there are limits how effective are they in practice?

[25 marks]

### QUESTION 7 :

The Judiciary is the sentinel of liberty. But it can only be effective and useful to society if it is independent.

Using relevant authorities, discuss the extent to which the Judiciary is independent in Zambia. Do the Judicial safeguards, if any, work in Zambia?

[25 marks]

**END OF EXAMINATION**

**THE UNIVERSITY OF ZAMBIA  
SCHOOL OF LAW**

**UNIVERSITY SECOND SEMESTER EXAMINATIONS, OCTOBER 2001/2002**

**L. 262 – FAMILY LAW**

**25<sup>th</sup> October, 2002**

**14:00 – 17:00 hours**

**INSTRUCTIONS**

**TIME : THREE [3] HOURS [ Plus 5 minutes to read the Paper]**

**Students may not take into the examination hall or  
Consult any statute.**

**ANSWER : QUESTION 1 AND ANY THREE QUESTIONS. QUESTION  
ONE [1] CARRIES 19 MARKS WHILE ALL OTHERS  
CARRY 17 MARKS EACH**

---

**QUESTION 1**

Lord Penzance in HYDE v HYDE [1866] defined marriage as “the voluntary union of a man and a woman for life to the exclusion of all others.” This statement went on to say marriage was something more than a contract; it was an institution. Explain, comparing and contrasting marriages under statute and under customary law.

**[19 marks]**

**QUESTION 2**

Below are the facts in CHRISTINE SAKUBITA v JUKUZA SAKUBITA 2001/HP/0000.

The Petitioner in the lower court [now the Respondent ] and the Respondent [now the Appellant] were married on August 21<sup>st</sup> 1987 in Chipata. The couple later on moved to Ndola and lived in the Respondent's employer's house. The Respondent had acquired plot 2080 Avondale, Lusaka, before his marriage to the Appellant. The couple later on moved to Lusaka in 1993 and lived at plot 2080, Avondale aforesaid which became their matrimonial home. At the time of the trial in the Court below the house had 5 bedrooms and a bore hole sank in the yard. The Appellant left her formal employment as a Nurse in 1992 to enable her dedicate her time to family affairs. The Respondent during the marriage had acquired two other properties namely stands 2011 and 1114 in Lusaka.

Problems in the couple's marriage started in 1994, when Mrs Sakubita started complaining about her husband's going home late after work. The appellant was seen and found by the Respondent on the two occasions in the company of men

at a pub. This led to the Respondents petitioning for the dissolution of the marriage in the High Court alleging adultery and/or unreasonable behaviour as facts for irretrievable break down of marriage.

In the Court below Mr. Justice Preamble Nshimbi dissolved the marriage stating that the Petitioner had satisfied the Court on a balance of probability that the marriage had broken down irretrievably on the facts alleged. On property settlement the Court ordered that the Appellant should have no claim to the matrimonial home as the same was acquired before marriage. On the other two houses acquired during marriage the Court ordered that the Appellant was a mere house wife and awarded 1/8 interest in the proceeds of the sale of the 2 properties which he ordered.

- a) Mrs. Sakubita wishes to appeal to the Supreme Court stating that the ground for dissolution of marriage was not proved in the Court below.

Give Jukuza Sakubita your legal opinion on the chances of success of the appeal. **[9 marks]**

- b) Mrs Sakubita is also not satisfied with the High Court Judges's ruling on property settlement. Advise her. **[ 8 marks]**

### **QUESTION 3**

Compare and contrast the position of cohabitees with that of spouses and look at various areas of family law such as property matters, financial relief, children, domestic violence. **[17 marks]**

### **QUESTION 4**

“ In matters of the family, the child should come first, last and always.”

Discuss to what extent family laws provide for children's welfare.

**[17 marks]**

### **QUESTION 5**

Muma Masiye died intestate on 1<sup>st</sup> October 2001. There is Queen whom he married at Trinity Church of the United Church of Zambia in 1980, and she has five [5] children aged 17, 15, 12, 8 and 6 months. There is also Malilo a woman who has two [2] children with Masiye, aged 9 and 5 and she also has two others from her previous marriage aged 19 and 20. She also lives with her aged and blind mother.

Muma Masiye has left several houses and two farms, one of which is occupied by Malilo and four motor vehicles for a car hire business. There are also three [3] guns left to him and his brothers by his father Mr. Mangani Masiye, but which are in Malilo's custody because her brother and his friend are hunters and often use them. Malilo has also learnt that there is K8,000,000 in a bank account and an

undisclosed sum of terminal benefits from Muma's Masiye's employers, Friendly Associates.

Malilo has come to you for advice. She wants to know about the appointment of an administrator and the distribution of the estate. She is opposed to Queen's appointment as administrator, preferring one Tuta Mundoka an Uncle of the late Muma Masiye whom she claims paid the lobola for her marriage to Masiye in 1994. She further claims that Queen's six month old baby known as Mbasela, can not be Masiye's child. Advise Malilo on her and Queen's interest in the estate of Muma Masiye. **[17 marks]**

#### **QUESTION 6**

- a) You are a student of family law and having read the laws of Intestate Succession and Wills and Administration of Testate Estates, you have decided that after your death, you do not wish your property to be distributed according to the rules of intestate succession.

Write a Will and have it accordingly attested. **[10 marks]**

- b) Advise a neighbour Songiso Mpeza who is blind and illiterate and wishes to make a Will, on her capacity to make a valid Will. **[7 marks]**

#### **QUESTION 7**

Mposya a Zambian girl went to work in Ruritania on a two year contract. There she met and married Phillip a Ruritanian who told her that although he knew that in Zambia as in Ruritania polygamy was legal, he would never take on another wife because she was very special to him. Mposya however found Phillip adoring but extremely boring.

After her two year contract Mposya returned to Zambia and met Thole. Thole had had a love affair with Mposya's mother while they were both students at UNZA, but she had broken up with him to marry Mposya's father. Mposya's mother died sometime ago.

Mposya married Thole but after the wedding ceremony she could not bring herself to having sexual intercourse with him, as she was and still is tormented by the thought of his relationship with her late mother.

Advise Mposya on the validity of her marriages. **[17 marks]**

-----**END OF EXAMINATION**-----



**THE UNIVERSITY OF ZAMBIA  
SCHOOL OF LAW**

**UNIVERSITY SECOND SEMESTER DEFERRED  
EXAMINATIONS - NOVEMBER 2002**

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

**TIME: THREE (3) HOURS**

**INSTRUCTIONS:**

**ANSWER: QUESTION ONE AND ANY OTHER THREE**

**NOTE: READ THE QUESTIONS CAREFULLY. YOU ARE  
ALLOWED USE OF UNMARKED STATUTES**

---

1. (a) Discuss the theoretical basis and critique of the 1995 Lands Act.

[20 MARKS]

(b) Nayee Gupta is the landlord of business premises in the heart of Livingstone, the tourist capital of Zambia, the lease of which expires on 25<sup>th</sup> December 2002. The tenant, Sipopa Nyambe has on several occasions paid the rent a few weeks late and is using the premises for a purpose other than specified in the lease. Nayee Gupta has some vague plans to demolish and reconstruct the premises, or alternatively to let them to his son Rajesh who wants to set up a tour and travel company hoping to benefit financially from the tourist boom.

Explain to Nayee Gupta.

(a) The grounds under the Landlord and Tenant (Business Premises) Act which are available to him in order to claim possession. In the case of each ground, you should consider what he will have to substantiate and the financial consequences of his choice of ground.

- (b) What steps he should take (and when) in order to claim possession, and what steps you would expect Sipopa Nyambe to take in response (assuming that he does not wish to leave).

[20 MARKS]

2. Writ short notes on the following

- (a) The Lands Tribunal decision in Major Makwati V Chieftenness Nkomesha
- (b) RE-ENTRY
- (c) The disadvantages of customary tenure
- (d) The status of Land in Western Province before 1970.

3. (a) Mumbuna Kufekisa is a tenant of business premises situated in Ndola. On 1<sup>st</sup> January 1999, Kufekisa with his landlord entered into a revised lease agreement which was for a term of 2 years renewable only by the Consent of both parties. The agreed rentals were K400, 000.00 per month payable in advance.

Inspite of the agreed fixed term of two years in the revised tenancy Kufekisa on 8<sup>th</sup> November 2001 made a request for a new tenancy of the business premises. The Landlord did not respond to the request. On 24<sup>th</sup> January 2002 Kufekisa applied for a new tenancy under the provisions of section 4(i) of the Landlord and Tenant [Business Premises] Act. The matter is still pending in Court.

Mumbuna Kufekisa has called on you seeking your opinion on the merit of his pending action.

[13 MARKS]

- (b) Discuss the Supreme Court decision in Yengwe Farms Limited Vs. Massock (Z) Limited.

[7 MARKS]

4. Land Tenure Systems do respond to changes taking place in society. Identify the changes in society, which may lead to changes in the Land Tenure System of a country and discuss the same in the light of the Development of the Land Tenure System in Zambia from the

5. Your uncle Mr. Samuhati Samundengu who lives in Chavuma district in a customary area has approached you with a legal problem (as he is unable to pay the services of a qualified legal practitioner but knowing that you have been an A+ student ever since you entered Law School he is assured of the best advice). He informs you that he has been approached by IFAD a multilateral Agricultural Financial lending institution which has a large presence in the North Western province.

The said IFAD has offered him K200 million to purchase a 5, 000 hectares of his land. IFAD would wish to use this parcel of land for a pineapple growing pilot project which they wish to introduce in Chavuma district. They wish to develop a new and better breed of pineapple under the project far better than those grown in Mwinilunga. Your uncle further informs you that he inherited this parcel of land from his dead uncle Mr. Kaleji and according to Luvale custom the clan of his dead uncle have an interest in the parcel of land since under the Luvale customary land holding, land is generally considered to be owned by the clan.

The offer is irresistible to your uncle but the only conditions worrying him is the insistence by IFAD that he must first obtain Title Deeds in his name to the holding before the deal can be consummated. Your uncle has never heard about Title deeds or Certificate of Title but is determined to see that the deal goes through at all costs.

Advise him on the steps he would have to take to acquire the Title Deeds which should be beyond reproach and the hurdles or difficulties he may have to encounter.

[20 MARKS]

6. (a) Which institutions are responsible for land administration, delivery and allocation in Zambia? What role do each of the institutions you have identified play? [13marks]
- (b) Discuss the Supreme Court decision in *Jusuber R. Naik and Naik Motors Limited Vs Agness Chama* [1985]ZR 227

[7 MARKS]

**THE UNIVERSITY OF ZAMBIA**

**SCHOOL OF LAW**

**UNIVERSITY SECOND SEMESTER EXAMINATIONS – OCTOBER, 2002**

**L. 322 – LAND LAW - II**

**INSTRUCTIONS:**

**TIME : THREE [3] HOURS [Plus 5 minutes to read the Paper]**

**ANSWER : QUESTION ONE AND ANY OTHER THREE**

---

**QUESTION 1**

- a) “.....In this respect the fundamental answer to the question, who is the owner of the land among all tribes in Zambia is that the land in effect belongs to the whole community. The interests of individual and constituent members of the tribe or community are not interests of allodial ownership.” Muna Ndulo – “Mining rights In Zambia.”

Critically discuss the above statement.

**[20 marks]**

- b) You are a research assistant to Professor Madson. Professor Madison is writing on the development of the Land Tenure system in Zambia from colonial rule to date. Professor Madison has requested you to write or contribute to a chapter (in his book) entitled “The theoretical basis and critique of 1995 Lands Act.”

**[20 marks]**

**QUESTION 2**

Compare and contrast:

- a) Native Reserves and Native Trustland Reserves
- b) Compulsory acquisition and re-entry
- c) Customary tenure and freehold.
- d) Ownership and possession as legal concepts

**[20 marks]**

**QUESTION 3**

- a) Identify the institutions responsible for land administration, delivery and allocation in Zambia clearly pointing out the role played by each Institution.

**[13 marks]**

- b) Discuss the Supreme Court decision in Honorus Maurice Chilufya and Chrispin Haluwa Kangunda SCZ Judgement. No. 29 of 1999.

[7 marks]

#### QUESTION 4

- a) With the aid of decided cases discuss on how the Town and Country Planning Tribunal has approached or interpreted the requirement for planning permission before any development and sub-division can be carried out under the Act.

[13 marks]

- b) Discuss the remedy of distress as between Landlord and Tenant of business premises in Zambia.

[7 marks]

#### QUESTION 5

- a) Discuss the rationale behind the enactment of the Housing (statutory and Improvement Areas) act. What were the guiding principles in the drafting of the Act and how were the same incorporated under the Act. To what extent has the legislation improved the squatter problem in Zambia.

[13 marks]

- b) With the aid of decided cases discuss the legal regime relating to compulsory acquisition of property in Zambia.

[7 marks]

#### QUESTION 6

- a) Ian Moto is a tenant of business premises situated in the heart of Mbala township. Mr Moto has been a tenant of Mbala limited since 1990. During this period, the tenancy agreement between the parties had been revised from time to time. The parties on 1<sup>st</sup> January 1999 entered into a revised tenancy agreement, which was for a term of 2 years renewable only by the consent of both parties. The effective date of the agreement was 1<sup>st</sup> January 1999. The agreed rentals were K400,000.00 per month payable in advance.

Despite the agreed fixed term of two years in the revised tenancy Ian Moto on 8<sup>th</sup> November 2001 made a request for a new tenancy of the business premises. The landlord did not respond to the request. On 24<sup>th</sup> January 2000 Ian Moto applied for a new tenancy under the provisions of Section 4 [i] of the Landlord and Tenant [Business premises] Act Cap 193. The action is still pending in court.

You are an advocate in the firm of Messrs Chinondo Chambers. This morning Mr. Moto has called at your chambers seeking your opinion on the merit of the pending action. Advise him.

[12 marks]

- b) Discuss the policy of land reservation, which was first introduced in Northern Rhodesia in 1928.

[8 marks]

## **QUESTION 7**

Write short notes on the following

- a) The status of land in Barotseland before 1970
- b) The Supreme court decision in ZIMCO Properties Limited and Dinalar Randee Enterprises Ltd.
- c) The effect of converting customary tenure into leasehold tenure
- d) The Inadequancies of customary tenure [20 marks]

**THE UNIVERSITY OF ZAMBIA**  
**UNIVERSITY EXAMINATIONS – 2002**  
**L332**  
**COMMERCIAL LAW II**

**TIME ALLOWED:**    **THREE HOURS** (Plus 10 minutes to read the paper)

- INSTRUCTIONS:**
1.     Students may take into the examinations hall and consult clean, unmarked copies of any relevant statute.
  2.     The paper is divided into 3 sections. Candidates must attempt question 1 and at least one question from each section.
  3.     In all candidates must answer four questions.

**SECTION 1 – COMPULSORY**

**Qust 1:**     Kwenga runs a successfully maize farm in Mazabuaka. He maintains a current account with Zoba Commercial Bank.

On 17<sup>th</sup> November 2001, Kwange supplied maize seed worth K6 millions to Kwenga on credit payable within sixty days. On the 22<sup>nd</sup> December 2001, Kwenga prepares a bearer cheque which he duly signs and gives to Kwange in settlement of the debt. The cheque is for K6 million and Kwenga, being in a hurry, writes the "Six Million" somewhat in the middle of the space provided for the endorsement of the amount in words so that there is sufficient room for additions on the left side of the space.



Before presenting the cheque for payment, Kwange writes the word "Twenty" before the words "Six <sup>million</sup> Thousand" and adds the figure "2" in the box for the amount in figures so that it now appears as though the cheque was for twenty six million kwacha.

On his way to the bank Kwange has an accident and in the process Swiftfinger steals the cheque from his brief case. Kwange discovered the loss of the cheque only on the 25<sup>th</sup> December 2001 after gaining consciousness. Meanwhile, on the 23<sup>rd</sup> December 2001, Kwenga discovers that the seed supplied by Kwange was expired. He immediately wrote to Zoba Commercial Bank stopping payment of the cheque. The letter containing the instructions only arrived at the bank's mail bay at 10:00 hours on the 24<sup>th</sup> December 2001 and was only opened and read at 10:55 hours. Meanwhile, at 10:30 hours on 24<sup>th</sup> December 2001 Swiftfinger presented the cheque and was paid K26 million by teller No.3.

Although teller No. 3 confirmed that Kwenga's account was only in credit to the tune of K10 million, he was aware of the existing overdraft arrangement in favour of Kwenga which the manager sanctioned.

Consider the legal issues and advise the respective parties as to their rights and liabilities if any.

- Quest 2.**
- (a) Wisdom, an established businessman in Lusaka, maintains an account with Jominga Bank. One morning on a Monday, he read in the **Daily Nonsense**, a local newspaper with wide national circulation, that his account in his bank was in the red and that he was about to be declared bankrupt. The newspaper quoted that Wisdom's overdraft was in the region of K100 million. When Wisdom visited the bank later that day, the clerk who had given

the details to the press, confirmed that, that was the state of affairs.

Identify the legal issues that arise and advise the parties.

- (b) Himonga draws a cheque in favour of his girl friend Abigail in the sum of K2 million. This is a gift to Abigail who has lately made Himonga a very cheerful man. Abigail endorses the cheque to Sandra, a boutique owner, in payment of her bills. Sandra in turn endorses the cheque to Habatwa her landlord in settlement of unpaid rent. Habatwa endorses the cheque in blank. It is lost while Habatwa was boarding the train to Neganega. Hamilimo picks the cheque and tries to encash it but it is dishonoured. He wishes to know whether he would sue any of the parties to the cheque.

Explain the legal position in full?

## SECTION 3.B

- Quest. 3** (a) Twambo who owes money to Kasonde, draws a cheque in favour of Kasonde. He trust Kasonde so much that apart from his signature, he writes nothing else on the cheque. Kasonde completes the cheque showing an amount twice what Twambo owes and indorses it in blank. Kasonde's brother secretly picks up the cheque from Kasonde's bedroom and negotiate it to Dean. Dean presents it for payment and it is dishonoured because a mistake in the bank, Twambo's account appeared overdrawn.

Advise the parties.

- (b) With suitable illustrations, compare and contrast indorsement in blank, special indorsement, conditional indorsement and restrictive indorsement.

**Quest 4.**

Kandela was a proud owner of a Fiat Uno which his brother Kickback gave to him when leaving for studies abroad. The vehicle was insured comprehensively by Whitewater Insurance by Kickback for one year from 1<sup>st</sup> January 2000. At the time of leaving, Kickback did not transfer ownership of the car to Kandela since he was convinced that this was unnecessary. After all, they were both K Banda.

On 31<sup>st</sup> December 2000, Kandela approached Gogeta Insurance Brokers Co. to renew insurance on the Fiat No. Uno. Gogeta received the premium from Kandela and issued him with a cover note headed Whitewater Insurance Limited stating that cover was given for one year from 1<sup>st</sup> January 2001. A receipt in the name of Kandela for the premium was issued.

By the 15<sup>th</sup> March 2002, Gogeta had not transmitted the premium to Whitewater Insurance. On the 14<sup>th</sup> April 2002, while he was enjoying a drink at Chez Ntemba, Kandela's Fiat Uno was stolen. The thief drove negligently and before too long was involved in a road accident with a mini bus. The vehicle was extensively damaged, but could be repaired at great cost. Infact, the cost of repair would exceed the value of the vehicle at the time of the accident by one third.

Kandela loves his Fiat Uno and was relieved that the thief did not go very far with it. As he contemplates to lodge in an insurance claim he wishes to know whether the fact that the whitebook is in his brother's name, and also the fact that the renewal premium was not paid to the Insurance Company would work against his claim. He also wants to know whether he can get the Fiat Uno back for himself.

**Quest. 5** Lishomwa took out a life insurance policy with Zanu Insurance Co. The policy covered death caused by accidental injury but not disease. Lishomwa was involved in a road accident in which he sustained severe injury to his right arm and rib cage. He lost a considerable amount of blood in the accident. This aggravated his anaemic condition. On arrival at the University Teaching Hospital, the doctor in charge advised that the blood bank was empty.

Lishomwa died the following day. The doctor who attended to Lishomwa explained that Lishomwa's anaemic condition could not have caused death without a further loss of blood, that the loss of blood was not to such an extent as would have caused death in a normal man of Lishomwa's age and size, and that there was a fairly good chance that injury sustained, especially in the ribs would have deteriorated and possibly caused death had Lishomwa not died earlier.

Consider whether a claim on Lishomwa's insurance can succeed.

**Quest. 6** (a) "The absolute rule is that the court will not recognize a benefit occurring to a criminal for his crime.... His executors or administrator claims as his representatively and, as his representative, fails under the same ban...."

With the help of the relevant authorities, discuss this quotation.

(b) What principle of law was involved in **London Joint Stock Bank v Macmillan and Arthur** (1918) AC 777

**Quest. 7** Critically discuss the legal problems arising from any three of the following:

- (a) the non payment of premiums under the Insurance Act No. 27 of 1997
- (b) procuration signature on a negotiable instrument
- (c) days of grace in insurance law
- (d) Inchoate instruments under the Bills of Exchange Act.

**END OF EXAMINATION**

**THE UNIVERSITY OF ZAMBIA  
SCHOOL OF LAW**

**2001/2002 ACADEMIC YEAR – SECOND SEMESTER**

**FINAL EXAMINATION**

**L.342 – ADMINISTRATIVE LAW -II**

**TIME : THREE [3] HOURS**

**DATE : 4<sup>TH</sup> NOVEMBER, 2002**

**DOCUMENTS: Following unmarked Acts allowed in Examination Hall.  
Town and Country Planning Act; Industrial and Labour  
Relations Act; Commission for Investigations Act.**

---

**ANSWER FOUR QUESTIONS INCLUDING QUESTION ONE**

**QUESTION 1 – COMPULSORY**

Judicial review is concerned with the powers of judges to check and control the activities and decisions of governmental bodies, tribunals, inferior Courts as well as the decisions of some private bodies that affect the public. To ensure its efficacy, there are a number of what are called as stages, metaphorically resembling the shakespearean theatrical stages, but on these ones the principal actors' concerns are relative to the efficient use of court time, prompt and effective dispatch of public business,...., the protection of public administration from unmeritorious, or costly litigation. The redress of grievance is done through a pyramidal framework the 'bottom-up' perspective, where the appellate courts assume undue importance and tribunals inevitably become court – substitutes... Quintessentially, in determining whether a particular issue is appropriate for judicial review, a Court will consider at least FIVE factors. These factors can be reduced and represented in a pyramidal form- 'bottom-up'; first factor constituting the foundation stone, while fifth factor is symbolized by the apex of the pyramid, and the other three factors in between the two in ascending order.

You are requested to:

- (a) carefully and precisely list the five factors [without elaboration] in a 'top-down' perspective.
- (b) critically evaluate the role[s] of the middle factor; its impact on the question of accessibility to the courts and in re-shaping the two main functions of judicial review. Cite three cases to support your argument. **[22 marks]**

## QUESTION 2

Wade said, ‘ The social Legislation of the twentieth century demanded tribunals for purely administrative reasons. They are essential for the administration of welfare schemes involving large numbers of small claims. The process of the Courts of Law is intricate...for the object is to provide the highest standard of justice. But in administering social services the aim is different.’ [Wade and Forsyth, Adm. Law [1994], emphasis added].

- (a) What are tribunals? And, why is the main object of the courts of law different from the major object of tribunals?
- (b) How do you distinguish between finality and non-finality of a tribunal’s determination.
- (c) What are these “purely administrative reasons” for which tribunals were demanded, and will continue to be demanded [today] and in the future?

**[16 marks]**

## QUESTION 3

- (a) Section 10[2][a] of the Commission for Investigations Act provides:  
The Commission may refuse to conduct, or may decide to discontinue, an investigation where it is satisfied that – the complaint is trivial, frivolous, vexatious or not made in good faith;..critically, evaluate paying particular attention to what standard[s] the Commission may employ in order to determine whether or not to refuse to conduct or discontinue an investigation.
- (b) What are the advantages or disadvantages of section 3 of the Commission for Investigations Act. You should describe an example. **[16 marks]**

## QUESTION 4

Any discussion relative to an Ombudsman institution: in Nigeria, South Africa, Costa Rica, Tunisia, or Zambia has generally centred on certain important characteristics of the institution: such as, jurisdiction, functions, investigatory power, speed, personality, .. ..., and...

- (a) Which important characteristics of an Ombudsman institution are represented by these ellipses?
- (b) Explain [precisely] the challenges that any Ombudsman must face.

**[16 marks]**

## QUESTION 5

In *R v North West Lancashire Health Authority, ex parte A* [1999] *The Times*, the applicant had wanted gender reassignment surgery. But the complainant had been unable to receive it. In its submissions, the respondent, Health Authority of North West

Lancashire had adopted a policy whereby certain conditions, which were determined as of minimal clinical gain, were given a low funding priority. Gender reassignment surgery fell within this category. The Court of Appeal accepted that the Health Authority retained jurisdiction to prioritise various treatment. But it decided in favour of the applicant.

Do you agree with the Court of Appeal? Be sure to support your opinion.

**[16 marks]**

### **QUESTION 6**

What difficulties [if any] a lawyer may encounter in construing [legally] section 17 of the Commission for investigations Act?

**[16 marks]**

### **QUESTION 7**

The International Commission of Jurists [ICJ] Congress of Rio 1962, stated that “The Ombudsman’s powers of investigation should not extend to the head of state and judges, or to matters of discipline in the armed forces.” Taking the Commission for Investigations as a model, and in view of the contemporary practice of the Investigator-General [Ombudsman] of Zambia, carefully assess the proposition of the ICJ as quoted hereinbefore.

**[16 marks]**

.....**END OF EXAMINATION**.....



# THE UNIVERSITY OF ZAMBIA

## SCHOOL OF LAW

2001/2002 ACADEMIC YEAR, SECOND SEMESTER

### DEFERRED EXAMINATIONS

### L342 ADMINISTRATIVE LAW II

TIME : Three(3) hours

DOCUMENTS : Commission for Investigations Act

ANSWER ~~QUESTION ONE~~ ONE Plus ~~Three other Questions~~ = Four Questions

---

#### QUESTION ONE

~~Compulsory~~

"The Ombudsman is an instrument of human rights". Explain by way of concrete examples (at least **four** examples).

[19 marks]

#### QUESTION TWO

R.v. Inland Revenue Commissioner, ex parte National Federation of self-employed and Small Business Ltd (1982) AC 617

- (a) Who lost in this case? (b) Give specific reasons to justify your answer in (a).

[17 marks]

#### QUESTION THREE

What is an Ombudsman?  
Who.

[17 marks]

#### QUESTION FOUR

Is the Industrial Relations Court a tribunal?

[17 marks]

**QUESTION FIVE**

Evaluate the two main functions of Judicial review.

**[17 marks]**

**QUESTION SIX**

Describe the structural development of tribunals.

**[17 marks]**

**QUESTION SEVEN**

Briefly explain the investigatory power of the Commission for Investigations (Zambia's Ombudsman).

**[17 marks]**

**END OF EXAM**

**THE UNIVERSITY OF ZAMBIA**

**UNIVERSITY FIRST SEMESTER EXAMINATIONS- APRIL 2002**

**L 351**

**INTERNATIONAL AND REGIONAL HUMAN RIGHTS LAW**

**TIME: THREE (3) HOURS**

**INSTRUCTIONS:**

- 1. THERE ARE TWO SECTIONS IN THIS PAPER. IN SECTION A, CANDIDATES MUST ANSWER QUESTION ONE AND ONE OTHER QUESTION. IN SECTION B CANDIDATES MUST ANSWER TWO QUESTIONS.**
  - 2. CANDIDATES FOR THIS PAPER ARE ALLOWED TO BRING INTO THE EXAMINATION ROOM CLEAN AND UNMARKED COPIES OF INTERNATIONAL AND REGIONAL HUMAN RIGHTS DOCUMENTS.**
- 

**SECTION A- ANSWER QUESTION 1 AND ONE OTHER QUESTION**

**QUESTION 1**

You are a lawyer in the Department of International Law and Agreements of the Ministry of Legal Affairs of Zambezia and just returned from pursuing your master's degree in human rights law from a reputable European university.

The Government of Zambezia plans to accede to the International Covenant on Civil and Political Rights (ICCPR) and the First Optional Protocol. However, the Government is not comfortable with some of the provisions in the Covenant and the Protocol and is intent on entering reservations on selected provisions. In particular, the Government does not want persons on death row to make use of the individual complaints procedure in the First Optional Protocol. Zambezia has in recent years been plagued with a high crime rate and its capital, Lusakaburg, ranks as one of the top ten murder capitals in the world. Zambezia's economy is heavily dependant on tourism and the Government is desperate to repair the country's dented reputation in order to revive the tourist industry. A recent amendment to the Penal Code made capital punishment mandatory upon conviction of manslaughter, murder, aggravated and armed robbery and other serious crimes.

The Attorney-General, Dr. Rights Nsambu, has been asked to advise Government on the question of reservations made to international human rights instruments, in particular the ICCPR. Dr. Nsambu has instructed the Department of International Law and Agreements to prepare an opinion and your Head of Department has in turn delegated the task to you as the human rights law expert in the Department. Dr. Nsambu wants the job done by the time he returns from the 58<sup>th</sup> Session of the Commission on Human Rights in Geneva.

Prepare your opinion, clearly stating what the Human Rights Committee has stated on the question of reservations to the ICCPR, including reference to case law in which the issue has been discussed. (40)

## **QUESTION 2**

- (a) There are two organs within the United Nations human rights protection and promotion system with very similar names, viz., the Commission on Human Rights and the Human Rights Committee. Explain the differences between them in so far as (i) their origin (ii) their place in the institutional structure and (iii) their respective competences, are concerned. (12)
- (b) With regard to their mandate and functions, state each institution's advantages and disadvantages so far as the protection of human rights is concerned. (8)

## **QUESTION 3**

Your client, Scribe Kachepa, wants to request the Human Rights Committee to consider his case. He is a citizen of Ruritania, a country which has ratified the International Covenant on Civil and Political Rights and its Optional Protocols. Your task is to draft a communication in accordance with the requirements laid down in the First Optional Protocol, including an article-by-article identification of the rights allegedly violated, and address it to the Human Rights Committee, C/o The Centre for Human Rights, United Nations Office, Palais des Nations, CH-1211 Geneva 10, Switzerland.

Your client is a freelance journalist in Ruritania and he specializes in stories about public figures and national events. Kachepa has frequently prepared well-documented features, always including the full names and identity of the persons involved. In this particular case, Kachepa's story dealt with the alleged misconduct of four well-known individuals who had set up and run a secret organization called 'Incognito' with the stated purpose of influencing the public and private fortunes of its members and their friends in society. The story alleged the practice of secret rituals within 'Incognito', including blood sacrifices. The story was published on the front page of 'Rumors', the most widely

circulated newspaper. The four individuals concerned held high and powerful positions in government, a political party, a church and a private bank. These individuals sued Kachepa and 'Rumors' and argued before the High Court that the journalist's action had violated their freedom of association and their right to privacy, as well as religious privileges, and that the story would seriously hurt their hard earned honour and reputation unless the courts were to throw it and provided for compensation. Based on a decision of the Supreme Court in an earlier case, in which it was decided that journalists must respect public figures and not disparage their reputations in public, the High Court ordered Kachepa and 'Rumors' to immediately withdraw the story, publish an apology and pay US\$ 5000 to each complainant as compensation.

Kachepa has instructed you to prepare a detailed complaint to the Human Rights Committee, citing all relevant provisions with respect to the rights and freedoms that may have been violated with respect to him as a result of the decision of the High Court and the reasons why, in the circumstances, his story was justified and did not amount to defamation of the individuals concerned. Proceed. (20)

#### **QUESTION 4**

- (a) The Universal Declaration of Human Rights is described in its Preamble as "a common standard of achievement for all peoples and all nations". In the context of the legal, moral and political arguments that have been advanced since its adoption by the United Nations General Assembly in December 1948, state the prevailing general opinion at international law on the status of the Universal Declaration. (12)
- (b) Briefly state and explain the general principles on which the Universal Declaration of Human Rights is founded? (8)

#### **SECTION B- ANSWER TWO QUESTIONS**

#### **QUESTION 5**

- (a) Describe in as much detail as possible either:
  - (i) the African system of human rights (15) or
  - (ii) the European system of human rights (15)
- (b) What are the advantages of a regional system of human rights when compared to the universal system? (5)

## **QUESTION 6**

The State Reporting Procedure is usually described as the most important monitoring mechanism within the United Nations human rights system. Describe what state reporting is and the functions that it serves. (20)

## **QUESTION 7**

Describe in detail and, in both cases, state the advantages and disadvantages in the promotion and protection of human rights of:

- (i) the 1235 Procedure; (10) and
- (ii) the 1503 Procedure. (10)

**THE UNIVERSITY OF ZAMBIA  
SCHOOL OF LAW**

**UNIVERSITY SECOND SEMESTER EXAMINATIONS, OCTOBER 2001/2002**

**L. 352 – NATIONAL HUMAN RIGHTS LAW**

**INSTRUCTIONS**

**TIME :**        **THREE [3] HOURS** [Plus 5 Minutes to read the Paper]

**DATE :**        30<sup>TH</sup> OCTOBER, 2002

CANDIDATES ARE ALLOWED TO BRING INTO THE EXAMINATION HALL  
**CLEAN AND UNMARKED COPIES OF THE CONSTITUTION OF ZAMBIA  
AND OTHER RELEVANT PIECES OF LEGISLATION AND HUMAN RIGHTS  
INSTRUMENTS.**

CANDIDATES MUST ANSWER **QUESTION 1** AND **THREE OTHER**  
QUESTIONS.

---

**QUESTION 1**

The right to life has been described as the supreme human right without which the enjoyment of other rights is not possible. Some countries, however, including Zambia, still retain the death penalty as punishment following conviction for the commission of a crime for which that kind of punishment is provided. With reference to relevant jurisprudence from national and international courts and tribunals, discuss whether or not the death penalty violates international standards which prohibit cruel, inhuman or degrading punishment. **[40 marks]**

**QUESTION 2**

- a.        Discuss and distinguish the concepts in Article 15 of the Zambian Constitution. To what extent does Article 15 compare and contrast with similar provisions in international instruments? **[12 marks]**
- b.        Briefly explain what is meant by the “death row phenomenon.” **[8 marks]**

**QUESTION 3**

- a.        Article 12[2] prohibits depriving an unborn child of life, except in certain permissible circumstances in accordance with the provisions of an Act of

Parliament. State and explain the exceptional circumstances in which termination of pregnancy is legal in Zambia. **[10 marks]**

- b. Explain the technical difference between the protection of the right of personal liberty in Article 13[1] and protection of freedom of movement in Article 22[1] of the Constitution **[10 marks]**

#### **QUESTION FOUR**

State the facts and discuss the significance of Christine Mulundika vs. The People (Appeal No. 95/1995), in the development of human rights in Zambia. **[20 marks]**

#### **QUESTION FIVE**

Article 111 of Part IX of the Constitution of Zambia stipulates that, although referred to as rights in some instances, the “Directive Principles of State Policy” are not, by themselves, justiciable before a Court, tribunal or other administrative body. Further, Article 110 [2] states that their implementation is dependent on available resources. What argument would you put forward for:

- a. justiciability of economic, social and cultural rights; and **[10 marks]**
- b. the resource constraint factor in the implementation of economic, social and cultural rights. **[10 marks]**

#### **QUESTION SIX**

Discuss the extent to which the functions and powers of the Human Rights Commission fulfil the standards outlined in the “Principles relating to the status of national institutions for the promotion and protection of human rights [UN, 1993]”. **[20 marks]**

#### **QUESTION SEVEN**

There are calls for a review of the Republican Constitution, including the Bill of Rights. State and explain four changes you would like to see introduced with regard to the Bill of Rights. **[20 marks]**





# **The University of Zambia**

## **SCHOOL OF LAW**

### **UNIVERSITY SECOND SEMESTER DEFERRED/ SUPPLEMENTARY EXAMINATIONS**

#### **L352: HUMAN RIGHTS LAW IN ZAMBIA**

#### **INSTRUCTIONS:**

**TIME:** THREE (3) HOURS (plus 5 minutes to read the question paper)

**ANSWER:** FOUR (4) QUESTIONS

**NOTE:** Only unmarked statutes may be brought into the Examination Room.

---

- Q.1. Some scholars have posited that the concept of human rights is relative and cultural specific.
- Discuss critically.
- Q.2. Evaluate the performance of the Organisation of African Unity (OAU) in the promotion and enforcement of human rights in Africa.
- Q.3. Compare and contrast the constitutional provisions relating to emergencies in Zambia and South Africa. Which one is more protective of individual rights and freedoms?
- Q.4. Discuss some of the major weaknesses of the Zambian Bill of Rights.

Q.5. The Zambian courts have had occasion to pronounce on the scope of the power of detention.

With the help of relevant authorities discuss the limitations, if any, the courts have put on the detaining authority's discretionary power to detain.

Q.6. Discuss the function and purposes of freedom of expression in a democracy.

**THE UNIVERSITY OF ZAMBIA  
SCHOOL OF LAW**

**UNIVERSITY SECOND SEMESTER EXAMINATIONS, OCTOBER 2001/2002**

**L.362 – CIVIL AND CRIMINAL PROCEDURE – II**

**INSTRUCTIONS:**

**TIME : THREE [3] HOURS [Plus 5 Minutes to read the Paper]**

**ANSWER QUESTION ONE AND ANY OTHER THREE QUESTIONS.  
NO STATUTES OR OTHER RELATED DOCUMENTS SHALL BE  
PERMITTED TO BE BROUGHT INTO THE EXAMINATION ROOM**

**QUESTION ONE ( This question is Compulsory)**

**NOTE : Do not use any of your names in answering this question.**

You have been provided with two Writs of Summons, a Subordinate Court writ of summons and a High Court writ of Summons. You are required to use **only one** of them and **not both**. You are required to complete the form you have chosen using the information given below:

**a) Completion of the Subordinate Court Writ of Summons:**

- i) The matter will be heard in the subordinate court of the second class for the Mumbwa District, to be held at NANGOMA COURT. The case record number is 2002/SSP/52.
- ii) The Plaintiff is JOHN MAINZA of House No. 714, KAINGU ROAD, Mumbwa Central, and the Defendant is BWALYA CHINTU, of House No. 125 SHEZONGO TOWNSHIP, Mumbwa East.
- iii) The matter will be heard on 28<sup>th</sup> day of October, 2002 at 10:30 hours.
- iv) The Plaintiff is claiming the repayment of a debt in the sum of K950,000 as agreed price for building s pigsty at Defendant's farm at SITUMBEKO FARMING BLOCK in Mumbwa.
- v) The Writ was issued at Mumbwa Subordinate Court, on 18<sup>th</sup> September, 2002.
- vi) Court fees are K45,000, and messenger's fees aare K24,000. The Plaintiff will represent himself at the trial and has therefore not retained any counsel.

- vii) The writ was served personally on the Defendant BWALYA CHINTU, by the Court messenger TOM SIMASIKU, on 24<sup>th</sup> September, 2002.
- viii) The Defendant, BWALYA CHINTU, is denying the claim, and therefore wishes to notify the Plaintiff of his intention to defend himself, against the claim, his ground for denying the claim is that the agreed price for building was K650,000 and not K950,000 as stated in the writ.

**NOTE:** If you have answered question 1 [a], do not answer question 1[b] which follows below:

**[b] Completion of the High Court Writ of Summons:**

- i) The case record number is 2002/HP/934.
- ii) The Plaintiff is CHINONDO MANDEFU of 95 ITAWA ROAD, NDOLA, and the Defendant is KONGOLAN PHIRI, of 351 NORTHRISE TOWNSHIP, NDOLA. Plaintiff's postal address is 92680, NDOLA, and that of the Defendant is 90024, NDOLA.
- iii) The Plaintiff is required to enter appearance within fourteen days of receipt of the summons. The name of the Chief Justice is E. L. Sakala, and the writ was issued on 25<sup>th</sup> September, 2002.
- iv) The Plaintiff has retained MALOYA AND PARTNERS as his legal representatives, whose physical address is FIRST FLOOR, CHINYUMBA HOUSE, BUTEKO AVENUE, NDOLA, and whose postal address is 933, NDOLA.
- v) The Plaintiff is claiming general damages for personal injuries inflicted on him on 10<sup>th</sup> January, 2002, along TWAPIA ROAD, when the Defendant hit his left leg, breaking his femur [thigh –bone] as a result of Defendant's negligent driving of his Toyota Corona, White in Colour, Registration number AAL. 555.
- vi) The writ was served personally on the Defendant by the Plaintiff himself, on 26<sup>th</sup> September, 2002. Endorsement of service of the writ was done on 27<sup>th</sup> September, 2002.

## **QUESTION TWO**

**Answer all questions: Question 2[a], Question 2[b] and Question 2[c].**

- a) Briefly explain any three of the methods of executing or enforcing judgments in the Subordinate Courts.

- b) What is the distinction between a judgment and a judgment summons in the Subordinate Court civil litigation?
- c) As a general rule a civil debtor is not liable for committal to prison. Under what circumstances can he be sent to prison in civil litigation, stating the obligations to be born by the person seeking committal of the debtor to prison. Cite the law on which you are basing your answer.

### QUESTION THREE

Write brief notes on any three of the following terms and topics:

- a) Interpleader summons
- b) Garnishee proceedings
- c) Composition order
- d) What are damages and their two main divisions.

### QUESTION FOUR

Answer both question 4[a] and question 4[b].

- a) State any four main grounds upon which a court may refuse to grant <sup>bail</sup>~~bail~~ to a prisoner in a bailable offence, and name any two non-bailable offences in Zambia.
- b) what is meant by 'Mentioning a case' in the Zambian criminal justice system? Give the reasons for this mentioning procedure in the criminal proceedings.

### QUESTION FIVE

State what an 'Order for Directions' is, and name any four processes or matters or proceedings that are usually included in orders for directions in the High Court civil proceedings.

Explain very briefly two of the four processes you have named.

### QUESTION SIX

In the High Court civil litigation, matters may be disposed of either in Open Court or in Chambers. Rule II of Order 30 gives a number of matters that may be dealt with in Chambers.

Name any three such matters that may be disposed of in Chambers, and briefly explain each item.

### QUESTION SEVEN

Answer both 7(a) and 7 (b)

- a) Discuss the main distinction between the procedure of obtaining default judgment under Order XII [12] and the procedure provided for the same purpose under Order XIII [13] of the High Court Act, Cap. 27.
- b) Draw up the summons [in general form] which is used by parties to a case for all sorts of interlocutory applications. In this case the summons is for application to set aside a default judgment.

Do not use your names in any part of the summons you will draw up.

**THE UNIVERSITY OF ZAMBIA  
SCHOOL OF LAW**

**2001/2002 ACADEMIC YEAR SECOND SEMESTER FINAL EXAMINATIONS.**

**L. 382 - INDUSTRIAL LAW**

---

**TIME : THREE [3] HOURS [Plus 5 Minutes to read the Paper]**

**INSTRUCTIONS:**

1. Answer question **ONE** and any other **THREE** Questions.
  2. All questions carry **16 Marks** except Question **ONE** which carries **22 marks**.
  3. Candidates are strongly advised to cite relevant authorities and to be clear in their presentation. Credit will only be given for clarity of presentation, appropriate use of authorities and the candidates knowledge of the legal issues involved.
  4. Relevant statutes may be brought in the examination room provided they do not bear any marginal notes, markings or any such mark intended to aid the candidate.
- 

**QUESTION 1 - COMPULSORY QUESTION**

Junior doctors who number a good 600 in the country, formed an association called the Junior Doctors Association of Zambia through which to pursue the objectives of their profession. The association was registered under the Societies Act, Chapter 119 of the Laws of Zambia. In order to run the affairs of the association, a fifteen [15] member executive was elected into office headed by Dr. Mulenga as its Chairman and Dr. Mulikita as General Secretary. Over the course of time, however, Junior doctors in the country begun to feel that they are the profession working under very poor conditions of service. Their salaries, they argued, are too low and have no relation to their long periods of study and the importance of their work in the nation. The majority of them do not have houses and other benefits such as car loans and furniture loans are not easily available. Recent salary increases in government which were condemned by all trade unions in the public service as inadequate, did nothing to cheer the doctors who felt that their effect on their take home pay was negligible.

In reaction to members' widespread discontent, Dr. Mulenga summoned his executive to an emergency meeting at Long Acres Hostels in Lusaka to discuss an appropriate strategy to redress the poor conditions of service. At the stormy meeting on 23<sup>rd</sup> August, 2002, it was unanimously agreed that all members of the association, a strong 600, would, with immediate effect 'work according to rule.' This meant that they would work only according to their normal working hours which apply to all public officers i.e. eight hours

per day or right and would not respond to emergency calls when they were off duty, would not handle Aids patients because they do not enjoy risk allowance, etc.

Members immediately complied with their executive's directives and adopted a 'work to rule' approach in all hospitals, health centers and clinics all over the country. The situation became chaotic. Death rates at hospitals shot up as the Senior doctors, nurses and clinical officers could not cope with the increased volume of work.

The Minister of Health issued a statement on the fourth day of the strike in which he said that government would not be intimidated by a group of people however important they may be to the community. He said that Junior doctors were breaking the law because as essential workers, they had no legal power to go on strike. He appealed to them to return to work while their demands were being looked into. The following day, Dr. Mulenga and the General Secretary, Dr. Mulikita issued a joint statement in which they denied they were on strike. They alleged they were simply working according to rules and refused to do extra work which they were not obliged to do.

On the seventh day, the University Teaching Hospital recorded 70% deaths above the usual rate. The Inspector-General of Police issued instructions to the Lusaka Commanding Officer to arrest the fifteen [15] executive members of the association. This was done and Dr. Mulenga and his colleagues were charged with contravening subsections 2, 5 and 6 of section 107 of the Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia. All the accused agree to have met and resolved to adopt a work-to-rule approach and communicating the same to members of the association.

You have been retained as counsel for the fifteen [15] accused. Explain the issues of law involved and prepare a submission to court on behalf of your client. **[22 marks]**

## **QUESTION 2**

In the context of approaches to the study and understanding of industrial relations, discuss the main threads of the unitary, the pluralist/conflict and the Dunlop's theories. **[16 marks]**

## **QUESTION 3**

Common law denies wrongfully dismissed workers the right to demand re-instatement even when the court recognizes the wrongfulness of the dismissal and grants compensation for the dismissal.

Discuss the above statement in the context of current judicial practice in Zambia. Is reinstatement still not available where an employee has been dismissed against written procedures in his contract or collective agreement?

**[16 marks]**

## **QUESTION 4**



To what extent are the Zambian Labour laws dependable in protecting workers' and trade union rights? [16 marks]

### QUESTION 5

Concisely trace the major judicial and legislative innovations into the question of combinations of workers to better their conditions of work. [16 marks]

### QUESTION 6

Using decided cases, discuss the terms implied in a contract of employment at common law. [16 marks]

### QUESTION 7

Moonlight Carriers Limited and Mulungushi Travellers Limited are engaged in the same business i.e. operating passenger transport.

Moonlight Carriers has employed 46 employees on unionized conditions and 54 temporary drivers and mechanics. Although they have been with the company for nine [9] months having originally been engaged on six [6] months' contracts, they have continued to work under temporary engagements. Mulungushi Travellers has a strong 400 unionised workforce.

The two companies, their trade union officials and workers representatives have come to you, the newly appointed Labour commissioner with the following issues:

- i) the two companies wish to combine their efforts and form an Employers' Association so that they can negotiate with the union as one employer.
- ii) there is a rift in the union with graduates on union conditions demanding to form their own union because the present union leadership, which draws heavily from non-graduate employees, does not represent the particular problems of graduates to management.

The unionized graduates have presented to you their constitution for their union.

Explain what action [s] you would take and advise the parties on their legal rights and Obligations. Does recognition of a trade union in Zambia entail any legal effect on the Union? [16 marks]

---

**END OF EXAMINATION**

**THE UNIVERSITY OF ZAMBIA  
SCHOOL OF LAW**

**UNIVERSITY SECOND SEMESTER EXAMINATIONS – OCTOBER 2001/2002**

**L. 412 – JURISPRUDENCE - II  
[LAW AND SOCIETY]**

---

**TIME :**        **THREE [3] HOURS** [Plus 5 Minutes to read the Paper]

**INSTRUCTIONS:**

Statutes are allowed in the Examination Room.

There are **Four Parts** to this paper. Answer **ONE** question from each part.

---

**PART A**

**QUESTION 1:**

A drought that has hit the Southern African Region is devastating with severe hunger and threats to lives of people particularly in the rural areas. Some donor countries have offered large quantities of Genetically Modified Maize [GMO]. Reputable international organizations see no real harm or threats to lives of people arising from consumption of this maize. In fact a lot of countries in the Region have opted for this maize although they insist it must be milled before consumption.

Local scientists and experts are split in their opinions as to the safety of this maize if consumed by human beings. One School of thought among these scientists and experts is that from the numerous workshops attended there is no real danger to human life if the maize is consumed. The other School of thought insists that there is sufficient scientific evidence on record as to the safety of this maize.

In this impasse the Government of Zambia has sent a team of local experts abroad to study and evaluate the subject in more detail. The report of these experts just released states that laboratory tests of GMO maize disclose no known danger to human life but this can only be verified over a long period of consumption of this maize. The Government of Zambia now wants to review its stand on the subject since scientific laboratory tests indicate no danger to human life.

**Give your considered legal opinion on the subject.**

## **QUESTION 2**

The squatter problem in the country is getting out of hand, posing practical difficulties to developers. A survey of the problem reveals that most of the squatters on stateland are families of workers who have been employed on this land in some instances for over three decades. Their original employers, who were registered title holders, have since transferred vast tracts of land to new owners who are now the registered proprietors.

Another dimension to the problem is that these squatters are large families who, if removed, would cause a lot of hardship and disruption to the families. A lot of the new owners, although not all, have obtained Court Orders for the eviction of squatters. Large sums of money have been invested by some landowners who want to boost agricultural production, particularly the production of maize, which is the staple food. Some other tracts of land have been earmarked for important national projects such as construction of secondary schools, hospitals and health centers.

The squatters, on the other hand, argue that they have nowhere else to go and their original employers left them on this land without paying them any terminal benefits having worked for them for over three decades. Regrettably, most of these employers are since deceased.

Bailiffs are now anxious to execute Writs of Possession on instructions from the title holders.

**Government now seeks an opinion on how to resolve this crisis – Give your opinion.**

## **PART B**

### **QUESTION 3:**

A heated debate is raging on the use of condoms as a preventive measure to curb the spread of the deadly HIV-AIDS pandemic. Advocates of the condom have urged the critics to accept realities that promiscuity levels are rising, posing a very serious danger particularly to young lives.

The Church, on the other hand is adamant, on moral grounds, against the use of condoms which they view as encouraging sexual immorality. The Church has now taken its battle front further and are urging enactment of a law prohibiting the manufacture, importation and use of condoms.

**Give a well reasoned and balanced legal opinion on the subject.**

## QUESTION 4

On the relation of justice to law Friedman makes this conclusion:

“Justice as a general valid concept, in the sense that it is the goal to which every legal order aspires as a “ purposeful enterprise “ and procedural, in the sense that the Aristotelian notion of “equality for equals” implies a minimum machinery of justice and third party determination.”

[ W. Friedman, **Legal Theory**, Fifth Edition at p.25].

**Discuss the concept of Justice in a legal system.**

## QUESTION 5

Article 17 of the Constitution of Zambia [1973 Edition] provides thus:

“ 17 [1] No person shall be subjected to torture or to inhuman or degrading punishment.”

[2] Nothing contained or done under the authority of any law shall be held to be inconsistent with or in contravention of this Article to the extent that it is shown that the law in question authorizes the infliction of any description of punishment that was lawful immediately before the coming into operation of this Constitution.”

Advocates of the Abolition of the Death penalty have described the same as inhuman, harsh, unjust and degrading punishment.

**Evaluate the arguments for and against the death penalty as to whether it is a fair and just law.**

## PART C

### QUESTION 6:

In **Mulundika and Others vs The People [1996] 2 LRC. P. 175** the Supreme Court of Zambia did **inter alia** say the following about the Public Order Act:

- a. “This brings us to consider if s.5[4] is reasonably justifiable in a democratic society, especially one that is re-establishing the essential elements of democracy based on plural politics and the genuine exercise by the people of their free will and choice and their freedoms. Even in the best of the democratic traditions, some regulation of public gatherings is required. For example, the Public Order Act 1986 of England, which both sides referred to, is instructive ..... Provision is made for notifications to be given by organizers of processions of

gatherings so that the regulating authorities have the opportunity to perform the very necessary function of giving directions and imposing conditions, if any, for the sake of upholding public order and preserving the peace. The giving of notice to a regulating authority for the latter to give regulatory directions is one thing; the giving or refusal of permission to meet and speak is quite another matter” [at. P.186].

- b. “The requirement of prior permission to gather and to speak, which permission can be denied sometimes for good and at other times for bad cause not contemplated by the constitutional derogation, directly affects the guaranteed freedoms of speech and assembly. It is little wonder that these are freedoms most discussed by the Courts whenever a democratic society is being considered. The weight of judicial authority in Commonwealth countries argues against the constitutionality of a provision like our s.5[4] of the Public Order Act..... [at p.187]
- c. In summary for the reasons which we have given, we hold that s.5[4] of the Public Order Act contravenes arts 20 and 21 of the Constitution and is null and void, and therefore invalid for unconstitutionality. It follows also that the invalidity and the constitutional guarantee of the rights of assembly and expression preclude the prosecution of persons and the criminalisation of gatherings in contravention of the subsection pronounced against..... [ at p. 190].

113

**Evaluate the regulatory role of the Public Order Act, Cap 104 and Amendments in Act No. 1 of 1996 and Act No. 36 of 1996.**

### **QUESTION 7:**

“..... An analysis of the legal values of modern democracy is a more complex task; for it is a more comprehensive and flexible creed, the condensation of a long historical development, which comprises the essence of most of the great legal theories of Western civilization; and it is still in a state of flux. The main forces in the development of modern democratic thought have been the liberal idea of individual rights, protecting the individual, and the democratic idea proper, proclaiming equality of rights and popular sovereignty. The gradual extension of the idea of equality from the political to the social economic field has added the problems of social security and economic planning. The implementation and harmonization of these principles has been and continues to be the main problem of democracy” [W. Friedman, **Legal Theory**, Fifth Edition at p. 398.

**What are these principles of a modern democracy and how has implementation and harmonization of the same been achieved?**

## **PART D**

### **QUESTION 8:**

The Rule of law implies:

- a. the principle of equality before the law and
- b. equal individual responsibility

**Discuss the Rule of Law and Limitations imposed by the universal increase of planning functions and of public control over a range of economic and social activities.**

### **QUESTION 9:**

Discuss custom as a material source of law, the process through which it crystallizes into law and the conditions for its recognition and validity.

### **QUESTION 10:**

Friedman, in his **Legal Theory** fifth Edition, observes that a crisis of society challenges the law more directly perhaps than any other branch of social activity [at p. 70]. On the role of law in social change Radbruch has had this to say:

“ All great political changes were prepared or accompanied by legal philosophies. At the beginning there was legal philosophy, at the end of revolution.”

**Discuss the role of law in social change.**

**THE UNIVERSITY OF ZAMBIA  
SCHOOL OF LAW**

**OCTOBER, 2002**

**L. 422 - COMPANY LAW**

**TIME : THREE HOURS [Plus 5 Minutes to read the Paper].**

**INSTRUCTIONS : ANSWER FOUR QUESTIONS. QUESTION ONE IS COMPULSORY.**

**Candidates may bring a clean copy of the Companies Act.**

---

**1.(a)** It is a principle of law that the proper plaintiff in an action in respect of a wrong which is alleged to have been done to a company is prima facie the Company, if this wrong is a transaction which might bind a company, then such a wrong can be ratified by a simple majority of members. In such a case the Court will not intervene at the suit of a minority. Discuss critically the statement. **[21 marks]**

**(b)** Write short notes on the following:

- i) The Reserve Capital
- ii) Loan Capital
- iii) Nominal Capital
- iv) The issued Capital
- v) The paid-up Capital

**[10 marks]**

**2.** A Public Company may raise its capital by issue of shares or debentures by inviting the public to subscribe for them. Describe three ways [methods] of raising capital by a private company. **[13 marks]**

**3.** Write short notes and give examples of the business for which the following resolutions are required to be passed:

- i) Ordinary Resolution;
- ii) Extra-Ordinary Resolution;
- iii) Special Resolution.

**[ 13 marks]**

- 4.(a) Discuss briefly the distinction between a Voluntary Winding up and Compulsory winding up. **[ 6 marks]**
- (b) Discuss the principle in the case of Salomon v Salomon and give instances when the principle may be overlooked. **[7 marks]**
5. Discuss the rights available to a minority shareholder against majority shareholders' action that adversely affect his interest. **[13 marks]**
- 6.(a) What is the position of an auditor appointed to hold office in the Company? **[6 marks]**
- (b) Briefly in your own words discuss the **Rights and Duties of Auditors**. **[ 7 marks]**
- 7.(a) List the documents required to be submitted to the Registrar of Companies in order for a company to be registered. **[ 6 marks]**
- (b) Discuss what is meant by "**Lifting the Veil**" of the Corporate personality. **[7 marks]**

---

**END OF EXAMINATION**



# THE UNIVERSITY OF ZAMBIA

## SCHOOL OF LAW

SECOND SEMESTER EXAMINATIONS, OCTOBER, 2002

L432 –THE LAW OF INTERNATIONAL INSTITUTIONS

---

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

- INSTRUCTIONS :**
1. ANSWER ANY FOUR QUESTIONS
  2. Candidates may bring into the examination room unmarked copies of the following documents.
    - (i) The United Nations Charter
    - (ii) The Constitutive Act of the African Union
    - (iii) The Diplomatic Immunities and Privileges Act, CAP.20 of the Laws of Zambia
    - (iv) The UN/USA Headquarters Agreement
    - (v) The General Convention on Privileges and Immunities of the United Nations
    - (vi) The Organization of African Unity Charter.
- 

### QUESTION 1

Your country is a non-permanent member of the Security Council for the next two years. You are the representative of your country in the Council.

Recently, there has been some serious social disturbances in Imaqi, a member state of the United Nations. During these disturbances, hundreds of Makaqi, a minority ethnic group believed to be politically opposed to the ruling class have consistently been brutally murdered by the Government in what seems to be an ethnic cleansing of this social group by authorities.

Imaqi is one of the world's main producers of oil. Most of its oil is sold to companies in Western countries. Some neighbouring countries to Imaqi have floated a resolution in the Security Council to have military action taken against Imaqi to destroy this country's military machine and protect the Makaqi people from the atrocities being committed by authorities in that country against them. In the debate that followed, some Western countries have strongly opposed the proposal to send military forces pointing out that this would be contrary to the principle of non-interference in the internal affairs of Imaqi. Using the United

Nations Charter as a base and international law in general, prepare your country's position on the matter.

**(25%)**

## **QUESTION 2**

Critically analyse the Charter provisions of the defunct Organization of African Unity (OAU) which resulted in the ineffectiveness of this organization in light of conflict prevention, management, promotion and protection of democracy and human rights on the African Continent.

**(25%)**

## **QUESTION 3**

Typically, international organizations have a plenary body in which all members are represented, and which resembles a national parliament.

However, there are important differences between plenary bodies of international organizations and national parliaments. Which differences would you single out as the most important ones? Give appropriate examples in your answer.

**(25%)**

## **QUESTION 4**

- (a) In international usage one speaks of international organizations as possessing 'legal capacity' and as possessing 'international personality'. Are these two notions synonymous? If not, please explain the difference between them.
- (b) What is Article 1 of the General Convention on the Privileges and Immunities of the UN about-legal capacity or international personality?
- (c) International Organisations conclude agreements with States and with other international organizations. Is this a manifestation of their legal capacity or international personality?

**(25%)**

### **QUESTION 5**

There is an apparent conflict in the UN Charter between Article 2(1), (which states that the UN is based on the principle of sovereign equality of all its members), and Articles 23(1) (which enumerates permanent members of the Security Council) and Article 27(3) (which subjects substantive decisions of the Security Council to concurring votes of its permanent members).

- (a) How do you reconcile this conflict in the charter?
- (b) What is the modern day reasoning for maintaining this privilege for a few states?
- (c) In the current debate about changes in the membership of the Security Council, which ideas for enlarged membership, permanent seating and voting rights would you like to consider?

**(25%)**

### **QUESTION 6**

Explain the practice of democracy in the EU particularly in relation to the election of Members of the EU Parliament from EU Member States and the principles governing this. How do ordinary electorates in EU States participate in choosing their representatives bearing in mind the different political movements in their respective countries?

**(25%)**

### **QUESTION 7**

- (a) Assume, that there is a dispute between State A and State B. Are the parties obliged to submit their dispute to the United Nations? Support your answer with relevant provisions of the UN Charter or general international law.
- (b) Please, assume alternatively that a third country, State C would wish to bring that dispute to the attention of the United Nations. Is this third Country entitled to do so; and if it is, has it a free choice of the organ of the UN it wishes to be seized of the dispute-the Security Council, or the General Assembly?
- (c) Assume further that the Security Council discusses the question of putting the dispute on the Agenda. Both parties to the dispute are invited, without right to vote, to the Council (Art.32 of the Charter); and State A argues that the Security Council should not place the matter on its agenda, because (i) negotiations aimed at settling the dispute are under way, (ii) the dispute is not threatening international peace and

security. Is the Security Council obliged to acquiesce in the arguments of State A? Would the situation be different, if both State A and State B advanced the same arguments?

- (d) Please, assume finally that the Security Council discusses the substance of a dispute between two states. Since the underlying facts are not clear, the Council wishes, before adopting a resolution on the substance of the dispute, to investigate the facts and to appoint a commission for that purpose. Is a resolution on the establishment of such a commission a procedural matter (Art.29) or a non-procedural one (Art.34)?

**(25%)**

**THE UNIVERSITY OF ZAMBIA**

**SCHOOL OF LAW**

UNIVERSITY SECOND SEMESTER EXAMINATION, 2002

**L452: INTERNATIONAL INVESTMENT LAW**

---

**TIME:** THREE HOURS (Plus 5 minutes to read through the paper)

**INSTRUCTIONS:** CANDIDATES MAY BRING INTO THE EXAMINATION ROOM AN UNANNOTATED COPIES OF THE FOLLOWING ACTS: INVESTMENT ACT, PRIVATISATION ACT.

NO OTHER MATERIALS ARE PERMITTED

ANSWER QUESTION ONE AND THREE OTHERS

QUESTION ONE

- (a) Why do governments in developing countries seek foreign investment and what can the law do in order to attract it?

[20 marks]

- (b) While a foreign investment may offer the investor with significant opportunities, it may also present serious risks of a nature and magnitude far different from those involved in the home country.

Critically discuss the opportunities and risks that foreign investment may present to the investor. What steps, if any, can the foreign investor take to mitigate the risks?

[20 marks]

QUESTION TWO

- (a) Describe the guidelines on conditionality applicable to the resources of the International Monetary Fund. Have these been "relaxed" in the last two decades? If so, give examples of the alleged relaxation.

[10 marks]

- (b) What is the relationship between surveillance function and the conditional support function of the International Monetary Fund?

[10 marks]

### QUESTION THREE

- (a) Describe the various objectives a government can pursue in privatization of State-owned enterprises.

[12 marks]

- (b) Discuss at least two methods the government can employ in the privatization of State-owned enterprises.

[8 marks]

### QUESTION FOUR

Critically discuss the similarities and differences between the World bank and the International Monetary Fund.

In your opinion do you think the conditionalities attached to their lending policies are in the best interest of the developing countries?

[20 marks]

### QUESTION FIVE

- (a) Critically analyse the reasons that motivate Multinational corporations to invest abroad. How can the host country government's policies affect the operations of multinational corporations?

[10 marks]

- (b) Critically analyse the principles governing debt management at the Paris Club. How does the London Club differ from the Paris Club?

[10 marks]

### QUESTION SIX

Critically discuss the origin of the debt crisis and the strategies that were adopted to deal with the said crisis.

In your opinion do you think the solutions that were adopted to deal with the debt crisis were effective?

[20 marks]

## QUESTION SEVEN

You are a Research Assistant to Professor Madison who is researching on technology transfer laws in Southern Africa. Professor Madison is surprised that there is no law regulating technology transfer in Zambia. Professor Madison has requested you to write a paper on the need or justification for technology transfer laws in Zambia.

[ 20 marks ]

**THE UNIVERSITY OF ZAMBIA**  
**SCHOOL OF LAW**

**UNIVERSITY SECOND SEMESTER EXAMINATIONS, OCTOBER 2001/2002**

**L. 472 – REFUGEE LAW**

**INSTRUCTIONS:**

**TIME** : **THREE [3] HOURS** [Plus 5 Minutes to read the Paper]

**DATE** : **1<sup>st</sup> NOVEMBER, 2002**

1. ANSWER **ANY FOUR QUESTIONS** OUT OF SEVEN QUESTIONS.
  2. ONLY WRITTEN MATERIALS PERMITTED IN THE EXAM ARE UNMARKED COPIES OF THE 1951 [GENEVA] CONVENTION, THE 1969 OAU CONVENTION, THE STATUTE OF UNHCR, AND THE REFUGEE [CONTROL] ACT. THESE MATERIALS MAY NOT BE SHARED.
- 

**QUESTION 1**

Discuss the differences between the 1951 [Geneva] Convention and the 1969 OUA Convention and how these differences were designed to fulfill the wishes of the drafters of the OAU Convention.

**QUESTION 2**

Uruk is a national of Mordor. Mordor is a Monarchy ruled by the Emperor Sauron. Sauron maintains control through a strict military hierarchy and the judicious use of torture, detention, and execution to quiet opposition. At this time, there is no known opposition to Sauron. Uruk was a Colonel of an army division which made a wrong left turn and wandered into Zambia. Uruk was captured and detained. Uruk claims that he can no longer return to Mordor as he will be tortured, detained, and executed for entering Zambia and being captured. Analyse Uruk's claim to refugee status.

**QUESTION 3**

What is UNHCR's statutory mandate and how does assistance fit within the mandate? How does UNHCR provide assistance to refugees?

**The following facts apply to both questions 4 and 5.**

The Who Republic has two major ethnic groups, the Constari and the Sanstari. 25% of the population is Constari while 70% is Sanstari. Novisan is a Constari and a national of



Who. Novisan was friends with a mixed group of Constari and Sanstari who wished to see the two groups put aside ancient differences and live together in peace and harmony. In 1995, the suspicious death of the Sanstari President led to interethnic fighting. Sanstari militants caught Novisan and beat him severely. Novisan awoke three days later in a hospital. Novisan had to flee the hospital with his injuries when more militants came to the hospital to finish the job. Novisan made his way to Zambia with a large group of Whos and was granted 1969 status. In 1997 a coalition of Constari parties and mixed parties including a party formed by Novisan's friends gained power. By 1998 all resistance in Who was quelled and most Constari refugees repatriated. In 2000, the President of Who squeezed out the other parties from power. Many of Novisan's friends were detained for long periods of time without being charged. Novisan was interviewed by the press and denounced the actions taken against his friends. Currently, most Who refugees are Sanstari. Novisan is frequently harassed and threatened by Sanstari refugees who view him as a spy.

**QUESTION 4**

Analyse Novisan's claim to continued refugee status.

**QUESTION 5**

Analyse Novisan's claim that he needs to be resettled to a third country.

**QUESTION 6**

Analyse the current procedures for refugee status determination in Zambia, including their statutory basis and conformity with international law.

**QUESTION 7**

Istar is a member of the Pawali tribe of Palukistan. The Pawali tribe openly practices female genital mutilation ["fgm"]. Women who refuse to undergo the ritual are ostracised and sometimes beaten. Some are circumscised against their will. Istar does not wish to be circumscised and has fled Palukistan. She has crossed several countries to come to Zambia which she feels will offer her greater protection from fgm because it is a Christian Nation. Refugees from Palukistan are in all the countries she crossed. Analyse Istar's claim to refugee status.

.....**END OF EXAMINATION**.....

# THE UNIVERSITY OF ZAMBIA

## UNIVERSITY EXAMINATIONS-SEPTEMBER 2002

**L620**

### INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW

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

**INSTRUCTIONS:**

1. ANSWER ANY FOUR (4) QUESTIONS.
  2. ONLY UNMARKED TREATIES/LEGISLATION MAY BE BROUGHT INTO THE EXAMINATION ROOM
- 

1. The UN credo is that all categories of human rights are indivisible, interdependent and inter-related and all states should accord them equal importance. Yet in practice most countries appear to be more committed to protecting civil and political rights than economic, social and cultural rights.
  - (a) What are the reasons for this ambivalence and are such reasons tenable?
  - (b) Discuss why economic and social rights must be given equal attention.

(25 Marks)

2.
  - (a) Does the division of human rights into categories have any significance?
  - (b) What are perceived to be the differences between the different categories of rights?

c() Are these distinctions tenable?

(25 Marks)

3. Discuss the strengths and weaknesses of the UN Charter-based mechanisms for the enforcement of Human Rights. How do they differ from Treaty-based mechanisms, if at all?

(25 Marks).

4. The Reporting Mechanism is the main method for monitoring State implementation of human rights under human rights treaties.

(a) What are the advantages of this mechanism?

(b) In practice what are the drawbacks of this Mechanism?

(25 Marks)

5. Zambezia is a member of the African Union (AU). It is ruled by President Robert Gabriel who does not tolerate any opposition. In the run up to national elections in which he is contesting the presidency, he cracks down hard on the opposition. He closes down the independent press, and instructs the police not to allow the opposition to hold campaign rallies. On his orders, opposition leaders are detained without trial. Robert Gabriel uses government resources to fund his campaign and that of his ruling party, which is called ZANA. The opposition are not allowed to use government owned media to transmit their campaign messages to the electorate. ZANA youths go on rampage physically attacking members of opposition parties and destroying their property. Opposition supporters are driven away from their homes through violence. But the police do nothing about it. The President and his government ignore court orders in favour of the opposition. He bans foreign observers from monitoring the elections. When elections are held both he and his party are re-elected for another term of office.

Leaders of the main opposition party, MCD, approach you for advice on whether there are any international remedies they can access and how they can go about doing so. In your advice you should discuss what specific rights, if any, have been violated.

6. (a) In what way does the definition of refugee in the *OAU Convention Governing the Specific Aspects of Refugee Problems in Africa* 1969 differ from that in the *1951 Convention Relating to the Status of Refugees*?

(b) In Rwanda almost a million members of the minority Tutsi tribe are killed by government armed forces and pro-government militia in revenge for the assassination of the President. The government is in the hands of the majority Hutu tribe. The killings are masterminded by General Ratsiraka, the army commander. The RPF, an armed force dominated by Tutsis, defeats the government army and takes over the government. Ratsiraka and other Hutu leaders flee to Zambia and seek asylum. The new RPF government rounds up thousands of suspected perpetrators of the killings and detains them in overcrowded prisons. It plans to try them in fast-track traditional courts called 'Gatchacha', composed of villagers. Some of the suspects are beaten severely during interrogations by government investigators so that they can provide information. The RPF authorities, upon hearing that Ratsiraka is in Zambia, demand his immediate return to Rwanda so that he can face trial for his crimes.

The Zambian government asks for your legal advice on how it should respond both to the application for asylum from Ratsiraka and the Rwandan Government's request for his extradition.

(25 marks)

7. (a) What is international humanitarian law and what are its major objectives?

(b) Chambeshi is a country in Africa which is ruled by a corrupt dictator, Kobutu. He considers the country's Central Bank as his personal asset, which he uses in any way he deems fit. He does not brook any opposition to his rule and his political opponents are ruthlessly dealt with by his fearsome secret police. As a result, there is growing opposition to his rule. The Chambeshi Liberation Front (CLF) is

formed by Temba to dislodge Kobutu from by power by military means. He sets up a well-disciplined armed force which takes on the Chambeshi army. The CLF is dressed in military uniform and operates under a recognised command. The Front captures the Eastern part of the country and establishes an administration. The Chambeshi Army bombs the Eastern Province indiscriminately in an effort to destroy the armed rebels. In the process hundreds of civilians are killed.

Furthermore, in a fierce ground battle, the Chambeshi Army captures 200 rebel soldiers and detains them in prison together with common criminals. It plans to try them for treason. The rebel soldiers are badly treated in jail. For example, they are denied baths, are fed daily on badly cooked beans and are frequently beaten so that they can reveal the whereabouts of their commanders.

In order to deny rebels the support of the local population Civilians are rounded up and placed in camps which are heavily guarded by the army. No movements into and out of the camps are allowed.

Chambeshi is party to all Geneva Conventions.

Critically discuss the humanitarian law implications of the conduct of the Chambeshi government and the rebels.

(25 Marks)