

THE UNIVERSITY OF ZAMBIA EXAMINATION PAPERS-SESSION 1985

LAW

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THE UNIVERSITY OF ZAMBIA  
UNIVERSITY EXAMINATIONS - JULY 1985

L 110 (LEGAL PROCESS)

CERTIFICATE IN LAW

TIME: THREE (3) HOURS (Plus 10 minutes to read the Question paper).

ANSWER: ANY FOUR (4) QUESTIONS.

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1. A layman has recently learnt that when trying cases the Supreme Court and the High Court in Zambia often refer to and utilise the principles of law spelt out in previous decisions (or judgments) made by other Courts in Zambia and elsewhere. The layman wishes to know the reasons (rationale) for this practice and whether the practice makes a useful contribution to the administration of justice in Zambia.  
Advise him.
- 2.a. How are Judges, Magistrates and Local Court Justices appointed.
- b. Should Zambia introduce the system of trial by Jury? (Give reasons for your answer).
3. "It would certainly save the judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears a judge cannot simply fold his hands and blame the draftsmen. He must set to work on the constructive task of finding the intention of Parliament..." (Per Lord Denning in the case of SEAFORD COURT ESTATES V. ASHER).

With this quotation in mind discuss the various rules or principles used by Courts when they are involved in the interpretation of statutes.

2. L 110 (LEGAL PROCESS).

- 4.a. Outline the jurisdiction of the High Court of Zambia.
  - b. In your opinion do Local Courts still have an important role to play in the settlement of disputes in Zambia? (Give reasons for your answer).
5. Laymen are often shocked to learn that although Zambia has been independent for over twenty (20) years a large body of English Law is still applied by the Courts in Zambia.  
Explain the reasons for this state of affairs and state what aspects of English law are applicable in Zambia.
- 6.a. Outline the advantages of being legally represented in litigation.
  - b. Critically examine the system of providing legal assistance to poor persons in Zambia.

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END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA  
UNIVERSITY EXAMINATIONS - JULY, 1985

L 140

CRIMINAL LAW

(Certificate in Law)

TIME: THREE HOURS (Plus 10 minutes for reading the question paper)

ANSWER: FOUR questions ONLY, two questions from each section.  
Illustrate your answers by reference to decided cases where possible.

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SECTION A

Answer two questions from this section.

- Q1. Chungu's wife had a reputation in the village for infidelity. Chungu returned home one evening and was taunted by his wife. She said, "your no good for sex, I know Zulu is far better than you". Chungu in a rage pierced her with a spear and she died a few hours later.
- At the trial it was established that in Chungu's tribe the insult offered him was of the gravest nature and such an insult would be punishable by death under the customary law.
- Chungu is convicted of murder and you are asked to represent him at his appeal.
- Q2. Lungu gave MUTAMBO a cup of tea containing a deadly poison. MUTAMBO drank the tea and died an hour later at U.T.H. MUTAMBO had refused all treatment at UTH insisting that he 'did not believe' in doctors.
- Lungu was later charged with murder. Evidence at the trial showed that the cause of death was a heart attack totally unrelated to the poison. The poison had not time enough to react.
- You are Lungu's lawyer advise him.
- Q3. Discuss in detail ACTUS REUS. Refer to decided cases.

SECTION B

Answer TWO questions from this section

- Q4. Employees of a sportsclub had an agreement with the management that they could keep a certain percentage of the proceeds of

THE UNIVERSITY OF ZAMBIA  
UNIVERSITY EXAMINATIONS - JULY, 1985

L 140

CRIMINAL LAW

(Certificate in Law)

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ANSWER: FOUR questions ONLY, two questions from each section.  
Illustrate your answers by reference to decided cases where possible.

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You are Lungu's lawyer advise him.

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SECTION B

Answer TWO questions from this section

Q4. Employees of a sportsclub had an agreement with the management that they could keep a certain percentage of the proceeds of

2. L 140 CRIMINAL LAW

Q4 (Cont'd)

the sale of lost golf balls. Three employees A, B and C collected a large number of lost golf balls over a period of time unknown to the management. The employees then sold the golf balls and kept all the proceeds.

A, B and C are charged with stealing the golf balls. Discuss.

Q5 SIMANGO was a guest in KUMANI'S house. KUMANI always kept one room locked but one day he noticed K50 missing from that room. SIMANGO was found in possession of K50 and was charged with breaking and entering a dwelling - house with intent to commit a felony therein and with committing theft therein. Evidence showed that the locked room had been recently built and that KUMANI at one time intended this room to be used as his office. Discuss.

Q6 Outline the law relating to Rape.

OR

Outline the law relating to ASSAULT and Battery.

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END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - JULY, 1985

L 150

CONSTITUTIONAL LAW

(Certificate in Law)

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

ANSWER: ANY FOUR Questions

Candidates are allowed to consult the constitution of Zambia

- Q1. Explain in detail the meaning of the doctrine of 'separation of powers'.. What are some of the practical limitations of the application of the doctrine? Discuss with reference to the British, American and Zambian constitutional situations.
- Q2. Discuss the constitutional safeguards of detained persons under Article 27 of the constitution of Zambia and show <sup>how</sup> Courts have interpreted them.
- Q3. Describe in detail the procedure for electing the President in Zambia both under the multi-party constitution and the one-party constitution. How and in what circumstances can he be removed under the current constitution?
- Q4. What does the doctrine of the 'Sovereignty of Parliament' mean? Is the Parliament of Zambia supreme? Give reasons citing any relevant cases.
- Q5. Hon. Preamble Lemba was a Minister of State for Women's Affairs. She has just received a letter from the Secretary-General of the party expelling her from UNIP for embezzling party funds. She has come to you for advice on:-  
(a) the consequences of her expulsion,  
(b) whether or not she can seek redress in a court of Law.
- Q6. Discuss the principle of the independence of the judiciary with reference to Zambia.
- Q7. Critically examine the salient features of a parliamentary system of government such as is found in Britain and the presidential system such as exists in the U.S.A. To what extent has Zambia's presidential system of government been a blending of the two systems of government?

THE UNIVERSITY OF ZAMBIA

UNIVERSITY SUPPLEMENTARY EXAMINATIONS      SEPTEMBER 1985

L 150

CONSTITUTIONAL LAW

(CERTIFICATE IN LAW)

INSTRUCTIONS

TIME      THREE HOURS

ANSWER      ANY FOUR QUESTIONS

CANDIDATES MAY CONSULT THE CONSTITUTION OF THE REPUBLIC OF ZAMBIA.

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1. On April 13th. 1985 Manyani Tembo was detained under regulation 33(6) of the Preservation of Public Security Regulations by Superintendant Cosmas Mwila. On 27th of the same month he was furnished with grounds which stated that he had engaged in various acts of aggravated robbery.  
  
He has been in detention ever since. He now wishes to challenge his detention. He has come to you for advice. Advise him.  

(20 marks)
2. "The rule of law is preferable to that of any individual"  
Aristotle  
with reference to this statement discuss the meaning of this doctrine and its application.  

(20 marks)
3. Preamble Meleki a minister of state was detained by <sup>the</sup> President under the Preservation of Public Security Regulations in September 10th. 1984. He was released on March. 21st. 1985 On 22nd March. 1985 the President nominated him to parliament and appointed him Minister without portifolio.  
  
Discuss the various constitutional issues that arise. Is the presidential appointment valid?  

(20 marks)
4. Carefully analyse the decision in Nkumbula v Attorney General (1972) Z.R 204 (Court of Appeal) bringing out clearly the arguments on behalf of the appellant and the Courts judgement.  

(20 marks)

L 150

CONSTITUTIONAL LAW

(CERTIFICATE IN LAW)

5. How are constitutions classified? Why do most developing countries have written constitutions.

(20 mark)

6. What were the main apparatuses devised under the Federal Constitution to safeguard the interests of Africans in the Federation? How effective did they prove?

(20 marks)

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END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - JULY, 1985

L 210

LEGAL PROCESS

TIME: THREE HOURS (Plus 10 minutes to read the examination paper).

ANSWER: FOUR questions (at least ONE question MUST be from Part I)

PART I

Q1. "Just as an English Oak, so with the English Common Law. You cannot transplant it to the African continent and expect it to retain the tough character which it has in England. It will flourish indeed but it needs careful tending. So with <sup>the</sup> Common Law. It has many principles of manifest justice and good sense which can be applied with advantage to the peoples of every race and colour all over the world, but it has also many refinements, subtleties and technicalities which are not suited to other folk. These off-shoots must be cut away. In these far off lands the people must have a law which they understand and which they will respect. The Common Law cannot fulfil this role <sup>without</sup> considerable qualifications" (Per Lord Denning in the case of NYALI v ATTORNEY-GENERAL (1956) 1 QB. 1 ).

You have now studied various branches of the law in force in Zambia, comment on the performance of Zambian Judges when they have been faced with issues involving principles of English Common and doctrines of Equity.

Q2. In an angry letter to "The People's Informant," a newspaper published in Livingstone and widely circulated in the Southern Province, Pelekelo Mundia an Engineer's Assistant in Livingstone District Council, said among other things, that Samakayi Ndonji was a tribalist, liar and a corrupt man. Samakayi Ndonji is the District Executive Secretary for Livingstone District Council. Expectedly, Ndonji is outraged by the appearance of Mundia's letter and considers it to be highly defamatory. Ndonji is contemplating commencing an action for damages against Mundia. He seeks your legal opinion regarding:-

- (a) the best court in which to commence the action;
- (b) the law which is to apply to the dispute.

Write a legal opinion setting forth the various considerations involved and giving appropriate advice.

## PART II

- Q3. "It is revolting to have no better reason for a rule of law than that it was laid down in the time of Henry IV. It is still more revolting if the grounds upon which it was laid down have vanished since, and the rule simply persists from blind imitation of the past" (Per Mr Justice Holmes of the United States Supreme Court).

Comment on this statement, using it as a basis for your own assessment of the usefulness of the Common Law doctrine of stare decisis in Zambia in particular.

- Q4. Trace the changes which have taken place in <sup>Zambia's</sup> ~~Zambia's~~ judicial system since 1924 with particular reference to the following.

- (a) appointment, qualifications and removal of judges and magistrates from office.
- (b) appellate structure
- (c) jurisdiction over persons.

- Q5. Sam Tembo a second year student in the School of Education, is amazed to learn that lawyers and judges are often involved in lengthy arguments over what Parliament intended when it passed a particular law. Tembo contends that after studying law for many years, lawyers and judges should find the interpretation of Acts of Parliament a simple and straightforward task. Tembo wishes to know the source of the problems which lawyers and judges encounter when interpreting Acts of Parliament, and how they are resolved finally. (You are expected to use suitable illustrative cases to highlight the most important rules or principles involved in statutory interpretation).

- Q6. (a) Outline the advantages and disadvantages (if any) of being legally represented in Zambia.
- (b) Should Zambia adopt the inquisitorial system?

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END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - JULY 1985

L 220

CONTRACT

TIME. THREE HOURS (Plus 10 minutes to read the paper)

ANSWER: FOUR QUESTIONS

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- Q1 Discuss the effects of the Misrepresentation Act 1968 (ZAMBIA) on the common law of misrepresentation.
- Q2. Minestone Ltd was awarded a contract by the University of Zola to build the new school of law within two years. Minestone Ltd decided to provide a good lunch for its general workers and to make a deduction of K1 from their wages. This term was embodied in an agreement with the workers. Minestone Ltd, which had accepted a tender from Mulenga Hotel Ltd, made a contract with the Hotel whereby the latter was to supply these meals at a cost of K1.20n per meal. The essential terms of the contract were that:
- (a) Minestone Ltd would grant the Hotel the sole concession to fulfil its catering requirement for its workers on the site;
  - (b) Mulenga Hotel Ltd would cater to the extent of one meal a day for the entire labour force in existence from day to day throughout the period of the contract; and
  - (c) the contract would be for two years, being the term by which the project would be completed at the University.

Subsequently the general workers refused the meals for two weeks in respect of which Minestone Ltd paid the Hotel. Four months later the whole labour force went on strike to back up their demands for higher wages and the removal of a white foreman who was allegedly a racist. When the strike ended new terms were agreed between Minestone Ltd and its workers, one of which was that there should be no compulsory deduction from wages for meals provided. Meals were available as before for those who wanted them but deduction from wages was only made if they were taken.

The result was that the demand was virtually nil and Minestone Ltd felt obliged to refuse to order any more meals from Mulenga Hotel Ltd.

2. L 220 CONTRACT

Can Mulenga Hotel Ltd, sue for breach of contract? Advise.

- Q3. (a) Silumesi is injured in the Munda Wanga Zoo by a tiger, which a servant of the National Hotels and Tourist Board (NHTB) (the owners of the Zoo) has negligently allowed to escape. A framed notice, excluding the NHTB and its servants from all liability in respect of any injury caused by its animals, whether attributable to its negligence or not, is clearly visible to all patrons in an entrance hall through which they must pass to enter the Zoo after negotiating the entry turnstiles. Silumesi does not read the notice as he is illiterate. Advise Silumesi.
- (b) Advise also Mwewa who is injured in similar circumstances, but after signing a long and closely printed handbill containing numerous reservations by the NHTB and one of which, he subsequently discovers, exempts the NHTB from all liability for negligence. The document was handed to him while queueing to enter the Zoo.
- Q4. (a) How far, if at all, can money paid or property transferred under an illegal contract be recovered?
- (b) Kabwe has embezzled money he received on account of his employers, National Bank. Kabwe's father, a church minister very much concerned about his reputation, wished to hush up the matter. He promised to refund the money to the Bank if the latter did not report the matter to the police. The money was refunded but the Bank has now informed the police of the theft/<sup>Kabwe</sup> and is to be prosecuted. Advise Kabwe's father.
- (c) Kaluya leased to Chilufya a house for a term of 10 years and hired to her a car on hire purchase terms over a period of four years, knowing that the house was to be used for prostitution and the car for ferrying Mandrax tablets to the Border with Botswana for eventual delivery to South Africa. Kaluya has been informed that Chilufya has purported to sell the car to Mbeki, a D.J. at Moon. Advise Kaluya as to whether he can recover:
- (i) the car; and (ii) possession of the house.

3. L 220 CONTRACT

Q5. Maxie is a famous designer of women's clothes in Lusaka. She wished to exhibit at the 1984 Ndola International Trade Fair and asked Phiri Haulage Company to take her samples of garments to the show for delivery by 29th June. The show was scheduled to open on the 1st of July.

Owing to a misunderstanding as to dates, Phiri's lorry did not leave Lusaka until 30th July. It was impounded by the Police at Kapiri Mposhi for being in breach of road safety regulations. The lorry and its contents were not released until the 4th of July by which time the show had ended. Advise Maxie, who wishes to claim for the following:

- (i) the contract price of K450;
- (ii) the cost of transport for herself and three assistants to Ndola and back plus living expenses incurred at Savoy Hotel. K1000;
- (iii) the cost of hiring an exhibit stand, K600; and
- (iv) the loss of profits she would have made from sales at the show. K3,000.

Q6. John is a 2nd year student in the School of Law at UNZA. He is 17 years old. His father, who is based in Ndola, is one of the richest men in Zambia. He told John that he could pledge his credit for whatever he wanted provided he exercised some restraint.

Relying on this statement John purchased an expensive suit worth K369 from Serioes Ltd and a gold watch worth K500 from the Gift Box on credit. During the term John threw a birthday party for his girlfriend, Judith. He ran out of money after the party and so he got a loan of K1000 from Grindlay's Bank to meet his needs for the rest of the term.

He also bought some soap, washing powder and foodstuffs for himself, and cosmetics for his girlfriend on credit from a Greek trader at Northmead. He decided to use his name on these occasions believing that this would not make a difference to his father.

John's father has refused to repay his loan and to pay for the items he bought during the term saying that he had been too extravagant. He is also disputing the contention

4. L 220 CONTRACT

by the Gift Box and Serioes Ltd that the gold watch and suit qualify for necessities to John.

Advise Grindlays Bank, the Gift Box, Serioes Ltd and the Greek trader on their respective legal positions.

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END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA  
UNIVERSITY EXAMINATIONS - JULY 1985

L 230  
LAW OF TORTS

TIME: THREE (3) Hours plus 10 minutes to read the question paper.

ANSWER: Any 4 Questions.

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1. P and D were partners in a business of building contractors. P was given the use of a Datsun Vanette both for the work of a partnership as well as for his private use. Following a dispute between the partners over the return of the vehicle D made a false report to the Police that his Vanette had been stolen and later added to it that P was seen heading towards Kasama. P was arrested by the Police and charged with theft. Following representations by P's lawyers that the dispute was of a civil nature P was released from custody. Advise P as to his chances of success in an action against D for false imprisonment and malicious prosecution.
  
2. X and Y represent rival student revolutionary groups. They often engage in very noisy, riotous meetings.
  - (i) At one such meeting Y commences a heated verbal attack on Z and advances upon him yelling "If you were a different tribe I'd thrash you". X, a friend of Z races over and pushes Y. Does Y have a cause against X. Does Z have a cause of action against Y. (12)
  - (ii) As a result of the attack on Y his supporters surrounded X and prevent him from leaving the hall by the only door. No one touches X and W, one of the supporters of Y tells him that he can leave if he wants to go out by a window seven feet off the floor. Does X have a cause of action. (8)

2. L 230.

3. The Defendants in their daily paper published an advertisement showing three couples dancing around a bottle of "Mum Mist", a deodrant. Of the three couples, one shows the male partner making funny faces and trying to run away from the female partner as if she was smelling. Below the picture was the following caption:

"When there is 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. Use it everyday you will see why popular people all over the world say Mum. Mum makes you nice to be near."

The Plaintiff, a practising lady lawyer sees the advertisement and feels that the picture of the lady whose partner is seen 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?

4. With the aid of decided cases write notes on TWO of the following:

- (a) Volenti non fit injuria
- (b) Res ipsa loquitur
- (c) Vis major

5. P, a mother, stayed at home one autumn afternoon while her husband was out in the car with three of the children, the eldest being at the wheel. About 5 p.m. a friend arrived with the grim news that an hour beforehand the car had been involved in a very bad accident about two miles away. The friend drove P to the hospital; there P found her husband and sons screaming, bloody and bemused, and learnt that her eldest daughter was dead. The accident and the resulting events, due to D's negligence, were such as to cause P severe shock, organic depression and a change of personality, it being assumed that P was a person of normal fortitude.

P sues D to recover damages for mental shock. Will she succeed. Give reasons for your answer.

6. In the development of our law, two principles have striven for mastery. The first is for the protection of property: no one can give a better title than he himself possesses. The second is for the protection of commercial transactions: the person who takes in good faith and for value without notice should get a good title

per Denning L.J. in *Bishopsgate Motor Finance Corporation v. Transport Brakes Ltd.* (1949) 1KB 322 at pp. 336-337.

With the aid of cases discuss the statement in relation to the development of the tort of conversion.

7. A defendant can only be liable for damage which a reasonable man would foresee might follow from the negligent act.

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

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - JULY, 1985

L 240

CRIMINAL LAW

TIME: THREE HOURS (Plus 10 minutes for reading the question paper)

ANSWER: FOUR Questions ONLY. Answer TWO questions from EACH section.  
You are expected to include reference to relevant statute  
and case law in your answers.

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SECTION A (Answer two questions from this section)

Q1. At a dance in a club in Cairo Road a fight broke out. Chanda struck Kongwa a severe blow with an iron bar on the head. Kongwa lost his balance but before he fell to the floor Bwalya also hit him with a heavy stick. Tembo then tried to kick Kongwa but he lost his balance and kicked Zimba, an eighteen year old girl who also lost her balance and struck her head on a sharp nail. She died almost immediately. Kongwa died three hours later in hospital.

Consider the criminal liability of CHANDA, BWALYA and TEMBO.

Q2. Chinkashila and Zulu were passing a house in a lonely area one night. They were very hungry and entered the house through the back door, intending to get some food. They knocked the occupant, an old man unconscious. They then ran out of the house having made sure to set it on fire.

At the trial evidence showed that the man died of CARBON MONOXIDE poisoning from the fumes and not of any other cause. CHINKASHILA and ZULU were convicted of murder. You are asked to set out grounds of appeal against the conviction.

Q3. Discuss Causation in the Criminal Law.

SECTION B

(Answer TWO questions from this section)

Q4. Kapeya, Njaidi and Lungu attacked two persons, a young man and woman, in a dark road after a dance at 02.00 hours, on 5th January.

2. L 240 CRIMINAL LAW

Kapeya and Njaidi had two knives each and injured the young man. Lungu flung himself at the girl and threw her to <sup>the</sup> ground. He proceeded to tear off her clothes and started to open his trousers when voices were heard in the distance. Lungu, afraid, said "I'm sorry" to the girl and then ran off. Kapeya and Njaida also ran.

On 8th January all three were arrested. Kapeya and Njaida were charged with attempted murder and attempted rape.

Lungu was charged with attempted rape only.

You are asked to defend the three accused. Outline the bases of the defence.

Q5. MUTAMBO hired three vans from TOMASI. MUTAMBO agreed to pay a certain sum per week for the hire of each van.

TOMASI was not paid for the hire of one of the vans stactching over a period of four weeks. One morning TOMASI had three men drive away with the three vans and he confiscated all the goods-electrical equipment - from one of the vans as security until he was paid the money owed <sup>to</sup> him.

TOMASI is charged with the theft of the electrical equipment.

Discuss.

Q6. Outline the law relating to BURGLARY. Refer to any decided cases.

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END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - JULY, 1985

L 250

CONSTITUTIONAL LAW

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

ANSWER: Any FOUR questions.

Candidates are allowed to consult the constitution of the Republic of Zambia.

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Q1. "No constitution, however strongly entrenched, can be guaranteed against the temptations of power on the part of the executive, unless there is an independent legislature...."

In light of this statement discuss fully ways in which the legislature in Zambia can be said to be subordinated to the executive.

Q2. Explain in detail the traditional role and functions of the Speaker in the legislative process. Is the Speaker of the National Assembly of Zambia subject to the jurisdiction of the High Court? Explain and illustrate your answer with reference to decided cases.

Q3. Salus populi est suprema lex (the safety of the nation is the supreme law)..

Comment on this doctrine in light of Articles 30 and 26 of the constitution of Zambia. What has been the judicial response in the interpretation and enforcement of the provisions contained in Article 27 of the constitution.

Q4. Compare and contrast the decisions in the Feliya Kachasu case (1967) and the Patel Currency Case (1963). Which one of the two decisions provides the most effective protection of the rights and freedoms of the individual as guaranteed under chapter III of the constitution of Zambia and why?

Q5. Critically analyse both the justifications and criticisms of a one-party state.

Mukuba is an independent multi-party state. Its leaders wish to introduce a one-party state. Being a constitutional lawyer you have been invited by the Mukuba Government to advise on the procedure the Government should adopt in introducing a one party state. Advise.

2. L 250 CONSTITUTIONAL LAW

Q6. Choose any three from the following and comment comprehensively.

- (a) The Devonshire agreement
- (b) The 1962 General elections in Northern Rhodesia
- (c) The African Affairs Board
- (d) The 1924 Northern Rhodesia Order in Council
- (e) The Lewanika Concessions, 1890.

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END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - JULY, 1985

L 310

EVIDENCE

TIME: THREE HOURS (Plus 10 minutes for reading the question paper)

ANSWER: ANY FOUR QUESTIONS

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- Q1. Mwanza and Mweene are charged with being in possession of dagga, count one alleges that they were caught red-handed selling dagga to Bupe and count two alleges that/a<sup>in</sup> search of their house the police found 100 grams of dagga hidden in a cupboard. Mwanza and Mweene are puzzled as to how the police officer called to give evidence for the state got the information. He informed the court that he caught them red-handed after receiving information from a "source". Under cross-examination defence counsel asks the police officer to give the name of the "source", the prosecution raises an objection. The defence counsel seeks an adjournment to consult authorities. During this consultation, the defence counsel is tipped by a third party that the informer is Bupe and that the whole transaction was a trap. At the resumed hearing, the defence counsel submits that it is perfectly proper for the court to know who the "source" is. The defence counsel further argued that the second count cannot stand as it is based on an illegal search. He is aware of/<sup>the</sup> decision in Liswaniso's case but argues that that case was wrongly decided as it followed decisions in England, a country whose society is organised completely differently from       Zambian Society.
- Q2. Zimba and Mwansa were picked up by party militants after a shop had been broken into in Kanyama. They were taken to the party chairman. Throughout the journey to the chairman's house they received severe beatings from the party militants, on arrival there, they were questioned by the party chairman, in the presence of the party militants. They admitted breaking into the shop. The party chairman wrote on a piece of paper that both Zimba and Mwansa admitted shop-breaking and asked them to sign the piece of paper which they did. He then handed them to the police. The police kept them in a cell for a week and, just before they took them to court, constable Chanda came

in and asked them whether they each wished to make a statement. He was very polite to them and gave them the customary caution. They made statements admitting that they had broken into the shop in question but alleged that they had been sent by Mr. Banda to obtain a T.V. set from the shop. At the trial, Banda is jointly charged with them. These statements are the only evidence against Banda. Discuss the admissibility of the statements.

Q3. Mwanza was charged with defilement in court A and was jointly charged with John in another court for the theft of <sup>a</sup> book and a doll. He is alleged to have committed the defilement offence <sup>against</sup> the daughter of a colleague of his. The little girl, aged 7, gave unsworn evidence describing what went on and stating that Mwanza had attacked her and that she sustained injuries in the attack. The police, and Tembo testified that shortly after the incident, the girl, Mary, had gone up to Mwanza and said: "This is the man" To this allegation, Mwanza remained completely silent and when he saw a policeman approaching, he ran away. At the trial, the mother of the girl testified that Mary came home crying and that, after promising her some sweets, she told her that she had been sexually assaulted by Mwanza. John, who is jointly charged with Mwanza on the theft charge before another court, volunteered to give evidence in the defilement case and stated that he had been present when Mwanza committed the offence. He added that since the crime, the police had searched Mwanza's flat with a warrant. In their search they found ten pictures of nude small girls. Discuss the admissibility of the various evidential matters that arise.

Q4. James and Jim were charged with burglary and theft. The evidence alleged that they broke into the flat with intent to commit rape and <sup>to</sup> steal. They were unable to commit rape as Mary, the occupant of the flat shouted for help and some one came to her aid. While in the flat however, James stole a briefcase belonging to Mary's boyfriend. At the trial, James, through his counsel, denied the burglary and theft and alleged that Mary had invited him to the house and that this whole prosecution was because Mary was the local police chief's girl friend. James repeated these allegations on oath. Jim, on the other hand, <sup>speaking from the dock</sup> described the prosecution's key witness Mary as a liar. The prosecution has information that last year, James broke into Anne's house and later pleaded a similar

### 3. L 310 EVIDENCE

defence but that he was acquitted. They also know that Jim has a previous conviction for theft. They further suspect that on the same night, James is the man who broke into a shop shortly before the break in at Mary's house. At the scene of the incident, a revolver which the police believe belongs to James was found. While James is in the witness box, the prosecution show him a gun and ask him whether it is his. James refuses to answer the question. The prosecution insists that he is obliged to answer all questions put to him in the witness box. They further seek permission to attack the character of both James and Jim.

Discuss.

- Q5. John and Maria lived together in Lusaka for 20 years, although there was no evidence that they had gone through any formal ceremony of marriage. Through some of their period John maintained another woman in Chilenje. He paid her rents and occasionally spent nights there. John and Maria had a son named Juma. In 1968, John left for a visit to Kampala. He has not re-appeared since. There were rumours that he was staying in a hotel which was destroyed by a Bomb blast. Before John left, he was covered by workmens compensation. The son wishes to obtain the benefits but believes that the compensation Board would argue that he has to prove, not only that he is legitimate, but also that his father is dead. He comes to you for advice. Advise the son.
- Q6. On the 11th of March, 1984. Doris, the wife of Banda was seen with John, by Mary who passed them on their way to a stream where she was going to fetch water. On her way back, she passed them again. About three minutes after she had passed them she heard Doris saying: "Oh sister Mary although you are going, John is killing me". Mary ran away. She did not turn round because she was afraid. Moonze, who was nearby, heard the shouting a little later from the direction of the stream, he went out and saw Doris coming along holding her stomach and crying: "John has killed me? Doris died as a result of wounds of Doris". John is charged with the murder of Doris. At the trial, the prosecution contends that the words heard by Mary and Moonze are admissible. Discuss the admissibility of the statements.

4. L 310 EVIDENCE

- Q7. Peter, uses a stolen car to get to Kabulonga where he breaks into a house of Miss Tembo and there in commits rape on her and steals a stereo system which he later sells to Mr. Bowa. At the trial, Peter alleges that Miss. Tembo is a thief herself as she stole a watch from a place they worked together at, a few years ago. The prosecutor asks the magistrate for permission to cross-examine Peter as to his previous convictions. The defence counsel submits that his client is protected by <sup>the rule set</sup> out R v Turner. The prosecutor later in the trial recalls Miss Tembo who testifies that she had bought the stereo worth K2,000 from John. John is Peter's friend and room mate. Defence counsel later submits that Miss Tembo's evidence needs corroboration.
- Discuss the evidential issues that arise.

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END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - JULY 1985

L 320

LAND LAW

TIME: THREE HOURS (Plus 15 minutes to read the examination paper)

ANSWER: THREE QUESTIONS FROM SECTION A AND ONLY ONE FROM SECTION B

NOTE: Statutes may be brought and used in the examination room provided they do not contain any notes or annotations.

SECTION A

1. The most important asset that any country has is land. Therefore, the way it is used and distributed is crucial. In a Humanist society such as Zambia the need for the state to ensure the fair distribution and optimum utilization of land cannot be overemphasized.

Evaluate how the state can employ the Land (conversion of Titles) Act, No. 20 of 1975, and the Lands Acquisition Act, cap. 296 to effect fair distribution and optimum utilization of land. Are these two pieces of legislation adequate for the purpose?

25 marks

2. (a) Distinguish between the equity of redemption and the equitable right to redeem.

10 marks

- (b) Chimuka obtained a plot under a 30 year lease from the Lusaka Urban District Council along the Great East Road. He procured a loan of K100,000 from Mudenda Enterprises Ltd, a firm of soft-drink manufacturers. As security for the loan he offered the lease of the plot to Mudenda Enterprises Ltd. The mortgage agreement provided that the loan would be repaid over a period of ten years, from January 1974 to January 1984 in instalments of K10,000 per year, and at 15% interest. The deed also contained a covenant by Chimuka that during the continuance of the security he would deal exclusively with the mortgagee for all soft-drinks sold on the mortgaged premises and would not sell or permit the

2. L 320.

sale of soft-drinks produced by any other company. It also provided that in the event of default the mortgagee could go into possession and treat the property as its own.

By January 1984 only K70,000 had been paid. Furthermore, Chimuka had started selling in his motel, "Coca-cola", a soft-drink manufactured by Zambia Bottlers Ltd, contrary to the covenant in the deed. The "coca-cola" was much cheaper than the drink manufactured by Mudenda Enterprises Ltd.

In February 1984 the mortgagee went into possession and Chimuka went to his home village in Choma to slaughter some animals to raise money to defray the loan. In January 1985 Chimuka tendered the balance of the principal sum (i.e K30,000) plus interest but the mortgagee refused to accept the money.

Advise both parties on their rights.

15 marks

3. (a) Contrast and compare the common law rule against perpetuities with the Trusts Restriction Act, CAP 76.

10 marks

- (b) Evaluate the validity of the following transactions:

- (i) "To A in trust for B on the attainment of the age of 36".
- (ii) "To A in trust for C, the widow of B, who has left three minors."
- (iii) Blackacre is conveyed to T on trust for C. T gives the land to Q, Q devises it to R, R sells it to S, who is a bonafide purchaser for value without notice. S gives it to X who has notice of the original trust.

15 marks

4. (a) Evaluate the criteria for grant of planning permission in terms of section 22 of the Town and Country Planning Act, CAP. 475.

10 marks

- (b) Banda applied to the Lusaka Urban District Council, the Planning Authority for the Lusaka area, for permission to erect a film theatre in the Munali area, an area zoned for residential purposes under the Lusaka Approved Development Plan. The Council took long in considering his application. Worried by the delay Banda went to see the secretary of the Planning Authority, who assured him that his application would certainly be approved and that he should go ahead and start constructing the building. Work on the Theatre was completed before permission was granted. The Theatre then started operating and proved very successful. The proprietors of Theatre Houses in Lusaka, who included a councillor of the District Council, felt their business threatened. Subsequently the District Council wrote to Banda telling him that his application for planning permission had been turned down and that he should immediately take steps to demolish the structure. The Council cited two reasons for its decision. First, that owners of Film Theatres in town had strongly objected to the erection of yet another Theatre arguing that the existing Theatres for Lusaka were not only adequate but in fact too many so that to permit another theatre was not only unnecessary, but actually harmful to the community and unfair to the existing Theatre owners who were already suffering financial loss. And secondly that the establishment of the Theatre would inevitably cause nuisance and annoyance to adjoining occupiers.

What procedures and remedies are available to Banda?

15 marks

5. (a) "The Rent Acts have throughout their history constituted an interference with contract and property rights for a specific purpose - the redress of the balance of advantage enjoyed in a world of housing shortage by the landlord over those who have to rent their homes."

Per. Lord Scarman in Horford Investments Ltd v. Lambert  
[1951] Ch. 39 at p. 52.

How has the Zambian Rent Act, 1972 accomplished this purpose? How effective has the Act been in this respect?

10marks

- (b) Musonda granted a 20 year lease of a house in Roma Township to Sitali at a rent of K500 per month. When Sitali moved into possession at the commencement of the lease in January 1985 he found that the Kitchen floor was flooded, all the walls were filthy, and the ceiling of one of the bedrooms had fallen in. After the had been in occupation for three months half of the house was destroyed when a UBZ bus careered off the road and smashed into the house. At the beginning of April Sitali received a bill for rates from the District Council. On the premises was a servant's quarter which Sitali, without consulting Musonda, sublet to Tabulani at a monthly rent of K10. Furthermore, Sitali has not paid his rent for three months. Musonda would like to re-possess the house so that his favourite Uncle, Mwaba should live in it.

The lease is silent on all the above matters.

Advise both parties as to their legal positions.

15 marks.

6. (a) "Quicquid plantatur solo, solo cedit." Discuss this maxim in the Zambian context.

10 marks.

- (b) Ngambela is a tenant of a plot in Makeni under a 30 year lease at a rent of K4,000 per annum. On the plot is a large bungalow, which he has furnished with large dressing mirrors drilled into the wall. He has also affixed window blinds. There is also a stove which is merely plugged into the wall, and also an air-conditioner which is built into the wall. The stove and airconditioner were installed by Milimo.

During his tenancy he establishes a petrol filling station on the plot with the consent of both the landlord, Asimbuyu, and the Lusaka Urban District Council. He has brought some petrol pumps and bolted them to storage tanks embedded in the ground. Further, he has

put a big part of the plot under cultivation. He has also sunk a borehole. The 30 year lease is about to expire. Both Ngambela and Milimo would like to know their rights regarding the plot.

Advise them.

15 marks

7. (a) Distinguish easements from -  
 (i) Profits;  
 (ii) Licences

12 marks

- (b) Domingo has travelled from Mbala to Lusaka to attend a seminar organized by the Law Association of Zambia. The seminar is to last one week. He books a room for one week at the Hilton Hotel. On the 3rd day of his stay at the Hotel he receives a notice from the Hotel Management telling him to vacate the room by 08.00 hours the following day, as it has been allocated to a Minister from Brazil. Evaluate the nature of the interest Domingo has in the room.

13 marks

Both Ngambela and Milimo would like to know their rights regarding the plot.

Advise them.

15 marks

### SECTION B

8. The Law Development Commission is inviting comments on the assimilation of traditional landholding into the statutory land tenure system of the nation. It is generally felt that some aspects of customary tenure of land are retrogressive and not conducive to the success of "Operation Food Production". The Commission is inviting your comments on these particular aspects:
- (a) The nature of rights and interests in land at customary law;
  - (b) Security of title and the means or machinery for ensuring this; and
  - (c) The criteria for determining which land under customary law is suitable for assimilation into statutory tenure and which land should continue to be held by peasant farmers for subsistence agriculture.

25 marks

9. (a) What provisions exist for individual grants of land in Reserves and Trustland?
- (b) Patel, an Indian national who has lived in Zambia for 25 year, has just retired from the Mines. He would like to invest his savings in farming. He is undecided as to whether to settle in an area within Trust Land or a Reserve. Moreover, he does not know what procedures he must follow in order to acquire land, and also whether he will enjoy security of tenure once he has acquired land. He comes to you for advice. Advise him.

25 marks

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END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - JULY, 1985

L 330

COMMERCIAL LAW

TIME: THREE HOURS (Plus ten minutes reading time).

ANSWER: FOUR QUESTIONS ONLY. TWO QUESTIONS ARE TO BE ANSWERED FROM EACH PART.

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PART A

ANSWER ANY TWO QUESTIONS FROM THIS SECTION.

- Q1. Peter is a poultry and vegetable farmer. He has a contract to supply Chainama Hospital on a daily basis. His chicken meat price per kilogram fluctuates with the unstable cost of chicken feed which strongly relies on the law of supply and demand. He always buys his feed from NATIONAL MILLING COMPANY as it is cheaper than the private millers and <sup>if</sup> never exceeds K25 per <sup>25kg</sup> bag. John is Peter's trusted driver. He delivers the chickens to the Hospital with the price quotation for the day and receives the money for Peter. He also collects the chicken feed from National Milling which Peter buys on account. At the end of the year Peter celebrates his successes with a "KACHASU" drinking party. On the last occasion Peter drank too much "Kachasu" and becomes insane. John is aware that this kind of insanity is usually temporary. However not knowing how long it will last and afraid that the business will suffer if he just sits back, John decides to proceed with deliveries and buying of chicken feed. John quotes a price of K5.00 per kilo for 1000 Kilograms of chicken meat that should have really been sold at K6.50 a Kilo. John also decides to open an account with E.C. Milling who produce superior quality chicken feed. He takes delivery of 100 bags of chicken feed at K30 per bag. When Peter recovers he seeks to recover his loss of profits on the sale of the chickens from John's pay or from the Hospital. He also refuses to pay E.C. Milling anything. Advise all the parties concerned on their legal positions. What would be the situation if John had quoted a price of K7.50 per kilogram, given Peter his K6,500 and pocketed ' K1000?

(25 marks)

Q2. Explain the principles of law applied in the following cases.

(a) Angela was employed to manage Paul's farm in Makeni. Most farm managers in Makeni were also the salesmen for farm produce. In her terms of appointment, however, Angela was only allowed to sell vegetables. Angela entered into an agreement to sell 1000 chickens to Thomas Peters Hotels Ltd for their Easter Feast. Paul already had his regular customers for whom he reserved the chickens. It was held that Paul was liable to Thomas Peters Hotels Ltd.

(11 marks)

(b) Goods were bought by Anthony on behalf of Patrick but it was agreed that they should stay at the seller's premises. Later, without Patrick's knowledge, Anthony removed them to his own premises. Patrick became bankrupt and Anthony refused to part with the goods claiming that he had not been paid for his services. It was held that Anthony was not entitled to the goods.

(7 marks)

(c) Star Motors employed Mwale to sell some cars to the University of Zambia on their behalf. Mwale charmed his way and managed to sell on paper ten Fiat 131's. The contract clearly stated that "sold on behalf of Star Motors Ltd" Star Motors Ltd failed to deliver. The action brought by the University against Mwale failed.

(7 marks)

Q3. On the 1st of February Klaus Rygaard Jewellers Ltd ran the following advertisement in the Times of Zambia.

"We buy old jewellery at attractive prices  
Bring in person or send by registered post.  
We reserve the right to reject any jewellery that  
we consider unsuitable. Owners will be informed within  
30 days."

Mwanga took in one 18 carat gold Half Hoop Chain set Eternity ring set with seven diamonds for K10,000 and an 18 carat gold bracelet for K2,000. Klaus Rygaard Jewellers only managed to inspect the merchandise on 7th of February. They valued the ring at K50,000/<sup>but</sup> they decided to send it back as they did

3. L 330 COMMERCIAL LAW

not expect to have a market for its residue even at K11,000. They, however, melted the bracelet and used the gold to make 10 wedding rings. The following day, the shop was burgled and among the items stolen was the valuable gold and diamond Eternity ring and all ten wedding rings. The police were informed. On the 16th of February, the following advertisement ran in the Times of Zambia READERS BARGAINS COLUMN:

"For sale, one beautiful 18 carat gold Half Hoop Claw set Eternity Ring set with seven diamonds. Contact Star Jewellers, Cairo Road Lusaka."

Mrs Chite, one of the elite women of Lusaka/<sup>saw</sup> the advertisement and went and bought the ring from Star Jewellers for K6,000. On the 18th of May, Mwanga met Mrs Chite at a ball at Hotel Intercontinental. He politely asked Mrs Chite to remove the ring so that he could look at the markings inside. Indeed it was the same ring. Star Jewellers explained that they bought the ring from one Martin Kruger who was on a visit from South Africa and staying at the Pamodzi Hotel. He had apparently failed to pay his Hotel bill and hence decided to part with the ring which he described as a family heirloom for K5000. He has since left the country.

Discuss the issues involved in this problem and advise Mwanga of any right he may have against

- (a) Klaus Rygaard Jewellers
- (b) Star Jewellers
- (c) Mrs Chite

(25 marks)

Q4. Discuss in detail the various rights available to:

- (a) the unpaid seller of goods (15 marks)
- (b) the buyer of goods for non-delivery (10 marks)

PART B

ANSWER ANY TWO QUESTIONS FROM THIS SECTION.

Q5. Compare a Hire Purchase Agreement with a sale of goods by instalments. Which method of consumer credit do you prefer and why?

(25 marks)

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Q6. (a) Williams, an expatriate on a one year contract, brings into the country a brand new Peugeot 504 worth £5,000. In Zambia it has a marked value of K40,000. Thinking that such pricing is unrealistic he insures it for K20,000. After driving it for six months he decides to secure a buyer. He contracts to sell it to Banda for K18,000 on the terms that Banda pay K9,000 immediately as deposit, the remainder to be paid after six months when Banda is to take delivery. Banda is getting a loan from the University of Zambia for the purpose. They insist that he insure the car comprehensively. Banda insures it for K25,000. Two months later Williams is involved in a car accident and the car is a total wreck.

E Explain the legal positions of both Williams and Banda

(15 marks)

(b) Explain and comment on the principle of subrogation.

(10 marks)

Q7. On the 1st of April Chilufya fills in a proposal form to insure his wife for K50,000, which is accepted by Zambia State Insurance Corporation. The beneficiaries are to be as follows

his daughter	Beene	K15,000
son	Mweene	K15,000
wife	Kaluba	K10,000
parents		K10,000

In case of his parents pre-deceasing him, their amount is to go to his wife Kaluba.

On 10th April Chilufya is involved in a very bad car accident. He has to breathe with the aid of a respiration machine. The doctors think that only a miracle can save him. His wife is heart broken as she does not know how she will raise the children. Chilufya tells her about his insurance policy but that he has not yet paid the premium of K50. The wife goes and pays the premium the following day.

On the 13th of April Kaluba finds her in-laws shivering from the cold. She buys them charcoal and advises them to keep the "mbabula" in their bedroom.

5. L 330 COMMERCIAL LAW

On the 14th of April she finds her husband in excruciating pain. She decides that since he has already provided for their future, he need not suffer any more. She therefore switches off the respiratory machine. The doctors thinking that the machine had malfunctioned and convinced that he would have died anyway, put down the cause of death to be due to injuries sustained in a motorcar accident. Before Kaluba even leaves the hospital her in-laws bodies are brought to the mortuary. They died during the night of suffocation from charcoal fumes. Kaluba confides in you as her legal counsel.

Advise her on her claim for K20,000 for herself and K30,000 in respect of the children.

(15 marks)

- (b) What do you understand by the term "insurable interest" in a life insurance policy.

(10 marks)

8. (a) Discuss the rights and obligations of the various parties to a Bill of Exchange
- (b) Export Ltd are a large import and export firm. They are Trust Bank Ltd K10,000.00 and draw an order Bill on World Bank Ltd. Trust Bank Ltd negotiate the Bill to Johns Ltd. Ben, an employee of the of the latter forges the indorsement in favour of his friend Mary and he subsequently endorsed it in blank and negotiates it to John who presents it for payment on the due date. World Bank refuse to pay it.

Consider the liabilities of the parties.

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END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY SUPPLEMENTARY EXAMINATIONS - SEPTEMBER, 1985

L 330

COMMERCIAL LAW

TIME: THREE HOURS

ANSWER: FOUR QUESTIONS. TWO FROM EACH PART

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PART I

1. Mulenga is a poultry farmer and Mwale is a dealer in stockfeed. One morning Mulenga went to Mwale's shop and in the course of the conversation said he had a very good breed of young chickens which he was having difficulties feeding. Pointing to a stack of bags he said, "your brand looks good. I wonder if it will make good feeding for my chickens." Mwale made no reply but sold to Mulenga a bag of the feed which he described as "generally good and nourishing food for animals." Mulenga fed the feed to his chickens and a number died from food poisoning. It subsequently transpired that the manufacturer who supplied Mwale's shop with the feed had mixed it with a substance that had a fattening effect on animals like pigs but toxic to poultry. The sale to Mwale contained a stipulation excluding liability for all errors of description. Mulenga has refused to pay for the goods and seeks your legal advice.
2. "In the development of our law/<sup>two</sup> principles have striven for mastery. The first is the protection of property and second is the protection of commercial transactions. A bonafide purchaser for value without notice should get good title.  
Lord Diplock LJ in *Bishops Gate Motor Finance Corporation Ltd v Transport Brakes Ltd*. (1949) 1 KB 322 at 336 - 7  
Discuss this dictum in relation to the sale of goods Act and the Factors Act.
3. Paul is a manufacturer of neckties. He entered into an agreement with Aki in which Aki agreed to try to sell the neckties, and Paul agreed to pay a commission on all ties that Aki sold. Paul gave Aki several ties as samples. Aki first went to White Rose and secured a contract to sell 1000 ties. Aki then went to Afrique Ltd Store and attempted

- to persuade the manager to include neckties in the stock in trade of the store. To demonstrate the quality of the ties, Aki put one around the manager's neck and tied a knot in it. Acting without exercising due care, Aki tied the note too tight and the manager was unable to breathe. The manager lost consciousness and fell to the floor, suffering injuries. Fortunately Aki was able to untie the note and the manager regained consciousness. The manager is claiming damages from both Paul and Aki. Paul tells Aki that if he has to pay the manager anything, he will not pay Aki any commission on the ties that he has already sold. Advise the parties.
4. Mr. Mutale is a primary school teacher and his wife is unemployed. During the school holidays Mr. Mutale went to visit his ailing mother in Chinsali for two weeks and left his wife K50 housekeeping allowance whilst her husband was away. Mrs Mutale got the following goods on credit
- (a) 5 kilos of rumpsteak at K7 a kilo = K35
  - (b) Two bottles of "Blue Nun" German wine from Musonda store at = K20 per bottle
  - (c) Two dresses from a girl that had come from London at K100 per dress
  - (d) Shoes for her daughter for K6 from a Zairean who was going from house to house.

Mr. Mutale has refused to pay. Advise the parties concerned.

## PART II

Answer at least two questions from this part.

5. Banda took a Ford Escort from Duly Motors on a Hire Purchase agreement which stipulated repayment by 24 monthly instalments of K200. After paying 10 instalments, Banda sold the car to Chembe for K4,000 and used the money to pay service charges on a residential plot in Roma. Banda continued to pay his instalments regularly. Chembe did not like the Escort and sold it to Mweemba. When Mweemba took the car to Duly Motors for servicing the garaged recognised it as their car and refused to return it to Mweemba. Duly's resold it to Mensah for K2,000. By that time Banda had paid a total of 16 instalments. Advise Banda and Mweemba citing statutory provisions and decided cases wherever possible.

to persuade the manager to include neckties in the stock in trade of the store. To demonstrate the quality of the ties, Aki put one around the manager's neck and tied a knot in it. Acting without exercising due care, Akie tied the note too tight and the manager was unable to breathe. The manager lost consciousness and fell to the floor, suffering injuries. Fortunately Aki was able to untie the note and the manager regained consciousness. The manager is claiming damages from both Paul and Aki. Paul tells Aki that if he has to pay the manager anything, he will not pay Akie any commission on the ties that he has already sold. Advise the parties.

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6. Chileshe owes Timothy K5,000 Kwacha. Timothy insures Chileshe's house for K6000. The house burns down. Can Timothy recover the K6000.
- (b) Timothy Insures Chileshe's life for K10,000, if Chileshe dies can Timothy recover that sum.
- (c) Chileshe insures her house against fire. The neighbours house burns down and damages part of Chileshe's house. The neighbours policy makes good her loss. Can Chileshe recover under her own policy?
7. Explain the following principles
- (i) Contract "Uberrimae Fidei"
  - (ii) Cover note
  - (iii) Indemnity
  - (iv) Salvage.

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END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - JULY, 1985

L 340

ADMINISTRATIVE LAW.

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

ANSWER: FOUR QUESTIONS; QUESTION ONE AND ANY OTHER THREE QUESTIONS.

NOTES: CANDIDATES ARE PERMITTED TO TAKE INTO THE EXAMINATION ROOM AND TO REFER TO ANY OR ALL OF THE FOLLOWING DOCUMENTS:-

1. THE CONSTITUTION OF ZAMBIA
  2. THE INTERPRETATION AND GENERAL PROVISIONS ACTS CAP 2.
  3. THE INQUIRIES ACT, CAP 181
  4. THE COMMISSION FOR INVESTIGATIONS ACT 1974 AND AMENDMENT ACT 1975.
- 

Q1. THIS QUESTION IS COMPULSORY:

Following a number of reports in the popular press about the alleged "leaking" of examination questions in a certain named secondary school in which the headteacher is implicated by name, the authorities in the Ministry of Education conduct their own investigations and decide to institute disciplinary proceedings against the headteacher, under the provisions of the Teaching Service Commission Regulations. However, while the matter is before the Teaching Service Commission similar allegations are made in the popular press against other officers in some other schools in the same province. The Government becomes so concerned that the President intervenes personally. In exercise of his constitutional powers, he directs the Teaching Service Commission to suspend, on half pay, all the headteachers of secondary schools who are public servants in the province. The Service Commission immediately suspends them. The President then constitutes a two-member Commission of Inquiry under the Inquiries Act to inquire into the allegations and report to him as a matter of urgency. Almost immediately, the Commission of Inquiry starts to hold its hearings.

The affected headmasters jointly request the Chairman of the Commission of Inquiry to permit them to appear before the Commission to give evidence in the presence of their Lawyers

2. L 340 ADMINISTRATIVE LAW

and to allow their lawyers to cross - examine the other witnesses. The Commission refuses them legal representation and the "right" to cross-examine the other witnesses on the ground that this would unduly delay the work of the Commission. The headmasters are, however, allowed to appear as witnesses and to give evidence and to answer questions from the Commissioners. The headteachers are aggrieved by this decision and in protest, decide to boycott the Commission's hearings. The Commission of Inquiry has not completed its inquiry yet and the headteachers now come to you for your opinion on not only the decision of the Commission of Inquiry, but, also their suspension from office.

Write two separate opinions on:

- (a) the constitutionality of their suspensions from office, and
  - (b) the most suitable remedy or remedies which the headteachers could seek before the High Court of Zambia and the possible outcome.
- (The two separate opinions will carry equal weight for purposes of grading your answer).

Q2. "The growth of administrative law has been a direct result of the growth of the administrative state during the nineteenth and twentieth centuries."  
Discuss <sup>critically</sup> this statement with particular reference to Zambia.

Q3. Professor Rowat once warned that "any kind of new complaint or appeal officer.... is now likely to be mistakenly dubbed an Ombudsman in order to gain popular support for his activities" (Rowat, Ombudsman: Citizen's Defender, preface.)

- (a) What is an 'Ombudsman'?
- (b) Would you regard the Zambian Commission for Investigations as an Ombudsman, in the light of the statement quoted above and the Commission's constitutional status and powers?

Q4. "The National Assembly of Zambia, by establishing and retaining a select Committee on Foreign Affairs, unwittingly contravened the Constitution. Parliamentary supervision of the administration, which has grown phenomenally in recent years, should be rationalized by the abolition of this particular select committee."

3. L 340 ADMINISTRATIVE LAW

- (a) Give an account of the development of Parliamentary Control of the Administrative Process in Zambia up to 1984.
- (b) Is the Parliamentary select Committee on Foreign Affairs unconstitutional as suggested by the statement quoted above?

Q5. "The distinction, between jurisdictional and non-jurisdictional errors of law in judicial review of the administrative process is a fictitious one and should be discarded. All errors of law are jurisdictional. "

Do you agree?

Q6. Compare and contrast the two remedies of certiorari and declaration as they existed prior to the introduction of the uniform procedure of 'application for judicial review' in 1976. In what ways were they reformed in that year?

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END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - JULY, 1985

L 4 10

JURISPRUDENCE

TIME: THREE HOURS (Plus 10 minutes for reading the question paper))

ANSWER: FOUR QUESTIONS; Question 1 and ANY THREE OTHER QUESTIONS

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Q1. THIS QUESTION IS COMPULSORY

What is Law?

Answer ANY THREE QUESTIONS from the remainder of the paper.

Q2. Mr. Bonzo is a Minister of Information and Propaganda in the government of the African State of CHAINAMA. He is also Chairman of the Board of Directors for the Sugar Plantation State Corporation-a paid job. One day as he was being driven to his office from his farm house, soldiers stopped his car and immediately he was physically harassed and told that there had in fact been a coup in the country and that the army had taken over the government. Mr. Bonzo was arrested and whisked away into detention at Chimanmani maximum security prison. Some of Mr. Bonzo's comrades in the Party and Government who learnt about the coup earlier managed to escape from the country to form a government in exile, and in collaboration with foreign mercenaries swear to work night and day to regain control of CHAINAMA state.

Mr. Bonzo was detained under the authority of an order made pursuant to a decree constituting/<sup>a</sup>group of 12 army officers as the new government of CHAINAMA, and conferring on them the power to make any orders or other decrees "for the proper governance and administration of the country".

Mr. Bonzo, through his wife, manages to instruct you, as a lawyer, to bring an action of habeas corpus against the new Attorney-General to challenge the legality of his detention on the following grounds:-

- (i) That since the new government came to power through "illegal" means, the order under which he is detained must ipso facto be illegal.

- (ii) Alternatively, that even if one were to ignore the illegal nature of the new government, this regime cannot begin to issue lawful orders because it has not fully or effectively established itself as a government - since the overthrown government is actually making serious attempts to regain control of the country.
- (iii) Mr. Bonzo had been sacked as Chairman of the Board of Directors of the Sugar Plantation State Corporation, which is a government-controlled enterprise. While the first decree constituting the new regime has expressly allowed for the continuation of other offices established by the old order, the office of Mr. Bonzo was not mentioned as one of those. Mr. Bonzo now wants you to sue the government to recover his gratuity and other fringe benefits to which he would have been entitled under the pre-coup state corporations service regulations. Advise Mr. Bonzo on all three counts with reference to the theory of the juristic effect of a revolution as propounded by Hans Kelsen. Show clearly your understanding of Kelsen's theory on this subject and discuss with reference to African cases, decided on these questions.

"The present day **climate** of democratic liberalism in the western countries and/<sup>and</sup> world-wide tendency for the protection and promotion of human rights is a concrete manifestation of the success of the **teachings** of natural law theorists throughout the **centuries**". Discuss.

The philosophy of Humanism seeks to improve the Social and economic, or material, conditions of the people of Zambia. Discuss the apparent connection between this concept (ie of humanism) and the characteristic features of sociological jurisprudence and examine the importance and usefulness of both of these theoretical models as aids in promoting development in Zambia.

Write critical notes on any three of the following:-

- (a) The Role theory.
- (b) The Social Contract theories and their impact on the development of western democratic liberalism.
- (c) Law and power
- (d) Law and social change.
- (e) The Marxist view of the function of law.

5. "Although the law is an indispensable and highly beneficial institution of human life, it possesses - like most/<sup>human</sup> institutions its drawbacks and **defects**. These negative aspects of the law stem in fact from its normative nature and its conservative tendencies." Discuss.

7. Examine the nature of the relationship between any two of the following.

- (a) 'Law and morality'
- (b) 'Law and justice.'
- (c) 'Law and Social order.'

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END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY SUPPLEMENTARY EXAMINATIONS - SEPTEMBER, 1985

L 410

JURISPRUDENCE

TIME: THREE HOURS

ANSWER: ANY FOUR QUESTIONS

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1. Examine the basic teachings of the Natural Law School of jurisprudence and in particular;
    - (a) the origins and development throughout the centuries of this school of jurisprudence;
    - (b) its impact on the rise of the doctrines of "liberalism" in the political life of the West. and
    - (c) the weaknesses of its teaching especially in the later Age of Enlightenment' (ie in the scientific age).
  2. Carefully examine the characteristic features of the positivistic, sociological and American Realist Schools of jurisprudence. indicating their distinct differences between their approaches to the study of law. Which of these jurisprudential theories do you think is apt and valuable to the study of law in Zambia and why?
  3. Comment comprehensively on the relationships between law and morality' and between 'Law and Justice'.
  4. Can Karl Marx accept the often advanced view that Law is a necessary apparatus to restore and maintain societal order for the welfare and security of everybody in any given society? Critically examine the marxist understanding of the role of law in society.
  5. Write concise but comprehensive notes on any Two of the following:
    - (a) The Kelsenite "Grundnorm".
    - (b) The Historical School of Jurisprudence
    - (c) What is jurisprudence and why is it important to study it as a discipline in its own right?
  6. Examine carefully the 'Non-Formal Sources' of Law.
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END OF EXAMINATION

UNIVERSITY EXAMINATIONS - JULY, 1985

L 420

BUSINESS ASSOCIATIONS

TIME: THREE HOURS (Plus 10 minutes to read the Question Paper)

ANSWER: FOUR questions (two from each section)

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SECTION A

ANSWER ANY TWO QUESTIONS FROM THIS SECTION

- Q1. (a) Discuss the significance of a company having a share capital divided into smaller units as is provided for under S. 8 of the Companies Act, Cap 686 of the Laws of Zambia. (10 marks)
- (b) Mr. Mojo, who has been running a prosperous legal practice in which he is the senior partner, intends to digress to other businesses because of the competition he now gets from the recently formed Legal Services Corporation and also because of the economic malaise being experienced in the country. He envisages to form a company which will run haberdashery business.

The proposed share capital of the company is K1,000,000. although Mr. Mojo has been assured of K10,000.00 only through floating of shares. Meanwhile Mr. Mojo is prepared to make an advance of K10,000 with a view to recoup the same principal amount with interest when the company is formed.

Discuss the propriety of this arrangement both from the financial and legal view points.

(20 marks)

2. (a) "A company that is formed under the Companies Act (Cap 686) has distinctive tripartite form: it has shareholders, the board of directors, and officers who are the agents of the board." Explain the legal theory of corporate control using this model. (10 marks)

- (b) Papa-Pia and Mama-Mia were the incorporators of a company known as Pia-Mia Co Ltd; and they held equal shares. The share capital of the company was K8,000.00 divided into 8,000 shares of K1-00 each and was all issued. Papa Pia paid fully for his 4,000 shares but Mama Mia only paid

2. L 420 BUSINESS ASSOCIATIONS

K2,000 for the 4,000 shares that were allotted to her.

Last year Papa-Pia was killed in a plane crash and immediately the business of Pia-Mia Co. Ltd slumped. Mama-Mia has not been daunted by this turn of events and has continued to run Pia-Mia Co Ltd single handedly for 10 months now - albeit no signs of the company's economic recovery. The company's creditors who are not impressed by Mama-Mia's unrealistic determination, have petitioned for the company's liquidation.

The total amount owing to creditors is K10,000.00 but the company has called upon Mama-Mia who has got vast personal wealth to contribute K2,000.00 only. One of the creditors, Kabanki, who is owed K3,000.00 has decided to sue Mama-Mia to recover his money. Examine whether it is feasible to maintain such an action.

(20 marks)

- (a) What limits are imposed by law upon the power of a company to alter its articles of association?

(10 marks)

- (b) Article 16 of the Articles of Association of Mambilima Ltd provided that any three directors would constitute a quorum at any meeting of the directors. Clause 10 of the Memorandum of Association provided that the company could with the authority of a general resolution

borrow any amount of money not exceeding K1,000,000.00.

On June 24th, 1984, three directors, among them Jason Sangwapo a person of unsound mind decided to borrow K500,000.00 from Standard Chartered Bank for the purpose of buying four farms from AFC Ltd. A purchase agreement was consequently entered into and it was provided that payment was to be within five months of the agreement, but hitherto Mambilima Ltd has not paid a single ngwee to AFC Ltd.

AFC Ltd are now claiming for either the K500,000.00 or the farms but the board of directors have refused to pay as there is no provision in the Articles or Memorandum of Association empowering the company to hold land.

Advise both parties.

(20 marks)

SECTION B

ANSWER ANY TWO QUESTIONS FROM THIS SECTION.

- (a) "Executive appointments in the parastatal companies are not in accordance to the provisions of the companies' articles of association." To what extent is this statement true, and how has the judiciary reacted to the above issue?  
(10 marks)
- (b) "ZIMCO Ltd has been described as an omnipotent and omnipresent organisation through which the government controls the commanding heights of the economy."  
Discuss the advantages and disadvantages of controlling the parastatal sector through ZIMCO Ltd.  
(10 marks)
- (a) In what respects are co-operative societies similar to companies formed under the companies Act, Cap 536 of the Laws of Zambia.  
(10 marks)
- (b) From the 1914 Co-operative Societies Proclamation to the 1970 Co-operative Societies Act, the direction of co-operative development has changed in no measure.  
Discuss.  
(10 marks)

Answer either (a) or (b)

- (a) Peter and Jane, husband and wife and their son, aged 17 years old, with a group of eighteen relatives, have been collecting money from the proceeds of their individual farms for the last five years. They now want to open a shop in their locality. They are not willing to allow any other person to join them because they want to keep the business in the family. At the same time, they want to run their business in a form of organisation recognised by law.

4. L 420 BUSINESS ASSOCIATIONS

They come to you and they tell you that they have heard about **some** people working as a private company and others as a partnership. They seek your advice as to which of these would be a better form of organisation for them to achieve and promote their goal.

Advise them, giving reasons as to choice of form of organisation their business should take.

(20 marks)

- (b) Simba, Peter and Tembo are fishermen who operate a fishing boat, the finance for which was provided by Chanda. The fishermen divide the proceeds from the sales of the fish they catch by four, each one<sup>of</sup> then taking a **quarter share**. The remaining **quarter share** is further divided by two, with half being **retained** to provide for upkeep and maintenance of the boat and other equipment, and the other half going to Chanda in return for **me** having put up the finance for the boat.

What kind of business organisation is being operated.  
Give reasons?

(20 marks)

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END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY SUPPLEMENTARY EXAMINATIONS - SEPTEMBER, 1985

L 420

BUSINESS ASSOCIATIONS

TIME: TWO HOURS (Plus 10 minutes to read the Question Paper).

ANSWER: QUESTION ONE and any other TWO Questions.

1. Write critical notes on each of the following cases:-

- (a) J.P. Karnezos v Hermes Safaris Limited [1978] Z.R. 197
- (b) Mwanza (F K.) v National Transport Corporation of Zambia Ltd and Another [1979] Z.R. 129.
- (c) Antoine Attala Trust Ltd. v. Registrar of Companies [1972] 1 A.L.R. comm 300.
- (d) Baker v Raine Engineering Company Ltd. [1971] 3 ALR Comm 264.

(40 marks)

2. (a) The relationship between shareholders and directors with regard to management of company affairs is not an easy one.

Discuss the problems that may be encountered in this relationship using decided cases to illustrate your points

- (b) Explain the dilemma of a nominee director in a joint-stock company

(30 marks)

3. Bwalya, who had been a sole trader for the past ten years, sold his business to a company called Bwalya Investments Ltd. - a company which is not founded on the concept of a joint-stock venture as all the shares are owned by Bwalya. The reason for selling the business to the company was to put Bwalya beyond the reach of creditors since he thought that the concept of separate legal personality would apply. This notion was entertained by Bwalya until last month when Masiliso filed a suit against the former for debts incurred by Bwalya Investment Ltd. Bwalya has intimated that he intends to defend the action. What is your advice to him?

(30 marks)

L 420BUSINESS ASSOCIATIONS

- 4 RURALCO Ltd is a parastatal company wholly-owned by the Government. According to Government policy declared at Mulungushi Rock, this company was ordained to serve as a Government agent in the development of rural areas. The memorandum of association of this company have not included rural development as one of the objects of the company. The articles of association, on the other hand, have provided that the company should be controlled by the shareholders, namely, the Minister of Finance who owns 1,999 shares and his Permanent Secretary who owns 1 share. Notwithstanding the above arrangements the Government has formed the Ministry of Rural Upgrading and has charged this Ministry with responsibility for the overall operation of RURALCO - that is to say, this Ministry is responsible to both Cabinet and the President on all the affairs of RURALCO. Advise the Ministry of Rural Upgrading on how it should go about discharging its responsibilities.

(30 marks)

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END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - JULY, 1985

L 440

CONFLICT OF LAWS

TIME: THREE HOURS. (Plus 10 minutes for reading the question paper)

ANSWER: ANY FOUR QUESTIONS.

- Q1. "If Public International Law is of vital importance in the interest of world peace, as indeed it is, its counterpart Private International Law is equally important in the interest of the social and commercial well-being of society-----"

Cheshire (1947).

In light of the above statement discuss what you think has been the major contribution of conflict of laws to the intercourse between subjects of different nations of the world.

- Q2. (a) Compare and contrast Domicile and Nationality.  
(b) A is born in Zambia with parents domiciled in Ghana. In his infancy he is taken to Zimbabwe where he resides for the next 40 years. He then leaves Zimbabwe with the intention of settling in Malawi permanently, but he dies in a road accident on the way to Malawi.

With the help of decided cases determine A's domicile at the time of his death.

- Q3 (a) Briefly discuss the functions of proper law of contract.  
(b) How will the Zambian courts determine the proper law of the following transaction.

X is a Zambian businessman resident in Lusaka. He executes a power of attorney in Lusaka in the English language. In that power of attorney, X empowers D, a resident of Harare, to buy shares for him in a corporation doing business in Harare. These shares are then duly registered in the name of X.

Six months later X decides to rectify the registration of the shares claiming irregularities in their purchase and registration.

- Q4. Mambo and Sons is a Zambian importer of pharmaceutical products and runs a chain of Chemists throughout the country. They have a contract with Smith Inc., a New York manufacturer of the said products.

Ten months ago Mambo and Sons received a regular consignment of drugs from Smith Inc. Among that consignment was "Pepto-Bismol" a well known remedy for digestive upsets.

The contract for this sale contained a clause to the effect that the "property should pass in New York and that the contract shall be governed by the law of New York state."

D, a Lusaka resident bought "Pepto-Bismol" from Mambo and Sons Chemist in Cairo Road. He took two tablespoons of it as prescribed by the manufacturer for his digestive upset. D suffered severe gastritis (inflammation of the stomach) as a result. He stayed in hospital for three months. Subsequent investigations revealed that the manufacturer had used a wrong formula in the manufacturing process.

With the help of decided cases advise D as to his legal rights.

- Q5. (a) Briefly discuss the effect of mistake on a foreign judgement whose recognition and enforcement is being sought in Zambia.
- (b) Puma Ltd is a Company whose registered office is in Lusaka and its place of business is Zambia. It entered into an agreement with Zack Ltd, a Zimbabwean Company.

By that agreement Puma Ltd was to supply aluminium sulphate to Zack Ltd, delivery to be done in Harare.

In January this year Eddie, a managing director of Puma Ltd, took<sup>a</sup> business trip to South Africa. While waiting for a connecting flight back to Lusaka (from South Africa) at Harare Airport, Eddie was personally served with a writ against Puma Ltd for short delivery of aluminium sulphate to Zack Ltd. Eddie returned to Lusaka without participating in the action in Harare. Judgment was entered against Puma Ltd and<sup>in Harare</sup> damages of K50 000 were awarded to Zack Ltd.

Zack Ltd has now decided to seek recognition and enforcement of this judgment in Zambia.

With<sup>the help of</sup> decided cases, advise the parties.

3. L 440 CONFLICT OF LAWS.

Q6 Mwansa is from Luapula Province of Zambia, but is resident and domiciled in Lusaka Province. He is engaged to Mweemba, a girl from Southern Province, who is also resident and domiciled in Lusaka Province. They plan to celebrate their marriage in December in Lusaka.

In Luapula, Lobola is calculated in money terms, usually around K200.00. In Southern Province it is calculated in cow terms, usually 6 heads of cattle. In Lusaka Province, the position is not clear.

Assuming that Luapula, Southern and Lusaka Provinces are separate legal entities with their own state laws in a federal system of Zambia, <sup>as</sup> (indeed they may be <sup>so regarded</sup> for the purposes of customary law), how would the lobola question be settled?

7. Write short notes on any two (2) of the following

- (a) Foreign Court theory (in renvoi)
- (b) Domicile of origin.
- (c) Finality of judgment (in Recognition and Enforcement of Foreign judgments).
- (d) Implicit choice of law (in contract)

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END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - JULY, 1985

L 430

PUBLIC INTERNATIONAL LAW

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

ANSWER: FOUR QUESTIONS. AT LEAST ONE FROM EACH SECTION

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SECTION A

(You must answer at least one question from this section)

- Q1. Mwanza is a cannabis dealer. While in Zambia, Mwanza and Josephine conspire to<sup>and do infact,</sup> smuggle cannabis to England. Mwanza and Josephine contact Benjamin, who is a drug dealer of<sup>international</sup> reputation. Unfortunately Mwanza and Josephine are apprehended by English Police. The police are now considering the possibility of prosecuting Mwanza and Josephine.
- Discuss the basis of the jurisdiction of the English Courts over Mwanza and Josephine. Can the Zambian courts exercise jurisdiction over Mwanza, Josephine, and Benjamin?
- Q2. Discuss any three of the following with respect to the relation between municipal law, and international law:
- (a) the dualist theory;
  - (b) the monist theory;
  - (c) adoption theory;
  - (d) transformation theory.
- Q3. His Excellency Charles Mabuku, is accredited to India as Zambia's High Commissioner. Mr. Mabuku casually associates with one Ashok who is a well known Indian dealer in illicit drugs. The Indian Police are suspicious of Mr. Mabuku's association with Ashok. One night, the police spot Mr. Mabuku's official car parked at a dark corner in the streets of New Delhi. The police become curious upon seeing Ashok alight from Mr. Mabuku's car, carrying two small bags. They immediately approach Ashok who, upon seeing the Police, flees. Mr. Mabuku drives away at a tremendous speed. Ashok is apprehended by the police. The police find cannabis in the bags that Ashok was carrying. Ashok reveals that he is merely a

a cannabis carrier for Mr. Mabuku. This news quickly spreads around New Delhi. Students at New Delhi University demonstrate at the Zambian Embassy against the involvement of Zambian diplomats in illicit drug trafficking in India. The students smash windows of the Zambian Embassy building and manhandle several persons in the building, including Mr. Mabuku. In spite of this incident, the Indian government wishes to search Mr. Mabuku's official residence and office. Discuss the legal issues involved and advise the Indian government accordingly.

The Exclusive Economic Zone is a delicately balanced compromise. The recognition of the rights<sup>of</sup> neighbouring land locked states<sup>of</sup> in the Zone is without prejudice to the rights of the coastal state. In order for these states to realise their different interests in the zone, they must respect and accomodate their rights in the zone. Assess the extent to which a neighbouring land locked state may realise its rights in the Exclusive Economic Zone.

#### SECTION B

(You must answer at least one question from this section)

Discuss the effect of the principle of unanimity among the five permanent members of the Security Council in maintaining international peace and security. Does the General Assembly have any role under the charter of the United Nations in the maintenance of international peace and security?

The International Court of Justice has no compulsory jurisdiction. It has, however, a contentious and an advisory jurisdiction. Discuss these two jurisdictions.

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - JULY, 1985

L 450

INTERNATIONAL TRADE AND INVESTMENTS

TIME: THREE HOURS (Plus 10 minutes for reading the question).

ANSWER: ANY FOUR QUESTIONS

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- Q1. Compare and contrast the applicable procedures and permissible measures available under the GATT regarding action taken by a country:
- (a) to protect its balance of payments
  - (b) to safeguard a particular sector of its economy.
- Q2. Discuss fully the measures that have been taken at international level towards the stabilization of commodity prices to improve the export earnings of commodity producers.
- Q3. The Lome Convention and the GSP schemes have a common goal - development assistance to the third world. What advantages and disadvantages do you see in the two arrangements? Put the two schemes in proper world trade perspective.
- Q4. Describe the different forms of foreign investment and the role played by multinational corporations in the economic development of host countries.
- Q5. National governments have taken fairly different approaches to negotiation of transnational rules on multinational enterprises (MNEs). The more developed countries of North America and Europe have focussed on the establishment of rules to guarantee fair competition among firms and to harmonize or unify national policies toward multinational firms. The less-developed countries of Latin-America, Africa and Asia are in many instances pushing for and setting mandatory constraints on MNEs' operations, including requirements of local ownership, content and control.

Discuss the various issues involved.

- Q6. The Convention on Settlement of Investment Disputes (CSID) is part of the world-wide efforts to settle investments disputes peacefully. Consider the virtues of this convention.

2. L 450 INTERNATIONAL TRADE AND INVESTMENTS

- Q7. The Tokyo code on Subsidies and Countervailing Duties has been hailed as one of the major successes of the MTN-Tokyo. Assess its importance to world trade.
- Q8. Zambia has just concluded a trade agreement with Zimbabwe whereby the two nations would accord each other duty-free imports. Zambia is a member of the GATT, Zimbabwe is not, Kenya, a member of the GATT, asks Zambia to extend similar terms on Kenyan exports to Zambia as those accorded to Zimbabwean exports to Zambia. Zambia refuses pointing out that Zimbabwe is a newly independent state and need to be assisted in a practical manner and further that Zimbabwe is not a member of the GATT.
- Kenya takes the matter to the Contracting Parties, saying that as a result of the Zambia-Zimbabwe trade agreement Kenyan exports to Zambia have suffered a reduction.
- (a) Discuss the issues involved and the likely result.
- (b) Would your result be different if Zimbabwe were a member of the GATT.

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END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY SUPPLEMENTARY EXAMINATIONS - SEPTEMBER, 1985

L 450

TIME: THREE HOURS

ANSWER: FOUR QUESTIONS

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1. "Equal treatment in international trade is not possible among unequals".

Discuss this statement with reference to the "Most favoured-Nation clause" in the GATT.

2. One of the main aims of UNCTAD is to establish a new international economic order. How has this been evolving?
  3. Discuss the role of foreign investment in national development and the forms this may take.
  4. What factors are important to a foreign investor.
  5. Outline the principal advantages in the World Bank Convention 1965- on arbitration (CSID).
  6. Transnational Corporations are always suspected of malpractices in most countries. What approaches have been adopted to counter this.
  7. Suggest proposals to improve the working of the two schemes: Stabex and sysmin.
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END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - JULY, 1985

L 470

CRIMINOLOGY

TIME: THREE HOURS (Plus 10 minutes to read the question paper).  
ANSWER: ANY FOUR QUESTIONS.

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1. "A case can enter a legal system from two possible directions. A citizen may set the legal process in motion by bringing a complaint, or the state may initiate a **complaintt** upon its own authority through the police with no participation of a citizen **complainant**. In the first sequence, a legal agency reacts to a citizen, so we may refer to it as a reactive mobilization process. In the second sequence where a legal official acts with no participation from a citizen, we may speak of proactive mobilization process"

Black (1980), p43

In the light of the above statement discuss critically the role of a private citizen in the production of criminal statistics in Zambia.

- . In order to reduce the current crime wave in Zambia, we need a strong and effective police force. At the same time, Zambians would like to see that police activities in curbing crime are **confined** within the provisions of law.

How can Zambia ensure this balance?

Discuss.

Rehabilitation or Reformation is the official policy on treatment of offenders in Zambia. Prison records, however, show that between 35-45% of our prisoners have one or more previous convictions. This high recidivism rate may suggest a need for rethinking of rehabilitation strategy.

In your view, what factors could this apparent failure of rehabilitation be attributed to? Your answer should include suggestions as <sup>to</sup> how the rehabilitation program could be improved.

"The object of the Juveniles Act Chapter 217 of the Laws of Zambia is that as far as possible juveniles should be kept out of prison" Mvula v The People (1976) ZR 80.

In the light of the above dictum give a critical assessment of the efficacy of non-custodial institutions provided for juvenile offenders in Zambia.

There are several dams or reservoirs around towns and cities throughout Zambia. We several times hear of deaths by drowning in these dams, especially of children.

Suppose our Parliament wishes to make it a criminal offence punishable with 3 months imprisonment or K300.00 fine in lieu or both, for failure to come to the rescue of a drowning child.

What considerations should be taken into account in framing this legislation?

Discuss.

With specific examples, assess the view that urban violent crime in Third World cities is a result of the rapid urbanization process.

Write short notes of any two of the following:

- (a) Fines
- (b) Death Penalty
- (c) The subject matter of Criminology
- (d) The theory of Functionalism.

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END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - JULY, 1985

L 480

LABOUR RELATIONS

TIME: THREE HOURS (Plus 10 minutes for reading the question paper)

ANSWER: FOUR QUESTIONS, ONE FROM EACH SECTION

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SECTION A:

ANSWER ONE QUESTION FROM THIS SECTION

1. Discuss the rights and obligations of the company and the other parties in EACH of the following industrial situations:
  - (a) In the course of a campaign to form a trade union, some of the militant employees persuaded others not to work with those who refused to join the union;
  - (b) When a majority of the company's employees established a union, the management had already signed individual contracts with each of the company's employees. Therefore the management refused to bargain <sup>with the union</sup> on matters covered by the existing individual contracts and contended that even when such contracts expired those employees who were not members of the union should be allowed to continue serving under individual contracts;
  - (c) After the company had entered into a Recognition Agreement with the union, the management met with the union representatives and listened to their suggestions regarding conditions of employment, took account of the suggestions made by the union and altered management policy as it thought fit but refused to enter into a collective agreement with the union.
  - (d) Following an impasse during negotiations regarding an increase in wages, the management unilaterally gave a pay rise to all employees exceeding any which the management had offered during the negotiations;
  - (e) Some of the employees suggested to the management that if they could obtain better terms on their own they would do away with the union.

2. "Strong unionism marks a fundamental disintegration of the very bases of political order, a disappearance of free exchange of the State's monopoly of coercion". Discuss

SECTION B.

ANSWER ONE QUESTION FROM THIS SECTION

3. Critically examine the Right to Strike, and evaluate the machinery for the settlement of collective disputes under the Industrial Relations Act (Cap. 517) in terms of the objectives which the Act attempts to promote in relation to collective bargaining.
4. Compare and contrast the respective functions of Work Councils and trade unions under the Industrial Relations Act (Cap. 517) and show the extent to which these institutions meet the standards prescribed by the Freedom of Association and Protection of the Right to Organise Convention, 1948, and the Co-operation at the Level of the Undertaking Convention, 1952, as the case may be.

SECTION C.

ANSWER ONE QUESTION FROM THIS SECTION

5. Discuss the procedure for international supervision over the application of the Conventions and Recommendations adopted by the International Labour Conference.
6. "The main objectives of labour policy in Northern Rhodesia include the establishment of fair working conditions for those in employment, the maintenance of good relations between employers and employees and the peaceful and expeditious settlement of industrial disputes".  
To what extent is the above statement a fair assessment of the colonial labour policy in Northern Rhodesia especially as regards Africans? Support your answer with reference to at least three colonial commissions' reports.

SECTION D

ANSWER ONE QUESTION FROM THIS SECTION

- Q7. Under the Employment Act (Cap. 512) discuss -
- (a) The application of the Act;
  - (b) The requirements in relation to contracts of foreign employment;
  - (c) The machinery for settlement of disputes and breaches of contract.
- Q8. Describe three duties which are imposed on employers by statute in addition to their common law duties arising out of the contract of employment and discuss the enforcement of such duties.
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END OF EXAMINATION