

SCHOOL OF LAW

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UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - FEBRUARY, 1974

L.210

INTRODUCTION TO LAW AND LEGAL INSTITUTIONS

TIME : THREE hours

ANSWER : THREE questions, including ALL of questions 1 and 2
and a choice of either Part A or Part B of question 3

1. Adam Banda is a man who prefers to make his living without working. One afternoon he visited his brother, who was a patient in a small hospital in Zambia, and who told him that the night guard had been sick for several days. On his way out of the hospital, Banda noticed two other interesting things, a collection of valuable drugs in a locked glass-topped case sitting in an open closet, and a broken window at the end of the only hall in the building. All this was too much temptation for Banda. That night he donned the uniform of a police officer that he kept for such occasions as when he desired unimpaired movement and set out for the hospital. As the sky lightened at dawn, he clambered through the broken window silently drawing aside the curtain that had been partially closed the evening before. Quickly he ran to the closet, still unlocked, found the drug case, and broke in the top. He grabbed most of the drugs and scampered out of the window just as the sun cleared the horizon in the east. The whole operation had taken less than seven minutes. Unfortunately for him, however, Banda was caught trying to sell the drugs, and faced with the obvious evidence against him, confessed the whole deed.

Banda has been charged before a Zambian court with the crime of burglary, as defined by sections 300 and 301 of the Penal Code. Relevant portions of these statutes are appended to this examination. Write the opinion of the court in the case, analyzing all statutory issues and giving full reasons for your conclusions. You may cite and discuss the appended statutes and any cases or materials used in this course. Do not cite other authorities.

2. Assume that the Zambia Law Journal published an article critical, on legal grounds only, of several Zambian decisions concerning the protection of fundamental rights provided by the Constitution. Assume further that the President declared that issue of the Journal to be a 'prohibited publication' pursuant to Section 53(1) of the Penal Code, making it (under Section 54 of the Penal Code) a crime to further distribute the issue :

Argue for the State that the President's action is lawful under Section 53(1) of the Penal Code, constitutional under Articles 13, 22, and 29 of the Constitution and in the best interests of Zambia.

Argue the other side of the question for the Law Journal.

NOTE : Section 53(1) of the Penal Code and relevant portions of Articles 13, 22, and 29 of the Constitution are appended to this examination. You must answer both sides of this question.

3. Answer ONE of the following two questions :

A. In your opinion, what should the term 'common law' mean in Chapter 4 of the Laws of Zambia, and why?

B. How do you define the term 'independent judiciary'? In the context of the needs and traditions of Zambia, is an independent judiciary a good thing? To what degree are the current laws of Zambia satisfactory in this respect, and why?

STATUTORY APPENDIX

PENAL CODE

- 300 (1) A person who breaks any part, whether external or internal, of a building, or opens by unlocking, pulling, pushing, lifting or any other means whatever, any door, window, shutter, cellar flap, or other thing, intended to close or cover an opening in a building, or an opening giving passage from one part of a building to another, is deemed to break the building.
- (2) A person is deemed to enter a building as soon as any part of his body or any part of any instrument used by him is within the building.
- (3) A person who obtains entrance into a building by means of any threat or artifice used for that purpose, or by collusion with any person in the building, or who enters any chimney or other aperture of the building permanently left open for any necessary purpose, but not intended to be ordinarily used as a means of entrance, is deemed to have broken and entered the building.
301. Any person who -
- a. breaks and enters any building, tent, or vessel used as a human dwelling with intent to commit felony therein ... is guilty of the felony termed 'house-breaking' and is liable to imprisonment for seven years. If the offence is committed at night, it is termed 'burglary' and the offender is liable to imprisonment for ten years.

PENAL CODE

53. (1) If the President is of the opinion that there is in any publication or series of publications published within or ~~without~~ⁱⁿ Zambia by any person or association of persons matter which is contrary to the public interest, he may, in his absolute discretion ... declare that that publication ... shall be a prohibited publication.

CONSTITUTION

13. Every person in Zambia has been and shall continue to be entitled to the fundamental rights and freedoms of the individual ... (b) freedom of conscience, expression, assembly and association
22. (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression that is to say, freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any person or class of persons) and freedom from interference with his correspondence.
- (2) Nothing contained in 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 makes provision -
- (a) that is reasonably required in the interests of defence, public safety, public order, public morality or public health; or
- (b) that is reasonably required for the purpose of protecting the reputations, rights and freedoms of other persons, or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, regulating educational institutions in the interests of persons receiving instruction therein, or

(c) that imposes restrictions upon public officers;

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

29. (1) ... (I)f any person alleges that any of the provisions of Articles 13 to 27 (inclusive) of this Constitution has been, is being, or is likely to be contravened in relation to him, then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the High Court for redress.

CHAPTER 4 The English Law (Extent of Application) Act

1. This Act may be cited as the English Law (Extent of Application) Act.
2. Subject to the provisions of the Zambia Independence Order, 1964, and to any other written law -
 - (a) the common law; and
 - (b) the doctrines of equity; and
 - (c) the **statutes** which were in force in England on the 17th August, 1911 ...; and
 - (d) any statutes of a later date than that mentioned in paragraph (c) in force in England, nor (or hereafter) applied to the Republic ...;
 shall be in force in the Republic.

UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - FEBRUARY, 1974

L.220

LAW OF CONTRACT

TIME : THREE hours

ANSWER : Any FOUR questions

1. On 10th December 1973, BABA wrote to KALUZI offering to sell to him BABA's farm near Lusaka for K9,000, and giving him thirty days in which to accept or reject. The letter contained a full description of the location and area of the farm. The following day, at a drinks party in Lusaka, BABA met CHAKA, who intimated his interest in the farm, offering to pay K12,000 for it, which BABA accepted. There and then CHAKA gave BABA a cheque for K500 as deposit and to bind the agreement. On 12th December, BABA wrote to KALUZI informing him that the offer to him was cancelled as the farm had now been sold. The letter was wrongly addressed and never got to KALUZI. In the meantime, on 20th December, KALUZI wrote to BABA accepting his offer of 10th December, and enclosing a cheque for K9,000. KALUZI is now suing BABA for specific performance, and CHAKA has interpleaded.
- Which of the two contracts, KALUZI's or CHAKA's, will the court enforce?

2. Tinto and Company, a private manufacturing enterprise operating in Lusaka has in its employ some fifty workers. For the last three months it has been unable to pay its workers owing to its straitened financial position, which has been steadily deteriorating. Meeting recently its board of directors has, in a circular letter to the workers individually, proposed that they forego their arrear of salary or else the company will have to retrench at least half of them. In separate letters, all the workers accede to this proposal. The company has observed its own part

of the bargain, and has retrenched no one. Two of the workers, LUANGWA and MUFULIRA, the manager and foreman respectively of the company's works, decided to go back on their letters, and are now claiming from the company their arrear of salary. LUANGWA's contract of service with the company is not terminable and has still two years to run. MUFULIRA's has five years outstanding but is terminable by either side giving one month's notice or paying one month salary in lieu of notice.

Advise LUANGWA and MUFULIRA on the validity of their claims.

Would your answer be different if all the workers had agreed among themselves to accept the company's proposal?

3. The rule of privity is a useless anachronism in the law of contract.

Discuss.

4. PHIRI advertised his Mercedes Benz 280, 1971 model, for sale. One morning, a well-dressed, well-groomed man walked into his house to enquire of the car. He produced a business card on which was printed : 'D.W. BATA, BA(Hons), LL.M., Ph.D.(Lond), Professor of Law, University of Zambia, P.O. Box 2379, Lusaka.' PHIRI was duly impressed. "Professor" BATA then asked to see the car. After inspecting the car, he and PHIRI agreed, after some stiff bargaining, on a price of K5,000. The "Professor" then produced his cheque book. Observing a look of worry and protest in PHIRI's face, the "Professor" said : "I see you are looking worried. You are not satisfied as to my identity, perhaps." He then produced a University of Zambia Library Card, which has also inscribed on it "Professor D.W. BATA, School of Law." PHIRI looked at it and said : "That's OK for me, Professor." He accepted the cheque for K5,000, and allowed the "Professor" to take away the car together with all the documents of title. The "Professor"

who was in fact a twice-convicted swindler, by name ⁹ADAKA, immediately sold the car to ABDUL for K4,000, and disappeared.

Can PHIRI recover the car or its value from ABDUL? Would it make any difference to your answer if during the discussions with the "Professor", PHIRI had excused himself, slipped into his bedroom and telephoned the Registrar of the University of Zambia, who confirmed to him that Professor BATA was a member of the University?

5. CHANGA was interested in buying KANTA's mansion house in Lusaka, known as "The Lodge". During a visit of inspection, KANTA said to CHANGA : "You cannot wish for a more suitable and delightful house to live in." Asked about the drains he said they were in perfect condition. He further said the roofs were intact, and had never leaked. "The Lodge" was then conveyed for K30,000 to CHANGA, who discovered, on the very first day of moving into the house, that the drains were so bad as to render the house insanitary, and that the roofs leaked badly. His whole family of six had become ill from drinking water polluted by the defective drains, and he had had to pay a bill of K350 to his family doctor for medical treatment given to his family.

Advise CHANGA as to his remedies, if any, against KANTA on the basis that the latter misrepresented the position;

- i. fraudulently;
- ii. negligently;
- iii. innocently.

Would it make any difference to your advice if CHANGA had engaged a maintenance engineer to check on the condition of the house, and the latter had reported that everything was in order?

6. "It would appear that a common mistake has no effect whatsoever in law unless it is such as to eliminate the very subject-matter of the agreement."

Discuss.

7. CHANDA, a young man of twenty with a wife and two children, is engaged in business, dealing mainly in electrical appliances. He also owns a hotel in Lusaka which was left to him by his late father. CHANDA mortgaged his hotel to the National Bank to secure a loan of K50,000 to be used for the purposes of his business. He was supplied on credit with electrical appliances worth K10,000 by Rio and Company who had been his traditional suppliers for the past two years. Some of these appliances he has used in equipping his newly built house in Lusaka, where he lives with his wife and children. He also obtained, again on credit, large supplies of groceries worth K500 for use in his hotel and for domestic use also. CHANDA has been living a profligate life, and is now in serious financial difficulties, which make it impossible for him to meet his obligations to his creditors.

Advise the National Bank, Rio and Company, and the groceries suppliers, as to their respective rights against CHANDA.

Do you consider the present state of law satisfactory?

8. To what extent may a party to a contract exclude his liability for breach of it?

END OF EXAMINATION L.220

UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - FEBRUARY, 1974

L.230

LAW OF TORTS

TIME : THREE hours

ANSWER : Any FIVE questions

1. A client approaches you and after narrating his story about what has been done to him by another person seeks your advice if he has a good cause of action in torts. What considerations will guide you in giving him the advice whether he should seek his remedy under the law of torts, or whether he should proceed under the law of crimes or contracts instead?

2. P and D were having a boxing match. Infuriated by a hard blow from P, D hit P hard on the face. P started bleeding from the mouth and he fell flat on the ground. While P was on the ground, D got on top of him and gave him a few hard blows left and right on the back of P. The referee managed to separate the two with some difficulty.

P approaches you for advice. Advise him as to the possible tort for which he can sue D; the possible defence or defences D may plead and the extent to which the same may succeed.

3. Curious, a young boy of 12 years of age, read in the Times of Zambia a news item to the effect that Adventurer, a young boy of about 11 years, was seriously hurt in an explosion caused by mixing of some chemicals he had bought of a chemist. Turning the pages of his Science text book he discovered that if chemicals A, B, and C were mixed in certain proportion an explosion would result. Eager to find out if they were the same chemicals which Adventurer was mixing that caused the explosion in which he was hurt, Curious went to the shop of D, a chemist, and asked S, a salesman in the shop for the chemicals. S asked Curious what did he want the chemicals for.

Curious replied that it was for an experiment that their science teacher had suggested. S sold the chemicals and Curious brought them home. There he announced to his mother, M, that he was going to perform an interesting experiment that their science teacher had suggested. M expressed the desire to watch the experiment being performed. Curious told her that she could but only from a distance. While Curious was mixing the chemicals and as a result thereof there was a terrible explosion. M heard the explosion and saw one of Curious' hands blown off. On seeing this she suffered a nervous shock and fell to the ground. Later, M brought an action against D to recover damages for the injuries sustained by her as also on behalf of Curious for the injuries sustained by him.

Discuss the liability of D in the action.

4. a. State and discuss the requisites of the tort of malicious prosecution distinguishing it from the tort of false-imprisonment.
- b. X was found murdered at a certain place. D, who was on bad terms with P, informed the police that he saw P giving X fatal panga blows. The police prosecuted P for the murder of X. The Trial Magistrate acquitted P on the finding that D's story was absolutely false.
P sues D for damages and attaches with his^{cc}plaint a certified copy of the Magistrate's judgment. Will P succeed in recovering damages? Give reasons for your answer.

5. A Municipal Corporation had put a dam on a river with a view to storing water to be supplied to the city population for drinking and other purposes. Due to heavy rains the water overflowed the banks of the river and flooded the fields of the plaintiff by the side of the river, causing considerable loss of the standing crops. Plaintiff sues the Corporation to recover damages for the loss suffered. On what grounds can he hope to succeed in his action? What difference, if any, would it make to your answer if the defendant Corporation can show that the collected water of the river was also being supplied for certain agricultural purposes and the plaintiff was one of the beneficiaries.

6. Peter Banda established ten years ago a factory in a residential area of Lusaka and has since been running it successfully. Recently, Henry Chanda bought a vacant plot of land adjacent to Peter Banda's factory and built a residential house on it with a garden in which he planted some delicate and rare plants. His resources did not permit him to build a covered motor garage in the house and so he used to park his car on the street opposite his house. Smoke and acid smuts from the chimneys of Banda's factory spoil Chanda's washing spread in the house to dry, kill his plants and have spoiled the paint of his car. Chanda files a suit to get an injunction enjoining upon Banda to close his factory and also to recover damages for the loss suffered by him. How is the matter likely to be decided? Give reasons for your answer and cite authorities.

7. Defendants in their daily paper published an advertisement showing three couples dancing around a bottle of "Mum Mist" a deodorant. Of the three couples, one shows the male partner making faces and trying to run away from the female partner as if she was smelling. Below the picture was the following caption : "WHEN THERE'S MUSIC IN THE AIR ...MAKE SURE YOU ARE NICE TO BE NEAR ... Don't let embarrassing perspiration spoil your fun. Rub a little mum under your arms every day.

and make sure you are always nice to be near. Mum stops ugly perspiration smell and stops perspiration staining your clothes too; choose the MUM you like best - Rollett-Stick-Mist or MUM for Women. Use it every day. You will see why popular people all over the world say MUM. MUM makes you nice to be near."

Plaintiff, a practising lady-lawyer sees the advertisement and feels that the picture of the lady whose partner is shown trying to run away was hers and sues the defendants for libel. What has she to prove to make a prima facie case? What can the defendants say in defence or in mitigation of damages?

8. "The fact is that the issue of remoteness of damage is not susceptible to short cuts. There is no substitute for dealing with the particular facts, and considering all the factors that bear on them, interlocked as they must be. Theories ... have not improved at all on the old words 'proximate' and 'remote' with the idea they convey of some reasonable connection between the original negligence and its consequences, between the harm threatened and the harm done."
- Discuss illustrating your view.

END OF EXAMINATION L.230

UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - FEBRUARY 1974

L.240

CRIMINAL LAW

TIME : THREE hours

ANSWER : THREE questions; at least ONE question must be chosen from Part A, and at least ONE question from Part B.

You may use your copy of the Penal Code in this examination

PART A

1. Examine critically the function of the institution of bail in the administration of criminal justice in Zambia.

2. Y, a citizen of Agrobria, has been working in the nation of Rocabia for the past three years, and arrived in Zambia with his wife and children two weeks ago on a tourist visa. Last week the police pursuant to a proper warrant searched Y's hotel room and found rounds of ammunition, military plans for an attack, and a coded set of instructions for an intended invasion of Zambia by Rocabia.
Y was convicted of treason by the High Court, and an appeal was taken. Write an opinion for the Supreme Court.

3. F visits a bus station where he is told by an old woman that she has been stranded there for a week without getting a ticket because she has no money to bribe the ticket seller. F gives K10 of his own money to the ticket-seller, and tells the ticket-seller that when his (F's) turn comes, he wants the ticket seller to sell a ticket to F. F does not want the ticket for himself, but intends to sell it to the old lady.
The ticket seller reports the matter to the police. F is charged and convicted of official corruption, and appeals. Write an opinion for the Supreme Court.

UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - FEBRUARY 1974

L.240

CRIMINAL LAW

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The ticket seller reports the matter to the police. F is charged and convicted of official corruption, and appeals. Write an opinion for the Supreme Court.

4. C, who is illiterate, picked up A's cheque-book from the sidewalk where it had fallen out of A's pocket. Inside the cheque-book were two cheques. One of these was properly made out to cash for K20, and signed by A. There was one clear leaf, unsigned and with none of the blanks filled in. C, posing as A, persuades B to make out the blank cheque in C's favour for K300, but B leaves the cheque unsigned. C. then takes the cheque to his friend D, who imitates A's signature on the cheque, using the authentic signature on the K20 cheque as a model. D then takes the K20 cheque in payment. D encashes the K20 at the bank. C encashes the K300 cheque at the bank.
- C and D are both convicted of forgery, and appeal. Write an opinion for the appellate court.

PART B

5. Accused was hunting in a Game Park without the hunting license required by law. He saw a movement in the bushes. Honestly and reasonably believing that there was a wild animal in the bushes, and taking all the care that a reasonable hunter would have taken to make sure that it was an animal and not a human being, he shot at it. In fact it was a small child whom the accused had killed with his shot.
- Accused is charged and convicted of manslaughter. He appeals. Write an opinion for the Supreme Court.
6. Assume that the Licensing Act provided that 'If any person sells intoxicating liquor to any person under the age of eighteen years, he shall be liable to a fine not exceeding fifty kwacha or six months in prison'. Accused owns and manages a bar. Mojo, an UNZA student aged seventeen years and six months, entered the bar in company with a group of fellow-students. Mojo wore a beard, and any reasonable man would have thought he was at least twenty-two years or twenty-three years old. The accused served beer to all the students, including Mojo, honestly believing Mojo to be more than eighteen years of age.
- The accused was charged and convicted of a violation of the licensing statute. He appeals. Write an opinion for the Court of Appeals.

7. Mojo, the accused, is charged with attempted aggravated robbery (Penal Code, sec. 294). During the trial the following facts were proven by the prosecution and accepted as true by the court :

On a Tuesday of this year the accused and two others were in a bar in Freedom Way. There they agreed to hold up the teller of the National Commercial Bank on the following Thursday when he was at the University of Zambia between 0830 and 1030 hours in the morning. Pursuant to the agreement, Mojo went to his brother on the following day (Wednesday) and borrowed from him a pistol and ammunition to use in the proposed robbery. In the meantime, one of the other confederates became frightened, and reported the whole affair to the police. While Mojo was returning from his brother's house with the pistol in his pocket, he was arrested by the police.

Mojo was convicted of the charge of attempted aggravated robbery, and appealed. Write an opinion for the Supreme Court.

8. The accused went to one Solili, who purported to be a magician and wonder-worker. He said to Somili "I wish to bring about my wife's death, because she has committed adultery. I want you to use a Kalilosi gun to kill her." The Kalilosi gun is an ordinary gun which is loaded with magical substances instead of a bullet. The belief is that if it is fired at the sun, while saying the name of the person whom it is desired to kill, the person named will die by sunset. The Accused paid Somili K10 to do the deed. Somili, however, did not use a Kalilosi gun, but an ordinary gun. He loaded it with an ordinary bullet. Instead of aiming it at the sun, he aimed it directly at the accused's wife, killing her not by magical means but by a very ordinary bullet in the brain.

Accused is charged and convicted of murder. He appeals. Write an opinion for the Supreme Court.

UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - FEBRUARY, 1974

L.310

CONSTITUTIONAL LAW

TIME : THREE hours

ANSWER : FIVE questions

The following may be consulted :

The Constitution of Zambia Act 1973 inclusive of the Schedule -

The Constitution of Zambia and the annexure -

The Constitution of the United National Independence Party

1. Define supremacy of parliament and consider the view that it is Article 80 rather than Article 63 that determines whether or not the parliament of Zambia is supreme.
2. (a) Distinguish between a dual and a unified executive;
(b) examine the executive in Zambia in terms of that distinction;
and
(c) comment on the reasons for the form of executive in Zambia.
3. Describe and comment on the development of the Legislative Council since 1924.
4. Is the Speaker of the National Assembly subject to the jurisdiction of the High Court?
Explain and illustrate your answer.

5. UNZA students decide to hold a protest meeting at Kafue roundabout to form a society for the Protection of Citizens from Sociological Questionnaires. They are advised that such a demonstration would be unlawful. Some first year students in the School of Law, however, point to Articles 22 and 23 of the Constitution and assert that the meeting, far from being unlawful, would be an expression of a guaranteed constitutional right. UNZA students seek your advice. Advise.

6. The President exercises his authority under clause (9) of Article 131 of the Constitution and directs the Police and Prison Service Commission that in the exercise of its functions it must have the highest regard for and impose the strictest of standards in relation to physique and physical fitness.

It is considered by his superiors that Constable Tembo has a marked distaste for physical pursuits, disregards exhortations and even instructions to take more exercise and has allowed himself to get into a condition inimical to the discharge of his duties. Eventually he is suspended and the matter referred to the Police and Prison Service Commission which, after investigation, reports that the allegations about Constable Tembo have not been substantiated and he should be reinstated to duty. The matter is then taken up with His Excellency, with the strongest recommendation from Tembo's superiors that he be dismissed because the retention of such obviously unfit men in the police force makes it difficult if not impossible to maintain the high physical standards that His Excellency has publicly urged and formally directed. The President responds by directing that Tembo be discharged. Tembo is then dismissed and he seeks your advice. Advise him.

3. L.310

7. The Independence Constitution of 1964 provided in section 19 for freedom of privacy of home and other property; in section 21 for freedom of conscience; in section 22 for freedom of expression; and in section 23 for freedom of assembly and association. In each of these sections it was provided: "Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision"

These freedoms are now protected by Articles 19, 21, 22 and 23 respectively in similar terms but in each of these Articles it is now provided: "Nothing contained in 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 makes provision" Cf. Article 19(2), Article 21(5), Article 22(2) and Article 23(2).

Explain and illustrate the problem that this drafting change is calculated to overcome.

8. Information has been received that a society that calls itself the Eager Eagle Lions and is reputed to be a consumer protection society to ensure adequate quality and fair prices for beer is in fact an embryo political party and is clandestinely disseminating political propaganda. You are asked to prepare a memorandum on the action that can be taken against the Eager Eagle Lions :

(a) if it is registered;

AND

(b) if it is unregistered.

You are also asked to indicate any formal legal action that can be taken to facilitate the obtaining of information about the activities of the Eager Eagle Lions.

9. A number of Asians who are not citizens of Zambia but of whom three have satisfied all the requirements and have completed all formalities for becoming citizens by registration have been evicted on grounds of Africanisation by the local council from their trading places in the local market where they have traded for many years. They seek your advice. Advise.

10. Comment on any THREE of the following :

- i. The Chona Commission
- ii. The Central Committee
- iii. The Leadership Code
- iv. The primary elections
- v. The Lenshina case

UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - FEBRUARY, 1974

L.320

LAND LAW

TIME : THREE hours

ANSWER : FOUR questions, TWO from Section A and TWO from Section B

SECTION A

1. The Trusts Restriction Act, 1970, section 3, provides :

"Save as hereinafter provided, after the commencement of this Act no person shall -

- a. settle any property; or
- b. limit any property in trust for another; or
- c. make any disposition whereunder property vests in possession at a future date."

Discuss the extent to which future interests and trusts still exist in Zambia, if at all, and comment on the relevance of the rules against remoteness of vesting since the Trusts Restrictions Act.

2. Thomas Testator made a will in 1968. In 1973 while in the hospital seriously ill, Testator wanted to make some changes in certain dispositions of the will. In the belief that he could not make a new will until he had destroyed the previous will, from his hospital bed he asked his brother Robert to destroy his will. After the brother had torn the will in half, Testator requested that he call Mr. Mlandu, a Lusaka lawyer, to come immediately to assist in the preparation of a new will.

This question continued on the
the next page

When Mr. Mlandu arrived at the hospital some hours later Testator was dead. The destroyed will had given the bulk of Testator's estate to his younger brothers and sisters with only a modest disposition to Testator's wife.

Testator's widow seeks your advice on any rights which she may have with regard to her deceased husband's estate.

3. An Australian academic lawyer has written that the caveat is the heart of the Land Registration and Title system.

Discuss the function of this 'heart' and diagnose any defects which you have observed.

4. L leased business premises on Cha Cha Road to T for a period of five years at a rent of K150 per month payable quarterly in advance. The lease provided that the premises be used exclusively for the purpose of operating a bar and contained the usual covenants against assignment and underletting without the consent of the landlord.

L has given T notice of the termination of the lease at the expiration of the five-year period in eight months time and L has stated his opposition to an application to the court by T for an order granting a new tenancy. L indicates his reasons for opposition as follows :

- a. During T's occupation he has twice been in arrears by as long as a month in his payment of the quarterly rent;
- b. T during his tenancy entered into an agreement with an adjoining businessman O which permitted O to place advertising hoardings on the roof and wall of T's leased property without the consent of L;
- c. T contrary to the lease had used the premises for purposes other than the sale of alcoholic beverages, e.g. meals, sale of lottery tickets and entertainment in the form of a Zairean band;

When Mr. Mlandu arrived at the hospital some hours later Testator was dead. The destroyed will had given the bulk of Testator's estate to his younger brothers and sisters with only a modest disposition to Testator's wife.

Testator's widow seeks your advice on any rights which she may have with regard to her deceased husband's estate.

3. An Australian academic lawyer has written that the caveat is the heart of the Land Registration and Title system.

Discuss the function of this 'heart' and diagnose any defects which you have observed.

4. L leased business premises on Cha Cha Road to T for a period of five years at a rent of K150 per month payable quarterly in advance. The lease provided that the premises be used exclusively for the purpose of operating a bar and contained the usual covenants against assignment and underletting without the consent of the landlord.

L has given T notice of the termination of the lease at the expiration of the five-year period in eight months time and L has stated his opposition to an application to the court by T for an order granting a new tenancy. L indicates his reasons for opposition as follows :

- a. During T's occupation he has twice been in arrears by as long as a month in his payment of the quarterly rent;
- b. T during his tenancy entered into an agreement with an adjoining businessman O which permitted O to place advertising hoardings on the roof and wall of T's leased property without the consent of L;
- c. T contrary to the lease had used the premises for purposes other than the sale of alcoholic beverages, e.g. meals, sale of lottery tickets and entertainment in the form of a Zairean band;

- d. During the tenancy six persons had been arrested on the premises for possession of cannabis (dagga).

T seeks your advice. He desires to remain in the premises leased from L after the expiration of his present lease.

5. Registered Proprietor Lesi mortgaged his 500 acre farm to Ndarana, a wealthy Lusaka businessman, as security for a loan of K5000. After making instalment payments totalling K500 Lesi for the past year has been in default having failed to make any payments on the date due.

Ndarana seeks your advice concerning the possible remedies available to him and the relevant factors which should be considered in selecting the most appropriate remedy, if any.

SECTION B

6. a. "Zambian customary land law is one of communal tenure".
- i. Comment on the correctness of this statement;
 - ii. What significant individual rights, if any, exist over land in the Trust, Reserves and State Land areas under customary law?
- b. Discuss the theory of 'descending hierarchy of estates'. To what extent is this pattern typical of Zambian customary land law?

7. Implementation of the Second National Development Plan with regard to the up-grading of squatter compounds in the urban areas has encountered difficulties. The Minister of Local Government and Housing has asked for your legal opinion. He specifically requests your observations on the following :
- a. acquisition of land now occupied by squatter settlements;
 - b. problems in application of land legislation to the areas after acquisition, e.g. Rent Acts, Town and Country Planning Act, Lands and Deeds Registry Act, Municipality Building Regulations;
 - c. any recommendations with regard to new legislation which may solve existing problems.
8. Write notes on ALL the following :
- a. extinction of interests in land held under customary law;
 - b. compare the concept of fixtures under the law applicable to the State Lands with that under customary law;
 - c. briefly indicate the major patterns of intestate succession which exist under Zambian customary law.

END OF EXAMINATION L.320

UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - FEBRUARY, 1974

LAW

L.330

TIME : THREE hours

ANSWER : FIVE questions, at least TWO from each section

SECTION ONE

1. An agreement to sell is defined as a contract 'where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled', sale of goods Act 1893, S.1(3). On the other hand, the essence of a hire purchase contract is that the goods are hired now but the hirer has an option to purchase them in the future.

The distinction between an agreement to sell and a hire purchase contract is only jurisprudential and has no practical legal consequences.

Do you agree? Give a critical comment.

2. a. Mumba and Son is a Lusaka furniture shop. Anticipating a baby boom by the New Year, Mumba and Son advertised in the 'Times' of Zambia for tenders for the supply of 1,000 babies' cots. Jack's Furniture Limited, a well known Kitwe manufacturer answered the advertisement and sent a sample cot to Mumba and Son for inspection. Mumba and Son subsequently signed a contract for the purchase of 1,000 cots at K35 each. Two months later Mrs. Kalonga who had given birth to twins, a boy and a girl, bought two cots from Mumba and Son at K60 each. One day, when

the babies were ten months old and were sleeping in their separate cots, the baby boy fell through the bottom of his cot and fractured his skull. Mrs. Kalenga's tragedy was widely publicised in the press which called for the closure of Jack's Furniture Limited. Mr. Kalenga returned both cots to Mumba and Son and demanded to be refunded K120 plus damages for the death of her son.

Advise Mumba and Son. Would your opinion be different if no other cot had similar defects?

- b. Mvula left his gold watch at a jeweller's shop having agreed that the jewellers could buy it for K120 or return it to him not later than 30 days. On the 20th day the jeweller's shop was burgled and the watch was stolen and sold at Luburma Market to one Sakala who knew nothing of its history. Three months later Mvula sees Sakala wearing the watch and demands his K120 from the jeweller.

Advise the parties.

3. a. Pan-Africa Taxis Limited which operates a fleet of taxis in Kitwe ordered fifty new vehicles from the Livingstone car assembly. The contract was signed on 10 June 1973 when there was no car ready for delivery. The total cost of the new cars was to be K150,000 less K30,000 being the trade-in value of twenty of the Pan-Africa's used cars. The purchase price was payable cash-on-delivery which was to be at the rate of ten cars a month beginning from 1 August 1973.

The first two deliveries were satisfactory. But the third delivery was effected fifteen days later than the due date and five of the cars had defective clutches and other serious defects.

Pan-Africa Taxis Limited refuse to take delivery of this consignment and telephone the Livingstone Assembly that the whole deal is cancelled forthwith.

Advise the parties.

- b. Explain in detail the meaning and significance of the seller's right of 'stoppage in transitu' in modern business transactions.

4. Banda took a Ford Escort from Duly's Motors on the basis of a hire-purchase agreement which stipulated repayment by 24 monthly instalments of K100 each. After paying ten instalments Banda sold the car to Chombe for K2,000 and used the money to buy a residential plot in Woodlands. Banda continued to pay his instalments regularly. Chombe did not like the Escort and sold it to Dada. When Dada took the car to Duly's for servicing the garage recognised it as their car and refused to return it to Dada. Duly's resold the car to Mwale for K1,200. By that time Banda had paid a total of 16 instalments.

Advise Banda and Dada discussing the principles involved. Base your answer on decided cases and the provisions of the Hire Purchase Act, Cap. 691.

SECTION TWO

5. Mr. Mwaase who used to be a successful poacher died in 1970 leaving his elderly wife (Mrs. Mwaase) in possession of a large stock of game hides. Mr. Chombe was employed by the Zambia Tourist Bureau (ZTB) to buy animal skins for their tourist centre in Lusaka. While on one of his country tours, Chombe bought ten lion skins from Mrs. Mwaase for K600 without telling her that he was employed by anyone for buying the skins.

Chombe got his niece, Mrs. Manda, to sign a receipt stating that she had sold ten skins to Chombe for K5,000. When Chombe presented the lion skins to the ZTB Manager valued them at K10,000 and authorised that Chombe must be paid a special commission of K1,000 over and above the K5,000.

Mrs. Mwaase later learnt from her son Hulunga who had just completed his legal studies at UNZA that Mr. Chombe was in fact employed by the ZTB and that the lion skins were displayed in the ZTB shop in Lusaka for K1,000 each. Mrs. Mwaase and her son approached the Manager of the ZTB demanding a fair price be paid for the hides - K8,000 and not K600.

Advise the parties.

6. Ponde is a prosperous farmer in Mongu. Since he dismissed his farm manager three years ago Ponde personally sold a truck load of maize every week to NAMBOARD's depot in Lusaka. Very rarely did he allow his eldest son, Andrew, to sell the maize at the depot and bring the proceeds home. In June 1973 Ponde became totally insane and remained in a mental asylum for five months. During that period Andrew took full control of the farm business and effected the following transactions :
 - a. He sold K800 worth of maize to NAMBOARD and used all the money on a pleasure trip to Mauritius.
 - b. He bought, on his father's credit, a brand new tractor from Wilfred Watson who knew Ponde but had never done business with Andrew.
 - c. Having found a letter in which his father had asked him to buy pigs from their neighbour, Mr. Archer, Andrew bought ten pigs, for K400 cash which he handed over through Mr. Archer's Manager called Smart. Smart absconded with the money and Archer still demands K400 from Ponde.

Ponde recovered last week and now

- i. claims the K800 from NAMBOARD; and
- ii. refuses to accept any contractual liability for the transactions with Wilfred Watson and Mr. Archer.

Can he do so? Why?

- 7. a. Consider the following policies and explain the rights of the parties arising under them. Antony owes Ben K5,000. Ben fears that Antony may not be able to repay the debt.
 - i. Ben insures Antony's house against fire for K5,000. If the house burns down, can Ben recover the K5,000? Why?
 - ii. Ben insures Antony's life for K10,000. If Antony dies can Ben recover the K10,000? Why?
- b. Jere insures his house against fire. He then contracts to sell the house to Mwila but before the completion of the conveyancing the house burns down. Jere claims and is paid the insurance money. He later also wishes to compel Mwila to pay him the contract money.

Explain the legal position.

- 8. a. Discuss the objectives and the major provisions of the Trades Charges Act, No. 41 of 1973. Why was it necessary to pass such an Act? In what ways does it improve on the existing law?

b. Compare and contrast the Trades Charges Act 1973 with the Agricultural Credits Ordinance (CAP 142) and state which gives better protection.

a. to the borrower

b. to the financial institution

END OF EXAMINATION L.330

UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - FEBRUARY, 1974

L.340

ADMINISTRATIVE LAW

TIME : THREE hours

ANSWER : FOUR questions of which at least ONE should be from
Part A

NOTE : Examinees are permitted to bring to the examination hall copies
of the Constitution of Zambia.

PART A

1. Subject to the provisions of Article 132 of the Constitution, power to appoint persons to hold or to act in any office in the public service (including power to confirm appointments), to exercise disciplinary control over persons holding or acting in office and to remove any such person from office vests in the President. Under clause (3) of that Article the powers of the President to make appointments to any office and to exercise disciplinary control over persons holding or acting in such offices and to remove such persons from office shall be exercised by the Public Service Commission. Article 125 of the Constitution gives to the Public Service Commission power to make regulations regulating its own procedure. A set of regulations have been made by the Commission which set out the procedure for and the circumstances in which a civil servant may be dismissed by the Commission. Regulations 32(4) and 36 of the Regulations expressly provide as follows :

"32(4) Where criminal proceeding or disciplinary proceedings have been instituted against a public officer under interdiction and such public officer
(a) is not convicted as a result of such criminal proceedings, if any;
and
(b) is not subjected to any punishment under these Regulations as a result of such disciplinary proceedings :

continued overleaf

the whole amount of his salary withheld under subregulation (3) shall, upon the expiry of the period of his interdiction be paid to him."

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

John Banda, an Immigration Officer, employed on the permanent and pensionable staff by the Government of the Republic of Zambia, on 20 September 1972, was suspended from the service and put on half pay on certain charges of corruption and irregularities in the discharge of his functions. On 5 October 1972, John Banda was prosecuted in the court of the Senior Resident Magistrate, Lusaka. Times of Zambia, dated 6 October 1972, while reporting the trial proceedings reported the denial of corruption charges by John Banda but admission of certain irregularities in the discharge of his functions. On 5 February 1973, the Senior Resident Magistrate acquitted John Banda of corruption charges. On 10 February 1973, the Permanent Secretary, Ministry of Home Affairs, wrote to John Banda to say "Although you were acquitted of corruption charges by the Senior Resident Magistrate but in view of your confessional statement before him admitting irregularities in the exercise of your functions as an Immigration Officer, the Public Service Commission has terminated your services with effect from 20 September 1972.

John Banda seeks your advice as to his legal rights in the matter. Advise him.

2. Under the Liquor Licensing Act (Cap 429 of the Laws of Zambia) the Liquor Licensing Board for Southern Province is the Licensing Authority for the grant, renewal, etc. of the Liquor Licences for Livingstone.

Section 20(4) and 21 of the Act provide as under :

"20(4) A Board shall not consider an application for the grant or renewal of a licence ... unless it is satisfied that the applicant has given at least twenty-one days notice of his intention to make such application."

"21. Any person who intends to oppose an application for the grant, renewal, transfer and removal of a licence shall give notice in writing of his intention to the applicant and to the licensing authority concerned, specifying in general terms the grounds of his opposition, and including an address at which service of notices and other documents may be made, not later than fourteen days after the last publication of the notice referred to in subsection (4) of section twenty, and unless such notice of intention has been so given the licensing authority shall not entertain such objection."

Under section 22(2) of the Act a Board may refuse to grant a licence under any of the following grounds :

- a. that the premises concerned do not comply with the provisions of any law for the time-being in force; or
- b. that the grant or renewal of the licence would conflict with any approved or proposed town plan or zoning area; or
- c. that the grant or renewal of such licence is calculated to cause nuisance or annoyance to persons residing in the neighbourhood of the premises concerned; or
- d. that the applicant is not a fit or proper person to hold a licence."

On 4 September 1973, was published in the Times of Zambia a notice from Solomon Katete of his intention to apply for a retail liquor licence in respect of premises on the Main Street, Livingstone.

On 15 September 1973, Herbert Matulu wrote to the Chairman of the Liquor Licensing Board for the Southern Province giving notice of his intention to oppose Solomon Katete's application for the grant of a licence for the following reasons :

- a. His premises are situated opposite a Day school for boys and granting him a liquor licence will not only be encouraging school boys to drink during school hours but will also cause annoyance to most of the teachers and many students;
- b. Mr. Katete is not a fit and proper person to hold a liquor licence as he is given to heavy drinking and will not be able to serve his customers well;
- c. His Excellency, the President of the Republic, has repeatedly appealed to the public to give up drinking and granting yet another liquor licence would be contrary to public policy.

Herbert Matulu endorsed a copy of his letter to Solomon Katete. On 30 September 1973, Solomon Katete in spite of objection from Herbert Matulu applied to the Board for a retail liquor licence.

On 25 October 1973, the Liquor Licensing Board considered Solomon Katete's application for licence along with other applications for licences and considered that it would not be in the public interest to grant a licence to Solomon Katete. On 1 November 1973, the Secretary of the Board informed Solomon Katete that his application for a licence was unsuccessful as in the opinion of the Board it would not be in the public interest to grant him a licence.

Solomon Katete petitions the High Court for an order of Mandamus asking the Liquor Licensing Board to issue him a retail liquor licence as his application for the same had been illegally turned down, and/or issue a certiorari to summon the decision of the Board before it and to quash the same as it was contrary to law and against the rules of natural justice.

What relief, if any, is the High Court likely to grant? Give reasons for your answer.

PART B

3. "The functional approach to government has grown phenomenally during the 20th century in many countries of the world and more recently in Zambia."

What are the reasons for this development and what has been its impact on law?

4. "Administrative discretion is indispensable to the present day administration."

Discuss, bringing out clearly the need and justification for administrative discretion, the problems raised by it and their possible solution.

5. A number of special and administrative tribunals have been set up in Zambia as elsewhere. Discuss the need and justification of these bodies.
6. The Constitution of the Second Republic has made provision for the appointment of the Investigations Commission in Zambia, an institution analogous to that of the Ombudsman in some other countries. Discuss the need and justification for such an institution and also the scope of its powers and functions.
7. Write a critical note on the judgment of the Court of Appeal in Harry Mwaanga Nkumbula and the the Attorney General for the Republic of Zambia delivered by the Court on 4 December 1972.

6. L.340

8. "Administrative law is primarily concerned with the rules and restrictions binding on the various organs of the executive and with the extent to which those rules and restrictions may be used by a citizen to obtain a redress from the courts." (Garner).

Critically examine the above and set out your own views about administrative law, its scope and function in Zambia.

END OF EXAMINATION L.340

UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - FEBRUARY, 1974

LAW - L.412

INTERNATIONAL LAW

TIME : THREE hours

ANSWER : FOUR questions

1. a. Assess the influence of the systems of feudalism and the mediaeval Church in the development of modern international Law in Europe.
b. "When you consider the total impact of Immerich de Vattel's writings on our system of international law, its character, and its subsequent growth, the works of other writers of his time pale into insignificance. Up to a century ago not even the name of Hugo Gootius himself was more potent in its influence upon questions relating to international law than that of Vattel." Discuss.

2. Deserta is an underdeveloped country in which large quantities of oil were discovered five years ago. Deserta entered into agreement with the Government of Titania on the basis of which Titania invested K50 million in prospecting, purchasing of oil fields, and machinery. A number of oil companies registered in Titania also signed separate oil agreements with the Government of Deserta investing a total of K20 million in machinery stationed in Deserta.
Three years ago a left wing coup d'etat overthrew the Government of Deserta, and the new regime promptly decreed the nationalisation of the oil industry and the confiscation of all plant and machinery; fair compensation was promised subject to negotiation. Titania denounced the 'coup' and refused to recognise the new regime.

Advise Titania on whether and how :

- i. Titania and its companies can recover compensation for their nationalised properties;
- ii. they can stop the sale of oil to other states until compensation is paid;
- iii. would your answers to (i) and (ii) be different if Titania had recognised the new regime de facto?

3. As late as 1928 Brierley was able to entitle his famous book "The Law of Nations" and to define international law as "the body of rules and principles of action which are binding upon civilised states in their relations with one another." After the epoch-making decision in the Reparation for Injuries suffered in the Service of the United Nations, case I.C.J. Reports [1949] p.174, such a conception of international law is wholly inadequate.

- a. Give an exhaustive discussion of the case in relation to this statement;
- b. Reconcile your answer in (a) with Art. 59 of the Statute of the I.C.J. which says "The decision of the Court has no binding force except between the parties and in respect of that particular case." State the relationship, if any, between this decision of the I.C.J. and custom and treaties as other sources of international law.

4. Write an essay on any TWO of the following :

- a. Registration of treaties under the League of Nations and the United Nations;
- b. The Island of Palmas Case 2 R.I.A.A. (1928) p.829;
- c. River boundaries in relation to the Zambia/Botswana border question;
- d. International status of South-West Africa case I.C.J. Reports (1950) p. 128;
- e. The Cristina, [1938] A.C.485.

5. A collision between two pleasure boats occurs. One boat is registered in Zambia and driven by a Zambian national. The other boat is registered in Tanzania and driven by a Kenyan man whose Tanzanian girlfriend passenger gets killed. The circumstances of the collision constitute a crime by the Zambian national.

Advise on the proper national court to adjudicate the criminal consequences of the collision assuming the collision occurs :

- a. on an inland lake of Tanzania;
- b. in the Indian Ocean 15 miles off the coast of Tanzania;
- c. in the port of Mombasa, a Kenyan port.

What would your advice be if the facts were the same as above but the collision was caused by a Zambian state owned merchant ship driven by a Zambian and the Kenyan wants to claim compensation for the damage to his boat and the death of his girlfriend?

6. a. War is illegal and any state which wages war or aids and abets another to wage war is in breach of international law. Consequently territory or any other booty acquired as a result of the use of force is illegally held and can never give rise to a legal title.

Discuss.

- b. Discuss the concept of recognition of a new state in relation to Biafra and the recently proclaimed independent Republic of Guinea Bissau.

UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS, FEBRUARY 1974

L.416

FAMILY LAW

TIME : TWO hours

ANSWER : THREE questions: TWO from Section A and ONE from Section B

SECTION A

1. a. Compare and contrast the basic features of the customary law of divorce in Zambia with the provisions in the Divorce Reform Act, 1969.
b. If requested by the Ministry of Legal Affairs to make recommendations which would lead to a single divorce law for the whole of Zambia what would you advise.

2. Dr. Dulafupa and his wife were married in 1955 under customary law and in 1964 converted their marriage into a monogamous one by remarrying under the Marriage Act. In 1973 both parties by petition and cross-petition sought a divorce under section 2(1) (a) of the Divorce Reform Act. Cross-decrees were granted. The doctor had an income annually of about K8000. He purchased a home for K10000 in 1965 which now has a market value of K20000 to K25000. The house has a mortgage of K2000. Mrs. Dulafupa has a Form II education and during the marriage had not worked preferring to stay home to look after her home and six children. She admitted a number of adulterous meetings with John Cigololo which she explained resulted from the many evenings she was left alone while Dr. Dulafupa worked at the hospital. The doctor admitted that his hospital activities included adulterous affairs with a nurse on a number of occasions.

THIS QUESTION IS CONTINUED OVER
ON THE NEXT PAGE

The wife has applied for periodical payments, a lump sum, and transfer of property, specifically the matrimonial home, to herself.

As judge indicate the relevant factors and general principles which will guide your decision to the wife's application.

3. Write notes on any three of the following :

- a. Re Bothell
- b. Domicil with particular reference to contracting a valid marriage
- c. Community of property
- d. Presumption of marriage
- e. Consummation - customary and non-customary law

SECTION B

4. While studying business administration in England, Mr. Sakamika married an English girl. Since 1964 when he returned to Zambia with his wife their marriage has not been a happy one. His wife Penelope, being an orphan without relatives in England, made every effort to adapt herself to her new country. She took care of her home and their four children while Sakamika spent an increasingly large part of his time away from home. He travelled overseas frequently as Director of ZAMSTORES. Penelope patiently accepted her husband's neglect, drunkenness, abuse and girlfriends. She did refuse his demand that she bring divorce proceedings so that he could marry his girl friend Cimwemwe.

For the past five-and-a-half years Sakamika has been living with Cimwemwe and their three children. During this time he has on occasions seen Penelope, stayed in the same house but except for two brief periods he has not had sexual relations with her nor shared the normal domestic life.

THIS QUESTION IS CONTINUED ON THE NEXT PAGE

He has petitioned for divorce. Penelope opposes the divorce because of her hope that Sakamika will eventually leave Cimwemwe and return to her, also because of embarrassment and a fear of the future as a divorced woman with no family or certain way to support herself and her children.

Advise her.

5. Discuss all the following :

- a. custody of children - customary and non-customary
- b. child of the family
- c. illegitimacy - customary and non-customary law
- d. adoption

UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - FEBRUARY, 1974

LAW - L.420

BUSINESS ASSOCIATIONS

TIME : THREE hours

ANSWER : FOUR questions - Question 1 and THREE others

1. This question MUST be answered

Discuss the income taxation of non-mining companies in Zambia. Be certain to mention, among other things, the rate of taxation, the tax treatment of ordinary business expenses (such as employees' salaries and interest paid), the tax treatment of capital expenditures, and the taxation of dividends remitted to individuals and other companies.

2. a. Define the terms 'authorised share capital', 'issued share capital' and 'paid up share capital' and explain the differences between the three terms.
- b. Explain what 'bonus shares' are, ~~why~~ a company would issue such shares, and what the effect of issuing such shares is on a company's balance sheet.
3. a. Explain what a 'company promoter' is.
- b. Discuss whether or not in Zambia a contract entered into by a promoter on behalf of a company prior to the formation of such a company can be enforced against the company or by the company.

4. Discuss the business, tax, and legal distinctions between debt and equity in Zambia.
5. Discuss the extent to which shareholders in Zambia are able to exercise effective control over the operations of a company. Your discussion should include, among other things, the ability of shareholders to keep themselves well informed on company matters and the obligation of officers and directors to consult the shareholders on matters affecting the company.
6. The Zambian Companies Act distinguishes between 'private' companies and 'public' companies. Explain the purposes for such distinction and discuss the adequacy with which the distinction is made.

END OF EXAMINATION L.420

TIME : THREE hours

ANSWER : FOUR questions

The following may be consulted :

Basic Documents in International Law

Protocol of the Commission of Mediation, Conciliation and

Arbitration of the Organisation of African ^Unity

1. "Since the end of the Second World War, the development of public international law has been affected by two major factors of which the first is the growth and proliferation of international institutions on an unprecedented scale and the second is the emergence as sovereign independent states of former colonial dependencies ..." (Elias: "Africa and the Development of International Law").

Examine the inter-connection between these two factors.

2. "The jurisdiction of the Court comprises all cases which the parties refer to it ..." (Art. 36(1) Statute of the International Court of Justice).

Under this provision can one state in dispute with another state unilaterally seize the court of the issue? Explain and illustrate your answer.

3. Does a condition of reciprocity in a declaration under Art. 36(2) of the Statute of the International Court of Justice invariably diminish the jurisdiction of the Court. Explain and illustrate your answer.

4. Explain with reference to EITHER the Suez or Congo intervention the legal difficulties associated with the Uniting for Peace Resolution passed by the General Assembly in 1950.

5. In 1964 the Assembly of Heads of States and Governments of the Organisation of African Unity at its first Ordinary Session passed a resolution which concluded : "Solemnly declares that all Member States pledge themselves to respect the frontiers existing on their achievement of national independence."
Zambia has had some experience of a border problem at Kazangula on the Zambesi River and this issue may become somewhat more crucial with the completion of the Botswana - Zambia road link. You are asked to prepare a memorandum which considers the alternatives of referring the border issue to the Organisation of African Unity, the General Assembly of the United Nations or the Security Council. Draft the memorandum and make your recommendation.

6. In October 1966 the General Assembly of the United Nations adopted a resolution which commenced : "Reaffirming the inalienable right of the people of South-West African to freedom and independence in accordance with the Charter of the United Nations Recalling the advisory opinion of the International Court of Justice of 11 July 1950 which was accepted by the General Assembly ... and the advisory opinions of 7 June 1955 and 1 June 1956 as well as the judgment of 21 December 1962, which have established the fact that South Africa continues to have obligations under the Mandate which was entrusted on it on 17 December 1920 and that the United Nations

as the successor to the League of Nations has supervisory powers in respect of South West Africa" Explain fully.

7. Examine the view that the Protocol of the Commission of Mediation, Conciliation and Arbitration under Article XIX of the Charter of the Organisation of African Unity is conceptually superior to Chapter VI of the Charter of the United Nations.

8. Explain what you consider to be the principal problems of international organisations functioning in Africa. For purposes of your analysis you may use as examples any one or more of the following :
 - i. The work in Africa of any United Nations specialised agency;
 - ii. The work in Africa of any body responsible to United Nations Economic and Social Council;
 - iii. The Organisation of African Unity;
 - iv. The East African Community and Common Market.

UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATION - FEBRUARY, 1974

LAW OF EVIDENCE

L.431

TIME : THREE HOURS

ANSWER : ANY FOUR QUESTIONS

QUESTION 1

- a) "One characteristic of hearsay as evidence is that the statement is repeated as proof of its truth".

Nokes 70.L.Q.R.370.

Discuss.

- b) Monze was prosecuted for the crime of theft in Lusaka. Monze pleaded alibi and several witnesses testified that they were with him at Livingstone at the time the crime was committed. The prosecution offered evidence that a man who answered the description and was identified as Monze committed another robbery in the vicinity of Lusaka shortly after the crime charged in the indictment. Objection was urged that the evidence was irrelevant, remote, and prejudicial.

What ruling?

QUESTION 2

- a) What do you understand by the doctrine of judicial notice and what is its rationale?

2. L.431

- b) Towa, her former husband Waza, and her present husband Nguza, were picked up for questioning shortly after the burning of a bank in Lusaka. All three were told that they could retain Counsel if they wished, each declined to do so. Towa and Waza were questioned in Nguza's presence by Police Officer Moya. After prolonged questioning, Towa gave a detailed confession, accusing Nguza and Waza of serving as her accomplices in starting the fire. Neither Nguza nor Waza said a word.
- Towa was tried in the High Court. The prosecution tendered the confession. The defence objected.
- Is the confession admissible? Why or why not?

QUESTION 3

- a) "Acts, declarations and incidents which constitute or accompany and explain the fact or transaction in issue are admissible for or against either party as forming part of res gesta".

Discuss.

- b) A and his friend B are charged with possession of dagga before the High Court of Zambia. At the trial, C, a Police Officer is called to give evidence for the State. He informs the Court that he began his investigations after receiving information from a "source". The lawyer for the defence asks for the name of the "source". The prosecution witness refuses to give the name. Later on the lawyer for the defence by use of his own resources finds out who this "source" is. It turns out to be A's wife who has been a bit unhappy about her husband's activities especially with matters relating to beer and to the fair sex. The defence lawyer seeks permission to let the Court know who the "source" is.

What result and why?

QUESTION 4

- a) What is meant by corroboration and what form may it take?
- b) Maata a young girl aged 14 was defiled by John, a first year student at the University. The incident took place in the now famous Lake Goma area. After the incident Maata sat by the road crying. A friend of hers came by and asked her what was the matter. She replied by saying nothing. Her friend escorted her home. At home the mother said to her, "It is no use crying tell us what's wrong". There upon she said "John had sexual intercourse with me". John is charged with defiling a girl under 16. Maata's mother proposes to tender Maata's reply in evidence.

Is it admissible?

QUESTION 5

- a) Mweete, a witness, during cross examination, is asked if he was offered a bribe for giving the evidence in question. He denied it. Prosecution gives evidence to contradict him.

Is it admissible? Why or why not?

- b) Phiri a third year student had a quarrel with his father some time in 1960. The father asked Phiri to leave him alone. Phiri left his father saying "I have forgiven you and forgotten you". Phiri has a younger brother called Mateyo. Phiri's father died in yet another road accident in Zambia in 1972. After he died a will was discovered. The will gave his five bedroomed house to "My son Mateyo if he survives me or to Phiri if Phiri survives both me and Mateyo".

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Question 5^b continued.

Mateyo left Zambia for Angola to join the Angola patriots in 1962. He had been writing home frequently until early 1964. He was last seen near a village which was bombed by the Portuguese racists in 1964. Nothing has been heard of him. Phiri believes his brother died in the bomb attack. On January 12, 1974 Phiri thought of seeking legal advice. He is very anxious to have his fathers will admitted to probate.

What advice would you give him?

QUESTION 6

- a) What do you understand by the parol evidence rule? and what is the rationale behind the rule?
- b) Mangalita has for quite some time been troubled by what he considers his heavy tax bills. He read something about that publicity seeking magistrate Peter Clyne. He decides to consult Monze and Co., a Lusaka Law firm on how to evade tax without getting into trouble with the authorities. He has heard that you are about to join the Bar, he comes to you to ask whether his communications will be so covered.

Give your opinion.

QUESTION 7

- a) Distinguish between competence and compellability of witnesses.

Question 7 continued.

- b) Jean Phillipe Banda is accused of indecently assaulting Marie Antoinette, a ravishing young Afro wigged girl behind the Twentieth Century Cinema at 1.00 a.m. on a Sunday morning.

At his trial Jean-Phillipe elects to give evidence on oath and calls his wife who testifies that Jean-Phillipe is a model husband who has never been unfaithful to her during their 21 years of marriage. Jean-Phillipe also calls the chairman of the local Preservation of Christian Morals Society who swears that the accused is an active committee member of his society. Under cross-examination the prosecutor asks both Jean-Phillipe and his wife if they remember one occassion 6 years ago when Jean-Phillipe was convicted of rape. Counsel for the defence objects to the question.

What should be the Courts ruling?

QUESTION 8

- a) "Judges rules are not rules of law but rules of practice. A confession obtained contrary to the judges rules so long as it is voluntary can be admitted".

Discuss.

- b) Maliya Foloko who, contrary to her reputation this year, has led a fairly decent and honest life, discovered to her surprise that she is pregnant. She recalled that she had had a casual affair with John after having too much to drink at a party to mark the 9th anniversary of our hard won independence. She approached John who denied responsibility. Later John wrote an article in Truza a dirty campus newspaper entitled "The Applicability of the Doctrine of volenti non fit insuria to Pregnancy Cases".

Question 8^b continued.

John had heard from one of his brighter friends in class that the cause of action based on the violation of right to privacy in America developed as a result of an article in the Harvard Law School journal. John is a conceited and ambitious young man who of late has been thinking that he can do much better than most of the present crop of Zambian lawyers. This thinking was buttressed by his recent appointment by the Vice-Chancellor to the Committee on erection of traffic barriers within the University. This article greatly upset Maliya who there and then decided to approach a back street abortionist in Banteni near Woodlands. The abortion was not very well done. Maliya fell very sick and was admitted to the University Teaching hospital. On the 2nd of January her friend Maria, visited her. The conversation took this form.

Maria - What is wrong Maliya.

Maliya - Oh, it is that boy John. I know I may die, but somehow I shall revenge.

Maria visited her again on the 4th of January. They again had a conversation.

Maria - How are you feeling?

Maliya - Oh, fine. Maria I think I am dying, but please if you ever get pregnant do not ever go to Banteni that woman is no good.

Maria - I thought you said it is John.

Mariya - Well I mean.....

She did not finish her statement, she died.

John is charged with manslaughter, the police seek to prove Mariya's statement?

What result?