

THE UNIVERSITY OF ZAMBIA
FIRST SEMESTER EXAMINATIONS
SCHOOL OF LAW
1996/97 AND MARCH, 1998

MARCH 1998

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1996/1997

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THE UNIVERSITY OF ZAMBIA
UNIVERSITY FIRST SEMESTER EXAMINATIONS - JUNE 1996

L III

LEGAL PROCESS

(CERTIFICATE IN LAW)

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

INSTRUCTIONS:

- (i) ANSWER ANY FOUR QUESTIONS
 - (ii) ALL RELEVANT AND UNMARKED STATUTES MAY BE BROUGHT INTO THE EXAMINATION ROOM.
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1. Upon your return to your station, your Officer-in-Charge requests you to address other officers on the topic:

"The Applicability of English Law in Zambia"

The Officer-in-Charge would like you to explain to your colleagues the Zambian Laws which make the application of English law in Zambia possible and why such a situation should exist in Zambia 32 years after independence.

- 2. Discuss in detail the applicability of African customary law in the various courts in Zambia.
- 3. A layman has heard that Lawyers follow the previous decisions of Superior Courts. He wishes to know how this system works in Zambia and whether it serves any useful purpose. Advise him.
- 4. Discuss the composition and powers of the following courts:
 - a) the Supreme Court
 - b) the High Court
 - c) the Subordinate Courts
- 5. Outline the various rules that are utilised by lawyers in interpreting statutes.
- 6. Article 20 of the Constitution of Zambia provides that an accused (a person charged with a criminal offence) is free to testify in his own defence but that he cannot be compelled to do so against his will.

THE UNIVERSITY OF ZAMBIA

UNIVERSITY FIRST SEMESTER EXAMINATIONS - JUNE 1996

L 251

CONSTITUTIONAL LAW I

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

ANSWER: FOUR (4) QUESTIONS

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

1. Explain clearly the doctrine of the Rule of Law. What is its rationale?
 2. Critically examine the meaning, scope and rationale of the doctrine of the separation of powers. To what extent has the separation of powers been implemented under the American constitution?
 3. Compare and contrast the presidential and westminster systems of government. Which of the two systems do you prefer and why?
 4. What do you understand by the concept of representative democracy?
 5. It has often been said that most African countries have had constitutions without constitutionalism. Explain.
 6. Discuss the differences between the Northern Rhodesia constitutional order of 1911 and that of 1924.
 7. Discuss the idea of a constitution, various ways of making a constitution and how a constitution may achieve legitimacy.
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END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY FIRST SEMESTER EXAMINATIONS - JUNE 1996

L 321

LAND LAW AND PROPERTY RELATIONS

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

INSTRUCTIONS:

1. ANSWER ANY FOUR QUESTIONS. UNLESS WHERE OTHERWISE INDICATED ALL QUESTIONS CARRY EQUAL MARKS.
 2. STATUTES MAY BE BROUGHT AND BE CONSULTED IN THE EXAMINATION ROOM.
 3. CREDIT WILL ONLY BE GIVEN FOR CLARITY OF PRESENTATION AND A DEMONSTRATION OF UNDERSTANDING THE ISSUES INVOLVED.
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- Q1. According to Professor Denman, property relations can always be arranged and understood according to whether they are based on individual or communal principle. illustrate Denman's model of the arrangement of those property rights and indicated which one fits most appropriately in the Zambia's land tenure system. (25 marks)
- Q2. (a) State and explain the Rule against Perpetuities at common law. (5 marks)
- (b) Determine, with reasons, the validity of the following dispositions at common law:
- (i) A gift by will "to A for life, with remainder to A's first son to be called to the Bar in fee simple". A being alive and having two sons, B and C, at the testator's death. (5 marks)
- (ii) A gift by will "to the first of A's son's to marry". A being dead and having two sons, B and C. (5 marks)
- (iii) A gift by will "to all my great grandchildren living twenty one years after the death of the survivor of my brothers, X, Y, and Z". (5 marks)

- (iv) A gift by will in Zambia in 1996 "to A in trust of my son B (a minor) until he becomes 30 years old". (5 marks)
- Q3. (a) State the rule in *Walsh v Lonsdale* (1882), 21 Ch.D.9. To what extent is this rule relevant in Zambia? (12 marks)
- (b) Whose fixtures are they in the following relationships?
- (i) Devisee and personal representative (5 marks)
 - (ii) Vendor and purchaser (5 marks)
 - (iii) Mortgagor and mortgagee (3 marks)
- Q4. Explain and qualify the following maxims
- (i) "Quicquid plantatur solo, solo credit" (12.5 marks)
 - (ii) "Cujus est solum ejus est usque ad coelum et ad inferos" (12.5 marks)
- Q5. "Joint tenancy and tenancy in common are but an illustration when two or more people hold an interest in land in possession at the same time. There are, however, a number of significant differences between them." Discuss.
- Q6. Write brief notes on the following
- (i) The equity of redemption and the equitable right to redeem.
 - (ii) The mortgagee's means of enforcing his security. (25 marks)
- Q7. Discuss the nature and main characteristics of a licence. (25 marks)

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY SECOND SEMESTER EXAMINATIONS - NOV/DEC 1996

L 262

FAMILY LAW

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

INSTRUCTIONS:

- (i) ANSWER QUESTION ONE AND ANY OTHER THREE QUESTIONS.
 - (ii) YOU MAY REFER TO ANY RELEVANT AND UNMARKED STATUTES.
-

1. Musonda and Inonge were married in April 1980 and unknown to them they were step-brother and sister. On learning that they were actually related, the two ran away to Malawi. This was done to avoid embarrassment and to escape from being prosecuted for incest. Whilst in Malawi Inonge continually thought of coming back home to Zambia and was always in touch with her relatives. Musonda, meanwhile, considered Malawi to be his permanent home. He had opened businesses, built houses in his name and had become a Malawian citizen. Inonge gave birth to Junior who, at 15 years of age, was big and good looking. Whilst in Zambia Junior fell in love with Tracy, 19, a girl from Serenje. He paid K1.5 million to the parents of Tracy and thereafter they started living together. This was done without the knowledge of Junior's parents. Junior now wishes to convert the marriage to a statutory one arguing that marriages under Customary Law are old-fashioned.

Advise Junior on all the issues involved regarding firstly, the validity of their marriage and secondly, the possibility of marrying under the Act.

2. (a) How would you differentiate a common law marriage from the presumption of marriage?
- (b) Ben and Sally, both believers in the Christian faith, met at a Christian Fellowship and immediately fell in love. Some weeks later they tasted the forbidden fruit and to their amazement, Sally became pregnant. Ben had no plans whatsoever of getting married. However Sally threatened that if they did not get married immediately she would expose their immoral activities to the Fellowship to which they belonged.

Fearing a scandal and embarrassment, and in order to appease his parents, Ben agreed and the two were married. Ben is not happy with the marriage and wants to contest its validity on the ground that he had not consented to it.

Advise him.

3. Critically comment on the decisions in:

- (a) Muyamwa V Muyamwa (1976) Z.R. 146
- (b) The People V Katongo (1974) Z.R. 200 in the light of The People V Nkhoma (1978) Z.R. 122

4. (a) Briefly explain five grounds which may render a marriage void.

- (b) Joe and Sipiwe contracted a marriage under the Marriage Act in December, 1991. There were no children of the marriage and this was because Joe, on having learned that Sipiwe had had a child with another man, had developed repugnancy towards even touching her. In fact since the solemnisation of their marriage, the couple had not had any sexual intercourse at all. The marriage was virtually dead. Joe decided to marry another woman, Shupi under Tumbuka Customary Law. Sipiwe is not happy with the arrangement and wants her brother, a teacher, to contest the validity of Joe's second marriage to Shupi. Advise her.

5. Jane and Tom were married under the Marriage Act. Jane had always wanted to own a boutique of her own. She could not, however, do so because she was not employed and her husband's income, on which she solely depended, could not afford to finance one for her. She, thus, formulated a plan. She started saving part of the house-keeping allowances with which Tom was ever dutifully supplied her. This continued over a period of time until she finally managed to open a boutique from the savings. Tom on learning of the boutique wants it to be in his name arguing that it belongs to him since the capital used belonged to him.

Advise Jane of her rights, if any, in the boutique.

6. Mrs Sauzande, who had filed a petition for maintenance has just discovered that her husband has made a Will giving his block of apartments to his uncle. Although Sauzande runs several businesses, a good part of his income comes from the apartments which he has given to his uncle under the Will. Mrs Sauzande's petition is an interim maintenance petition pending the hearing of her petition for judicial separation. Advise Mrs Sauzande on:

- (a) Whether she can legally restrain her husband from transferring ownership of the block of apartments.
 - (b) The legality or otherwise of her husband's alleged transfer of the block of apartments.
 - (c) The technical term of her maintenance petition.
 - (d) The appropriate judicial office to hear her maintenance petition.
7. The Matrimonial Causes Act, 1973 of England is applied in Zambia under the provisions in the High Court Act, Cap 50, making the law of England 'for the time being in force' the law of Zambia in matrimonial causes.
- (a) Consider the desirability of this arrangement; and,
 - (b) Give arguments for and against extending the maintenance and property provisions of the Matrimonial Causes Act 1973 to marriages contracted under Customary Law if such an arrangement were to be proposed.

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY FIRST SEMESTER EXAMINATIONS - JUNE 1996

L 331

COMMERCIAL LAW

TIME: THREE HOURS

ANSWER: ANY FOUR QUESTIONS

- =====
1. The Sale of Goods Act makes a difference between specific goods and unascertained goods. Discuss why this distinction is important.
 2. Phiri Mutale has instructed Bwalya Musonda to complete, on his behalf, the necessary papers in support of an application for a mining licence for a plot in Chief Nkana's area on the Copperbelt. Before issuing the instructions Mutale had retained a geologist who had surveyed the area and his preliminary report showed that there were good deposits of emerald. Musonda collected the papers and indicated that he was the applicant of the licence for the plot in question.

A few days later Musonda sent a report that the exercise had been completed and that the licence had already been issued in the name of Mutale. Mutale gave Musonda K5 million to buy the necessary equipment and recruit people to start mining. After two months Musonda sent another report that he had not found any emerald in the area, but was still going ahead with the exercise.

A few days later Mutale learnt that Musonda had given one Mamadou Keita a Senegalese national 850 grammes of emerald to sell for him in Brussels. Upon receiving this information Mutale decided to carry out some investigations. He learnt that the area covered by the licence was rich in emerald and that Musonda had in fact mined well over 5 Kg of emerald.

Mutale later went to Ministry of Mines to find out more about the plot. He was shocked to learn that the licence had been issued in the name of Bwalya Musonda.

Mutale feels betrayed by Musonda a person whom he had brought up and assisted like his own brother. He has now come to you for legal advice. He wants to know whether it is possible for him to get the licence changed into his name and all the proceeds from the mine including the stones given to Keita.

Advise him.

3. Write brief notes on the following:

- (a) Implied authority
- (b) Ascertained goods
- (c) del credere agents
- (d) Agreement for sale

4. Mukando Jordan is a commercial farmer in Mkushi who is expecting to harvest well over 500,000 bags of maize due to the good rains received in the last season. He has been approached by Ben Mwanza, who is one of the maize marketing agents. Mwanza has found a good market for maize in Ethiopia, where he has been assured that he can get three times more than he can get, if he sold the maize within Zambia, or to any of the neighbouring countries.

Mwanza approached Mukando and offered to buy his maize, once harvested and packed in bags, at a price which according to Mukando was more than fair. Mwanza is interested in buying half of the expected number of bags of maize and is prepared to pay Mukando the amount due in advance.

Before committing himself, desperate though he was for money, Mukando has come to you and wants to know his legal position in the event that he went ahead with the deal and accepted the money and subsequently:

1. He wants to change his mind if he is offered a higher price for the maize, a possibility which could not be ruled out as the maize market was still turbulent.
2. The maize perished through fire, a possibility which could not be ruled out as the maize was still in the field.

Advise.

Peter Kapasula has been approached by Elias Kalusolo who wants to send him to Luapula Province to carry out a number of business transactions on his behalf. In return Kalusolo has promised to pay Kapasula a fixed sum of K2 million for his services. Kapasula is a very prudent man before accepting the job he has decided to consult you on the matter. He wants to know specifically:

- (a) His obligations to Kalusolo if he accepted the offer from Kalusolo
- (b) His position towards the people he has been instructed to deal with in the event of him failing to discharge his obligations towards them.

6. It is the end of the first semester and you have four weeks before the next one begins. As a way of passing time and also to help you have a feel of what it means to be a lawyer the senior partner in Chandwe Musonda & Partners has allowed you to spend two weeks in his firm just to acquaint yourself with the day to operations of a law firm.

The senior partner has a case whose determination will depend on the determination of the validity of the exclusionary clauses used in the contract. He has asked you to do a short brief on the position of the Courts on exclusionary clauses.

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY FIRST SEMESTER SUPP/DEFERRED EXAMS - JULY 1996

L 331

COMMERCIAL LAW

TIME: THREE HOURS

INSTRUCTIONS: ANSWER ANY FOUR QUESTIONS

1. Peter Kapasulo is engaged to a lady by the name of Petronella Mwanza whom he has known for five years. They have set 25 August, 1996 as their wedding day. On 1 June, 1996 Peter instructed Saville Tailors to make a tuxedo for him at the cost of K1,500,000.00. He was told that the suit would be ready on 15 July, 1996. As promised the suit was ready and Peter was impressed by the quality of craftsmanship, the tuxedo fitted him very well.

Peter could not, however, collect it. The suit needed to be packed in a special box which was yet to be made. He was advised to collect the tuxedo the following day at 16.00 hours. But due to some other commitments Peter was unable to collect the suit, until a week later. He was shocked to learn that the tuxedo had been sold to another person who had paid twice the amount he had paid. Peter has now come to you as a lawyer, he wants to know:
 - (a) his rights in the light of the facts stated above.
 - (b) his rights if the tuxedo had been stolen or destroyed by fire.
2. Jordan Mukando is one of the many nouveau rich in Zambia after dealing in maize using government funds. In his quest for an identity he has ordered a custom made car from AZ Motors who are manufacturers of Buick cars in Zambia. He submitted his specification and paid US\$150,000.00, the purchase price.

A few weeks later Mukando phoned the manufacturers and advised them that the car must be metallic blue instead of white as earlier advised. Unfortunately when the car was delivered six months later he discovered that it was metallic green in colour. This development has disturbed him and he has told you, as a lawyer, that he wants to rescind the contract and send back the vehicle. He wants you to advise on the matter.

3. You have just done an assignment on the law of hire purchase in Zambia, and one of the observations you and most of your colleagues have made is that the law on hire purchase is archaic and in dire need of revision in order to make it relevant to the material conditions obtaining in Zambia. Discuss some of the changes which are necessary.
4. Joseph Kangwa is a general dealer and has in the past entered into agency contracts with Bwalya to run various errands. On 30 May, 1996 Bwalya, without the knowledge of Kangwa entered into an agreement on behalf of Kangwa with the Government of Republic of Zambia through the Ministry of Education for the supply of 100 bags of beans every month to boarding schools on the Copperbelt. Kangwa has come to you, he wants to know his legal position in the arrangement.
5. Compare and contrast
 - (a) Agency of necessity and agency by estoppel
 - (b) Sale and agreement to sell

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY SECOND SEMESTER EXAMINATIONS - NOV/DEC 1996

L 332

COMMERCIAL LAW II - INSURANCE AND NEGOTIABLE INSTRUMENTS

TIME: THREE HOURS (plus 15 minutes to read the question paper)

INSTRUCTIONS: ANSWER ANY TWO QUESTIONS FROM EACH SECTION.

SECTION A

1. Mr. Mutinta, owner of "Deluxe Coach Company" sought to insure one of his coaches against theft. He approached the Broken Hills Insurance Company whose employee furnished him with a proposal form.

In the proposal form, Mr. Mutinta stated that the coach was always kept overnight at a garage situated at "plot 1520 Lumumba road". He further stated that the proposal was to be the "basis" of the contract.

The proposal was accepted by the insurance company and Mr. Mutinta thereupon paid his premiums as agreed.

One night early this year as the coach was parked at Mr. Mutinta's Lusaka West farm, it was stolen by a gang of heavily armed robbers.

Mr. Mutinta has now approached Broken Hills Insurance Company in an effort to recover from the policy.

As lawyer for the Insurance Company, state the Company's position on the matter.

2. Mulenga, a recent graduate from the University of Zambia, obtained a loan from his employers and purchased a good second-hand car. He insured his car with Pronto Insurance Company. The insurance policy he obtained covered him in respect of third party risks.

One Saturday afternoon after watching his favourite football team win a trophy and in a mood of excitement he negligently killed a pedestrian whilst driving at an excessive speed. He was arrested, charged and found guilty of manslaughter and jailed for two years with hard labour. Upon release from prison, a representative of the deceased successfully sued Mulenga in a civil action for damages.

Mulenga has now approached the insurance company claiming indemnity under the policy in respect of the damages which he had to pay to the representative of the deceased. The insurance company contends that it is not liable on the grounds that it is against public policy to indemnify a man against the civil consequences of his criminal act.

Mulenga has now sued the insurance company on the policy and the case has been brought before you for judgement. Write your judgement.

3. Ms. Chibeka made a proposal for a life policy to ZAMSTATE Insurance Company. The proposal was made on a standard form issued by the insurance company. On this form she made statements as to her health and other matters and concluded with a declaration that the statements were true and were to be taken as the basis of the contract. The proposal was accepted by ZAMSTATE Insurance Company at a specified premium but upon the terms that no insurance should take effect till the premium was paid.

Before Ms. Chibeka pays her first premium, you as a representative of the insurance company receives information from your usually reliable source, that there has been a material alteration in the state of the health of the proposer. A day after you receive this information Ms. Chibeka comes to your office to pay her first premium.

With the aid of suitable examples explain what course of action you would take and why?

4. In relation to the law of Insurance, write brief notes on the following:
- (i) The principle of indemnity
 - (ii) The doctrine of *uberimae fides*
 - (iii) Insurable interest

SECTION B

5. Chete, the Chief Accountant for a popular cleaning and sanitation company called Rodent Co. received a cheque for K1 million being payment to his company for services it rendered to Mr. Tango. The cheque was drawn on Prudential Bank by Mr. Tango who was a trusted customer of Prudential Bank. Although the cheque bore on the face of it two parallel lines and the words "and Co." in between, these were written in pencil. As a signatory to all Rodent Co. negotiable instruments, Chete wrote "Zulu per pro Rodent Co." on the back of the cheque. He also rubbed off the crossing on the cheque and paid it into his personal account with "Finale Bank". Four days later he withdrew the entire amount.

Discuss the liabilities of the following persons to the true owner of the cheque, that is, Rodent Co.

- (i) Prudential Bank
- (ii) Finale Bank
- (iii) Chete
- (v) Mr. Tango

6. In relation to negotiable instruments, critically discuss the essential characteristics of

- (i) A holder
- (ii) A holder for value
- (iii) A holder in due course

7. Mandondo works in the Accounts section of his employer's firm which deals in the production of office equipment. He informs his employer that K5 million is owed by the employer to Malaiti Company for services rendered when this was not true. As a result of this misrepresentation a cheque is drawn on the employer's bank by Mandondo in favour of Malaiti Company. The cheque is not crossed and Mandondo forges the endorsement in the name of Malaiti Company and negotiates it at a popular night spot called "watering hole" where he is a regular customer. His employer meanwhile has got wind of the forgery and issues instructions to stop the payment of the cheque.

- (a) Advise whether the "watering hole" is entitled to the amount of the cheque.
- (b) Would your answer be the same if there was no such firm as Malaiti Company?

8. Critically discuss the effect of forgery on

- (i) bill of exchange
- (ii) cheque
- (iii) bank draft

END OF EXAMINATION

Discuss the liabilities of the following persons to the true owner of the cheque, that is, Rodent Co.

- (i) Prudential Bank
- (ii) Finale Bank
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7. Mandondo works in the Accounts section of his employer's firm which deals in the production of office equipment. He informs his employer that K5 million is owed by the employer to Malaiti Company for services rendered when this was not true. As a result of this misrepresentation a cheque is drawn on the employer's bank by Mandondo in favour of Malaiti Company. The cheque is not crossed and Mandondo forges the endorsement in the name of Malaiti Company and negotiates it at a popular night spot called "watering hole" where he is a regular customer. His employer meanwhile has got wind of the forgery and issues instructions to stop the payment of the cheque.

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END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA
UNIVERSITY FIRST SEMESTER EXAMINATIONS - JUNE 1996

L 341

ADMINISTRATIVE LAW I

TIME: THREE HOURS

ANSWER: QUESTION 1 AND 3 OTHERS

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

- Q1. "The level of development of Administrative Law in any given country invariably depends on the nature and extent of public administration in that country which in turn depends on the nature of the functions which are assumed by the country's Government as being within its province to undertake."

Do you agree with the above assertion? Discuss with the aid of suitable illustrations.

- Q2. (a) Compare and contrast the various types of discretion that you have studied.

(b) Is administrative discretion a necessary evil?

- Q3. The Party for Democracy and Good Governance (PDGG) recently seized the reins of political power in the Sovereign Republic of Geza following the General Elections which were held in the country. The PDGG won the majority in the elections on the platform of its unwavering commitment to transform the country on the basis of strict adherence to the 'Rule of Law' and the doctrine of the 'Separation of Powers'.

You are the Legal Counsel for the PDGG and have been instructed to prepare a brief for the Party's Secretary highlighting your views upon the aforesaid commitment by the PDGG. Prepare your brief.

- Q4. Critically assess the contribution, if at all, which the Local Government Act, 1965, the Local Administration Act, 1980 and the Local Government Act, 1991 have made towards the development and/or otherwise of the institution of Local Government in Zambia.

5. Is delegated legislation a necessary evil?
6. Why should students of Zambian Administrative Law study:-
- (a) The parastatal sector;
 - (b) Service Commissions; and
 - (c) Commissions of Inquiry?
-

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY FIRST SEMESTER SUPP/DEFERRED EXAMS - JULY 1996

L 341

ADMINISTRATIVE LAW I

TIME: THREE HOURS

INSTRUCTIONS TO CANDIDATES: ANSWER ANY FOUR (4) QUESTIONS

NOTE: CANDIDATES ARE ALLOWED TO HAVE IN THE EXAMINATION HALL AND TO REFER TO UNMARKED COPIES OF ANY RELEVANT STATUTE.

- Q1. "Administrative Law has always been a fiction". Discuss.
- Q2. "The Rule of Law is a [doctrine] much declaimed by those who least want to embrace it in practice as much as by the genuine believers".
- Quote from a speech by Chief Justice Mathew Ngulube delivered during a workshop for judges held at Livingstone, Zambia (1996).
- Discuss and evaluate the above quotation clearly highlighting both its significance and/or insignificance in general terms and in relation to the role of judges in the Zambian Society.
- Q3. (a) Compare and contrast Constitutional Law and Administrative Law.
- (b) Is Administrative Law a necessary evil?
- Q4. Why should students of Zambian Administrative Law study the following:
- (a) The Institution of Local Government and;
- (b) The Zambian Civil Service?
- Q5. The pessimist says:
- "It is no more difficult to justify regulations made by such bodies as the Lusaka City Council in theory than it is possible to do without them in practice.
- Are you a pessimitst?

06. Discuss and illustrate the role and contribution, both actual and potential, of the Zambian Courts in the protection of the security of tenure of public servants.
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END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY FIRST SEMESTER SUPP/DEFERRED EXAMS - JULY 1996

L 341

ADMINISTRATIVE LAW I

TIME: THREE HOURS

INSTRUCTIONS TO CANDIDATES: ANSWER ANY FOUR (4) QUESTIONS

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- "It is no more difficult to justify regulations made by such bodies as the Lusaka City Council in theory than it is possible to do without them in practice.
- Are you a pessimist?

Q6. Discuss and illustrate the role and contribution, both actual and potential, of the Zambian Courts in the protection of the security of tenure of public servants.

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY SECOND SEMESTER EXAMINATIONS - NOV/DEC 1996

L 342

ADMINISTRATIVE LAW II

TIME: THREE HOURS

ANSWER: QUESTION 1 AND 3 OTHERS

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

Q1. COMPULSORY (40%)

M.S., a student at the Bauze College of Dramatic Arts (BACODA) was recently expelled from the College following her conviction by the College's Disciplinary Committee for the offence of stealing one book from the College's Library.

M.S. has approached you for legal advice. The following are her instructions to you:

She denies having committed the offence in question. She states that although she was afforded an opportunity to appear before the Disciplinary Committee she was never formally informed of the nature of the charges against her until she appeared before the Committee. She however confirms that she was aware of the likely allegations that she was to face because a day before she could appear before the Committee she was summoned by the College's Librarian who bluntly told her: "This College cannot afford to keep you around here because by the time you complete your course the Library shelves will be half empty."

When the charges were put to her on the date of hearing ~~the~~ M.S. chose not seek a postponement preferring to have the matter determined on the same date.

According to the Disciplinary Rules of BACODA the Disciplinary Committee was to consist of 5 members and any 3 members thereof could constitute a quorum. The rules also provided that one Students' Representative should be present at all the hearings of the Committee. M.S. informs you that at the time when her case was being heard the Committee comprised 4 members, the fifth member having previously resigned from the College.

However, 3 members of the Committee were present throughout the hearing of M.S.'s case although the 3 did not include the Students' Representative because the Students' Union had not been informed of the hearing.

M.S. appeared in person to conduct her defence. She was duly advised of her prerogative to call any witnesses to testify on her behalf. However, she was not allowed to address the Committee when she closed her case.

M.S. also informs you that she believed the decision to expel her from the College was reached after the Disciplinary Committee had taken into account certain allegations of previous misconduct on her part, which had been raised in her absence by one of the members of the Committee, and which she had no opportunity of challenging.

Finally, M.S. states that no reasons were given by the Committee for arriving at the decision to expel her because the Committee was not obliged to do so under the rules governing its procedure.

Advise M.S.

- Q2. "It is a popular misconception that judicial review is only available to challenge decisions made by the Courts, Government or Statutory bodies. This is not the case. Judicial review proceedings may, in certain circumstances, be used in relation to decisions made by a range of public, private and voluntary organisations. It is an increasingly useful means of challenging decisions made in both the public and private sectors."

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

Do you agree with the assertions quoted above? Illustrate your answer with the aid of appropriate case-law from Zambia and /or any other jurisdiction with which you may be familiar.

- Q3. X, a third year law student and a fully paid-up member of the University of Zambia Law Association (UNZALAW) recently incurred the displeasure of the Association's Executive Committee which, in exercise of its powers arising under the Association's constitution, expelled X from the Association. Following the expulsion, X instructed Messrs Rita, Ruth and Celine Advocates to institute legal proceedings in the High Court for Zambia and obtain appropriate redress for him.

In the High Court, Mr. Justice Kamwi took the view that since the Executive Committee had acted within the confines of the Association's constitution - the matter was purely an internal one over which UNZALAW had exclusive jurisdiction and that accordingly, the Court could not interfere with the decision of the Committee.

X is extremely perturbed by the High Court's decision and wishes to appeal to the Supreme Court.

Discuss all the possible arguments that X's Counsel should advance in the Supreme Court, the reasons therefor as well as the likelihood of success of each of the arguments.

Q4. Discuss the significance and/or insignificance of the following cases vis-a-vis the development of administrative law in Zambia:

- (a) SHILLING BOB ZINKA Vs A - G (SCZ Judgement No. 9 of 1991)
- (b) LUDWIG SONDASHI Vs GODFREY MIYANDA (SCZ NO.1 OF 1995)
- (c) MAXWELL MWAMBA AND STORA MBUZI Vs A - G. (SCZ Judgement No. 10 of 1993)

Q5. (a) The Industrial Relations Act of 1971 had made decisions of the Industrial Relations Court "final and unappellable."

In the light of the case law on the finality of decisions of administrative tribunals, discuss the availability or otherwise of any avenues by which the decisions envisaged above could or could not be *impaired*

- (b) Following the enactment of the Industrial and Labour Relations Act No. 127 of 1993 "Any person aggrieved by any award, declaration, decision or judgement of the [Industrial Relations] Court may appeal to the Supreme Court."

Discuss the ramifications of the provision cited above within the context of the arguments for and against the development of a system of specialised administrative tribunals.

Q6. "The Zambian Parliament neither affords effective redress against maladministration and abuse of administrative power nor exercises effective control over such institutions as the Presidency,... Ministers and their departments".

To what extent (if at all) would you agree with the above statement given the mechanisms available to Parliament to provide the redress and exercise the control envisaged therein?

END OF EXAMINATION

✓

THE UNIVERSITY OF ZAMBIA

UNIVERSITY FIRST SEMESTER EXAMINATIONS - JUNE 1996

L 351

HUMAN RIGHTS LAW

TIME: THREE (3) HOURS

INSTRUCTIONS:

1. ANSWER QUESTION 1 AND THREE (3) OTHER QUESTIONS.
 2. CANDIDATES ARE ALLOWED TO BRING IN THE EXAMINATION ROOM
 THE CONSTITUTION OF ZAMBIA (1991) AND THE PREVIOUS
 CONSTITUTIONS OF 1964 AND 1973.
-

[THIS QUESTION IS COMPULSORY]

- Q1. "The Committee which drafted the African Charter on Human and People's Rights was guided by the principle that 'it should reflect the African conception of human rights, [and] should take as a pattern the African philosophy of law and meet the needs in Africa'. It also recognised the value of international human rights standards that many African countries had already promised to respect."

In the light of this statement, examine how the system for the protection and promotion of human rights under the African charter is similar and yet different from the other international and regional systems for the protection and promotion of human rights. Discuss with reference to the rights and duties covered by the charter and the implementational machinery instituted under it.

- Q2. It is said that rights and freedoms cannot constitutionally be guaranteed in absolute terms because "the entrenchment of human rights in the constitution is merely an attempt to strike a more or less permanent balance between the interests of the individual and those of the state."

With the help of the decisions in the Kachasu Case (1967) and the Patel currency case (1968), examine,

- (a) how the courts in Zambia have classified the exceptions or derogations to the guaranteed rights and freedoms; and

(b) the impact of these exception clauses on the outcome of suits on alleged violations of human rights by the state.

- Q3. Critically analyse, with the help of some leading decided cases, how courts in Zambia have interpreted Article 26 of the constitution relating to the safeguards accorded to detained or restricted persons.
- Q4. Write comprehensive comments (illustrating your comments with reference to some relevant decided cases where possible) on three from the following subjects:
- (a) The requirement of Locus standi of the applicant;
 - (b) The Writ of certiorari;
 - (c) The Writ of mandamus;
 - (d) Impact of a declared 'State of Emergency' on constitutional rights and freedoms;
 - (e) The concept of constitutionalism.
- Q5. The existing mechanism or procedure for the enforcement of fundamental rights and freedoms under Article 28 of the constitution of Zambia has been heavily criticised as being 'inappropriate, ineffective, elitist, and formalistic or legalistic.'
- Do you agree?
- If so what other alternative modes for the protection of human rights would you recommend for Zambia?
- Q6. As an ordinary citizen of Zambia what have you noticed to be the major problems or factors hindering progress towards good democratic governance, accountable and transparent rule, and observance of human rights in Zambia?
- Q7. Explain carefully the theoretical and practical nexus and interplay between the ideas of 'constitutional democracy', 'human rights' and a 'limited government'.
-

END OF EXAMINATION

✓

THE UNIVERSITY OF ZAMBIA

UNIVERSITY FIRST SEMESTER SUPP/DEFERRED EXAMS - JULY 1996

L 351

HUMAN RIGHTS LAW

INSTRUCTIONS:

1. TIME ALLOWED: THREE HOURS
 2. ANSWER ANY FOUR (4) QUESTIONS.
 3. CANDIDATES ARE ALLOWED TO BRING IN THE EXAMINATIONS ROOM THE CONSTITUTION OF ZAMBIA (AS AMENDED) 1991 AND THE PREVIOUS CONSTITUTIONS OF 1964 AND 1973.
-

- Q1. Examine carefully the distinctive features of the system for the protection and promotion of human and peoples' rights under the African Charter on Human and Peoples' Rights.
 - Q2. Do you think there are any inadequancies or drawbacks in the contents of the Zambian bill of rights under Chapter 111 of the Constitution of Zambia? If so what would you recommend to improve both the content of the Zambian bill of rights and the mode of its enforcement?
 - Q3. Assess the impact with which the declaration of a state of emergency will have on the legal protection of human rights in Zambia.
 - Q4. With the help of some decided cases, critically assess whether the Zambian judiciary has demonstrated its independence in protecting the rights and freedoms of the individuals.
 - Q5. Discuss fully the decisions of the Zambian High Court in the cases of
 - (a) WILLIAM CHIPANGO V. ATTORNEY-GENERAL FOR ZAMBIA (1970)
 - and
 - (b) KAPWEPWE AND KAENGA V. ATTORNEY-GENERAL FOR ZAMBIA (1972)
- /2...

Q6. What does the concept of constitutionalism imply on human rights and constitutional democracy?

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY FIRST SEMESTER EXAMINATIONS - MARCH 1998

L 141

CRIMINAL LAW I

TIME: THREE (3) HOURS (PLUS 5 FIVE MINUTES FOR READING THE QUESTION PAPER).

INSTRUCTIONS: ANSWER QUESTION NUMBER ONE WHICH IS COMPULSORY AND ANSWER IN ADDITION ANY OTHER THREE QUESTIONS. PENAL STATUTES ARE ALLOWED IN THE EXAMINATION HALL.

1. (a) On 20th January, 1998, Mr. M. Mutale was driving a Datsun Saloon Car Reg. No. AAK 2405 along Pemba Road in Chilenje South, due to his negligent driving collided with another vehicle Toyota Hilux Van, Reg. No. AAP 5971 being driven by Mrs. P. Moyo. He was not arrested nor charged with any offence by the Police on that particular date, although the traffic accident was dealt with Constable Mooto, of Chilenje Police Station. The Police now intend to have him brought before a Subordinate Court in Lusaka for an offence of "Careless Driving" C/s 195 of Roads and Traffic Act, Cap. 464 of the Laws of Zambia. They come to you for a legal advise on how criminal proceedings can be instituted against Mr. M. Mutale.
- (b) What is a specified offence?
- (c) How do you understand the concept of deterrence in relation to the theories of punishment? And which sentences or penal sanctions in the Penal Code you think are associated with this theory?

2. How do you distinguish the defence of insanity from that of diminished responsibility. Relevant authorities and provisions of law are needed.
3. Dimba after work met his old friend Banda who requested him to join his company for a drinking spree. They went to a night club in one of the townships. They took large quantity of alcohol, and in addition smoked dagga. They, then decided to go home and parted. Dimba then on his way home while staggering remembered of John, who had got Dimba's former fiancée⁷ and thought of settling the old score. He decided to pass through their local club where John is usually found being a member of the darts club. Dimba entered this club and saw John. He immediately bought several bottles of Mosi and drank them in a record time. He started shouting loudly. Other members tried to shut him up, but failed and thereafter John had asked who was making noise. Dimba on hearing this produced a knife from his pocket and stabbed John who died instantly. Dimba was taken to the Police Station where he was charged with murder.

When interviewed Dimba claims not to remember anything as he was too drunk. He is brought before you as a trial Judge. What would be your judgement? Discuss with relevant authorities.

4. Chilufya was living with Mulenga, his old father. Chilufya had two of his children dying in very suspicious circumstances. He then consulted a very reputable witchfinder in their area, who had told him that his father was responsible of this children's death. Chilufya then went to Manda, an old woman, known to be a wizard and she was known for using her traditional gun "Kaliloze", whom he had asked to kill his father by using this gun. Manda agreed to kill Mulenga on behalf of Chilufya by using a traditional gun. But instead of using "Kaliloze" Manda approached Chewa for a pistol.

Chewe gave Manda a pistol knowing well the unlawful purpose it was going to be used for, although not knowing the actual person to be killed. Manda then shot and killed Mulenga.

Chilufya, Manda and Chewe are all charged with murder. Consider the criminal liability of each of them and the possible result in the case.

5. Give brief facts of the case of Kalimukwa - V's THE PEOPLE (1971) ZR 85 and its decision. How does this case differ from the English cases in relation to the law of "Attempts?"
6. Mary and Jane are twin sisters who really resemble each other and living with their parents in Matero. Peter admires Mary very much and wishes that one day, he will have sexual relationship with her. One day at about 19.30 hours Peter meets Jane whom he mistakes for Mary. He thought that God had answered his prayers. He without wasting time grabbed Jane and pushed her in the nearby bush. He pushed her to the ground and had a forced sexual intercourse with her. Mumba found them in action, and then Peter started running away. Jane reported to Mumba of having being raped. Mumba ran after Peter and apprehended him. Mumba took both of them to the Police Station.

When Peter was questioned stated that he mistook Jane to be Mary who is his girlfriend and had arranged to meet her that night. Peter is arrested and charged with rape C/S.32 of the Penal Code.

You are a Magistrate who is assigned to try Peter. Can you give a judgement in this case, particularly, paying much attention to the defence of Mistake of fact. Relevant authorities necessary.

7. Write brief notes on TWO of the following:
- (a) Self-defence to a criminal charge.
 - (b) Strict liability crimes in relation to mens rea.
 - (c) "Omission" as actus reus.

END OF EXAMINATION.

THE UNIVERSITY OF ZAMBIA

UNIVERSITY FIRST SEMESTER EXAMINATIONS - MARCH 1998

L 151

CONSTITUTIONAL LAW 1

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

INSTRUCTIONS: ANSWER FOUR (4) QUESTIONS. YOU MUST ANSWER AT LEAST ONE QUESTION FROM EACH SECTION.

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

SECTION A

1. (a) Briefly outline the three meanings of the theory of the Separation of Powers. (10 marks)
(b) Discuss the theory of the Separation of Powers in relation to the U.S. Constitution. (15 marks)
2. (a) What is judicial review? (15 marks)
(b) Is there a difference in the scope of judicial review between countries with written constitutions and those without written constitutions? (10 marks)
3. Zambezia is an independent African state which has a written constitution and a Republican form of Government. For a long time the country was ruled by a civilian dictator, Chintomfwa, who ignored all democratic norms and human rights. There is now a new President, Ganizani, who would like to steer Zambezia on the path of democracy. You have been retained by the new government as a legal consultant to advise the government on how to enforce the Rule of Law.
Write a brief setting out your advice. (25 marks)
4. Discuss the main features of the Westminster Parliamentary system with specific reference to the United Kingdom. (25 marks)

SECTION B

5. Discuss the constitutional arrangements put in place in Northern Rhodesia in 1924 in light of the theory of the Separation of Powers. (25 marks)
6. (a) Why were the Africans in Northern Rhodesia and Nyasaland opposed to the creation of the Federation of Rhodesia and Nyasaland. (5 marks)
- (b) What institutional and legal mechanisms were devised to protect African interests under the Federal constitution? (15 marks)
- (c) Were the mechanisms in (b) effective in protecting African interests? (5 marks)
7. (a) What was the main objective of the British Government in devising the 1959 Constitution in Northern Rhodesia? (10 marks)
- (b) Briefly outline the Franchise and Government organs introduced under the 1959 Constitution. Did the 1959 Constitution achieve its intended objective? (15 marks)
-

END OF EXAMINATION.

THE UNIVERSITY OF ZAMBIA

UNIVERSITY FIRST SEMESTER EXAMINATIONS - MARCH 1998

L 221

LAW OF CONTRACT

TIME: THREE (3) HOURS

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

QUESTION 1

John Banda inserted the following advert in the Times of Zambia of the 11th January, 1998.

"Sale, Brand new 20 "Sharp Color TV, K750,000.
Contact J. Banda at 213614 or write to Box 32379,
Lusaka."

Peter Zulu, who had always dreamed of owning a color TV wrote to John from Kitwe saying, "I accept to buy your TV for K750,000. Please quickly advise whether I can pay in instalments over three months. If I do not hear from you by 20th January, 1998, I will take it all is fine." He posted the letter on 12th January, 1998. On that same day John received a phone call from Joe Mubu and the following conversation was recorded:

"I'm interested in buying the TV you advertised in yesterday's Times. I'm willing to pay K750,000 cash and....."

and at that moment the line went dead. John told his wife who was present at that time that, "I accept Joe's offer. I'll sell him the TV if only I could locate him." Joe had not had time to give his phone number, neither did he call again.

In the evening of the same day Sword Luo, an old school friend of John, informed him that he was very interested in the TV but needed a few days to look for money, whereupon John said*

"Since you were such a good and helpful pal of mine during our undergraduate days, and because at one time you gave me a pile of Bob Marley records, I promise not to sell the TV to anyone before the 31st January

to give you a chance to look for money."

On 17th January, John received Peter's letter and replied the same day as follows:

"Thank you for your letter. You may have the TV on payment of K750,000 cash-straight within two weeks."

Due to inefficiency in the post, Peter received the letter only on 5th February.

Meanwhile, on 28th January, Martin Phiri who knew John well, drove to John's house. John was not at home then. He had gone to town for "deals." John's wife was however at home when Martin arrived. He inquired from her whether the TV had been sold, to which she replied.

"It's still in the house." Martin then produced K800,000 from his leather briefcase and gave it to John's wife saying,

"The K750,000 is for the TV, the K50,000 is for your coke. I'll come and collect the set this evening."

John's wife happily received the money and kept the K750,000 in the house. She got the K50,000 and went out shopping.

While in town that day John met Prosper Grey who offered to buy John's TV for K750,000 cash. He gave John the money and they drove home together to collect the TV. Soon after Prosper had gone with the TV, John's wife came home from her shopping.

In the evening Martin came to collect the TV as agreed. On hearing that the TV had been sold already, Martin refused to accept back his money John was giving him saying,

"You have breached the contract. I want damages as well."

Early in the morning on 29th January, Swor arrived at John's house with K750,000 cash. On being told that the TV was sold the previous day, Swor threatened to take legal action against John.

Joe Mubu, who has since located John's house also came to see John with K750,000. He claimed that John had breached the contract and that he was taking the matter up with his lawyers.

On February 6, Peter booked a taxi all the way from Kitwe to pay for and collect the TV from John. He paid the driver K120,000 for the trip. He also intends to sue John.

John has now come to you for legal advise. Advise him on his legal position as against each party. [25]

QUESTION 2

Careless Waozela is the head of a family business "Waozela and Bros. Enterprises Ltd," in the Kamwala trading area. Though the business objectives include trade in a variety of items, the main line of business is as a retail outlet for electrical goods like TVs, VCRs and hi-fi systems. Mr. Waozela imports most of his goods from South Africa and beyond. To bring in the goods, he contracts "Fastline Deliveries Ltd," a reputable company which has been in business for more than 25 years, delivering imported goods for clients in their big trucks.

On 5th January, 1998, Careless, as was his custom, headed for the Fastline offices on Cairo Road to engage them to go and collect his new consignment at Durban. At the end of the negotiations it was time for Careless to sign the Standard Terms of Carriage and Delivery.

Manager: Well, Mr. Waozela, you may read through.

Careless: Uh! I trust your efficiency. Show me where to sign.

The Manager pointed to a space on the Contract and Careless appended his signature.

Manager: You should read a piece of paper before you sign it. You could be giving your life away.

Careless just brushed off the statement as a mere joke.

On 21 January, on its way towards Lusaka from Chirundu, the truck carrying Mr Waozela's goods met with a terrible accident, overturning five times before resting in a ditch. The truck and its cargo were a complete write-off, but the driver and his two mates escaped unhurt. Careless, on learning about the accident, rushed to Fastline Headquarters with the intention of claiming compensation. He had spent K75 million to buy the goods plus other expenses. At Fastline he was shown some clauses in the contract he had signed.

Clause 5.1 - The carriage of goods by Fastline is at importer's risk. In the event of damage to or loss of goods while they are in our possession or in the possession of our duly appointed agents, Fastline reserves the right to limit compensation to 15% of the total expenses incurred by the importer, including cost of goods, any taxes payable and cost of carriage

.....

Clause 7.0 - It is the intention of the parties hereto that, subject to clause 5.1 aforesaid, Fastline or any of its agents shall be excluded from any further liability as a result of any misadventure resulting out of the transaction^{herein}

Careless refused to accept those terms. He claimed that he had not properly been made aware of their implications and that Fastline had tricked him. He claimed that K75 million was a lot of money and he could not accept 15% of it. This was his biggest order and he had been giving Fastline business for a good number of years. They should have exercised their functions with due care and skill.

Fastline maintained that the contract was binding. Now Careless comes to you with instructions on possible legal action. Advise him.

[25]

QUESTION 3

- (a) The Principle of Promissory estoppel provided a major development in English Contract Law. With reference to relevant Case Law, outline the scope, characteristics and significance of the principle. [15]
- (b) What important factor distinguishes promissory estoppel from general estoppel? [10]

QUESTION 4

On 10th January, 1997, the following advertisement appeared in the Utopia Times:

THE UNIVERSITY OF UTOPIA

is hereby inviting applications from established and reputable firms to register as Suppliers of Goods and Services for the year 1997 - 1998 as may be required in the following categories:

- A. Food Stuffs
1. Meat, Rice, Vegetables, Chickens, Eggs, Potatoes, etc.
- B. Services
1. Printing services
 2. Repair/maintenance of office equipment, air conditioners, refridgerators and kitchen equipment.
 3. Repair and maintenance of motor vehicles and other equipment, painting and building maintenance.

Application forms can be collected at the office and should be addressed to:

The Secretary

University of Utopia Tender Board

Box 30019

CAPITALVILLE.

Tip Top Services Ltd, specialising in Category B put in its application. On 31st January, 1997 Tip Top was informed in writing that it had been registered for Category B. One year elapsed and Tip Top did not hear from Utopia University again. The Managing Director wrote to the University inquiring about the agreement. The authorities at Utopia wrote back

stating that the University did not need Tip Top's services and that most of the jobs during the year had been assigned to other firms.

The Managing Director, not happy with the response he got, has instructed you on behalf of the Board to advise the company as Legal Counsel, with a view to sue Utopia University for breach of contract. What is your opinion? [25]

QUESTION 5

"The growing use of printed contract forms by one or both parties has givenrise to problems with regard to the rule that the acceptance must correspond to the offer."

G.H. Treitel, The Law of Contract, 7th ed., at p.16.

With relevant case law, discuss the above quotation. [25]

QUESTION 6

(a) As clearly as possible, and with the aid of case law, outline the tests applied by the Courts to determine whether or not a statement is a term of the contract. [20]

(b) What is the Rule in Pinnel's case? [5]

END OF EXAMINATION.

THE UNIVERSITY OF ZAMBIA

UNIVERSITY FIRST SEMESTER EXAMINATIONS - MARCH 1998

L 231

LAW OF TORTS

TIME: THREE (3) HOURS

ONE

INSTRUCTIONS: ANSWER ~~ONE~~ QUESTION AND ANY 3 OTHERS.

1. ACROPOLIS BAKERY LIMITED vs ZCCM LIMITED
1985 Z R P. 233 at page 235

per NGULUBE D.C.J.

".....We agree that the law should be responsive to changing circumstances. In a proper case, we do not see why an established principle cannot be extended to cover a novel situation: we would not hesitate to do justice on the merits of the case where a new situation arises for which there is no precedent but where it plainly appears that the legitimate rights of one person have been unfairly or wrongfully injured by another since the recognition of those rights would presuppose the availability of remedies for their enforcement and protection....."

Discuss.

2. ".....The law cannot take account of everything that follows a wrongful act. It regards some subsequent matters as outside the scope of its selection because if it were infinite for the law to judge the cause of causes or consequences of consequences..... in the varied web of affairs the law must abstract some consequences as relevant not on grounds of pure logic but simply for practical purposes.

by Cutler.

3. Write short notes on the following:

- (a) The Doctrine of Res Ipsa Loquitar.
- (b) Contributory negligence
- (c) The place of intention and negligence in the Law of Torts.
- (d) Reasonable and Reasonable Man

4. On 20th July, 1997, there was an illegal strike staged by some Miners working for Zambia Consolidated Copper Mines Limited (ZCCM Ltd) at Kitwe. The Miners had some dispute with their employers over working conditions and without going through the procedures required by the Industrial and Labour Relations Act Number 27 of 1993 they went on what is popularly referred to as a wild - cat strike. On 23rd July, 1997, there was assembled in the Mindolo Mine Compound, a large crowd of striking miners and this crowd was in riotous mood. At that point in time a driver and his helper employed by Bonggi's Bakery Limited arrived with a bread van to make deliveries of bread to customers in the compound. The crowd attacked the bread van with sticks and stones and finally set it on fire resulting in the total destruction of the vehicle valued at K10,000,000.00 and the bread valued at K200,000.00

The Managing Director of Bonggi's Bakery Limited approaches you demanding that ZCCM Limited ought to be made answerable for the loss suffered.

Please advise the Managing Director of Bonggi's Bakery Limited regarding the prospective legal action.

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

6. Richman Chulu was at the material time employed by Monarch (Z) Limited as a security guard. Richman Chulu and other three security guards were in the afternoon shift which commenced duties at 14.00 hours at the company's premises. The duty of Richman Chulu was to guard the company premises so that property is neither damaged nor stolen.

During the course of Richman Chulu's shift, the company premises were broken into and the sum of K500,000.00 was stolen.

Subsequently, the theft of the money was reported to management and management resolved to make a report to Zambia Police Services. As a result, Richman Chulu and the other security guards were detained for two days pending the investigations.

Richman Chulu is aggrieved and approaches you for advise. Please advise.

END OF EXAMINATION.

THE UNIVERSITY OF ZAMBIA

UNIVERSITY FIRST SEMESTER EXAMINATIONS - MARCH 1998

L 241

CRIMINAL LAW I

TIME: THREE (3) HOURS (PLUS 5 MINUTES FOR READING
THE QUESTION PAPER)

INSTRUCTIONS: ANSWER QUESTION NUMBER ONE WHICH IS COMPULSORY
AND ANSWER IN ADDITION ANY OTHER THREE QUESTIONS.
PENAL STATUTES ARE ALLOWED IN THE EXAMINATION HALL.

1. (a) Chola and Banda both adults whilst acting together attacked Mbewe, and stole from him K50,000.00 in cash. They were later picked up by the Police. Thereafter investigations, they were jointly charged with Aggravated Robbery C/s 294 of the Penal Code. They were brought before Mr. Bbali, a Magistrate Class I at Mazabuka District Court. Mr. Bbali read out the charge to them and asked them to plead. They pleaded guilty to the charge. Mr. Bbali, the magistrate convicted them as charged after brief facts were read out by the Public Prosecutor. Mr. Bbali in passing sentence said, "You did not waste Court's time and pass a 5 year imprisonment term with hard labour on each of you."

The D.P.P. asks you being a State Advocate to appeal to the High Court inclusively against the sentence passed being too lenient and other issues. What would be your reaction and grounds of appeal before the High Court?

Your answer to have authorities and sections of relevant Act.

- (b) Bomba is tried for theft of motor vehicle C/s 281A of the Penal Code which carries 5 years minimum mandatory sentence, before Mr. Sitali, the Resident Magistrate, and is convicted of that offence. Mr. Sitali sentences Bomba to six (6) years imprisonment with hard labour and then suspends the whole sentence for a period of 40 months on the condition that Bomba should not commit any other offense during this said period.

The case is passed to you as a Judge of the High Court as a review case. What would be your reaction to this case?

- (c) How do you understand the concept of rehabilitation/ reformation as a theory of Punishment? And which of the sentences or Penal Sanctions under the Penal Code you consider to be associated with the stated theory?

2. Mambwe, who has a history of mental illness goes to a party where he drinks some alcohol. He develops headache. He is given some tablets by Bwalya, believes them to be a cure for his (Mambwe's) but infact the tablets contain an hallucinatory drug, a fact known to Bwalya. Thereafter Mambwe forms a belief that Bupe, the girl with whom he was dancing with was attacking and strangling him. Mambwe then picks up a table knife from a nearby table and stabs Bupe to death.

Afterwards, Mambwe claims that he cannot remember any of the events. He is charged with murder and you are working in a Law Firm in Lusaka Town being approached to represent Mambwe; your Senior Counsel asks you for a legal opinion in order to prepare a defence.

What advise would you give? Authorities are necessary.

3. The Defence of insanity is the same as that of Diminished responsibility. Discuss as to the truth of this statement with authorities and sections of the Penal Code.

4. Phiri, a member of dissident organisation instructed by its leader, Tembo, to rob a certain store in order to obtain more funds for the organisation. Phiri is warned by Tembo that a failure to do so will result in "Serious Consequences" for him. Phiri, who is terrified of Tembo agrees. He drives to the store in a car supplied by Dinga and successfully carries out the robbery by attacking the Salesman, Mweemba. Unknown to Phiri, Mbewe had been sent to the store by Tembo with instructions to pose as a customer and assist Phiri if need arise. In fact, no assistance is necessary and Mbewe takes no part in the crime. Upon being apprehended or arrested, Dinga claims that he believed his car was to be used to transport some stolen property and he would not have allowed it to be used in a robbery had he had known of the true purpose.

Phiri, Tembo, Dinga and Mbewe are all charged with robbery. Consider the criminal liability of each of them and the possible results in the case. Please cite relevant provisions of the law.

5. Consider criminal liability in the given facts:
One afternoon Nyambe was on his way home and meets Joyce aged 19 years, a girl he has been admiring for a long time in their residential area coming from the opposite direction, as she had gone to have swimming lessons at Lusaka Club. Nyambe proposed to make love with Joyce, who turned down the proposal. He, then held her and twisted her arms backwards. She struggled until he overpowered her and pushed her to the ground in the nearby bush. He undressed himself by unbuttoning his trousers and pulling his person out. He pulled Joyce's dress upwards and tried to remove the swimming costume which was under the dress, but failed.

He then let Joyce go and said these words, "Oh, I am sorry, I have remembered today is the anniversary day of my graduating from Evelyn Hone College and I am not to behave like this, otherwise I would have torn your constume and fuck you." Nyambe then dressed up and went away.

Would Nyambe be charged of any offence? Please discuss with relevant authorities.

6. "The defence of 'Bonafide claim of right' only applies to cases of Theft." Do you agree with this statement? Give reasons for your answer with authorities.
7. Write brief notes on TWO of the following:
 - (a) Self-defence to a criminal charge
 - (b) "Omission" as actus reus.
 - (c) "Recklessness" as mens rea.

END OF EXAMINATION.

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END OF EXAMINATION.

THE UNIVERSITY OF ZAMBIA

UNIVERSITY FIRST SEMESTER EXAMINATIONS - MARCH 1998

L 251

CONSTITUTIONAL LAW I

TIME: THREE HOURS (Plus 5 minutes to read the question paper).

INSTRUCTIONS: ANSWER FOUR (4) QUESTIONS. YOU MUST ANSWER AT LEAST ONE QUESTION FROM EACH SECTION.

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

SECTION A

- Q1. (a) What is judicial review and in what situations does it apply? (15 marks)
- (b) How can the doctrine of judicial review be reconciled with the doctrine of Parliamentary sovereignty? (10 marks)
- Q2. The Republic of Zambezia has just attained its independence from the United Kingdom. During the colonial period the indigenous people were denied a voice in the running of government affairs. Racial discrimination against the black majority was the norm rather than the exception. The new government led by President Kapasa Mukupa wants to usher in a new era of democratic governance. He appoints you as Minister of Constitutional Affairs. He requests you to present a memorandum to the Cabinet on the principles or pillars of democracy Zambezia must embrace in order for it to be accepted by the international community as a democratic state.
- Prepare the memorandum to the Cabinet as requested. (25 marks)

Q3. Azania is a state in Southern Africa. It is in the process of designing a new constitution, whose object will be to enhance the system of democracy and protection of human rights. The constitution will also aim at increasing transparency and accountability in government. In recognition of your expertise in constitutional law, you have been requested by the *Constitutional Review Commission* to write a paper on what would be the best system of government to adopt, that is, the Westminster Parliamentary System or the American style presidential system. Write the said paper setting out the advantages and disadvantages of either system. Give reasons for recommending one over the other.

(25 marks)

Q4. Write short notes on two of the following:

- | | | |
|-------|-------------------------|--------------|
| (i) | Constitutionalism | (12.5 marks) |
| (ii) | The Rule of Law | (12.5 marks) |
| (iii) | Free and Fair Elections | (12.5 marks) |

SECTION B

Q5. (a) What was the African Affairs Board and to what extent did it succeed in fulfilling its mandate?

(15 marks)

(b) Why were the Africans in Northern Rhodesia and Nyasaland opposed to the introduction of the federation of Rhodesia and Nyasaland, while the white settlers welcomed it?

(10 marks)

Q6. (a) To what extent was the theory of the separation of powers observed under the 1924 constitutional arrangements in Northern Rhodesia?

(10 marks)

(b) Discuss the case of R v De Jager (1931 - 37) L.R.N.R 13. What was the significance of this case.

(15 marks)

Q7. (a) What were the organs of government created under the 1962 constitution and what was their composition. (5 marks)

(b) Discuss critically the electoral system devised under the 1962 constitution. What was the rationale behind it? What was its significance? (20 marks)

END OF EXAMINATION

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THE UNIVERSITY OF ZAMBIA

UNIVERSITY FIRST SEMESTER EXAMINATIONS - MARCH 1998

L. 311

EVIDENCE

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

ANSWER: QUESTION ONE AND ANY THREE OTHER QUESTIONS

1. Killian Muzongwe is a third year law student as well as treasurer of a Church group called Crusaders on Campus. His older and only sister, Inonge has just been arrested for peddling cocaine on Campus. The Lawyer he has engaged is asking for K500,000 as deposit. Since Killian and Inonge are Orphans, Killian took it upon himself to raise the funds. All his efforts failed and even Legal Aid refused to take up the matter. He decided to take some money that his Church group had raised for their choir. However, since there was no way he could ever repay the money, he decided to fake a break-in into his room.

Being born again and troubled by his conscience he decided to approach the Dean of the School of Law who is also his Lecturer and told him that he had done something terribly wrong. The Dean advised him to lay his "cards on the table". He thereupon told the Dean everything about the faked break-in including the fact that some cocaine was still in his room. The Dean too was now troubled by his own conscience. He decided to tell the police everything Killian had told him but omitted to mention anything about the cocaine although the police asked him about it. However, when the police indicated that they knew where his stolen Toyota Corolla was, he decided to tell them about the cocaine in Killian's room which was later found in his room. Killian was arrested and charged with theft and possession of drugs. At the trial the prosecution sought to tender the statement from the Dean. Killian's Lawyer objected and argued forcefully that both Killian's statement to the Dean and the latter's disclosure about the cocaine were involuntary.

Discuss.

[40 marks]

2. Hudson Tambatamba was employed as an electrician with ZESCO. His duties, inter alia, included repair of street lights, broken cables, etc. All electricians were given safety equipment which included rubber gloves for insulation when repairing electrical circuits. On one fateful day as Hudson was repairing a generator he accidentally switched on the generator and he was electrocuted and died instantly. At the time of the electrocution Hudson like most of his fellow electricians was not wearing safety gloves as they found them cumbersome. They believed that as long as the switch was off they could work safely.

Hudson's wife brought an action against ZESCO for negligence and breach of statutory duty to provide safety equipment. The company Lawyer adduced evidence to show that there was continued failure by workmen to use safety equipment although it was issued to them and there was no negligence on ZESCO's part.

Discuss.

[20 marks]

Jason Sangwapo and his wife Christine were married on January 7, 1985 and have two children. Christine's younger sister Cholwe, aged 20 has lived with the couple since 1986 and acts as their nanny. On one fateful night of December 15, 1996 Jason returned home very late and extremely drunk. He went to Cholwe's room where he repeatedly raped her. Cholwe was rescued by Christine together with her eldest son Jeff aged 7 years. Because of what she termed animal behaviour on Sangwapo's part Christine said she could not live with Sangwapo anymore and petitioned for divorce which was granted on January, 10th 1998. On January 30th Sangwapo was arrested and charged with rape. The prosecution intend to call Christine and Jeff as state witnesses. Discuss.

[20 marks]

Zambia Daily Mail Ltd and Zampost Ltd entered into an agreement on April 1, 1996 whereby it was agreed that Zampost Ltd would distribute and sell the newspaper on behalf of Daily Mail all over Zambia. It was further agreed that Zampost would be paid on commission basis. The contract stipulated that Zampost would retain 30% of the price of each paper sold and remit 70% to Daily Mail. In November 1997 a new management was put in place at Zampost. The new General Manager decided unilaterally that Zampost would from that time on retain 30% of the price of each paper distributed, whether sold or not. This had the effect of reducing the revenues of Daily Mail substantially.

This went on until February 1998 when Daily Mail were choking because of serious debts. Daily Mail told Zampost that they were going to sue them because they had reneged on the agreement resulting in a loss of K250 million in revenue by Daily Mail.

Discuss the evidential issues involved and assess the chances of Daily Mail winning the law suit.

[20 marks]

5. Tandiza Musonda and Monde Phiri got married on 4th July, 1997. However, since Monde suspected that Eric had the dreaded Aids virus she refused to consummate the marriage until Tandiza went for an Aids test. Tandiza who works as a Bar man at a local hotel refused to take the test. On December 26, 1997 he was dismissed from work because he could not account for a large sum of money which went missing. On New Years eve while in a drunken state he told Monde that he had embezzlement the money and would undergo an Aids test the following day. The following day he forged an Aids test certificate and demanded for his conjugal rights. Monde refused and was smashed with a bottle of whisky on the head. At the hospital she regained consciousness and told the nurse that "Tandiza has done this to me and moreover he is a thief, he stole money from his employers. Tell him that as soon as I get out from hospital I will get a divorce."

In the meantime Tandiza was charged with theft by servant. After Monde left hospital she left Zambia for Brazil with her boyfriend.

The prosecution wish to tender the statement made by Monde as evidence. Discuss.

[20 marks]

END OF EXAMINATION

UNIVERSITY OF ZAMBIA
UNIVERSITY FIRST SEMESTER EXAMINATIONS - MARCH 1998
L 341
ADMINISTRATIVE LAW

TIME: THREE HOURS

Answer Question One and any other Three Questions

1. Kenneth Culp Davis observed in relation to the work of Professor Wade:

One way to write a book about administrative law would be by going in the ministries and the tribunals, finding out what the legal problems are concerning the administrative process, and then discussing them in the light of the statutes and the case law. This, in my opinion, would be the best way to do it. Professor Wade has not done it this way. Instead, he largely ignores the administrative process itself, and he is concerned almost altogether with the statutes and the case law. His book shows that he has not yet systematically interviewed people in the ministries or in the tribunals. The result is that he does not locate the problems of administrative law, except for the few that happen to go to court. Many major problems of administrative law which English administrators are very much concerned and about which they know a great deal, have never been litigated. The one that have been litigated have been decided largely without the benefit of detailed inquiries into the administrative process itself. One result is that the Wade book is not about administrative law; it is about those small portions of administrative law that are the subject of either legislation or judicial decisions.¹

Assess this critic of the work of Professor Wade.

¹Kenneth Culp Davis, English Administrative Law - An American View, Public Law, 1962, at 139 - 142.

2. It is said that during the time of colonial rule the civil servants' participation in politics did not go beyond casting votes in various elections, but this arrangement changed after independence. The civil service became heavily politicised, after independence. Discuss the reasons for this development and how the politicisation of the civil service was done, or achieved.
3. Between 1964 and 1991 the Parastatal sector was an important arm of public administration in Zambia, but today this is no longer the position. Discuss why:
 - (a) the parastatal sector was such an important aspect of public administration during the said period and,
 - (b) the parastatal sector is no longer such an important part of public administration in Zambia.
4. Today administrative law is a separate and a distinct branch of law, discuss some of the factors, which have led to this development
5. Professor James Madison is a visiting Lecturer from Cornell University, and in one of the many papers he has written he has said this about Zambia:

Zambia as a country has never had an opportunity to experience and appreciate the basic values of democracy. The seventy years spent under colonial rule did not provide a sound foundation for democratic government. The colonial system was largely authoritarian. It was only in the last two years before independence that efforts were made to democratise the system. But authoritarianism was too deeply entrenched, hence it was no surprise that eight years after independence one-party rule was introduced.

If Zambia is to move steadily on the path chosen in 1991, that is the path to democracy and good governance,

administrative law must assume a special place in the Law School curriculum. Both judges and lawyers need to re-learn the fundamentals and the *raison d'être* of Administrative law.

Critically analyse this statement.

6. Musonda Mofya has just spent three months in detention, which was ordered by the President in exercise of his powers under the emergency regulations. His lawyer explained that his detention was ordered by the President in his own discretion. He went on to explain that other than the President, there are many other public officers, who exercise discretionary powers. Judges also exercise discretion in discharging their functions.

Mofya is disturbed by this explanation and he has come to you for a second opinion. He wants to know the meaning of discretionary powers and whether it is possible for public administration to be conducted without vesting discretionary powers in administrative agencies or officers in the agencies.

Please advise him.

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY FIRST SEMESTER EXAMINATIONS - MARCH 1998

L 351

HUMAN RIGHTS LAW

TIME: THREE (3) HOURS

INSTRUCTIONS:

1. THERE ARE THREE SECTIONS IN THIS PAPER. IN SECTION A, CANDIDATES MUST ANSWER QUESTION ONE AND ONE OTHER QUESTION. CANDIDATES MUST ALSO ANSWER ONE QUESTION FROM SECTION B AND ONE QUESTION FROM SECTION C.
2. CANDIDATES ARE ALLOWED TO BRING INTO THE EXAMINATION ROOM ALL RELEVANT TREATIES, CONVENTIONS AND STATUTES.

SECTION A - Answer Question 1 and one other.

QUESTION 1

Your client, Micheal Perrol, is a citizen of a country which has ratified, inter alia, the International Covenant on civil and political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the European Convention on Human Rights and Fundamental Freedoms, and the Protocols to that convention. The country in question has also accepted all respective complaints procedures. Your client is a well-known figure who has drawn nation-wide attention because of his accomplishments in the arts.

A few years ago, your client became active in politics and argued that radical changes were necessary in the country because all the politicians, both in government and opposition, were incompetent, greedy and corrupt. He mentioned specific examples of mismanagement and cover-up, but he always left out names of the alleged culprits. Your client established a political party which, drawing considerable popular support at meetings and rallies across the country, developed a detailed programme calling for "a revolutionary cleaning - up operation" if the party were to come to power. The programme included calls for the investigation of the conduct

of national politicians and for the prosecution of those politicians who had committed criminal offenses and/or violated the tax laws of the country.

Before elections took place, your client was arrested by police. According to newspaper accounts at the time, he was accused of misleading the public, upsetting the public order, harming the national interest and engaging in unpatriotic activities. Your client was kept in detention for three months, for reasons relating to "the complexity of the case," before being brought before a judge where formal charges were set forth along the lines mentioned above. During pre-trial detention, your client was interrogated constantly with the aim of identifying his "Sources of inaccurate and defamatory information." In light of his refusal to cooperate with the authorities, he was kept in solitary confinement for a few weeks. Several times, for days and nights before interrogation sessions, meals were served irregularly and the lights were not turned off in his cell which had no windows. Your client was further detained by court order and for "preventive purposes," for almost two years until the lower and higher courts of the country had delivered their judgements. The highest court confirmed the lower court's sentence of twenty-five months imprisonment, in accordance with the country's penal code, but ordered his immediate release as he had already served this time in detention. In the elections which were held during the detention of your client, his party gained 12% of the national vote. The party is represented in parliament, albeit outside government, but your client was not allowed to run for office.

Mr. Perrol, for reasons of both personal vindication and exposure of "corrupt practices of the government," wants to appeal his case to an international and/or regional organisation. As his legal counsel, your task are:

- (a) to identify the legal issues, both those which can be brought up and those which you deem likely to prevail at the international or regional appeals levels;
- (b) to refer to the provision(s) of particular treaties or other instruments for each issue; and

- (c) to choose the forum to which you would want to bring the case because it would allow your client the best chances of prevailing.

Write short and precise answers for tasks (a) and (b) but give substantial reasons for your reply to task (c)

(40)

QUESTION 2

- (a) There are two organs within the United Nations system with very similar names, viz., the Commission on Human Rights and the Human Rights Committee. Explain the differences between them in so far as (i) their origin (ii) their place in the institutional structure and (iii) their respective competences, are concerned.

(10)

QUESTION 3

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

Your client is a freelance journalist who specializes in stories about public figures and national events. Kulemba has frequently prepared well-documented features, always including the full names and identity of the persons involved. In this particular case, Kulemba's story dealt with the alleged misconduct of well-known individuals who had set up and run a secret organisation with the stated purpose of influencing the public and private fortunes of its members and their friends in society. The story was published on the front page of a major newspaper. The four individuals concerned held high and powerful positions in government, a political party, a church and a private bank. These individuals

4/..

argued before the national courts that the journalist's action had violated their freedom of association and their right to privacy, as well as religious privileges, and that the story would seriously hurt their honour and good reputation unless the courts were to throw it out and provide for compensation.

Arguments which Kulemba wants to emphasize include those of the equality of all citizens, the freedom of expression, public accountability, good governance in a democratic society, and the importance of a free press for preventing the abuse of power. All available remedies have already been exhausted. As legal counsel, you must now prepare a convincing case for the Human Rights Committee. Proceed. (20)

SECTION B - ANSWER ONE QUESTION

QUESTION 4

You are an expert on human rights in the Legal Affairs Ministry of Bakon, an African country. Bakon is a member of the Organisation of African Unit (OAU) and has ratified the African Charter on Human and Peoples' Rights (ACHPR) of 1981. At the Heads of State and Government Summit, it was resolved that all parties to the Charter must deposit with the Secretary General of the OAU within six months of the meeting, recommendations, both legal and political, on the improvements that should be made to strengthen the implementation mechanism. The recommendations are to be examined by a group of international experts at a conference to be held under the auspices of the OAU. The Bakonese Minister of Legal Affairs has charged you with the responsibility of heading a national committee of experts to come up with suggestions and recommendations in a report.

Having finished with your consultations, prepare the report accordingly, giving reasons why you think the desired changes you have proposed would make a difference and improve the implementation mechanism of the African system of human rights.

(20)

QUESTION 5

El Byron is a European country. The El Byron Prison Board has supposedly issued an administrative instruction on visits by inmates' spouses. Under the new rules, a spouse would be searched before and after each visit in a shameful way. A non-governmental organisation, which aims at better conditions in the country's Prisons, wants to challenge the administrative instruction and to submit an application to the European Commission on Human Rights. As their legal counsel, provide the NGO with the necessary substantive and procedural advice, including on the question of admissibility.

(20)

SECTION C - ANSWER ONE QUESTION.

QUESTION 6

Define and explain the notions raised in Article 15 of the Constitution of Zambia. How does this provision compare with international standards?

(20)

QUESTION 7

When deciding cases brought before them, the Strasbourg Organs have often made use of a principle termed the "margin of appreciation." What is the margin of appreciation. Could this principle be applicable to Article 25 of the Constitution of Zambia?

(20)

END OF EXAMINATION.

THE UNIVERSITY OF ZAMBIA

UNIVERSITY FIRST SEMESTER EXAMINATIONS - MARCH 1998

L411

CLASSICAL JURISPRUDENCE

TIME: THREE HOURS, PLUS FIFTEEN MINUTES TO READ THE QUESTIONS.

ANSWER: QUESTION NO. 1 AND ANY OTHER THREE QUESTIONS

You must answer Question No. 1.

1. "Constitutional storm clouds have gathered in Zambia, . . . There is compelling evidence that the constitutional process is under great stress, that constitutional change has been effected without widespread participation of the People, and that the changes serve and are intended to serve the short-range political interests of those in power."

- Muno B. Ndulo and Robert B. Kent

Constitutionalism in Zambia: Past, Present and Future,
Journal of African Law 1996

"The political situation in Zambia merits urgent attention from its friends and from the international community at large as a fragile experiment in democracy is under threat in a situation where the shortage of time is a critical factor."

- Commonwealth Human Rights Initiative

The Post, 24 September, 1996

"Suppose we are drafting a written constitution for a country just emerging from a period of violence and disorder in which any thread of legal continuity with previous governments has been broken. Obviously such a constitution cannot lift itself unaided into legality; it cannot be law simply because it says it is. We should keep in mind that the efficacy of our work will depend upon general acceptance and that to make this acceptance secure there must be a general belief that the constitution itself is necessary, right, and good."

- Lon L. Fuller

Positivism and Fidelity to Law - A Reply to Professor Hart

Article 79(1) of the Constitution of Zambia 1991 (prior to 1996 amendments) stated, "Subject to the provision of this Article, Parliament may alter this Constitution or the Constitution of Zambia Act, 1991."

Article 79(3) of the Constitution of Zambia 1991 (prior to 1996 amendments) stated, "A bill for the alteration of Part III of this Constitution or of this Article

shall not be passed unless before the first reading of the bill in the National Assembly it has been put to a National referendum with or without amendment by not less than fifty per cent of persons entitled to be registered as voters for the purposes of Presidential and parliamentary elections.”

Part III of the Constitution of Zambia 1991 (prior to 1996 amendments) was titled “Protection of Fundamental Rights and Freedom of the Individual” and contained the following articles:

- “11. Fundamental rights and freedoms
12. Protection of right to life
13. Protection of right to personal liberty
14. Protection from slavery and forced labour
15. Protection from inhuman treatment
16. Protection from deprivation of property
17. Protection for privacy of home and other property
18. Provisions to secure protection of law
19. Protection of freedom of conscience
20. Protection of freedom of expression
21. Protection of freedom of assembly and association
22. Protection of freedom of movement
23. Protection from discrimination on the ground of race, etc.
24. Protection of young persons from exploitation
25. Derogation from fundamental rights and detention
26. Provisions relating to restriction and detention
27. Reference of certain matters to Special Tribunal
28. Enforcement of protective provisions
29. Declaration of war
30. Declaration of public emergency
31. Declaration relating to threatened emergency
32. Interpretation and Savings”

The remaining parts of the Constitution of Zambia 1991 (prior to 1996 amendments) were titled as follows:

- “Part I - National Sovereignty and State
- Part II - Citizenship
- Part IV - The Executive
- Part V - The Legislature
- Part VI - The Judicature
- Part VII - Finance
- Part VIII - Service Commissions
- Part IX - Miscellaneous”

In 1996, the Parliament of Zambia amended the Constitution of Zambia 1991 in accordance with Article 79(1), that is the Parliament retained Part III and amended all other parts. The amended parts are now titled:

- “Part I - National Sovereignty and State
- Part II - Citizenship
- Part IV - The Executive
- Part V - The Legislature
- Part VI - The Judicature
- Part VII - Defence and National Security
- Part VIII - Local Government System
- Part IX - Directive Principles of State Policy and the Duties of a Citizen
- Part X - Finance
- Part XI - Service Commissions
- Part XII - Human Rights Commission
- Part XIII - Chiefs and House of Chiefs
- Part XIV - Miscellaneous”

In light of the above events and commentary, has Zambia undergone a “legal” revolution per Kelsen’s theory? Is the Constitution of Zambia 1991 (as amended 1996) “valid” per H.L.A. Hart’s theory? Can either of these theories adequately describe what happened in 1996? If not, what theory might help explain these events? Discuss critically and provide any case law as support where possible.

You must answer three of the next six questions.

2. “Nothing is more fallacious than to believe that one may give an account of the law by means of the law itself.”

- *Roguin, La règle de droit (1889)*

Do you agree with this statement? Support your argument making use of a thorough and critical discussion of one theory of the “law.”

3. “My aim is to present a conception of justice which generalises and carries to a higher level of abstraction the familiar theory of the social contract as found, say, in Locke, Rousseau, and Kant. . . . [T]he guiding idea is that the principles of justice for the basic structure of society are the object of the original agreement. . . . This way of regarding the principles of justice I shall call justice as fairness.”

- John Rawls, A Theory of Justice

Discuss Rawls’ theory of “justice as fairness.” Begin your discussion with an understanding and analysis of a “familiar theory of social contract” such as Locke, Rousseau or Hobbes.

4. The Thomist system of law is founded upon the connection between means and ends. It is from this unshakeable relation between a given operation and its result that Thomas Aquinas derived four types of law; eternal, natural, divine and human. Explain and critique the Thomist system of law and how it

is a result of the connection between means/ends and our unique nature as human beings.

5. H.L.A. Hart and Lon L. Fuller debated the issue of "fidelity to law." Each arrived at different conclusions which involved a discussion of the intersection or non-intersection of morality and law. Critically analyse and explain their debate demonstrating your understanding of how law and morality do or do not intersect.
6. Jeremy Bentham believed in a utilitarian theory of jurisprudence. What is his principle of utility? How does his theory work? Evaluate and critique utilitarianism providing examples for support in your argument. Why is his theory so persuasive? Is it useful today?
7. Historically and according to custom, women in Zambia are not allowed to show their thighs in a public place. In fact, it is known that women who have violated this "law of the street" have had their clothes forcibly removed and left naked to suffer public humiliation and censure. You are working for a Member of the Zambian Parliament who is a follower of the sociological and historical school of jurisprudence. You are assisting him in evaluating and drafting new legislation. Specifically, he has asked for your thoughts on the following bill which he would like to bring to the floor of Parliament. The draft bill reads:

"It shall be a crime for any woman to bear her thighs in a public place. Any woman in violation of this statute shall be subject to not less than 6 months in prison, a fine equal to 300 penalty units or both."

Provide a critical analysis of the above proposed legislation in light of the sociological/historical school of jurisprudence.

GOOD LUCK

HAVE A SAFE AND HEALTHY BREAK - ~~XXXXXXXXXXXX~~

THE UNIVERSITY OF ZAMBIA

UNIVERSITY FIRST SEMESTER EXAMINATIONS - MARCH 1998

L. 421

GENERAL PRINCIPLES OF THE LAW OF BUSINESS ASSOCIATION

TIME: TWO (2) HOURS

INSTRUCTIONS: ANSWER FOUR (4) QUESTIONS INCLUDING QUESTION 1

SECTION A: MANDATORY QUESTION

1. A partnership of 8 persons was formed to carry out business in the farming sector, including distribution of fertilizer and farming implements. The partnership appointed one of them as a salesman. This partner was responsible for purchases for the partnership. Unknown to the rest of the partners, this partner was carrying on a side trading business for himself alone. The suppliers of the partnership were also unaware of the fact that this partner was carrying out this business separate from the partnership because he used to purchase for his business at the time he went to make purchases for the partnership. However, he started getting stocks on credit and he subsequently defaulted in making a payment of K20 million. Thinking that the stock was part of the partnership supplies, the suppliers advanced him the stock without much questioning.

After sometime, the partnership business went burst, and the partnership was surprised to find listed among its debts its a K20 million they were not aware of as part of the debt for which the suppliers were threatening to sue them. After questioning, the partner admitted to carrying on a side business. However, the suppliers are insisting that the partnership is also responsible for the K20 million debt.

You have been approached by the suppliers as an Advocate. Write your legal opinion for them.

SECTION B

2. Discuss Cooperative Principles showing how they relate to the achievement of Cooperative objectives.
 3. Using the facts in question 1 above, write a legal opinion for the partnership.
 4. Write an analytical and comparative brief of advantages and disadvantages of carrying out business through a cooperative society, a partnership and a sole trader.
 5. The philosophical rationalisation of the cooperative society concept is the mitigation of the ills of capitalism. Discuss.
 6. Discuss the dual character of a statutory corporation and how this is either advantageous or disadvantageous to the achievement of its objectives.
 7. Unlike a company limited by shares, democratic control is the basic administrative principle in the operations of a cooperative society. Discuss this proposition.
-

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY FIRST SEMESTER EXAMINATIONS - MARCH 1998

L 431

INTERNATIONAL LAW

TIME: THREE (3) HOURS

INSTRUCTIONS: Attempt Question I and One other question. The compulsory question carries 60 marks while each of the other questions carries 40 marks.

QUESTION I

State concisely what is meant by:

1. general and particular international law.
2. law-making treaties and treaty-contracts
3. peace-keeping, peace-making and peace-building.
4. accession to a treaty and ratification of a treaty.
5. recognition de jure and recognition de facts.
6. domestic jurisdiction under Article 2(7) of the U.N. Charter.
7. expulsion of aliens and reconduction of aliens.
8. territorial and extra-territorial asylum
9. jus sanguinis and jus soli.
10. international maritime highways
11. international humanitarian law
12. territorial sea, contiguous zone, exclusive economic zone.
13. international custom
14. Calvo clause, Drago doctrine
15. the Stimson doctrine of non-recognition, the Estrada doctrine of non-recognition.
16. jus cogens and pacta sunt servanda
17. exhaustion of local remedies
18. monism and dualism
19. uti possidetis
20. clause compromissoire
21. air cabotage
22. nationality of claims
23. reservation
24. sovereignty

QUESTION II

- (a) Discuss the role of either the UN Security Council or the UN General Assembly or the UN Secretary General in the peaceful settlement of international disputes.
- (b) In what circumstances, if any, is the use of force by states permissible under the UN Charter?

QUESTION III

- (a) The following cases are generally cited for what proposition?
 - (i) US Diplomatic and Consular Staff in Teheran (1980)
 - (ii) Asylum Case (1950)
 - (iii) Lotus Case (1927)
 - (iv) Nottebohm Case (1955)
- (b) Write short notes on:
 - (i) the legal criteria of statehood
 - (ii) delimitation of land territory
 - (iii) the regulation of the activity of states in outer extra space.
 - (iv) extradition and rendition of fugitive offenders.

QUESTION IV

Distinguish between:

- (a) the protective principle and the universal principle
- (b) freedoms of the air and freedom of the air/high sea
- (c) the median line and the thalweg.
- (d) activities *jure imperii* and activities *jure gestionis*

QUESTION V

- (a) How does international law deal with genocide, terrorism, drug trafficking and counterfeiting currency?
- (b) How is the protection and promotion of human rights envisaged under the African Charter on Human and Peoples' Rights 1981.

QUESTION VI

- (a) Is recognition cognitive or constitutive?
 - (b) To what extent is a state responsible for injuries suffered by aliens within its territory?
 - (c) Explain the concept of hot pursuit.
-

END OF EXAMINATION & GOOD LUCK!

PROF. C. ANYANGWE.

INTERNATIONAL TRADE LAW

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

INSTRUCTIONS:

1. ANSWER ANY FOUR QUESTIONS
2. CANDIDATE MAY BRING INTO THE EXAMINATION ROOM THE GENERAL AGREEMENT ON TARIFFS AND TRADE (GATT).

-
1. Zambia and Burundi are members of the Great Lakes Customs Union. Zambia charges a 5% tariff on coffee imported from Burundi while it charges 20% tariff on similar quality of coffee it imports from Tanzania. Tanzania which is not a member of the Great Lakes Customs Union complains about the preferential treatment offered to coffee from Burundi citing the need for Zambia to adhere to the most-Favoured-Nation treatment contained in Article I of the General Agreement on Tariffs and Trade (GATT).

You are the lawyer representing Zambia. Set out your response to Tanzania's complaint.

2. One possible solution often suggested to curb primary commodity price fluctuations on international markets is the use of International Commodity Agreements. Assess the strengths and weaknesses of these agreements in achieving their intended objectives.
3. "All states have the right to associate in organisations of primary commodity producers in order to develop their national economies....."
(United Nations General Assembly resolution 3281 - xxix of December 12, 1974).
Consider how successful producers' associations have been in forstering the development of the economies of African countries dependant on exports of primary commodities.

4. Discuss how the GATT seeks to deal with
- (a) the problem of subsidies and
 - (b) administrative barriers to trade
5. An extremely important government barrier to international trade is the tariff (a charge imposed on importation and exportation either at a prescribed rate for particular quantity or as a percentage of value).

Discuss how the GATT has attempted to deal with this barrier.

6. Country X is a signatory to the current Lome Convention between the European Union (EU) and the African Caribbean and Pacific Nations (ACP) and its economy is almost entirely dependant on the export of palm kernels to the European Union.

Due to a mysterious disease which has attacked palm trees' country X has not been able to export any palm kernels to the EU in the past one year. Country X has now approached the EU for financial assistance to cover its budget deficit arising from the drastic reduction in its export earnings.

You are asked to advise the government of Country X on,

- (a) Its chances of securing financial assistance under the STABEX Scheme which forms part of the Lome Convention; and
 - (b) Whether it would have been better for the government of Country X to approach the IMF for assistance under its compensatory financing scheme, and why?
7. Quantitative Restrictions impose rigid limits on the volume of trade, they give the guidance of trade to public officials and they therefore cannot easily be divorced from politics. Because of this Quantitative Restrictions are among the most effective methods that have been devised by governments for purposes of restricting trade.
- Discuss how the GATT has sought to deal with this problem of Quantitative Restrictions.

THE UNIVERSITY OF ZAMBIA
UNIVERSITY FIRST SEMESTER EXAMINATIONS - JUNE 1996

L III

LEGAL PROCESS

(CERTIFICATE IN LAW)

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

INSTRUCTIONS:

- (i) ANSWER ANY FOUR QUESTIONS
 - (ii) ALL RELEVANT AND UNMARKED STATUTES MAY BE BROUGHT INTO THE EXAMINATION ROOM.
-

1. Upon your return to your station, your Officer-in-Charge requests you to address other officers on the topic:

"The Applicability of English Law in Zambia"

The Officer-in-Charge would like you to explain to your colleagues the Zambian Laws which make the application of English law in Zambia possible and why such a situation should exist in Zambia 32 years after independence.

- 2. Discuss in detail the applicability of African customary law in the various courts in Zambia.
- 3. A layman has heard that Lawyers follow the previous decisions of Superior Courts. He wishes to know how this system works in Zambia and whether it serves any useful purpose. Advise him.
- 4. Discuss the composition and powers of the following courts:
 - a) the Supreme Court
 - b) the High Court
 - c) the Subordinate Courts
- 5. Outline the various rules that are utilised by lawyers in interpreting statutes.
- 6. Article 20 of the Constitution of Zambia provides that an accused (a person charged with a criminal offence) is free to testify in his own defence but that he cannot be compelled to do so against his will.

This is because the Zambian legal system has adopted the "adversary" rather than the "inquisitorial" system of administering justice. In your view which of the two systems is better, given Zambia's level of political, economic, social and cultural development? Give reasons for your answer.

7. Discuss the following remedies:

- a) Restitution
- b) Specific Performance
- c) Rectification

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY FIRST SEMESTER EXAMINATIONS - JUNE 1996

L 141

CRIMINAL LAW I

TIME: THREE HOURS (Plus 5 minutes for reading the question paper).

ANSWER: QUESTION ONE IS COMPULSORY and ANY OTHER THREE QUESTIONS.

PENAL CODE, CAP.146 AND CRIMINAL PROCEDURE CODE, CAP.160 ARE PERMITTED IN THE EXAMINATION HALL.

1. (a) On 30th April, 1996, Mr. Tembo was driving a motor vehicle Toyota Hilux Reg. AAN 4560 along Church Road. He was driving so negligently that he hit into the motor vehicle Datsun Reg. AAM 6020 driven by Mr. Moonga and caused damages to both vehicles. The Police Officer who dealt with the accident did not charge any of the drivers. But now the Police wish Mr. Tembo be brought before court for the offence of careless driving contrary to Section 195 of the Roads and Road Traffic Act, Cap.766. The Police seek your opinion as to how the criminal charges be instituted against Mr. Tembo. What would be your legal advice?

(b) What is a specified offence?

(c) How is an arrest effected and under which Section of the C.P.C.?
2. The Defence of diminished responsibility can relieve an accused from liability of any offence. Discuss as to the truth of this statement.
3. How do you understand the concept of mens rea in relation to recklessness?
4. On 26th May, 1996, Mr. Mwiinga went to a bar in Matero Compound where he met his old school mates and they started drinking from 16:30 hours, and at 22.30 hours Mr. Mwiinga left his friends for home. On his way he passed through NIPA where his former wife Mary lived, whom they divorced a year ago. He knocked at the door and Mary opened the door, he Mwiinga immediately went in the bedroom where he found Choonga in bed.

He then turned to Mary whom he beat up severely and causing fatal injuries. He is charged with murder and at the trial raises the defence of Mistake that he believed still married to Mary and that of intoxication. Discuss his criminal liability in line with the defences raised.

5. Give brief facts and decision of the case of Kalimukwa -Vs-The People (1971) ZR 85, and what is its importance to the law relating to Attempt to Commit a Crime?
6. How do you understand the concept of deterrence in relation to theories of punishment? And which penalties do you consider to be associated with this theory?
7. Write brief notes on two of the following:
 - (a) Self-defence to a criminal charge.
 - (b) Parties to a crime - Section 21 of the Penal Code.
 - (c) State of affairs as actus reus.

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY FIRST SEMESTER EXAMINATIONS - JUNE 1996

L 151

CONSTITUTIONAL LAW I

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

ANSWER: FOUR (4) QUESTIONS

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

1. What do you understand by the concept of democracy? What principles or pillars underlie a democratic society?
 2. Examine the concept of the separation of powers. To what extent has it been applied in the United States?
 3. Discuss critically the features of the Westminster system of government. Do you think it promotes effective checks and balances?
 4. What do you understand by judicial review? What are its advantages and in what circumstances will it operate?
 5. Examine the factors that led to the creation of the Federation of Rhodesia and Nyasaland. How did the Federal Constitution of 1953 seek to allay African fears of European domination?
 6. What is a constitution and why is it considered to be the basic law? How does a constitution achieve legitimacy?
-

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY SECOND SEMESTER EXAMINATIONS - NOV/DEC 1996

L 152

CONSTITUTIONAL LAW

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

INSTRUCTIONS:

1. ANSWER FOUR (4) QUESTIONS.
 2. ONLY UNMARKED STATUTES ARE PERMITTED IN THE EXAMINATION ROOM.
-

- Q1. Discuss the extent to which elections in the Second Republic were democratic.
- Q2. The Civil Society Organization, which has been campaigning for good governance, plans to hold a mammoth rally at Fope Square. The main purpose of the rally is to discuss issues of governance and especially the need to revisit the constitution. The Deputy Minister for Lusaka Province instructs the police not to allow the rally to take place on the ground that the Civil Society Organization is anti-government. Two weeks before the rally the leader of the Civil Society Organization, Isaac Tembo, gives the Lusaka Police notice of the planned rally. The police refuse to allow the rally on the ground that it will annoy the government. Advise Tembo on his legal position.
- Q3. As political tensions rise in the country in the run-up to the 1996 Presidential and Parliamentary Elections the President unilaterally declares a state of emergency under article 30 of the constitution. He then issues emergency regulations, which among other things allow for preventive detention without trial.

The police detain Mofya Brenda, Secretary General of the Green Party, for ten days before the President signs a detention order detaining her for an indefinite period. The sole ground of detention states that,

"You have been detained because between September and October 1996 you, together with unknown persons, have been inciting the public to rebel against the government by saying that the President's term of office ends on 31st October and that you will not recognise him as President after this date."

The Green Party approaches you for legal advice. Advise them on the validity of Mofya Brenda's detention.

- Q4. The 1996 constitutional amendments have been described by the government as a great achievement in Zambia's quest for democracy. Do you think these amendments advance the frontiers of democracy in Zambia?
- Q5. An organization calling itself Green Mamba claims responsibility for a number of bomb blasts across the nation. The Green Mamba has been campaigning against the adoption of the 1996 constitutional amendments. Threatening letters signed by the Green Mamba have been received by some Ministers and MPs. The ruling party accuses the main opposition Party, the Peoples Redemption Party (PRP) of being behind the Green Mamba. The police, on the basis of these suspicions, raid the homes of four leaders of the PRP looking for bombs, bomb-making materials, seditious literature, arms and ammunition, etc. They find nothing incriminating. They, nevertheless, take the four leaders into custody and subject them to questioning for a continuous period of 24 hours. The detainees are denied food and water during this period. The police work in shifts of 4 officers. However, this intensive questioning yields nothing. Because of pressure from the ruling party the police charge the four leaders with treason after keeping them in custody for three days. They appear in court on the fourth day and they are denied bail.

You are approached by the PRP for legal advice.

- Q6. Discuss the relationship between the National Assembly and the Judiciary in the light of Zambian cases and legislation.
-

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY FIRST SEMESTER EXAMINATIONS - JUNE 1996

L 211

LEGAL PROCESS

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

INSTRUCTIONS:

- (i) ANSWER ANY FOUR QUESTIONS.
 - (ii) ALL RELEVANT AND UNMARKED STATUTES MAY BE BROUGHT INTO THE EXAMINATION ROOM.
-

1. A "Rastaman" recently visited the High Court. He found his way into a courtroom where a civil case was being tried. At the time that he entered the courtroom all the witnesses had already been called. The lawyers were making their submissions on the facts and points of law. To his utter amazement the Rastaman heard the lawyers refer to the provisions of statutes enacted by Parliament in England many years ago and also to decisions passed by the House of Lords and High Court in England and yet the parties involved in the case were 'born and bred' black Zambians. The Rastaman does not believe that after thirty-two (32) years of political independence Zambian lawyers can legitimately refer to outside sources of law.

Advise him on the precise legal position regarding the applicability or otherwise of English law and judicial precedents in Zambia. (You are expected to refer to relevant statutes and suitable illustrative judicial decisions).

2. You operate a legal office in Chingola. A delegation of Lunda and Luvala tribesmen from the North Western Province arrives at your office in an agitated mood. The reason for their agitation is that four men who belong to the two tribes have recently been jailed by a Magistrate in Solwezi because the four had been convicted on charges of causing grievous bodily harm to two men. The two men who complained to the police alleged that they had been forcibly circumcised when they strayed into a Mukanda camp. The defence maintained that the two did not stray. The two were merely curious individuals from other Zambian tribes which do not practice circumcision and who wished to see at close quarters what goes on in Mukanda camps. There was adequate warning that trespassers would be circumcised.

Members of the delegation do not believe that the Magistrate applied Zambian law. Consequently they wish to hire you to handle the appeal which the four jailed tribesmen intend to pursue.

Advise them on the prospects of the intended appeal. Refer to or cite provisions of statutes and decided cases when you tender your advice.

3. "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 varnished 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 basis for your own assessment of the usefulness of the common law doctrine of Stare decisis in Zambia.

4. "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 draftmen. He must set to work on the constructive task of finding the intention of Parliament." (Per Lord Denning).

Using decided cases as examples, explain the various rules utilised by Judges when they interpret statutes.

5. (a) Outline the composition and powers of the High Court for Zambia.
- (b) It is often stated that there are provisions in the constitution of Zambia which are designed to secure the security of tenure of office of Judges and independence of the judiciary in Zambia.
Critically comment on the merits or otherwise of the above statement.
6. Zambia has adopted the adversary system of administering justice as opposed to the 'inquisitorial' system. Critically discuss whether this system is adequate or practical given Zambia's level of political, economic, social and cultural development.
7. Discuss the following Equitable remedies and their applicability in the Zambian situation:-
- a) Injunctions;
b) Specific Performance; and
c) Restitution

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY SECOND SEMESTER EXAMINATIONS - NOV/DEC 1996

L. 222

CONTRACTS

TIME: THREE (3) HOURS AND TEN (10) MINUTES
(10 minutes to read the questions)

INSTRUCTIONS:

THERE ARE FOUR QUESTIONS TO THE EXAMINATION. YOU ARE REQUIRED TO ANSWER ALL FOUR QUESTIONS. PLEASE NOTE THAT QUESTION 4 HAS PART A AND PART B AND YOU HAVE THE OPTION OF WHICH PART TO ANSWER FOR THE QUESTION.

QUESTION 1: (30 marks)

On 15 September, 1996, a Parliamentary by-election had been scheduled to take place in the Chachazabuka district of Zambia. FAIRELECT, a Zambian run Non-Government Organisation (NGO) created during the 1991 national elections to monitor polling stations and ensure fair and free elections, required an office in the town of Chachazabuka to serve as its headquarters during the by-election.

On 1 September, 1996, FAIRELECT entered into a lease agreement (the "Lease") with Charles, a local Chachazabuka businessman, for the rental of a building owned by Charles at 101 Main Street in the centre of Chachazabuka. During their negotiations, FAIRELECT mentioned to Charles that it was planning to use the building as its offices and headquarters during the by-elections. The Lease read as follows:

Lease Agreement

On this 1st day of September, 1996, Charles (the "Landlord") agrees to rent to FAIRELECT (the "Tenant") his building located at 101 Main Street, Chachazabuka, for the 10 day period beginning 10 September, 1996 and ending 19 September, 1996. The total rent due for the 10 day rental period shall be ZK 1 million (ZK 100,000 per day). Furthermore, the parties agree to the following stipulations:

1. FAIRELECT agrees to pay Charles a deposit of ZK 500,000 (half the total rent due) on 1 September, 1996.

2. FAIRELECT agrees to pay Charles the remaining ZK 500,000 on 15 September, 1996.
3. Charles agrees to paint the inside of the building and clean the entire building before FAIRELECT enters the building on 10 September, 1996.

SIGNED THIS 1st day of September, 1996 by Charles and FAIRELECT.

Pursuant to the terms of the Lease, FAIRELECT paid Charles ZK 500,000 on 1 September, 1996. Also pursuant to the Lease, Charles painted the inside of the building and cleaned the entire building on 5 September, 1996. FAIRELECT moved into the building on 10 September, 1996.

On 11 September, 1996, the Zambian Government decided for unexplained reasons to cancel the Chachazabuka by-election. Upon learning of the Government's decision on 11 September, 1996, FAIRELECT closed their Chachazabuka office and moved out of the building. On that same day, FAIRELECT informed Charles that due to the Government's cancellation of the by-election, it considered the Lease discharged and asked that Charles return the ZK 500,000 FAIRELECT paid to him as a deposit on 1 September, 1996.

Charles refused to return the ZK 500,000 and, on 20 September, 1996, sued FAIRELECT for breach of the Lease. In the lawsuit, Charles' requested damages of ZK 500,000 for the remaining rent due under the Lease.

FAIRELECT filed a counter-claim and pleaded that the cancellation of the by-election by the Government on 11 September, 1996 was a frustrating event and thereby discharged the parties' obligations under the Lease. FAIRELECT requested the return of the ZK 500,000 it paid to Charles on 1 September, 1996. In its court brief, FAIRELECT argued that it was entitled to the return of the ZK 500,000 because there was a total failure of consideration. FAIRELECT cited the Fibrosa case in support of this proposition.

In his brief in response to FAIRELECT's counter-claim, Charles' argued that if the Court found that the Lease had been discharged, then he was entitled to be compensated the ZK 100,000 he spent on 6 September, 1996 to have the building painted and cleaned.

Assume that you are the High Court judge hearing this case. Resolved the following issues:

- (1) Was the Lease discharged when the Government cancelled the by-elections on 11 September, 1996?
- (2) Assuming the Lease was discharged, what are the legal consequences and effects of such discharge?
- (3) If you decide the Lease was discharged, are you merely giving effect to the apparent intention of the parties to the Lease or are you acting independently and imposing a solution on the parties?

In answering these questions, analyse the arguments set forth by FAIRELECT and Charles and discuss any relevant cases and statutes.

QUESTION 2: (30 marks)

On 15 December, 1995, Samuel and Boris entered into the following sales agreement: Samuel agreed to sell to Boris 2,000 traditional baskets for ZK 12 million on credit. Pursuant to their agreement (hereinafter the "Basket Agreement"), Boris agreed to pay Samuel ZK 1 million on the first day of each month for 12 consecutive months, beginning on 1 January, 1996.

On 20 December, 1995, Samuel entered into the following contract with Adam: Adam agreed to sell to Samuel his Landrover for ZK 24 million. Pursuant to their contract (hereinafter the "Landrover Contract"), Samuel agreed to pay Adam ZK 12 million on 20 December, 1995, and to assign to Adam his right to the payments from Boris under the Basket Agreement.

On 21 December, 1995, Adam wrote a letter to Boris informing him of the assignment and stated that it was very important that Boris pays him the ZK 1 million each month in a timely fashion because he will be using this money to buy new inventory for the store he has just opened and "that it will take me 12 months before the store will become self-sufficient". Boris received this letter on 23 December, 1995.

Boris paid Adam ZK 1 million on the first day of each of the first six months of 1996, but failed to make any subsequent payments. As a result, Adam was unable to buy new inventory for his store during the last six months of 1996.

On 1 January, 1997, Adams sues Boris in the High Court and requests the following damages: (1) the ZK 6 million that Boris owes Adam for the final six months of 1996; and (2) ZK 20 million in lost profits resulting from Boris' failure to pay Adam the ZK 6 million due during the last six month of 1996.

Assume that you are the High Court judge hearing this case. Analyse the issues relating to assignment and damages. Cite all relevant cases and statutes.

QUESTION 3: (20 marks)

The issue of whether a breach of a contract is a minor breach or fundamental breach lies at the heart of the law of contract. Discuss how courts determine whether a breach is minor or fundamental and the legal consequences of each. In cases of fundamental breach, discuss when an innocent party who has paid money in advance can recover his money from the breaching party. Create a short case study scenario illustrating the principles above.

QUESTION 4: (20 marks)

INSTRUCTIONS: ANSWER EITHER PART A OR PART B, BUT NOT BOTH. PLEASE INDICATE WHICH PART YOU ARE ANSWERING.

PART A

Consider and discuss the different legal consequences between when a contract is illegal under a statute as formed, and when a contract is illegal under a statute as performed. Please provide examples of each type of illegality.

PART B

Three scenarios may arise in situations when an agent is authorised to make a contract on behalf of his principal: (1) the third party contracting with the agent may know he is an agent and the principal is named; (2) the third party contracting with the agent may know he is an agent but the principal is not named; and (3) the third party contracting with the agent may not be aware he is an agent and the principal is undisclosed.

Consider and discuss each of these scenarios and the position of the principal and the agent with regard to the third party under each scenario.

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY SECOND SEMESTER SUPPLEMENTARY EXAMINATIONS

JANUARY 1997

L 222

CONTRACTS

TIME: THREE (3) HOURS AND TEN (10) MINUTES
(10 minutes to read the questions)

INSTRUCTIONS:

THERE ARE FOUR QUESTIONS TO THE EXAMINATION. YOU ARE REQUIRED TO ANSWER ALL FOUR QUESTIONS. PLEASE NOTE THAT QUESTION 4 HAS PART A AND PART B AND YOU HAVE THE OPTION OF WHICH PART TO ANSWER FOR THE QUESTION.

QUESTION 1: (30 marks)

Charlotte is very excited. She never expected to be one of the invitees to the State House dinner on 20 December 1996 in honour of South African President Nelson Mandela's visit to Zambia. But as one of Lusaka's leading businesswomen, she was one of ten Zambian businesspersons invited to the gala affair.

Charlotte received her invitation on 1 December 1996. On 5 December 1996 she visited her dressmaker Rochelle and, together, they designed an elegant evening gown for Charlotte to wear to the State House dinner. The gown was to be made of the finest Indian silk and lace and would cost Charlotte K 500,000. Rochelle assured Charlotte that the gown would be perfect for President Mandela's dinner.

Due to the expense of the gown and the short time in which Rochelle had to make it, Charlotte and Rochelle decide to formalise their arrangement. In a written contract, Rochelle agreed to finish the gown by 19 December 1996 and Charlotte agreed to pay Rochelle K 250,000 upon the signed of the contract and the remaining K 250,000 on the date Charlotte was to pick up the gown (19 December 1996).

The parties signed the contract on 5 December 1996 and Charlotte paid Rochelle K 250,000 at that time. On 15 December 1996, President Mandela cancelled his visit to Zambia and the State House dinner was thus also cancelled. Upon learning the news on the afternoon of 15 December 1996, Charlotte telephoned Rochelle and told her that she would no longer need the gown due to the cancellation of President Mandela's visit and

the cancellation of the State House dinner. Charlotte requested that Rochelle return the K 250,000 she paid her on 5 December 1996.

Rochelle refused to return the K 250,000 and, on 19 December 1996, sued Charlotte for breach of contract. In the lawsuit, Rochelle requested damages of K 250,000 for the remaining money due under the contract.

Charlotte filed a counter-claim and pleaded that the cancellation of the State House dinner on 15 December 1996 was a frustrating event and thereby discharged the parties' obligations under the contract. Charlotte requested the return of the K 250,000 she paid Rochelle on 5 December 1996. In her court brief, Charlotte argued that she was entitled to the return of the K 250,000 because there was a total failure of consideration. Charlotte cited the Fibrosa case in support of this proposition.

In her brief in response to Charlotte's counter-claim, Rochelle argued that if the Court found that the contract had been discharged, then she was entitled to be compensated K 100,000 for the expenses she accrued as of 15 December 1996 in buying the silk and lace for the gown and in making the gown.

Assume that you are the High Court judge hearing the case. Resolve the following issues:

- (1) Was the contract discharged when the State House cancelled on 15 December 1996 the dinner in honour of President Mandela?
- (2) Assuming the contract was discharged, what are the legal consequences and effects of such discharge?
- (3) If you decide the contract was discharged, are you merely giving effect to the apparent intention of the parties to the Lease or are you acting independently and imposing a solution on the parties?

In answering these questions, analyse the arguments set forth by Charlotte and Rochelle and discuss any relevant cases and statutes.

QUESTION 2: (30 marks)

On 15 December, 1995, Lolita and Trudy entered into the following Lease Agreement: Lolita agreed to lease to Trudy her 3 bedroom house for one year at K 1 million per month, payable on the first day of each month for 12 consecutive months, beginning on 1 January, 1996.

On 20 December, 1995, Lolita purchased a house from Rochelle and entered into the following written Sales Agreement: Rochelle agreed to sell the house to Lolita for K 100 million. Pursuant to the Sales Agreement, Lolita agreed to pay Rochelle K 52 million on 20 December 1995, and to pay K 1 million per month, on the first day of each month, for 48 consecutive months, beginning on 1 January 1996. Rochelle informed

Lolita that she would be investing each K 1 million monthly payment she received over the next four years in her dressmaking business. Under the Sales Agreement, for the months of January 1996 to December 1996, Lolita agreed to assign to Rochelle her right to the monthly payments of K 1 million she was to receive from Trudy under the Lease Agreement.

On 21 December 1995, Rochelle wrote a letter to Trudy informing her of the assignment and stated that she expected each payment in a timely fashion. Trudy received this letter on 23 December 1995.

Trudy paid Rochelle K 1 million on the first day of each of the first six months of 1996, but failed to make any subsequent payments. As a result, Rochelle was unable to buy new equipment and inventory for her dressmaking business during the last six months of 1996 and her profits suffered.

On 1 January, 1997, Rochelle sues Trudy in the High Court and requests the following damages: (1) the K 6 million that Trudy owes Rochelle for the final six months of 1996; and (2) K 10 million in lost profits resulting from Trudy's failure to pay Rochelle the K 6 million due during the last six months of 1996.

Assume that you are the High Court judge hearing this case. Analyse the issues and cite all relevant cases and statutes.

QUESTION 3: (20 marks)

The issue of whether a breach of a contract is a minor breach or fundamental breach lies at the heart of the law of contract. Discuss how courts determine whether a breach is minor or fundamental and the legal consequences of each. In cases of fundamental breach, discuss when an innocent party who has paid money in advance can recover his money from the breaching party. Create a short case study scenario illustrating the principles above.

QUESTION 4: (20 marks)

INSTRUCTIONS: ANSWER EITHER PART A OR PART B, BUT NOT BOTH. PLEASE INDICATE WHICH PART YOU ARE ANSWERING.

PART A

Consider and discuss the different legal consequences between when a contract is void at the common law on grounds of public policy and illegal in its formation by statute or at the common law, with respect to the following:

- (1) Is the entire contract void or illegal?
- (2) Are subsequent or collateral contracts void or illegal?
- (3) Are lawful promises in the contract severable and enforceable?

PART B

Discuss and compare the following three ways a relationship between a principal and agent may arise:

- (1) Express/actual appointment
- (2) Implied/apparent appointment
- (3) Ratification

Create a hypothetical scenario to illustrate each of the above situations.

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY SUPPLEMENTARY/DEFERRED EXAMINATIONS - JANUARY 1997

L232

LAW OF TORTS II

TIME: THREE (3) HOURS AND TEN (10) MINUTES .
10 MINUTES TO READ THE QUESTIONS.

INSTRUCTIONS: ANSWER QUESTION ONE AND THREE OTHERS. QUESTION
ONE CARRIES 40 MARKS.

QUESTION ONE

Patrick Banda is a Lecturer in the School of Engineering at the University of Zambia. He resides at F10 Handsworth Park, Lusaka. Patrick Banda in addition to lecturing, carries on a passenger transport business under the name and style of PA BA Investments Limited. One of his mini buses was recently involved in a motor traffic accident and was consequently extensively damaged. Patrick Banda contracted some panel beaters to repair his vehicle. In order to avoid inconveniencing his neighbours, Patrick Banda decided to panel beat the mini bus in the playing fields at the University of Zambia. Shortly after the panel beaters commenced repairing the mini bus, Patrick Banda was approached by Security Officers who requested him to stop panel beating the vehicle in the playing fields and instead advised him to repair the vehicle at his home. The Security Officers asserted that in any event he was entitled to his privacy. Patrick Banda is rather sceptical about the advice and decides to approach you for a professional opinion.

PLEASE ADVISE WITH THE AID OF DECIDED CASES.

QUESTION NUMBER TWO

A Member of Parliament for Kabwata in a parliamentary debate on the estimates of expenditure for the Ministry of Finance alleged that a Head of the Income Tax Department at Zambia Revenue Authority is always seen in compromising situations in the Company of tax evaders and crooks, who have always provided him with libations and convivialities. The Member of Parliament further alleged that he can hardly be effective in his job. The Times of Zambia published in their paper a summary of the Member of Parliament's parliamentary speech to the effect that the Member of Parliament for Kabwata stated in parliament that the head of the Income Tax Department at Zambia Revenue Authority is ineffective because of his close association with tax evaders. The Head of the Income Tax Department at Zambia Revenue Authority decides to sue the Times of Zambia. However, before commencing legal proceedings he decides to seek your professional opinion.

PLEASE ADVISE.

QUESTION NUMBER THREE

"Reasonable foresight" as the test of remoteness of damage is not quite the same as "reasonable fore sight" as the test for the existence of a duty of care and it is still further qualified by the fact that neither the precise extent of the damage nor the precise manner of this infliction need be foreseeable. WINFIELD

DISCUSS.

QUESTION FOUR

At Bondo Island five kilometres from B31 Beach Hotel a state owned hotel the Ministry of Home Affairs maintained an institution for the rehabilitation of prisoners under the control and supervision of prison officers. On 20th July 1996, a party of such prisoners were working on the Island under the supervision of six prison officers.

That night twenty (20) of the prisoners escaped and went aboard a Ministry of Home Affairs boat which they found nearby. They set it in motion and sailed away while some of the officers were sleeping and others had gone to a dance taking place at the officers mess on the island.

About a kilometre away was a fleet of pleasure boats which were operated by Omara Incorporation an American Company. The escapees in order to avoid being easily identified took over one of the pleasure boats which had been moored and boarded it. They later abandoned the boat after using it. The boat suffered extensive damage and had to be written off.

Evidence was adduced and it was established that of the thirty (30) prisoners under rehabilitational experimentation by the Ministry two had records of previous escape and that of the twenty (20) escapees none had records of previous escapes or attempts to escape.

Omara Incorporation sues the Ministry of Home Affairs claiming damages for negligence. The case is brought before you in the High Court.

WRITE THE JUDGEMENT OF THE COURT

QUESTION NUMBER FIVE

If it is the law that the duty arises from an undertaking to exercise care, it is not surprising that a Defendant should incur no liability if he makes it clear from the outset that he accepts no responsibility for his statement.

DISCUSS.

QUESTION NUMBER SIX

Write short notes on the following

- (a) Exemplary or punitive damages
- (b) Self-help as a remedy
- (c) Injunction
- (d) Inevitable accident.

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY FIRST SEMESTER EXAMINATIONS - JUNE 1996

L 221

CONTRACTS

TIME: THREE (3) HOURS AND TEN (10) MINUTES (10 minutes to read the questions)

INSTRUCTIONS:

THERE ARE FOUR QUESTIONS TO THE EXAMINATION. YOU ARE REQUIRED TO ANSWER ALL FOUR QUESTIONS. PLEASE NOTE THAT QUESTION 3 HAS PART A AND PART B AND YOU HAVE THE OPTION OF WHICH PART TO ANSWER.

- Q1. The University of Zambia, in an effort to reduce its operating costs, has decided to attempt to sell off all of its houses and flats to University faculty and staff.

The University writes a letter to all faculty and staff stating: "The University may be prepared to sell to you the house or flat you are presently residing in. If you are interested in this offer, please write to the Resident Engineer requesting an application form."

Gloria, a lecturer in the School of Humanities, receives the letter on April 1 and writes to the Resident Engineer requesting an application form. Upon receipt of the application form, Gloria reads the application and notes that her Handsworth flat has been appraised by the University at ZK 5 million. The University has entered this amount on the application form as the sales price of Gloria's flat.

Gloria fills out the rest of the application form and attaches a cover letter stating: "I would like to buy my Handsworth flat, but would you sell it to me for ZK 4 million? If I don't hear from you otherwise by the end of the month, I will consider the flat mine for ZK 4 million."

Gloria posts the application form and cover letter to the Resident Engineer on April 5. The Resident Engineer receives both the application form and cover letter on April 8 and immediately seeks the University's permission to sell the flat to Gloria for ZK 4 million.

On April 20, Gloria learns that she has been accepted to a five year Ph.D. program in the United States. She immediately writes a letter to the Resident Engineer stating her intention to study in the United States and instructs that her application to buy the flat be withdrawn. Gloria posts this letter on April 20 but, due to the negligence of the Post Office, the Resident Engineer does not receive the letter until May 3. When the Resident Engineer receives Gloria's letter withdrawing her offer, he is irate as he received permission from the University on April 30 to sell the flat to Gloria for ZK 4 million and has just completed the necessary paperwork to formalise the sale.

The Resident Engineer writes a letter to Gloria demanding that Gloria "honour their agreement". Gloria refuses and refers the Resident Engineer to her letter withdrawing her application to buy the flat. The University sues Gloria for breach of contract.

Assume that you are the High Court judge hearing this case. What are the issues that you are confronted with and how should you resolve these issues? Please state all relevant legal principles and cases.

(30 marks)

- Q2. Joseph owns a large, heavily wooded tract of land just west of Lusaka. He has decided to clear a portion of the land and to plant groundnuts.

On July 1, Joseph places an advertisement in the Zambian Times offering to sell freshly cut timber. Marie Chanda reads the advertisement and visits Joseph on July 2.

Marie offers to buy a truck load of the timber for ZK 500,000 and receives Joseph's assurances that the timber is freshly cut and not rotten. Joseph agrees to the sales price of ZK 500,000. Marie has no money with her and asks Joseph whether she can take the truck load of timber that day and pay the ZK 500,000 the following day. Joseph is hesitant. But Marie states, "I am good for the money. Don't you know who I am? I am Marie Chanda, the richest woman in Zambia." Joseph has heard of "Marie Chanda" and knows that she is the richest woman in Zambia.

Joseph checks Marie's National Registration Card and confirms that she is "Marie Chanda". He agrees to allow Marie to take the timber that day and return the following day with the ZK 500,000.

Marie is, in fact, "Marie Chanda", but not the "Marie Chanda" who is the richest woman in Zambia.

- (a) Assume that Marie pays the ZK 500,000 to Joseph on July 3 but soon thereafter discovers that the timber is mostly rotten. Marie sues Joseph for breach of contract and seeks monetary damages.
- i) Can Joseph raise the defence of mistake of fact?
 - ii) Is the contract unenforceable under the Statute of Frauds?
 - iii) Can Marie bring any other type of cause of action against Joseph?
 - iv) Does Joseph have any counterclaims against Marie?

Explain and cite all relevant legal principles and cases.

- (b) Assume that Marie is "richest woman in Zambia". Further assume that Marie's brother Frank, "the richest man in Zambia", accompanied her to visit Joseph on July 2 and promised to pay the ZK 500,000 to Joseph on behalf of Marie the following day. Frank, in fact, pays the ZK 500,000 to Joseph but soon thereafter, Marie discovers that the timber is mostly rotten. Marie sues Joseph for breach of contract and seeks monetary damages. Can Marie succeed in this action?

Explain and cite all relevant legal principles and cases.

(30 marks)

- Q3. INSTRUCTIONS: ANSWER EITHER PART A OR PART B, BUT NOT BOTH. PLEASE INDICATE WHICH PART YOU ARE ANSWERING.

(25 marks)

PART A

Lucy is interested in purchasing a used automobile. She hears through a friend that Alex, a professional and well-respected automobile mechanic, has a Toyota for sale. Lucy visits Alex's shop and asks whether the engine of the Toyota is healthy. Alex says, "I have taken care of and looked after this car since it was new, and there is nothing wrong with the engine."

Lucy, based on Alex's assurances, buys the Toyota. Two weeks later, the engine fails. Lucy sues Alex to rescind the contract and get her money back.

The testimony at trial reveals that Alex didn't actually know at the time of sale that the engine had a problem. The testimony at trial further reveals that the problem with the engine existed at the time of the sale.

- (a) Is Alex liable for damages under The Misrepresentation Act, 1968 (Cap.75)?
- (b) What must Lucy show at trial in order for Alex to be liable for damages under the Act?
- (c) What must Alex prove at trial so as not to be liable for damages under the Act?

PART B

Samuel is scheduled to fly to London on the afternoon British Airways flight from Lusaka. Samuel walks to the University bus stop at 12:30 and sees three waiting taxis. He announces, "I am willing to pay ZK 10,000 to the person who can deliver me to the airport by 13 hours." George, the taxi driver, says, "Get in".

At the Munali stoplight, Samuel sees his friend Alfred filling up his car at the Petrol Station. Samuel orders George to stop the taxi and says, "I will get out here and get a ride with my friend Alfred to the airport. Here is ZK 1,000 for your troubles".

George refuses to take the ZK 1,000 and replies, "We agreed for me to take you all the way to the airport. I am prepared to do so. If you want to get out here, you still owe me ZK 10,000." George threatens to sue Samuel if Samuel does not allow him to complete the trip to the airport or pay him ZK 10,000 immediately.

- (a) What are the issues that George should consider?
- (b) How would a Zambian or English court analyse this case?
- (c) How would an American court analyse this case?
- (d) How did Sir Frederick Pollock analyse these types of issues?

Q4. The American judge, Learned Hand, stated in Hotchkiss v. National City Bank of New York, 200 Fed.287, 293 (S.D.N.Y. 1911):

"A contract has, strictly speaking, nothing to do with the personal, or individual, intent of the parties. A contract is an obligation attached by the mere force of law to certain acts of the parties, usually words, which ordinarily accompany and represent a known intent. If, however, it were proved by twenty bishops that either party, when he used the words, intended something else than the usual meaning which the law imposes upon them, he would still be held, unless there were some mutual mistake, or something else of that sort."

Based on this quote, discuss the concepts of assent and intent of the parties. How can we reconcile the point Judge Hand is making with the doctrine of "meeting of the minds"?

(15 marks)

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY FIRST SEMESTER EXAMINATIONS - JUNE 1996

L 231

LAW OF TORTS I

TIME: THREE HOURS

INSTRUCTIONS: ANSWER QUESTION ONE AND THREE OTHER QUESTIONS.

1. "... Does the Law of tort consist of a fundamental general principle that it is wrongful to cause harm to other persons in the absence of some specific ground of justification or excuse or does it consist of a number of specific rules prohibiting certain kinds of harmful activity and leaving all the residue outside the sphere of legal responsibility..." Discuss.
2. Define and describe the essential ingredients of the Tort of False Imprisonment with the aid of decided cases.
3. The expression "vicarious liability" signifies the liability which A may incur to C for damage caused to C by the negligence or other tort of B.

With the aid of decided cases illustrate the conspicuous sub rules which are employed to establish vicarious liability.

4. "...The Law cannot take account of everything that follows a wrongful act. It regards some subsequent matters as outside the scope of its selection because if it were infinite for the Law to judge the cause of causes or consequence of consequences In the varied web of affairs the Law must abstract some consequences as relevant not on perhaps on grounds of pure logic but simply for practical purpose..."

Discuss with the aid of decided cases.

5. Write short notes on the following:
 - (i) Reasonable and Reasonable Man.
 - (ii) The place of motive, intention and negligence in the Law of tort.
 - (iii) The Duty to Mitigate Damages.
 - (iv) Distinguish the Law of tort from the Law of Contract and Criminal Law.

6. Indeco Milling Company Limited employed independent contractors who were apparently competent to construct a reservoir on their land to provide water for the mill of the Company. In the course of the work, the contractors came upon some old shafts and passages on Indeco Milling Company's Land. The old shafts and passages communicated with the mines of Zambia Consolidated Copper Mines, neighbours of Indeco Milling Company Limited. The shafts and passages appeared to be filled with earth. The contractors did not block them up and when the reservoir was filled, the water from it burst through the old shafts and flooded the mines of Zambia Consolidated Copper Mines.

Discuss the liability of Indeco Milling Company Limited and the contractors with the aid of decided cases.

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA
UNIVERSITY SECOND SEMESTER EXAMINATIONS - NOV/DEC 1996

L 232

LAW OF TORTS II

TIME: THREE HOURS

INSTRUCTION: ANSWER QUESTION ONE AND THREE OTHERS

1. The Journalists in this country have claimed that the Law of Libel in this country prohibits to a greater degree investigative reporting.

With the aid of authorities critically analyse the validity or otherwise of this claim.

2. "Whether an act constitutes a nuisance cannot be determined by an abstract consideration of the act itself but by reference to all the circumstances of the particular case; the time and place of its commission, the seriousness of the harm, the manner of committing; whether it is done maliciously or in the reasonable exercise of rights and the effect of its commission that is whether it is transitory or permanent, occasional or continuous, so that it is a question of fact whether or not a nuisance has been committed."

With the aid of decided cases discuss.

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

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

Please advise her accordingly.

4. Patrick Banda purchased a car from Sundat Motors (Zambia) Limited which was assembled by Lusaka Motor Assemblers Limited. Soon after purchasing the vehicle, the vehicle developed a fault. Patrick Banda took the vehicle to Sundat Motors (Zambia) Limited garage to have the fault rectified. The same day after being assured that the fault had been rectified Patrick Banda collected the vehicle and undertook a journey to Chipata. On the way, he noticed some smoke and when he tried to check the vehicle, it caught fire.

Patrick Banda commenced proceedings in the High Court against Sundat Motors (Zambia) Limited alleging negligence on the part of Sundat Motors Zambia Limited. Sundat Motors Zambia Limited counter-claimed that the fire was caused by Patrick Banda's attempted road side repair.

The trial Judge found that the fire had not been caused by Patrick Banda's negligence but that a probable cause of the fire might have been the negligence of Sundat Motors (Zambia) Limited.

Sundat is dissatisfied with the judgement of the trial court and consequently approaches you for advice.

Please advise accordingly.

5. Write short notes on the following:

- (a) Restitution in integrum
- (b) Mitigation of damages
- (c) Interlocutory injunction
- (d) Volenti non fit injuria

6. (a) State and discuss the requisites of the tort of malicious prosecution.

- (b) X was found murdered at a certain place. D who was on bad terms with P informed the police that he saw P giving certain spear blows to X. The police prosecuted P for murder of X. The trial magistrate acquitted P on the finding that D's story was absolutely false.

P sues D in a court for damages and attaches to the writ a certified copy of the Magistrates judgement. Further, he also alleges D's enmity towards him.

P approaches and seeks your advice whether or not he will succeed in recovering damages.

With the aid of decided cases please tender your advice.

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY FIRST SEMESTER EXAMINATIONS - JUNE 1996

L 241

CRIMINAL LAW I

TIME: THREE HOURS (Plus 5 minutes for reading question paper)

ANSWER: QUESTION ONE IS COMPULSORY AND ANY OTHER THREE QUESTIONS.

PENAL CODE, CAP.146 AND CRIMINAL PROCEDURE CODE, CAP.160 ARE PERMITTED IN THE EXAMINATION HALL.

1. (a) On 5th May, 1996 Doka fatally assaulted his wife over a petty quarrel. He was arrested and charged with murder before Mr. T.K. Banda, a Principal Resident Magistrate at Ndola Subordinate Courts. Doka pleads not guilty to the charge of murder. Mr. Banda then holds a preliminary inquiry and after 5 witnesses out of 7 had given their depositions, the D.P.P. has issued a summary comittal certificate in the case. But Mr. Banda continues with the Preliminary Inquiry saying that there is no direct and sufficient evidence warranting the committing Mr. Doka to the High Court. He then acquits the accused. The D.P.P. asks you being a State Advocate to prepare appeal grounds. What would be your reaction and grounds of appeal before the High Court?
- (b) What is the maximum imprisonment term a Magistrate Class III can impose on a convicted person?
- (c) How long can a Magistrate suspend an imprisonment term imposed on the convicted person?
2. How do you understand the concept of mens rea in relation to the crimes of strict liability?
3. The defence of Diminished responsibility is the same as the defence of insanity. Discuss as to the truth of this statement.

4. Consider criminal liability in the given facts:

One evening Mr. Bwalya went out to Garden nightclub and met Bupe, a 20 year girl. They had been dancing together many occasions. At 02:00 hours Bupe asked for a lift to Kabwata Estates and Mr. Bwalya agreed. But on their way Bwalya stopped the car and pulled Bupe to the nearby ditch and pushed her to the ground. He pulled Bupe's dress upwards and tried to remove the dancing costume which was under the dress, but failed. He then let Bupe go and picked her to the car, and uttered these words, "Oh, I have remembered today is my father's death anniversary and I am not to behave like this, otherwise I would have torn your costume and fuck you." As Bwalya had undressed himself, he dressed up and they continued their journey to Kabwata Estates where they reside. Bupe in the morning reported to the police, and the police seek for your opinion whether Bwalya would be charged of any offence. Please discuss.

5. Give brief facts and the decision of the case of R V Zulu and others (1961) R & N 645 and what is its importance to the law relating to interpretation of the Penal Code.
6. How do you understand the concept of Rehabilitation in relation to theories of punishment? And what penalties do you consider to be rehabilitative?
7. Write brief notes on two of the following:
- (a) Self-defence to a criminal charge.
 - (b) Mistake of fact.
 - (c) Omission as actus reus of a crime.

END OF EXAMINATION