

THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW SECOND SEMESTER
2012 /2013 ACADEMIC YEAR.

1. L 262 –Family Law
2. L 282 –Administrative Law
3. L 321 –Land Law
4. L 362 –Civil and Criminal Procedure
5. L 382 –Labor Law
6. L 412 –Jurisprudence.
7. L 452 –International Investment Law
8. L 482 –Alternative Dispute Resolution
9. LPU 922 –Environmental Law
- 10.LPR 998 –Medical Law

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

SECOND SEMESTER FINAL EXAMINATIONS

23RD AUGUST 2013

L 262 – FAMILY LAW

TIME: 3 HOURS (Plus 5 minutes to read through the paper)

INSTRUCTIONS:

- (i) QUESTION ONE IS **COMPULSORY** AND CARRIES 25 MARKS.
 - (ii) ANSWER ONE QUESTION FROM EACH OF THE OTHER SECTIONS. EACH QUESTION CARRIES 15 MARKS
 - (iii) YOU MAY USE RELEVANT AND UNMARKED STATUTES
 - (iv) THE EXAMINATION IS A TOTAL OF 70 MARKS
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SECTION A

QUESTION ONE:

Sibongile Bwalya and Mashabe Mushankwa were members of the church choir at Miracle Life Church in Lusaka West. They subsequently fell in love and Sibongile became pregnant. They sneaked out of Lusaka and lived as husband and wife in Chilanga township. They are still living in Chilanga, where no one knows about their background. Advise the couple as to the following:

- a) Whether the presumption of marriage will apply to them.
- b) Is their marriage a common law marriage, if not, then what type is it?
- c) Will their child be illegitimate or legitimate?

(25 Marks)

SECTION B

QUESTION TWO

Mwenso, a Zambian girl aged 17, and Jacob, a Dutch expatriate teacher at Santa Maria school in Muchinga province, are in love and wish to know whether they can marry under Mwenso's customary law or cohabit as partners until Jacob returns to the Netherlands where non-marital cohabitation is registrable.

Advise them, basing your answers on the laws of marriage in Zambia and decided cases. **(15 Marks)**

QUESTION THREE

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

After her two year contract Mposya returned to Zambia and met Prince. Prince 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 Prince but after the wedding ceremony she could not bring herself to have sexual intercourse with him, as she was and is still tormented by the thought of his relationship with her late mother.

Advise Mposya on the validity of her marriages

(15 Marks)

SECTION C

QUESTION FOUR

Discuss what a widow, or young child aged 17 years would do to benefit from the husband/father's will if the testator deliberately left her or him out of the list of beneficiaries on grounds of infidelity or naughtiness, respectively.

(15 Marks)

QUESTION FIVE

- a) Write a legal opinion on "Marriage Interference" and the efficacy of this phenomenon in family law in Zambia. **(15 Marks)**

SECTION D

QUESTION SIX

Sonks and Sherina have recently been divorced. They are now fighting over custody of their two children, Mary (F) aged 4 and Juma (M) aged 3. Their respective advocates have advised them that the courts are not concerned with “whether the father’s claim is superior to the mother’s or vice-versa,” and that guilt or innocence is rarely a determinant as to custody of children unless the conduct of one of them is very grave as in **Re L(*infants*) 1962 3 All ER 1**.

Discuss what the court will take into account when deciding the issue of custody in this case.

(15 Marks)

QUESTION SEVEN

In the case of Charity Wanjiku Oparaocha and Winfrida Muarmbiwa (2004), the Supreme Court of Zambia held that a mistress was a dependant because the late Dr. Christopher Ozobia Oparaocha paid for her flat and maintained her.

Write a legal opinion on this judgment, basing your answer on the law and decided cases

(15 Marks)

END OF EXAM.

UNIVERSITY OF ZAMBIA
SCHOOL OF LAW
SEMESTER 2 SESSIONAL EXAMINATIONS
19th AUGUST 2013

L282- ADMINISTRATIVE LAW

TIME ALLOWED: THREE (3) HOURS

INSTRUCTIONS:

- 1. This examination has 4 sections, A-D**
- 2. Answer the Question in Section A, and only One question in Sections B, C and D.**
- 3. Credit will be given for clear and logical answers**
- 4. You are allowed to refer to CLEAN copies of the Constitution of Zambia, the State Proceedings Act (CAP 71) and Order 53 of the Supreme Court Rules.**

SECTION A

QUESTION 1

‘The harder the draftsman strive to devise judge-proof legislation, the more judges show determination and ingenuity in extending and refining the grounds for judicial review. Legislation deliberately designed to cut down the powers of the courts tends, paradoxically, to lead to their expansion’, HWR Wade, Administrative Law, 5th Ed, p39.

Discuss this statement in relation to both grounds of judicial review and statutory interpretation given by courts to exclusion clauses regarding judicial review.

(25 Marks)

SECTION B

QUESTION 2

- a) In what ways is the right of appeal from a decision of a Tribunal different from an application for judicial review of a decision of a Tribunal?

(5 Marks)

- b) James Mwambazi’s son was recently expelled from Mutomboko Secondary School following riots that rocked the school over poor diet and deteriorating sanitary conditions. Mwambazi’ son was identified by the Boarding Master as one of the ring leaders, a charge which the schoolboy vehemently denied. The boy did not appear before a disciplinary committee as the decision to expel was taken by the Headteacher and 3 members of the Parent Teachers’ Association (PTA). In his discussions with the PTA members, the Headteacher reminded them of the recent statements by the Hon. Minister of Education to School authorities to deal sternly with pupils perpetrating a wave of violence in schools.

Mr Mwambazi is determined to have justice for his son, but he is skeptical that an appeal to the Minister (provided for by the Education regulations) would be futile.

Can the case be taken to the Commission for Investigations? Explain reasons why the case can or cannot be taken to the Commission for Investigations.

(10 Marks)

QUESTION 3

- a) Both Mandamus and Certiorari are ancient public law remedies initially intended to support centralization of power of the King's courts. Their essential characters have remained unchanged over the years. In what ways do they differ? (5 Marks)
- b) Albert Lubinda was away in the Carribean Islands for many years, having escaped the economic problems of Zambia in the 1980s. Before leaving Zambia, he had secured a piece of land at Namushakendi, near Mongu, to which he had hoped to return for his retirement. He returned recently to find that his land has been designated as the home of the new King Lewanika University by the Zambian Government.

Relief has come to Lubinda in that the Lands Tribunal sitting in Mongu last week ordered that the State should hand back Lubinda's land and find a new home for the new University.

The Attorney General is embarrassed at the turn of events and is now preparing to challenge the order of the Lands Tribunal.

Examine the case and assess the Attorney general's chances of success.

(10 Marks)

SECTION C

QUESTION 4

- a) In administrative law, what do you understand by the expression 'decision maker's jurisdictional facts'? Give example. (5 Marks)
- b) Choma Municipal Council, enjoying the new status as the Provincial Capital of Southern Province, is taking measures to rid itself of vices that have brought a bad name to the council. One such vice is the habit of Choma residents criticizing and denouncing the council and its councilors on the streets of Choma for poor delivery of services. The council feels this practice is bringing open ridicule of established authority and is detrimental to attracting investments in the new Provincial Capital. Consequently, a bye-law has been passed to 'prohibit open criticism, denunciation or ridiculing of the Council on the streets

bounded by Choma Municipal Council'. One does not offend the bye-law if he or she criticizes the Council within the confines of his or her private property. The authority for this measure is a section in the Local Government Act which permits local authorities to 'take such measures as would protect their resources and authority'.

Hamunene, a local bar owner and a well known critic of Choma Municipal Council, is annoyed at this bye-law and has threatened to take legal action to have the bye-law struck out by the High Court. In his view, this measure is unprecedented in a democratic country and must be challenged.

Prepare a memorandum on the case to assist Mr Hamunene to challenge the bye-law. (10 Marks)

QUESTION 5

- a) In prescribing rights and duties of an authority, what is the distinction made between a declaratory and a mandatory provision? Cite a case to support your views. *Director* (5 Marks)

- b) Bishop Muma is the President of the Pacificist Movement International, an organization opposed to the adversarial system of resolving disputes. He holds strong views that our courts in Zambia do not promote peace among citizens because with every litigation outcome, someone is left a bitter loser.

Critics of Bishop Muma have stated that the Bishop is naïve and that he has not had his day to see the need for courts. Now Bishop Mumba is involved in a land wrangle over a plot previously allocated to his organization to build its Headquarters in Kafue. Kafue District Council has received a donation from the European Union (EU) to build a modern market in a suitable area and the Plot for the Pacificist Movement International is very suitable as agreed by a visiting EU Mission.

If Bishop Muma does not want adversarial court systems, which other authorities in Zambia can he possibly approach to seek assistance in the event that Kafue District Council has passed a resolution to repossess the plot for his Organization? (10 marks)

SECTION D

QUESTION 6

- a) Both A.V. Dicey and Montesquie made valuable contributions to modern elaborations of constitutional concepts.

Briefly indicate with respect to each of these writers the basic tenets of each constitutional concept they are associated with and discussed in the Administrative Law Course. (8 Marks)

- b) Administrative power is often conferred with discretion to the administrator. What problem does this cause for the policing of administrative power?

(7 marks)

QUESTION 7

- a) Distinguish the remedy of injunction from the remedy of prohibition (5 Marks)

- b) Nsolo is a native of Kaputa District who, after completion of Grade 12 in 2002, enlisted in the Zambia Army. He has had a successful career until two months ago when he was fatally wounded by bandits at Mwami Boarder in Chipata.

His uncle, himself a former soldier, has been appointed Administrator of Nsolo's estate. He is a tough talking gentleman, who thinks the pension for soldiers is grossly inadequate. The uncle is intent on suing the state through the Attorney General to recover damages for the death of his nephew. He has since gathered evidence that the state was negligent in respect to his nephew's deployment on the fateful day.

Can the uncle's action succeed, give reasons and appropriate statutory authority.

(10 Marks)

GOOD LUCK

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

**UNIVERSITY FIRST SEMESTER EXAMINATIONS,
AUGUST/SEPTEMBER 2007**

L 321- LAND LAW

INSTRUCTIONS:

TIME: **THREE** (3) HOURS [Plus 5 minutes to read question paper].

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

No **STATUTES** allowed in the examination hall.

Use of appropriate authorities will be highly rewarding.

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QUESTION 1

(a) You are the legal counsel for BOKKASSA Property Investments Limited a company dealing in Construction and letting of residential dwellings. This afternoon, your General Manager has sent a memo to you seeking your learned advice on the remedies available to both lessors and lessees in the event of breach of the lease agreement. Your General Manager has further informed you that he has heard of implied covenants under landlord and tenant relationship. The General Manager would wish to know what the major or main implied covenants are.

Advise him with the aid of case law.

[20 MARKS]

(b) A contract of sale of land or other disposition of land or an interest in land is unenforceable by action unless there is either a sufficient memorandum thereof in writing or a sufficient act of part performance.

Discuss the above statement with the aid of case law.

[20 MARKS]

QUESTION 2

(a) Permission to enter upon land or do some act in relation to land in the possession of another person may be conferred by licence.

Entitlement to occupy a residential dwelling may result from a licence or from a lease. The range of factual circumstances covered by concept of licences is wide;

Discuss the legal nature of a licence. How does a licence differ from a lease as well as from an easement?

[10 MARKS]

(b) The origin of the perpetuity rule could be traced to the 13th Century where the principle was developed that property should not be rendered inalienable.

Discuss the perpetuity rule. To what extent, if any, has Statute Law in Zambia modified the perpetuity rule?

[10 MARKS]

QUESTION 3

Compare and contrast:

- (a) A settlement and a trust
- (b) Licence coupled with a grant and licence protected by estoppel
- (c) Equitable right to redeem and equity of redemption
- (d) Tenancy at sufferance and Tenancy at will

[20 MARKS]

QUESTION 4

(a) You are employed as legal counsel for the Nation Wide Bank of Zambia. Your Bank offers and provides a wide range of services including mortgage loans or transactions. This afternoon, your new Managing Director Mr. Ashok Pabloo has approached you for advice on the remedies available to the Bank in the event of breach by the mortgagor.

Advise Mr. Pabloo on the various remedies available and when and how each remedy may be exercised and the obligations if any imposed on the mortgagee in exercising each of the remedies.

[12 MARKS]

(b) Discuss the essential nature of easements and profits.

[8 MARKS]

QUESTION 5

(a) If a person acquiring land is to qualify as a “bonafide purchaser” and thus take free of any equitable interest affecting the land, it is for that person to establish that he satisfies each of the constituent elements of the doctrine: *Re Nisbet and Potts Contract* (1906) 1 Ch 386, at p. 403 per Collins M.R

Discuss the above Statement.

[14 MARKS]

(b) The effect of the decision in *Walsh vs. Lonsdale* [1882] 21 CH D 14 in equity depends upon the willingness of the court to grant the discretionary remedy of specific performance.

Discuss.

[6 MARKS]

QUESTION 6

(a) Prescription through long user is one of the principal methods of creation/acquisition of easements.

Discuss the antecedent and essential requirements that need to be satisfied before one can acquire an easement by prescription at common law, and under the Prescription Act 1832.

[12 MARKS]

- (b) Discuss the law relating to concurrent co-ownership of property.
[8 MARKS]

QUESTION 7

- (a) At common law, a riparian owner has certain rights and obligations in respect of water flowing through his land in a defined channel or that percolates through his land.

With the aid of case law discuss the rights and obligations of a riparian owner at common law. To what extent, if any, has statute law in Zambia altered the rights and obligations of a riparian owner at common law?

[14 MARKS]

- (b) Discuss the decision in **O.H Sundi vs. A.N Ravalia** N.R.L.R [1949-54] Vol p. 345

[6 MARKS]

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THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

L362: CIVIL AND CRIMINAL PROCEDURE

2012/2 EXAMINATIONS

INSTRUCTIONS

- The paper has 4 parts, A, B, C and D
- Answer 4 questions in total. Answer question one and one question from each section
- The paper is out of 70. Question one is out of 25 marks while the other questions are 15 marks each.
- You are allowed to bring unmarked copies of the following statutes:
 1. The Constitution, Cap 1 of the Laws of Zambia
 2. The Subordinate Courts Act, Cap 28 of the Laws of Zambia
 4. The Criminal Procedure Code, Cap 88 of the Laws of Zambia
 5. The Penal Code, Cap 87 of the Laws of Zambia

Part A

Question one (Compulsory)

25 Marks

In the case of **Godfrey Miyanda v The High Court (1984) Z.R. 62**, the Supreme Court stated, that:

‘The term "jurisdiction" should first be understood. In one sense, it is the authority which a court has to decide matters that are litigated before it; in another sense, it is the authority which a court has to take cognisance of matters presented in a formal way for its decision.’

With the aid of authorities, analyse the above statement.

Part B

Question two

15 Marks

You have been approached by Joe Saka, a second year student at the University of Zambia, who was arrested by police on 25th August 2013 during student demonstration. He has been charged with unlawful assembly contrary to section 75 of the Penal Code, Cap 87 of the Laws of Zambia. He was released from police custody on 26th August 2013 on police bond in his own recognisance and has been advised by the officer in charge of his case, that the matter is scheduled for trial in the subordinate court on 4th September 2013. He says the police officer who arrested him did not show him a warrant of arrest when he was arrested. Joe wants to know whether the police officer was in order to arrest him without a warrant.

Advise Joe Saka.

Question three**15 Marks**

You have been assigned by your Lecturer in Civil and Criminal procedure to observe criminal proceedings at the Subordinate Court of the Lusaka District. While in court, you observe delivery of a judgment in the matter of John Chiduka v The People. In his judgment, the Magistrate states that Chiduka was charged with burglary contrary to section 301 of the Penal Code, Cap 87 of the Laws of Zambia. The Magistrate adds, 'based on the evidence presented, however, the prosecution has successfully proved attempt to commit theft contrary to s.265 of the Penal Code as read together with s.390 of the Penal Code. This judgment is pursuant to my powers under section 182 of the Criminal Procedure Code, Cap 88 of the Laws of Zambia.'

Your lecturer has requested you to submit a reasoned opinion concerning your observations at court. Write the opinion.

PART C

Question four

15 Marks

You act for John Mwanza (the Defendant) in the Subordinate Court who has been sued by Grace Kombe (The Plaintiff). The Plaintiff is claiming damages for pain and suffering suffered on 18th August 2013, when a mini bus Toyota Hiace, Reg. no ABC 2013, on which she was a passenger, lost control and plunged into drainage ditch along Alick Nkhata road near ZNBC. Your client says that he admits owning the bus which he uses in his business as a public service transporter. He further says that on the fateful day, however, the bus was not supposed to have been on the road as it was at the garage where he had booked it in for service. He was surprised to learn that his driver, Isaac Dumbe, without the Defendant's instructions and consent, got the vehicle from the garage to transport his relatives (including the Plaintiff) who had a family function. He further says that the Plaintiff did not pay the prescribed bus fare when she was involved in the accident. Isaac Dumbe is not a party to the proceedings before the court.

Advise John Mwanza on the steps he should take to avoid or limit his liability.

Question five

15 Marks

In **TURNKEY PROPERTIES v LUSAKA WEST DEVELOPMENT COMPANY LTD., B.S.K. CHITI (SUED AS RECEIVER), AND ZAMBIA STATE INSURANCE CORPORATION LTD. (1984) Z.R. 85 (S.C.)** at page 88, the Supreme Court stated that:

“An interlocutory injunction is appropriate for the preservation or restoration of a particular situation pending trial; but it cannot, in our considered view, be regarded as a device by which the applicant can attain or create new conditions, favourable only to himself, which tip the balance of the contending interests in such a way that he is able, or more likely, to influence the final outcome by bringing about an alteration to the prevailing situation which may weaken the opponents' case and strengthen his own.”

Discuss the above quotation in relation to the exercise of Courts' jurisdiction when determining applications for interlocutory injunctions.

PART D

Question six

15 marks

Discuss the rule of *res judicata* and its application in civil proceedings.

Question seven

15 Marks

Discuss what is meant by an “unequivocal plea of guilty” and why it is important for the trial courts to ensure that they convict only on a plea of guilt which has attained this standard.

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End of examination

The University of Zambia

School of Law

2012/2013 Academic Year Examinations

Labour Law - Law 382

Instructions

1. Maximum time allowed is three (3) hours plus five (5) minutes to read through the paper.
 2. The paper is divided into four parts.
 3. Answer one (1) question from each part.
 4. The question from part A carries Twenty Five (25) marks while the questions in the other parts carry Fifteen (15) marks each.
 5. No statutes and or texts are allowed into the Examination Hall other than those supplied by the School and attached to this examination paper.
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PART A

Question One

Lumbalesa Katwishi is employed as a driver by Natasha Chola under an oral contract to drive one of her cars as a metered taxi. Lumbalesa keeps the car at his house and has a right to decide times to attend to his duties but the total number of hours the car should be on the road in a 6 days working week should not exceed 60.

Lumbalesa is obliged to cash at least K480.00 per week and his monthly salary is K400.00. However, in addition to his monthly salary, Lumbalesa is entitled to 20% commission for the cashing in excess of his weekly target of K480.00.

One day, while Lumbalesa was driving the car, he crashed into a parameter wall-fence of a private clinic after the brakes failed. The car was extensively damaged and had to be repaired at great cost under a comprehensive insurance cover.

Natasha instantly dismisses Lumbalesa for breach of contract. Natasha argues that Lumbalesa was negligent because had he acted as a professional driver he purported to be when he was employed, he would have realised much earlier that the breaks needed attention and would accordingly have caused them attended to and thereby avoiding the accident aforesaid. Natasha also refuses to pay for the repair of the parameter wall-fence arguing that was not her responsibility but that of Lumbalesa.

Using the appropriate legal authorities, fully advise Lumbalesa on:

1. all the legal issues his case brings up;
2. the cause of action he has against Natasha if any;
3. the remedies, he would be entitled to if at all; and
4. name the court(s) which would have jurisdiction to deal this such a dispute.

25 Marks

PART B

Question Two

Chisomo Mwale is employed as a bus driver by National Express on an oral contract. One day while returning from his trip from Mongu he is arrested by the police for over speeding. The bus is impounded and stays at Lusaka Central Police for two weeks and Chisomo is arrested and detained.

National Express charges Chisomo with misconduct. At a disciplinary hearing which is held in the absence of Chisomo as he is still in police custody, a decision is made to dismiss Chisomo. The police on the other hand also decide to charge Chisomo with careless driving and he is caused to appear before the Subordinate Court.

After attending court for over 3 months, Chisomo is discharged on a *nolle prosequi* because the speed camera which was the only evidence available in the matter had been damaged after Kanyama Police Station where it was kept was flooded by a heavy down pour.

Chisomo approaches National Express to claim his job on the basis that he had been discharged by a court of competent jurisdiction but he is told “*to go to hell*”.

Fully advise John as regards the following.

- (a) the legality or otherwise of the actions taken by his employer;
- (b) what cause of action he has against his employer, if any;
- (c) What remedies he would be entitled to, if any; and
- (d) What the appropriate forum is, if he decides to issue process.

15 Marks

Question Three

Jane Phiri was employed until 31 December, 2007 by a multinational bank called Capital Bank Limited on an oral contract. On 30 December, 2007 the bank’s Human Resources Manager served written notices on all the employees of the bank’s intention to terminate their contracts of service the next day, on 31 December, 2007 because the bank intended to merge its business with a large Insurance Company. The bank was going to pay in lieu of notice and therefore the effective date of termination of the contracts of employment by reason of redundancy was 31 December, 2007. Jane Phiri’s one year fixed term contract expired on 31 December, 2007 and had no provision for notice to terminate or provision for automatic re-newal.

Mary resumed work on 15 December, 2007 after serving a 3 months suspension for alleged negligence of duty and desertion, on account of participating in a 5 day seminar of the Bankers Union of Zambia in which she served as the Lusaka branch secretary. This is despite the fact that she had given 21 days advance notice of the seminar.

The bank scheduled payment of the employees’ redundancy benefits from 15 to 16 February, 2008 and stated that it would not pay at any other time.

Mary received her normal pay during the first month of her suspension but none during the remainder of her separation. Further, at termination, the bank does not pay Mary anything arguing that she was not entitled to redundancy benefits because she had prior to the termination not been in the continuous service of the bank for least one year.

On 27 May, 2008, Mary decides to sue the bank for all her dues but has been disturbed to hear that the Industrial Relations Court has the sole jurisdiction in industrial relations matters and that she has no liberty of choice to sue in the high Court for what lawfully belongs to her.

Draft a legal opinion fully advising Mary of her rights and any cause of action she may have against the bank.

15 Marks

PART C

Question Four

James Banda has been in the employment of the Kaoma District Health Organization ("KDHO") as a field health worker for 2 years. KDHO is a local NGO entirely operating in Western Province.

On 12 June, 2012 he saw an advertisement in a national daily news paper by an international NGO called Century for Health ("CH") for a position of field health worker to be based in Lusaka. James immediately wrote an application and emailed it to CH. The advertisement had clearly stated that all applications had to be sent by email.

On 15 June, 2012 CH called James and had a telephone interview with him. On 16 June, 2012, James received a letter of offer for a position of field health worker to start work on 1 September, 2012. The offer was sent by email and required him to accept it by 20 June, 2012 via email as well.

On 19 June, 2012, James sent the acceptance of the position to CH via email. On 20 June, 2012, James gave one month notice to KDHO to terminate his contract. On 25 August, 2012 he and his family relocated to Lusaka where he rented a flat in the Northmead residential area.

On 1 September, James reported for work at CH. To his shock, he was told that there was no job for him as he had not sent his acceptance of the offer. James insisted that he had sent his acceptance by email and even produced the actual email and the notice of delivery.

After careful check of the computer system it was discovered that in fact it was true that James had sent the acceptance on 19 June, 2012 but it had been captured as spam. In the meantime on 21 June, 2012, CH offered the position of field worker to another person on the belief that James had not accepted it.

CH apologized to James for the mix-up but told him that there is nothing they could do as the position he had applied for was no longer available.

James refuses to leave the premises of CH and demands that he is either given his job or he is compensated for breach of contract, the relocation to Lusaka and the gratuity he would have earned from KDHO had he not resigned and clocked 3 years of service.

Draft a legal opinion fully advising James of his rights and any cause of action he may have against CH.

15 Marks

Question Five

Carl Max as part of his theory on industrial relations argued that in employment the English concept of freedom of contract is a fallacy. Discuss the validity of Carl Max's proposition and how it has been addressed by both legislative and jurisprudential intervention in Zambia.

15 Marks

PART D

Question Six

Using at least two decided cases, discuss the grounds and extent to which Zambian jurisprudence and legislation allows for specific performance as a remedy in employment law.

15 Marks

Question Seven

Answer the entire question.

List 2 comparisons and 2 contrasts in respect of each of the following:

- (a) Wrongful and unfair dismissal;
- (b) Redundancy and frustration;
- (c) Summary and procedural dismissal; and
- (d) The jurisdiction of the High Court and that of the Industrial and Labour and Labour Relations in employment matters.

15 Marks

End of Examination

GOVERNMENT OF ZAMBIA

STATUTORY INSTRUMENT NO. 46 OF 2012

The Minimum Wages and Conditions of Employment Act
(Laws, Volume 15, Cap. 276)**The Minimum Wages and Conditions of Employment**
(General) (Amendment) Order, 2012

IN EXERCISE of the powers contained in section *three* of the Minimum Wages and Conditions of Employment Act, the following Order is hereby made:

1. This Order may be cited as the Minimum Wages and Conditions of Employment (General) (Amendment) Order, 2012, and shall be read as one with the Minimum Wages and Conditions of Employment (General) Order, 2011, in this Order referred to as the principal Order.

Title

SI No. 2 of
2011

2. Paragraph 2 of the principal Order is amended in subparagraph (1) by the deletion of item *(d)* and the substitution therefor of the following:

Amendment
of paragraph
2

(d) in any occupation where —

(i) wages and conditions of employment are regulated through the process of collective bargaining conducted under the Industrial and Labour Relations Act; or

(ii) employee-employer relationships are governed by specific employment contracts attested by a proper officer;

and such conditions shall not be less favourable than the provisions of this Order;

3. The Schedule to the principal Order is amended by the deletion of paragraph 1 and the substitution therefor of the following:

Amendment
of Schedule

Wages 1. The minimum wages shall be as follows:

- (a) category 1 — three thousand six hundred and forty-six kwacha (K3,646.00) per hour or seven hundred thousand kwacha (K700,000.00) per month, for a person engaged as —
 - (i) a general worker, not elsewhere specified;
 - (ii) a cleaner;
 - (iii) a handy person; or
 - (iv) an office orderly;
- (b) category II — three thousand, six hundred and forty-six kwacha (K3,646.00) per hour or seven hundred thousand kwacha (K700,000.00) per month, for a person engaged as a watch person or a guard;
- (c) category III — five thousand, two hundred and twenty kwacha (K5,220.00) or one million two thousand three hundred and eighty-six kwacha (K1,002,386.00) per month, for a person engaged as a driver;
- (d) category IV — five thousand, six hundred and fifty-six kwacha (K5,656.00) per hour or one million eighty-five thousand nine hundred and nineteen kwacha (K1,085,919.00) per month, for a person engaged as—
 - (i) a typist; or
 - (ii) a receptionist or telephonist; and
- (e) category V— seven thousand, five hundred and twenty-seven kwacha (K7,527.00) per hour or one million four hundred and forty-five thousand, one hundred and seven kwacha (K1,445,107.00) per month, for a person engaged as a qualified clerk.

LUSAKA

4th July, 2012

[MLSS/64/9/9]

F. SHAMENDA,

*Minister of Information,
Broadcasting and Labour*

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

JURISPRUDENCE (L412) EXAMINATION 2008/9

INSTRUCTIONS:

- A answer four questions two from each section**
 - B You have three hours to write the paper and 5 minutes to read through.**
 - C There are no statutes allowed for this exam.**
-

QUESTION ONE

A legal system must exhibit some specific conformity with morality and/ or justice, or must rest on a widely diffused conviction that there is a moral obligation to obey it.'

Examine the nature of the relationship that exists between law, morality and justice. [25 MARKS]

QUESTION TWO

Discuss the evolution of personal liberties and freedoms and the balancing of these vis-à-vis public policy and public interest.

[25 MARKS]

QUESTION THREE

What are the major elements of the rule of law?

[25 MARKS]

QUESTION FOUR

Friedman, in his Legal Theory 5th edition, observes that a crisis of society challenges the law more directly perhaps than any other branch of social activity (at page 70). On the role of law in social change Radbruch 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 a revolution.'

Discuss the role of law in social change. [25 MARKS]

SECTION B

QUESTION FIVE

“To follow past decisions is a natural and indeed a necessary procedure in our every day affairs. To take the same course as has been taken previously or has usually been adopted in the past, not only confers the advantage of accumulated experience of the past but also saves the effort of having to think out a problem anew each time it arises. Accordingly, in almost any form of organization, precedents have to be established as guides to future conduct, and this applies not merely to legal systems but to all rule or norm-creating bodies, whether clubs, government departments, schools, business firms or churches. There is, however, an inevitable danger that this tendency to follow past precedents may lead to stereotyped procedures and stultify progress, and much of the working success of any organization may depend on its ability to apply precedents creatively.”

Carlson Anyangwe, An Outline of the study of Jurisprudence, UNZA Press, Lusaka, 2005. Page 112

Discuss the validity of judicial precedence in a legal system. [25 MARKS]

QUESTION SIX

“Legal rules, ideas and concepts are expressed in words, whose uncertain sphere of operating precludes the statement of legal reasoning in the rigid defined terms by which conclusions may be logically deduced from stated premises. Legal rules and concepts depend for their usefulness on their very indefiniteness and flexibility.... The life of the law has been not logic but experience, ordinary language in which law is expressed is not an instrument of mathematical precision but possesses what has been described as an “open texture”... some part of the meaning of words is given by ordinary usage, but this does not carry one far in those peripheral problems which law courts have to solve in applying words, and legal rules expressed in words.”

Freeman, M D A, Introduction to Jurisprudence, 7th edn, 2001 pp 1406-1407

Discuss the rules of statutory interpretation showing clearly their practical function in any legal system. [25 MARKS]

QUESTION SEVEN

Unless the institution is one whose primary concern is the individual's moral and physical well-being, unless its facilities are intended for and adapted to guidance, care, education and training rather than punishment, unless its supervision is that of a guardian, not that of a prison guard or gaoler, it seems clear a commitment to such institution is by reason of conviction of crime and cannot withstand an assault for violation of fundamental constitutional safeguards. (**White v Reid, 125 F. Supp 647, 650**)

Analyse the relationship between law and obedience and the purpose of sanctions or punishment in any society. [25 MARKS]

QUESTION EIGHT

In the Christine Mulundika v The People [1996] 2 LRC 174 a Supreme Court Judgment , Justice Chaila delivered a dissenting judgment in which he referred to the holding in the Kachasu v The Attorney General (1967) ZR p. 143. His argument and reasoning is stated below:

“In this case it is common cause that there is need to have some regulating law. In his argument Professor Mvunga has admitted that the enjoyment of the rights in Part III of the Constitution is not absolute. In the case of *Kachasu*, Blagden C.J. accepted and found that the applicant's undoubted right to enjoy freedom of conscience, and all other rights guaranteed by Chapter III of the Constitution, depend for their very existence and implementation upon civil society - that is the ordered society - established by the Constitution. The continuance of that society itself depends upon national security, for without security any society is in danger of collapse or overthrow. National security is thus paramount not only in the interests of the State but also in the interests of each individual member of the State; and measures designed to achieve and maintain that security must come first; and, subject to the provisions of the Constitution, must override, if need be, the interests of individuals and of minorities with which they conflict. Blagden C.J. in accepting the principle of these arguments went further to say that subsection 5 of that section indicated that in the interest of security of the State or general rights of the people, the individual's right to the unhindered enjoyment of freedom of conscience can be curtailed.”

Critically discuss the above statement in the light of the relationship between law and democracy and the enjoyment of fundamental freedoms by the citizens.
[25 MARKS]

End of exam

The University of Zambia School of Law

2012 Second Semester Examinations

L452-International Investment Law

Instructions

Students are at liberty to bring any relevant statutes.

You are to answer one question from each section, four questions in total.

Duration: 3 hours and 5 minutes for reading the questions

Time: 09:00hours to 12:00 hours

Date : 30th August, 2013

Strive to be a good lawyer all the time

Good Luck!

SECTION A

Question One (Compulsory)

Liquid Hedge Fund Corporation (LHFC) is a Belgian Corporation which was desirous of investing in the Zambian financial sector by way of acquiring controlling stake in any local bank which is listed on the stock exchange.

Though initially skeptical about considering the various laws which ultimately would affect his investment, he nonetheless proceeded to conclude a development agreement with the government some three years ago.

LHFC has invested huge sums of money in BBB Liquid Bank Zambia Limited the past three years.

Zambia recently had a change of regime and the new government has decided to compulsorily acquire LHFC's shares in the BBB Liquid Bank Zambia Limited.

The CEO of LHFC, Mr. Marten Steinberg is keen on challenging the Zambian Government because he considers the actions of the Zambian government devoid of legal support.

Kindly advise Mr Steinberg on the options available to LHFC to challenge the Zambian Government and prudence of each such option while pointing out what option you consider optimal in the circumstances.

[25 marks]

SECTION B

Question two

Discuss the contrasting roles played by IMF and the Overseas Private Investment Corporation (OPIC) in the area of Investment Law.

[15 marks]

Question three.

Babangida Jimere is a Japanese tycoon whose business interests range from oil exploration to mining. Dr. Jimere has been recently in Zambia as part of the group that was sent to assess Zambia's capacity and preparedness to host the UNWTO conference slated for August month end.

Dr. Jimere took advantage of the trip to sample some of the investment opportunities and was extremely impressed with the Zambian government strides to commence oil exploration.

After returning to Japan, Jimere approached a number of fellow investors who are agreed on investing in Zambia. The group of investors is aware that oil exploration requires huge sums of capital to be successfully done. Even when the oil is found, more money would be required to successfully process oil. Further, the investors want to be sure that they will not be deliberately prevented from harvesting the fruits of their labour by the government. The group of investors has heard that the World Bank can assist them in their quest.

Discuss the various ways in which the World Bank could assist such investors.

[15 marks]

SECTION C

Question four

Below is an extract of the speech by his Excellency Hon Uhuru Kenyatta, President of the Republic of Kenya, at the meeting with the chamber of commerce and industry in Moscow held on 16th August 2013:

"The Vice President, Russian chamber of commerce and industry, Mr Georgy Petrov, Your Excellency's Ambassadors from Africa, Distinguished guests Ladies and gentlemen,

I take this opportunity to thank you, Mr. Vice President, and members of the chamber of commerce and industry, for enabling my delegation to interact and exchange ideas with your group.

I am happy to note that the Russian business community has recognized Kenya's potential as one of the most promising investment destinations in Africa, and wishes to deepen the existing trade and economic relations with us.

This forum comes at a time when Kenya has undertaken far reaching reforms that have created a conducive environment for doing business. Our country is on a path of high economic growth and has emerged as the regional economic, trading and investment frontier. I welcome Russian investors to take advantage of our strategic location as the gateway to the East African Community and the common market for Eastern and Southern Africa - which has a combined market potential of more than 400 million people."

Assuming you were the legal advisor to the Kenyan government before the government undertook the reforms to achieve the so called conducive business environment, discuss the various legal and extra legal reforms you could have recommended.

[15 marks]

Question Five.

Below is an excerpt from the Lusaka Times of 20th July, 2013:

"Vice President Guy Scott has concluded his official visit to North Korea.

Dr. Scott visited the native home of Founder and eternal President of Kim II Sung, South West of Pyongyang on Monday.

The Vice President who was taken on a tour of the native home listened attentively as guides explained the history of the place.

Dr. Scott also met Kim Yong Nam, President of the Presidium of the Democratic People's Republic of Korea – Park Supreme People's Assembly.

The Vice President who is traveling with his wife Charlotte and Ministry of Foreign Affairs Assistant Director for Asia and Pacific Winnie Natala Chibesakunda has left North Korea for Zambia. He is also accompanied by Ministry of Commerce officials.

Dr. Scott was in North Korea at the invitation of that country's government.

While in North Korea, Dr. Scott attended celebrations to mark that country's 60th anniversary of the armistice that ended fighting in the Korean war. He also held high level meetings with the business community in that country."

Assume that you were part of the team from Ministry of Commerce, and after the said visit the Vice President's office tasks you to draft an investment agreement with that country for the mutual benefit of the two countries.

Discuss the various issues you would consider including in your draft and justification for so doing.

[15 marks]

SECTION D

Question six

Below is the profile of Walmart, an American corporation:

"Wal-Mart Stores, Inc., branded as Walmart, is an American multinational retail corporation that runs chains of large discount department stores and warehouse stores. The company is the world's third largest public corporation, according to the Fortune Global 500 list in 2012, the biggest private employer in the world with over two million employees, and is the largest retailer in the world. Walmart remains a family-owned business, as the company is controlled by the Walton family, who own a 48 percent stake in Walmart. It is also one of the world's most valuable companies.

The company was founded by Sam Walton in 1962, incorporated on October 31, 1969, and publicly traded on the New York Stock Exchange in 1972. It is headquartered in Bentonville, Arkansas. Walmart is also the largest grocery retailer in the United States. In 2009, it generated 51 percent of its US\$258 billion sales in the U.S. from grocery business. It also owns and operates the Sam's Club retail warehouses in North America.

In the late 1980s and early 1990s the company rose from a regional to national giant. By 1988, Wal-Mart was the most profitable retailer in the US and by October 1989 it had become the largest in terms of revenue. Geographically limited to the South and Lower Midwest up to the mid 1980s, by the early 1990s Walmart's presence spanned coast to coast - Sam's Club opened in New Jersey in November 1989 and the first California outlet opened in Lancaster on July 28, 1990. A Walmart in York, Pennsylvania was opened in October 1990 bringing the main store into the Northeast.

Walmart has 8,500 stores in 15 countries, under 55 different names. The company operates under the Walmart name in the United States, including the 50 states and Puerto Rico. It operates in Mexico as Walmex, in the United Kingdom as Asda, in Japan as Seiyu, and in India as Best Price. It has wholly owned operations in Argentina, Brazil, and Canada. Walmart's investments outside North America have had mixed results: its operations in the United

Kingdom, South America, and China are highly successful, whereas ventures in Germany and South Korea were unsuccessful."

Discuss the importance of such a company in the area of Investment, the need and ways of regulating its business.

[15 marks]

Question seven

Write short notes on the relevance of following to Investment:-

1. DOHA Declaration
2. TRIPS
3. Paris convention
4. MDRI
5. HIPC

[15 marks]

End of Exam



THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

ALTERNATIVE DISPUTE RESOLUTION(L482) EXAMINATION

22ND AUGUST 2013

INSTRUCTIONS:

1. Section A: **Question One** in Section A is compulsory.
2. Sections B, C and D: Answer **one** question from each of these sections.
3. Time Allowed: **Three (3) hours plus five (5) minutes** for reading through the examination paper.
4. This examination paper carries a total of **70 marks**.
5. Candidates are **not permitted to bring any statutes** into the examination room.
6. Where ever applicable, cite the relevant provision in the **Arbitration Act No. 19 of 2000**.
7. Candidates must **not turn this page** until the invigilator tells them to do so.

SECTION A

Question 1 - Compulsory

Beta Ltd. of No. 5 Light Industrial Area, Lusaka and Matero Railway Co. (MRC) of No.223/5/1 Matero Compound, Lusaka had been trading with each other for ten years. The two companies had been dealing on an informal basis with no written contract. The parties agreed that it would be wise to have a formal contract written. MRC drew up a draft contract and sent it to Beta. One of the provisions in the draft contract was an arbitration clause, which provided that should a dispute arise between them, the matter would be settled by an arbitral tribunal of three arbitrators.

Beta made some minor amendments to the draft contract, filled in some blanks and added a clause that provided that Beta shall be the sole supplier of coal to MRC. Beta sent the draft contract back to MRC. MRC simply filed the document and never communicated its acceptance of the contract. Beta continued to supply the coal.

A year ago, MRC started sourcing coal from a cheaper supplier, Eureka. Subsequently a dispute arose between MRC and Beta. Beta argued that MRC violated the contract by sourcing coal from another supplier; while MRC contended that there was no valid written agreement between the two as MRC had not written back to Beta accepting the proposed contractual agreement.

1.1 Based on the facts above, draft an arbitration agreement for the two parties. (6 marks)

1.2 Beta has decided to evoke the arbitration clause in the agreement. Draft a request for arbitration on behalf of Beta. (6 marks)

1.3 The matters comes for arbitration before you and two other arbitrators. Two of the arbitrators flew into Lusaka from Ndola, and the hearing was conducted at the Radisson Blu Hotel. The costs of each air ticket was KR 2,000 and that of the Board Room in which the hearing took place was KR 10,000. The meals for the three arbitrators cost KR 450 each; and one of the arbitrators

photocopied materials for the case which cost KR 150. Draft the arbitral award.
(13 marks)

(25 marks)

SECTION B

Question 2

2.1 What matters can and cannot be subject to arbitration? (7marks)

2.2 What are the powers of an arbitral tribunal? (8 marks)

(15 marks)

Question 3

3.1 The art of questioning is a critical skill that a mediator must possess. Briefly outline the different types of questions that a mediator should use, and explain when it would be best to use each type of question. (10 marks)

3.2 It is argued that negotiation is the foundation of all ADR mechanisms. Briefly comment on how the styles of negotiation and the approaches to negotiation affect mediation and arbitration. (5 marks)

(15 marks)

SECTION C

Question 4

In the case of *Lake Kariba Inns Ltd, Patricia Ann Townsend, Andre Hadjipetrousvs John Sweatman, Sandra Sweatman and Kariba Marine Ltd* (SCZ/8/232/2002) the Supreme Court held that one of the available options open to a person aggrieved by an arbitral award is an appeal. It held further that only after the final Appellant Court has made a decision against the Appellant can an award be enforced. Is this decision in line with the Arbitration Act No. 19 of 2000 and the UNICTRAL Model Law? Comment on the appropriateness of the decision in light of the philosophy underlying ADR mechanisms. (15 marks)

Question 5

5.1 Paul Kalungu is a Chartered Accountant who would like to become an arbitrator. He is particularly interested in arbitrating in matters of forced displacement of communities by international corporations that acquire customary land for investment purposes. He wishes to know who can become an arbitrator; and what rules govern the appointment of arbitrators. Advise Paul. (7 marks)

5.2 Maxwell Phiri is the presiding arbitrator in a matter between Brenda Zulu and Isaac Chomba. The arbitral tribunal has had five sittings and made lots of progress. They are scheduled to have a final sitting in a week's time, during which they will grant an arbitral award. Unfortunately, before that sitting, Maxwell is appointed Ambassador to Congo DRC, and he has to leave with immediate effect. What is the consequence of Maxwell's departure? Can the other arbitrators sit in his absence and give a decision next week? Can and should he be substituted? Advise Brenda and Isaac. (8 marks)

(15 marks)

SECTION D

Question 6

Write an essay in which you outline the advantages of using arbitration. In the essay, also compare and contrast:

(i) Arbitration with negotiation; and

(ii) Arbitration with court annexed mediation.

(15 marks)

Question 7

Discuss the importance of the principle of voluntariness in mediation and arbitration, with reference to legislation and case law. (15 marks)

THE END.



The University of Zambia

School of Law

2012/2013

Second Semester Examination- August 2013

LPU 922, EED 472, GE 5625- Environmental Law

INSTRUCTIONS:

- **TIME: THREE (3) HOURS (PLUS FIVE (5) MINUTES TO READ THE PAPER)**
 - **NO STATUTES ALLOWED IN THE EXAMINATION ROOM**
 - **ANSWER FOUR QUESTIONS, ONE FROM EACH PART. PART A IS COMPULSORY**
-

PART A

Question One

- (a) In the recent past, an article entitled “Government cautious on sanctioning economic projects” appeared in one of the daily newspapers. In this article, the Minister of Environment was quoted as saying that: “the government is taking a cautious approach to sanctioning economic projects located within game management areas.” The Minister further denied assertions by the Zambezi Resources Chief Executive Officer that senior ministers in the Zambian government are surprised by the Zambia Environmental Management Agency (ZEMA) decision to reject the construction of the US\$494 million Kangaluwi copper mining project in the Lower Zambezi National Park. Zambezi Resources has appealed to the Minister of Environment against the ZEMA decision. Confirming receipt of lodgement of the appeal, the Minister stated that: “I have received the appeal....and we shall make a final decision over the matter within this month....I want to assure the nation that the decision to be taken will be in the interest of the country...people should take a keen interest in these matters especially that most of Zambia’s oil and gas reserves are found in game management areas....so how do we handle these issues? Anyway, the decision that we shall come up with will be a landmark one since we have to weigh the advantages of having an economic project against environmental protection, human and wildlife...” The Minister also questioned the motive of Ministry of Mines in sanctioning exploration activities at the Kangaluwi Project. He asked, “In the first place, why was the exploration licence given?” Environmental activists have challenged the Minister not to consider overturning the decision made by ZEMA to reject construction of the mining project in the Lower Zambezi National Park.

The Minister has approached you to prepare short notes that he can rely on in making his decision. The Minister has been reliably informed that you have spent the past six months on an intensive environmental law specialisation course at the highest public university in the country and for this reason. He has further been informed that you are well abreast of international and national environmental law, policy and management best-practices in both case and written law. **(12.5 marks)**

- (b) Writing in 1988 on environmental law in Africa (Reflections On Teaching And Research On Environmental Law in African Universities) Professor C.O. Okidi observed thus:

“Perhaps without exception the African countries have not adopted the comprehensive environmental laws as did the United States and other industrialized countries. Existing laws dealing with the management of natural resources and the environment are, by and large, sectoral and piecemeal in character...The second attribute is that there is a multiplicity of administrative institutions dealing with the

question of the environment. This arises from the fact that the management of various natural resources sectors is done by given ministries or departments of the national governments. Because there is no overall environmental legislation there is also no central enforcement or coordinating agency with overall jurisdiction over environmental matters, especially where there are inter- agency gaps....The third attribute of the laws related to environment found in most African countries is that they were adopted or have their textual roots in the colonial era. Most countries have not adopted fresh legislation which, though sectoral, might place the natural resources in the context of the whole environment...The fourth attribute is that the laws are largely rule- oriented, geared to the use of the criminal process for ensuring compliance. This attribute may have its roots in the authoritarian character of colonial administration which sought compliance, failing to which direct penalties were imposed; the natives were not expected to and did not raise questions on the appropriateness or necessity of a given rule”

Discuss the above statement in view of what you have learnt on the legal regime regulating the environment in Zambia(i.e. Zambian environmental law) clearly explaining on whether or not you agree with the above observations. **(12.5 marks)**

PART B

Question Two

- (a) Discuss the International Court of justice decision in the Case Concerning the Gabcikovo-Nagymaros Project (Hungary/Slovakia) – ICJ 1997 General List No. 92 25th September 1997 clearly bringing out the major principles of environmental law analyzed and applied in the case. **(7 marks)**
- (b) The Lusaka City Council has authorised Peter Limited to start constructing a facility for a chicken rearing business in the central business district (CBD) of Lusaka. Peter, the director of Peter Limited is shocked one morning to see Zambia Environmental Management Agency (ZEMA) inspectors asking whether the company has ZEMA authorisation for setting up such a business. Peter threatens the ZEMA inspectors with legal action, screaming that he knows his rights and will not be intimidated by overzealous young men masquerading as inspectors because he only knows councils inspectors. Advise Peter Limited and the ZEMA inspectors. **(8 marks)**

Question Three

- (a) The Constitution of Zambia, Chapter 1 of the laws of Zambia does not provide a constitutional guarantee for the exercise of the right to a clean and healthy environment. On the contrary, section 4 of the Environmental Management Act, No.12 of 2011 provides, in

express terms, for the right to a clean, safe and healthy environment as follows: *“(1) Subject to the Constitution, every person living in Zambia has the right to a clean, safe and healthy environment.*

(2) The right to a clean, safe and healthy environment shall include the right of access to the various elements of the environment for recreational, education, health, spiritual, cultural and economic purposes.

(3) A person may, where the right referred to in subsection (1) is threatened or is likely to be threatened as a result of an act or omission of any other person, bring an action against the person whose act or omission is likely to cause harm to human health or the environment...”

Discuss whether the right to a clean, safe and healthy environment is attainable in Zambia. (5 marks)

(b) Desertification is a serious environmental and social problem that directly threatens millions of people especially in Africa and places at risk the livelihoods of a billion people in more than 110 countries. UNEP estimates that desertification currently affects approximately 25% of the World's land surface and 70% of the world's dry lands. Discuss the causes of desertification and linkage between desertification and other major environmental problems. (10 marks)

PART C

Question Four

(a) Section 2 of the Environmental Management Act, No. 12 of 2011 defines “environment” as:

“the natural or man-made surroundings at any place, comprising air, water, land, natural resources, animals, buildings and other constructions.”

Section 1 (xi) of the National Environmental Management Act Number 107 of 1998 of South Africa defines the environment as:

... the surroundings within which humans exist and that are made of (i) the land, water and atmosphere of the earth (ii) micro-organisms, plant and animal life and (iii) any part or combination of (i) and (ii) and the interrelations among and between them; and the physical, chemical and aesthetic and cultural properties and conditions of the foregoing that influence human health and wellbeing.

Highlight the strengths of each definition in ensuring integrated environmental wellbeing. (7 marks)

- (b) Under traditional views of public international law, only states have rights and responsibilities. Non-governmental actors are not allowed to participate in, nor are they subjects of international law. This classic view of international law does not reflect the rich and dynamic role of NGOs in international environmental law. Discuss the various roles played by environmental NGOs in the protection and conservation of the environment. (8 marks)

Question Five

International Environmental Law has not developed in a systematic manner. It has developed on a sectoral basis often in response to disasters. The development of modern International Environmental Law starting essentially in the 1960's has been one of the most remarkable exercises in International law making. Since the Rio Conference in 1992, the subject as a whole has come of age. Its gestation may have been slow, but International Environmental Law has proved a vigorous plant. The 1980's and 1990's are best remembered for "treaty congestion" because of the large number of multilateral environmental agreements negotiated during the period referred to.

Discuss the above statement. (15 marks)

PART D

Question Six

Over the past twenty years, International Environmental Law Scholars and activists have increasingly looked to the law of human rights not only as a model for the progressive development of International Environmental Law, but as a potential independent tool for protecting the environment. Many environmentalists now argue for the recognition of "environmental rights" based on the fundamental human needs for clean air and water and more generally an environment conducive to human life and health.

Discuss the linkage or overlap between Human rights and the environment. Your discussion should also bring out the principles brought out in the case of *Social and Economic Rights Action Centre and Centre for Economic and Social Rights v Nigeria (Ogoniland Case)* – African Commission on Human and Peoples Rights. Comm. No. 155/96 (2001). (15 marks)

Question Seven

A wide variety of treaties implementing the principles of Conservation of nature ecosystems and Bio-diversity now exist at the global, regional and bilateral level. The Bio-Diversity Convention is limited to protection of bio diversity not species as

such. There are a number of treaties introducing protective techniques and approaches. These include the 1971 Convention on wetlands of International importance (Ramsar Convention and the 1973 CITES Convention.

Discuss the above statement in view of what you have learnt in this course. (15 marks)

THE UNIVERSITY OF ZAMBIA

School of Law

2nd Semester 2012/2013

Final Examination Paper - LPR 998: MEDICAL LAW

Monday 26th August 2013 – 14:00 – 17:00hrs

Instructions to the candidates

Time Allowed: 3 (Three) hours

This paper is divided into four sections

Answer one question from each section

Total marks for each question are indicated at the bottom of each question.

Concessions

The students will be allowed to carry a clean copy of the following statutes:

1. Public Health Act Chapter 295 of the Laws of Zambia
2. Medical Aid Societies and Nursing Homes Chapter 317 of the Laws of Zambia
3. Health Professional Act Chapter 297 of the Laws of Zambia
4. Health Professional (Appeal) Rules and Disciplinary Proceedings Rules Chapter 297 of the Laws of Zambia
5. Nurses and Midwives Act, Chapter 300 of the Laws of Zambia
6. Mental Disorders Act Chapter 305 of the Laws of Zambia
7. Persons with Disabilities Act Chapter 65 of the Laws of Zambia
8. The Human Tissue Act Chapter 306 of the Laws of Zambia
9. Medical Research Bill

SECTION A: Answer the compulsory question

QUESTION ONE

Mrs Grey, a lady now aged 58 has been a patient of Good Grove House Surgery in Kala State. She has gone to the Hospital in May 2008 with a number of complaints concerning her menstrual cycles. Doctor Flower had treated her with appropriate medication which had resulted in unpleasant side effects.

The Doctor patient relationship had developed through a series of consultations between the two parties. The evidence at the trial showed that there was a dispute regarding a consultation in March 2010. Mrs Grey (the patient) had alleged that she had presented Doctor Flower with a lump in her left breast. Doctor Flower performed a bilateral breast examination and reassured her that the lump was a blocked milk duct. Doctor Flower on the other hand denied that Mrs Grey had complained about the lump in her left breast but had simply referred to her original problem of menstrual cycles and sore breast. Further that Doctor Flower had examined her left breast but no lump had been found.

By November 2011 the lump had subsequently become bigger and there was dimpling of the skin around the swelling. Mrs Grey then made an appointment to get a second opinion from a new consultant at the same hospital a Doctor Ratchiffe. Upon examining her, the consultant told Mrs Grey that she had a hormonal problem and referred her to the breast clinic on a non-urgent basis.

On 1st January 2012, Mrs Grey was diagnosed with breast cancer by Doctor Burnett at the breast clinic of the same hospital. The treatment that followed was a mastectomy performed on Mrs Grey on 21st January 2012 and as the cancer had spread to her lymph nodes, chemotherapy between March and June 2012. Finally, Mrs Grey had to be put on a five year course of Tamoxifen hormone therapy.

At the trial oral evidence was obtained from five witnesses who clearly stated that Mrs Grey was a patient of Good Grove House Surgery. While the written records presented in court showed that Mrs Grey was examined in March 2010 and from her file Doctor Flower had examined her left breast but no lump was discovered. Doctor Flower had attributed Mrs Grey's symptoms to the side effects of the medicine.

As medical law lawyer Mrs Grey has retained you since she wants to sue the Hospital and the doctors under a negligence claim for damages.

Required

Argue the legal issues arising from this case in support of Mrs Grey's case.

[Total Marks: 25]

SECTION B: Answer one question from this section

QUESTION TWO

Wolpe P. An Advocate of sociological views aptly described that informed consent has become 'the modern clinical ritual of trust.' Do you agree with him?

Analyse some of the limitations as well as the strengths of informed consent in medical law

[Total Marks: 15]

QUESTION THREE

The development of human rights protections for persons with mental disabilities is one of the great and continuing challenges of the latter part of the twentieth century in Zambia. In many parts of the world, including Zambia persons with mental disabilities continue to face mistreatment, stigma, ostracization, and worse. Persons with mental disabilities are often isolated in psychiatric institutions under deplorable conditions that threaten their health and in some cases even their lives.

Discuss the link between human rights issues and national mental health legislation in Zambia

[Total Marks: 15]

SECTION C: Answer one question from this section

QUESTION FOUR

Two young girls, Rose and Petal have been diagnosed with an unknown disease called lobes by a foreign Doctor at the National Hospital. Doctor Nobody has proposed a novel treatment for the two girls aged 10 and 13. The treatment has not been tested on humans in Zambia. The Doctor is confident that the treatment will cure the girls because he read about the success of the treatment when given to pigs in a renowned medical journal. The two girls are not competent to consent to the treatment. The parents of both the girls have witnessed the health of girls deteriorating at an alarming rate and are willing to consent to the treatment. Doctor Nobody is concerned about the legality of trying the treatment and suggests to the parents to obtain a declaration from the court that the provision of the treatment would be lawful. Medical evidence brought to court clearly shows that without the treatment the girls would die.

Present your arguments in support of the two girls so that the court declaration will allow them to receive the new treatment.

[Total Marks: 15]

QUESTION FIVE

Mrs Daisy was sixteen (16) weeks pregnant when she was involved in a serious car accident. She has sustained injuries to her head and has been diagnosed as being in a permanent coma. Her Husband Banda feels that only God gives and takes life. He wants her to be kept alive in a coma so that the pregnancy can be brought to term. Mrs Daisy's sister believes otherwise and thinks that her sister will not recover to live a normal life and there would be no benefit for her to be kept alive and therefore should be allowed to die. The National Hospital and the Doctors attending to Mrs Daisy agree with her sister's position. Mr Banda wants to bring a case before the court to seek a declaration that Mrs Daisy be placed on the ventilator. The Hospital has only four ventilators and twenty patients are waiting for the same.

Assess what legal issues can be raised by Mr Banda in court.

[Total Marks:15]

SECTION D: Answer one question from this section

QUESTION SIX

While the concept of surrogacy dates back to biblical times when the infertile Sarah gave her servant Hagar to her husband Abraham so that a child can be conceived and born to them; the earliest reported case of surrogacy in the United Kingdom is that of *A v C* [1978] fully reported in [1985] FLR 445.

Explain the current legal position with regards surrogacy

[Total Marks:15]

QUESTION SEVEN

Loss of a patient can lead to criminal prosecution of the medical practitioner. Explain the basis of this criminal liability and the rationale for conviction and sentencing.

[Total Marks: 15]