

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

2016/2017 ACADEMIC MID YEAR EXAMINATIONS

1. LPU 2911 LEGAL PROCESS
2. LPU 2951 CONSTITUTIONAL LAW
3. LPU 3911 LAW OF EVIDENCE
4. LPU 3975 HUMAN RIGHTS LAW
5. LPU 4041 INTERNATIONAL LAW
6. LPU 4135 DISABILITY LAW RIGHTS LAW



THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

LEGAL PROCESS LPU 2911 MID-YEAR EXAMINATIONS

Thursday 11th May 2017

INSTRUCTIONS:

1. Answer **four (4) Questions**, one from each part.
2. Time allowed: **three (3) hours plus five (5) minutes** to read through the examination paper.
3. This examination paper carries a total of 60 marks.
4. Candidates are permitted to bring the following statutes into the examination room: The Constitution of Zambia as amended by The Constitution of Zambia (Amendment) Act No. 2 of 2016.
5. Candidates **must not turn this page** until the invigilator tells them to do so.

PART A

QUESTION 1 (Compulsory)

You have been asked to give a presentation on the salient features of the Zambian legal system at the annual conference of the International Bar Association in Bali, Indonesia. During the course of your presentation, you begin to discuss the hierarchy and jurisdiction of the Zambian courts. You inform your audience that in terms of Article 121 of the Constitution of Zambia (Amendment) Act, “the Supreme Court of Zambia and the Constitutional Court rank equivalently”. You further state that in terms of Article 128 (4) of the same Act, “a decision of the Constitutional Court is not appealable to the Supreme Court.”

- (a) A member of your audience asks you what the likely consequences of having two courts of equivalent rank could be. Discuss.

[10 marks]

- (b) A second member of your audience asks you whether a decision of the Supreme Court of Zambia is appealable to the Constitutional Court. Discuss.

[8 marks]

PART B

QUESTION 2

- (a) A submission to the 2003 Willa Mung’omba Constitutional Review Commission stated the following: “...the actions of the judiciary...shall be aimed at the speedy removal of any political tension/differences or mistrust among stakeholders....”

Which attribute of a good legal system does this submission refer to? How does this attribute relate to other attributes of a good legal system?

[9 marks]

- (b) What are the essential elements of customary international law?

[5 marks]

QUESTION 3

Write short notes on the following:

- (a) The lawmaking function of the Zambian parliament [5 marks]
- (b) Zambia as a dualist state [5 marks]
- (c) Statutes of general application [4 marks]

PART C

QUESTION 4

You are a newly qualified legal practitioner and have recently been employed as a state advocate at the Ministry of Justice. On your second day at work, you receive an email from your supervisor asking you to read Article 7 of the Constitution of Zambia (Amendment) Act and after having done so, to meet her in her office. After you dutifully read Article 7, you go to your supervisor's office, and she informs you that she has just received a request from the Attorney General to write a legal opinion on the status of judicial precedent as a source of law in Zambia.

- (a) Your supervisor asks you to prepare the first draft of the legal opinion. Write the draft opinion.

[10 marks]

- (b) After you submit your draft opinion, a colleague asks you whether the Supreme Court of Zambia is bound by its own decisions. Advise him.

[4 marks]

QUESTION 5

- (c) May a judge, faced with a statutory provision that appears to produce an absurd or unjust result, simply conclude that parliament made a mistake? With reference to the rules of statutory interpretation and relevant authorities, discuss this statement.

[9 marks]

Discuss the main principle laid down in the Supreme Court case of *Attorney General v Steven Luguru*, SCZ Judgment No. 20 of 2001

[5 marks]

PART D

QUESTION 6

- (a) "The conflict between customary law and the common law is a formal reflection of a cultural dichotomy – the separate existence of the traditional African culture and the European culture, each espousing its own legal system."

Bennett, T. W. "Conflict of Laws: The Application of Customary Law and the Common Law in Zimbabwe." *The International and Comparative Law Quarterly*, vol. 30, no. 1, 1981

Discuss this statement, paying particular attention to the factors that a court might consider when resolving a conflict between customary law and the formal law.

[9 marks]

- (b) Section 12 (1) of the Local Courts Act CAP 29 reads in part: "...a local court shall administer...the African customary law applicable to any matter before it in so far as such law is not repugnant to natural justice or morality..."

Critically evaluate this clause.

[5 marks]

QUESTION 7

- (a) Compare and contrast arbitration and mediation.

[7 marks]

- (b) Do the Zambian courts have the authority to overturn an arbitral award? With the use of appropriate authorities, answer this question.

[7 marks]



THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

**LPU 2951 CONSTITUTIONAL LAW
MID YEAR EXAMINATION**

10th May 2017

INSTRUCTIONS:

1. Answer **FOUR (4) questions**, one from each Part.
2. Time Allowed: **Three (3) hours plus five (5) minutes** to read through the examination paper.
3. This examination paper carries a total of **60 marks**.
4. Candidates are allowed to bring in unmarked copies of the constitution and pre-verified statutes into the examination.
5. Candidates must **not turn this page** until the invigilator tells them to do so.

PART A

Question 1 - Compulsory

Prophet Shokoloko was the overseer of Miracles by Fire Ministries which is one of the largest churches in Zambia. His healing powers and magical acts won him many followers across Zambia. On one Sunday Service he stepped over ten pregnant women preaching that he is going to bless their wombs. However the women all had miscarriages. This incident and many others led to the deportation of the Prophet to his home country in Buranda.

Unhappy with the deportation, the church leadership decided to hold a protest March to the Vice President's office. They therefore gave a notification to the police at Central Police command. The police warned the church leadership that if the march takes place it is likely to cause a breach of peace as the general public was unhappy with the activities of Prophet Shokoloko.

The church leadership however, insisted that they had enough security and further that the Constitution protects their freedom of religion as well as assembly and association. They therefore decide to go ahead with the march.

As the membership lined up on the day of the march heavily armed police officers arrived, shot teargas and arrested the church leadership.

You have been retained by the church to represent them in this issue. They want you to advise them on the legal issues involved and on their rights as protected by the Zambian Constitution. Advise them.

[18 Marks]

PART B

Question 2

Buranda was a colonial island under the United Kingdom. In 2016 it obtained its full independence. The new government has stated that their priority is economic development and peace building in the nation. In this light the new President has stated that the Burandan constitution will be amended to usher in a one party participatory democracy as this will ensure the desired peace and national unity.

You are a constitutional law expert at the University of Buranda and had lived in exile in Zambia. Seeing that you taught constitutional law during the one party state at the University of Zambia while in exile, the Ministry of Justice of Buranda requests you to advise the government of the following: -

- What are the advantages and disadvantages of a one party state?
- Is a one party state desirable in a constitutional democracy?
- Any other advice you deem important.

Advise the government.

[14 Marks]

Question 3

Citing practical examples, write short notes on the following:

- a) Juridical constitutionalism
- b) Structural constitutionalism
- c) Bicameralism
- d) Unicameralism

[14 Marks]

PART C

Question 4

Taking into account the history and recent development in the constitution making process in Zambia, discuss the Supreme Court's decision in the case of DERRICK CHITALA (Secretary of the Zambia Democratic Congress) v The Attorney General (1995-1997) Z.R. 91.

[14 Marks]

Question 5

You are the Law Association of Zambia Convenor of the Constitutional Law Reform Committee. National Assembly has written to you requesting for submission on "*key features of the Rule of Law and how the Rule of Law can be enhanced in Zambia*" Prepare the submissions for parliament.

[14 Marks]

PART D

Question 6

- (a) The Centre for Constitutional Development in Zambia has just filed an action in the Constitutional Court stating that the Zambian Constitution contravenes the principle of separation of powers by allowing members of the executive to be also members of the legislature. They have also applied for an injunction to stop Parliament from sitting and ministers from working until resolution of the matter.

You are the Attorney General of Zambia and have to prepare submissions in response to the petition and application for injunction. Prepare your submissions.

[9 Marks]

- (b) Discuss the Supreme Court decision in the case of Re Mumba (1984) ZR.4.

[5 Marks]

[14 Marks]

Question 7

Buranda has just come out of a tight election with the President winning the vote by 51.3% of the votes cast. The opposition have petitioned the results in the Constitutional Court. However the matter is dragging in court and this has caused wide spread violence and protests in the country. The new President has therefore declared a state of emergency in the country. Buranda has identical laws and constitution to those of Zambia.

Civil society is outraged with the declaration and have come to you for advice on the implications, constitutionality and powers of the President to declare a state of emergency in a modern democratic state. Give your advice.

[14 Marks]

TOTAL 60 MARKS

THE END



THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

**LPU3911 LAW OF EVIDENCE
MID YEAR EXAMINATION**

8th May 2017

INSTRUCTIONS:

1. Answer **FOUR (4) questions**, one from each Part.
2. Time Allowed: **Three (3) hours** plus **five (5) minutes** to read through the examination paper.
3. This examination paper carries a total of **60 marks**.
4. Candidates are **not permitted to bring any statutes** into the examination room.
5. Candidates must **not turn this page** until the invigilator tells them to do so.

PART A

Question 1 – Compulsory

- a) Moshe Masipa is being tried by the Subordinate Court for rape. He denies the charge and claims that the complainant falsely accused him out of spite. During the course of trial, the prosecution calls the complainant, Judy Muntu, to the stand. In the course of her testimony, the complainant states:

I know the accused. We used to date but I left him a year ago owing to his violent tendencies. On the fateful day, I met him on a lonely road during my routine jog. He grabbed me and threw me to nearby shrub where he proceeded to rape me. Later that evening, he called my cell phone and bragged about what he had done to me. I recorded the conversation. He gave graphic details of what he had done to me. I now tender the audio recording as part of my evidence.

Identify and discuss the evidential issues arising from the witness' testimony. (12 Marks)

- b) With the aid of authorities, discuss the various stages of examination of a witness during trial. (6 Marks)

(18 Marks)

PART B

Question 2

- a) You are the magistrate trying the case of *The People v Joyce Kasaka*. Joyce Kasaka is accused of theft of a motor vehicle contrary to section 281 A of the Penal Code (see attached schedule). The first prosecution witness is Marvin Swalalala (PW1) who testified that on or about 15th January 2017, he entered into an oral contract with Joyce Kasaka for the sale of a second hand motor vehicle, Mercedes Benz C220 at the price of K300, 000.00. That following this agreement, Joyce paid a part payment of K100, 000.00 to Marvin and took possession of the motor vehicle. She promised to pay the balance of K200, 000.00 in two monthly instalments, on 28th February and 31st March respectively. PW1 further testified that when he made a demand for payment of the first instalment from the accused on 28th February 2017, she stated

she had financial problems but would pay the full outstanding balance plus interest at 20% of the outstanding balance on 31st March 2017. PW1 agreed to the proposal. He also testified that on 31st March 2017, Joyce Kasaka stopped picking up PW1's calls, upon which PW1 reported the matter to the police. In cross examination, PW1 admitted that the accused called him on 4th April 2017 and explained that she had made an urgent trip to India on 26th February and was unable to get in touch with him. She asked for two more weeks within which to pay as soon as she returned from India. PW2 was inspector Mulilo Wapya. The gist of his testimony was how he received a complaint from PW1 and upon investigation arrested the accused on 6th April 2017 and charged her with the offence of theft of motor vehicle.

The prosecution has closed its case. You are required to render a ruling on whether or not the accused has a case to answer. Using your knowledge of principles of burden and standard of proof, write a well-reasoned ruling you will deliver to the parties.

(9 marks)

b) Discuss the rules governing admissibility of a confession statement in criminal proceedings

(5 Marks)

(14 Marks)

Question 3

You have been retained by Margaret Swilili (the accused) who was recently convicted of murder contrary to section 200 of the Penal Code of Zambia. She was sentenced to death by the High Court sitting at Chilubi Island. The particulars of the offence are that Margaret Swilili, on 16th January 2016, did murder the deceased, a boy aged 13 years old. The appellant denied murdering the deceased and alleged that he committed suicide. The evidence upon which the court made the finding are as follows:

Irene Pole, first prosecution witness (PW1), the accused's neighbour, testified that she found the deceased hanging on a branch in an almost kneeling/squatting position behind the accused's house. When she screamed for help, people in the neighbourhood came to her aid. They untied the deceased and laid him down. His body was still warm. They tried to resuscitate the deceased by pouring water on him

but failed. When they took him to the hospital, the deceased was pronounced as being brought in dead. The post-mortem report indicated the cause of death as brain haemorrhage traumatic shock and head injuries. The report did not show any physical injury or signs of strangulation on the deceased throat.

Another prosecution witness, PW3, the deceased's grandfather testified that he rushed to the accused's house after he heard people shouting that the deceased had committed suicide. He said on his way to the house, he saw the accused heading towards town and when he spoke to her, she did not respond.

The trial court found it as a fact that the deceased was found hanging in a kneeling/squatting position. He also found it as a fact that the accused was walking away from her home which was suspicious. He ruled out suicide and convicted the accused of murder.

Margaret Swilili has appealed against the conviction and sentence.

Write submissions on behalf of Margaret Swilili in support of the appeal. **(14 Marks)**

PART C

Question 4

- a) Peter Panda (the applicant) has sued Joe Masese (the respondent) for vacant possession of shop No. 1234 Mtendere East, Popularly known as Manchester Club on grounds of non-payment of rentals. The respondent is contesting the application and claims that he has duly paid his rentals. The respondent has applied for an interlocutory injunction to restrain the applicant from entering the subject shop and interfering with his business pending determination of the matter. The affidavit in support of the application for an interlocutory injunction was sworn by Machaka Masese, a sister to the respondent. Her affidavit reads in part:

1. That I am the sister to Joe Masese the respondent.
2. That I am a salesperson in the subject shop which I tend on behalf of my brother, Joe Masese, who has currently travelled out of the country.

3. That I have been advised by Joe Masese that he has duly paid all rentals claimed in this matter per copies of receipts attached hereto that were issued to Joe Masese by the Applicant.
4. That the said Joe Masese is being harassed by the Applicant.

You act for the Applicant in the matter. Write your arguments in opposition to the affidavit evidence. (9 Marks)

- b) Discuss the competence of a spouse as a witness in criminal proceedings. (5 Marks)

(14 Marks)

Question 5

- a) In the case of *Credland v Knowles* Cr. App. Rep. 48., Goddard, L.C.J, at p. 56 stated that:

As has been pointed out over and over again, where the question is whether a person's evidence is corroborated, the whole story has not to be corroborated, because if there is evidence independent of the person whose evidence requires corroboration which covers the whole matter, there is no need to call the first person at all. The evidence has only to be corroborated 'in some material particular...by some other material evidence.

With the aid of case law, explain the application of the above principle in Zambia.

(9 Marks)

- b) Discuss the admissibility of evidence of a single identification witness in criminal proceedings. (5 Marks)

(14 Marks)

PART D

Question 6

Write short notes on the following:

- a) Judicial Notice
- b) Weight of evidence
- c) Res gestae
- d) Estoppel by record

(14 Marks)

Question 7

Write short notes on the following:

- a) Documentary evidence (5 marks)
- b) Privilege (5 Marks)
- c) Opinion evidence (4 marks)

(14 Marks)

SCHEDULE: EXTRACT OF THE PENAL CODE ACT [Question 2(a)]

Section 265

(1) A person who fraudulently and without claim of right takes anything capable of being stolen, or fraudulently converts to the use of any person other than the general or special owner thereof anything capable of being stolen, is said to steal that thing.

(2) A person who takes or converts anything capable of being stolen is deemed to do so fraudulently if he does so with any of the following intents, that is to say:

- (a) an intent permanently to deprive the general or special owner of the thing of it;
- (b) an intent to use the thing as a pledge or security;
- (c) an intent to part with it on a condition as to its return which the person taking or converting it may be unable to perform;
- (e) in the case of money, an intent to use it at the will of the person who takes or converts it, although he may intend afterwards to repay the amount to the owner.

(3) When a thing stolen is converted, it is immaterial whether it is taken for the purpose of conversion, or whether it is at the time of the conversion in the possession of the person who converts it. It is also immaterial that the person who converts the thing in question is the holder of a power of attorney for the disposition of it, or is otherwise authorised to dispose of it.

s. 281A. (1) If the thing stolen is a motor vehicle, the offender is liable to imprisonment for a period-

- (a) in the case of a first offence, of not less than five years and not exceeding fifteen years;
- (b) in the case of a second or subsequent offence, of not less than seven years and not exceeding fifteen years.

End of examination



THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

LPU 3975 HUMAN RIGHTS LAW MID-YEAR EXAMINATION

Thursday 11th May 2017, 09:00 – 12:00 hours

INSTRUCTIONS:

1. Answer **FOUR (4)** questions, one from each Part.
2. Time Allowed: **Three (3) hours plus five (5) minutes** to read through the examination paper.
3. This examination paper carries a total of **60 marks**.
4. Candidates **are permitted to bring Unmarked statutes** into the examination room.
5. Candidates must **not turn this page** until the invigilator tells them to do so.

PART A

Question One (COMPULSORY)

Mpanzama is a 33 year old man with a mental disability. He wants to marry his childhood sweetheart, Antoinette, but his family members are opposed to this marriage stating that he is incapable of running a home and handling matrimonial responsibilities. Mpanzama has not been able to keep a job because his employers dismiss him from work as soon as they discover that he has a mental disability. This discovery is often made when he has a mental crisis. Mpanzama now feels helpless because no one wants to give him a chance at life. He hears of your Disability Rights Law Clinic and seeks your intervention in protecting his fundamental rights.

Write a well reasoned opinion for Mpanzama, identifying the human rights abuses he has suffered, if any, and the protection that can be accorded to him under the Zambian human rights framework.

(18 MARKS)

PART B

Question Two

The United Nations concept note on treaty body reporting of April 2017 prepared by the Office of the High Commissioner for Human Rights states that:

“Zambia is a State party to eight of the nine core human rights treaties... It is commendable to note that Zambia is a State party to eight core human rights treaties. In terms of reporting obligations to the treaty bodies, Zambia is up to date only on [one] and currently has 7 overdue State reports to various treaty bodies...”

In view of the above, address the following questions:

- a) Identify six of the core international human rights instruments that Zambia has ratified and the importance of these instruments to Zambia. **(8 marks)**
- b) Evaluate any two reasons that inhibit Zambia from adhering to its human rights obligations. **(6 marks)**

(14 MARKS)

Question Three

a) Discuss the normative content for the following rights under the African Charter for Human and People's Rights:

- i. the right to public participation.
- ii. the right to life.

(6 marks)

b) Identify and analyse two practical examples of enforcement of human rights under the African human rights system.

(8 marks)

(14 MARKS)

PART C

Question Four

The preamble of the Zambian Constitution, as amended by Act No. 2 of 2016 states, among others, that:

WE, THE PEOPLE OF ZAMBIA:

ACKNOWLEDGE the supremacy of God Almighty; Declare the Republic a Christian Nation while upholding a person's right to freedom of conscience, belief or religion;

UPHOLD the human rights and fundamental freedoms of every person...

Further Article 8(d) identifies "human dignity, equity, social justice, equality and non-discrimination" as national values and principles.

In light of these provisions, critically discuss whether a Satanist and a Witch can assert their rights to religion and/or culture under the Constitution as amended. Further, evaluate whether they are entitled to such an assertion.

(14 MARKS)

Question Five

- a) Basop is selected to travel to the UK for work-related meeting. His workplace has insisted that he undergoes medicals to enable them take out medical insurance cover for him. He is resisting the medical tests because he is HIV positive, a fact his employers do not know. He believes he will be stopped from traveling to the UK once they discover his HIV status because other employees in the firm have had their employment terminated on that account. Basop comes to you for advice.

Write a well reasoned opinion for him.

(9 marks)

- b) Evaluate the importance of the European Human Rights system to the African Human Rights system.

(5 marks)

(14 MARKS)

PART D

Question Six

Mapalo is a 20 year old house wife accused of murdering her abusive husband. She had an argument with her husband that led her to stabbing him and he bled to death. She was arrested immediately and taken to Lusaka Central Prison as the police conducted their investigations. She has been kept in prison for 3 months and has not appeared before any court. She is unable to afford a lawyer and so she is not challenging her detention. Recently Mapalo has been diagnosed with TB but has not been put on medication as the Prison Clinic does not have medical supplies for TB. Mapalo's family is worried that she will not make it to trial as she is always sickly. They approach you, the Director of the Human Rights Commission of Zambia, to assist them protect Mapalo's rights.

Write a well reasoned opinion on Mapalo's human rights status, identifying the human rights abuses she has suffered, if any and the

Question Five

- a) Basop is selected to travel to the UK for work-related meeting. His workplace has insisted that he undergoes medicals to enable them take out medical insurance cover for him. He is resisting the medical tests because he is HIV positive, a fact his employers do not know. He believes he will be stopped from traveling to the UK once they discover his HIV status because other employees in the firm have had their employment terminated on that account. Basop comes to you for advice.

Write a well reasoned opinion for him.

(9 marks)

- b) Evaluate the importance of the European Human Rights system to the African Human Rights system.

(5 marks)

(14 MARKS)

PART D

Question Six

Mapalo is a 20 year old house wife accused of murdering her abusive husband. She had an argument with her husband that led her to stabbing him and he bled to death. She was arrested immediately and taken to Lusaka Central Prison as the police conducted their investigations. She has been kept in prison for 3 months and has not appeared before any court. She is unable to afford a lawyer and so she is not challenging her detention. Recently Mapalo has been diagnosed with TB but has not been put on medication as the Prison Clinic does not have medical supplies for TB. Mapalo's family is worried that she will not make it to trial as she is always sickly. They approach you, the Director of the Human Rights Commission of Zambia, to assist them protect Mapalo's rights.

Write a well reasoned opinion on Mapalo's human rights status, identifying the human rights abuses she has suffered, if any and the

protection that can be accorded to her under the Zambian human rights framework.

(14 MARKS)

Question Seven

Kofi Anan once remarked that “building strong human rights institutions at the country level is what in the long run will ensure that human rights are protected and advanced in a sustained manner. The establishment or enhancement of a national protection system in each country, reflecting international human rights norms, should therefore be a principle objective of the United Nations.” In view of this observation, analyse how any two of the institutional and structural changes effected by the constitutional amendments of Act no. 2 of 2016 will enhance human rights protections in Zambia.

(14 MARKS)

END OF EXAMINATION



THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

INTERNATIONAL LAW LPU 4041

MID YEAR FINAL EXAMINATION

9th May 2017

09:00 – 12:00

INSTRUCTIONS:

1. Answer **FOUR (4) questions**, one from each Part.
2. Time Allowed: **Three (3) hours plus five (5) minutes** to read through the examination paper.
3. This examination paper carries a total of 60 marks.
4. Candidates **are permitted to bring the following unmarked statutes** into the examination room; The United Nations Charter, The Statute of the International Court of Justice and the Vienna Convention on the Law of Treaties.
5. Candidates must not turn this page until the invigilator tells them to do so.

PART A

QUESTION ONE IS COMPULSORY

- a) Four adventurous young men from the Republic of Siliza, with possible links to a named terrorist organisation have been arrested in Soche, the capital city of Siliza following a joint operation by the Siliza Police Service and International Criminal Police Organisation. The arrests followed an explosion on board a bus in the capital of the Republic of Zoon which killed 80 people.

Among the dead are 40 Zoonans nationals, 20 migrants workers from the Republic of Kyanma and the other 20 were tourists from the Republic of Misisi who were on holiday in Zoon. The four arrested Silizans are allegedly responsible for the attacks. Siliza would like the four men to be tried in Soche claiming that the act could have been undertaken in self-defence.

But Misisi is demanding that they be tried in that country, while the States of Zoon and Kyanma would like the suspects to be extradited to their respective countries for trial.

Critically analyse the relevant legal issues raised over the four suspects taking into account whether there are any defences that they can seek to rely upon in international law.

(10 Marks)

- b) According to the Lusaka Times Newspaper, of February 22, 2017, following a three days official visit of the Morocco King Mohammed VI to Zambia, Zambia now claims that it no longer recognises the territory of Western Sahara.

Discuss the criteria for recognition in International Law, using examples to illustrate your arguments.

(8 Marks)

18 marks

PART B

QUESTION TWO

- a) In the Fisheries Jurisdiction case (United Kingdom of Great Britain and Northern Ireland v. Iceland) 1974 International Court of Justice Report. 3 (Judgement of 25 July) paragraph. 73, the Court held that the most appropriate method for settlement of disputes was that of negotiation.

Critically analyse negotiation as a mode of settling disputes in International Law.

(7 Marks)

- b) Explain the International Court of Justice's rationale in the Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States) 1986 I.C.J. 14. 103 - 23 in recognising that Article 51 of the United Nations Charter provides an inherent or natural right to self-defence.

(7 Marks)

14 Marks

QUESTION THREE

- a) 'The Charter of the United Nations is not clear as it could when it comes to saving lives within countries in situations of mass atrocity. It reaffirms faith in fundamental human rights but does not do much to protect them and article 2 (7) prohibits intervention in matters which are essentially within the jurisdiction of any state'. (Report of the Secretary General's High Level Panel – 2005)

Discuss the above statement with regards to the weakness of international law and the United Nations Charter regime.

(10 Marks)

- b) With the aid of relevant authorities, explain the principle of cobotage.

(4 Marks)

14 Marks

PART C

QUESTION FOUR

- a) The Republic of Chabota invokes state responsibility of the Republic of Muziwangu on the basis of violation of a *jus cogens* rule. Explain the institutional framework or procedure available to Republic of Chabota to bring a claim against the Republic of Muziwangu in international law, taking into account the criteria for admissibility of the claim.

(10 Marks)

- b) Write short notes on the following;
- (i) The concept of a State
 - (ii) State Succession

(4 Marks)

14 Marks

QUESTION FIVE

EnviroCo is a manufacturer of weedkill. Although it carries out its manufacturing activities in the developing state of Povertia, it is registered in the developed state of Lucracia. The majority of its shareholders are nationals of Hegemonia. In June 2012 workers in the EnviroCo plant in Povertia were directed to strike for higher wages by their government-controlled trade union. Juuta, the manager of the plant and a national of Technolia, while attempting to keep the plant operating accidentally released a highly toxic chemical into the river Zamzam killing most of the fish in the river and polluting the fields along the river bank. The local population, who rely mainly on fishing and agriculture for their livelihoods,

were annoyed by this and after beating Bob, they dragged him before a local magistrate who sentenced him to 15 years imprisonment in a notoriously unsanitary neighbourhood jail.

The government of Povertia has stated its intention to expropriate the plant vowing that 'the foreigners responsible for the catastrophe will not receive a kwacha in compensation'

Discuss the law on state responsibility with references to relevant authorities.

14 Marks

PART D

QUESTION SIX

The people of the Republic of *Matomato* have for the last fifty years been subjected to cruelty under a government that has maintained power since independence in 1980. Despite, the people having an opportunity to participate in Matomato's general elections every five years. The *Matomatons* claim that they are being exploited and denied any meaningful exercise of their right to self-determination within the State. In addition, that the government does not represent all the people resident within its territory on the basis of equality. Following failure of securing change in the regime and remedies in national courts, an elite group now seek clarity on the status of individuals in international law.

Advise the *Matomatons* on the matter issues raised above, with reference to relevant authorities.

14 Marks

QUESTION SEVEN

In accordance with the *Lotus* Case (France v Turkey) PCIJ, Ser. A, no. 10 p. 18 and the *Asylum* Case (Colombia v Peru), (1950) ICJ Rep. p. 266; 17 ILR 280; States seeking to rely upon a rule of Customary International Law in a dispute must prove its existence.

Critically analyse the elements required to establish International Customary Law.

14 Marks

End of Examination



THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

LPU 4135 DISABILITY RIGHTS LAW
MID YEAR EXAMINATION

10th May 2017

INSTRUCTIONS:

1. Answer **FOUR (4) questions**, one from each Part.
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SCHOOL OF LAW

**LPU 4135 DISABILITY RIGHTS LAW
MID YEAR EXAMINATION**

10th May 2017

INSTRUCTIONS:

1. Answer **FOUR (4) questions**, one from each Part.
2. Time Allowed: **Three (3) hours plus five (5) minutes** to read through the examination paper.
3. This examination paper carries a total of **60 marks**.
 1. Candidates are allowed to bring in unmarked and pre-verified statutes into the examination.
4. Candidates must **not turn this page** until the invigilator tells them to do so.

PART A

Question 1 - Compulsory

- (a) Software Mukali was a brilliant computer science student and graduated top of his class with a distinction from the University of Zambia. His dream job was to work in the Cyber Operations Unit of the Zambia Army Military intelligence department.

Upon graduation, Software applied for enlistment in the Zambia Army. Despite scoring high on the professional enlistment checklist of the Zambia Army, Software's application was rejected because he had a physical disability. His left leg was permanently paralysed following an accident. The response Software was given is that military life required no physical disability as he would have to undergo training.

Software was devastated by this decision and felt discriminated against. He was of the view that computer work was primarily on the desk and that the Army and Ministry of Defence had a duty to reasonably accommodate him. He therefore petitioned the High Court citing the Convention on the Rights of Persons with Disability (CRPD), the Constitution and the Persons with Disabilities Act. The High Court Judge passed a decision to the effect that the state did not discriminate against Software on the basis of his disability; nor violate any of his rights under the CRPD, Constitution and Persons with Disabilities Act. The learned judge concluded that the nature of military life and training was not for persons with disabilities.

Dissatisfied with the decision, Software comes to you as an expert in disability rights with instruction to appeal to the Constitutional Court. Advise Software on the prospects of success of his appeal in the Constitutional Court. [12 Marks]

- (b) Briefly discuss the right to access to justice for persons with disabilities under Article 13 of the Convention on the Rights of Persons with Disabilities. [6 Marks]

[18 Marks]

PART B

Question 2

- (a) Kawalala Wakuba was charged and convicted for murder of a girl he had been known to be dating. He pleaded guilty to the offence stating diminished responsibility. During mitigation he stated that from childhood he has had moments when “*he loses himself*” and only realises that he has done something horrible after he “*finds himself*” again.

The High Court Judge ordered a psychiatric evaluation from which it was recommended that Wakuba should be detained in a mental institution for treatment. The Judge thereby ordered that Wakuba be detained at Lusaka Mental Health Hospital to serve at the President’s pleasure.

Wakuba, now at the hospital has been complaining that his rights are being violated as he is being denied food; he gets beaten up every day and confined to bed with handcuffs. His other complaint is that the hospital authorities verbally abuse him and violently open his mouth to enable him take his medication.

He tells his brother to find him a lawyer to represent him so that he can be released from the mental institution; and most importantly to protect his rights. He also tells his brother that he wants the court action to be in his name.

The brother goes to Legal Aid Board and the Director requests you as a disability rights expert to advise the brother on how Wakuba can be helped, if at all. Advise Wakuba’s brother.

[9 Marks]

- (b) Briefly discuss the weaknesses of the Mental Disorders Act, 1951 in protecting the rights of persons with mental and intellectual disabilities in Zambia.

[5 Marks]

[14 Marks]

Question 3

- (a) The state of Buranda just came from a violent election where a new government was elected into office. The new government had stood on the ticket that they would improve the human rights record of Buranda which had been dented under the leadership of the old government.

The new government comes to you as an expert in disability rights seeking advice on the importance of ratifying the Convention on the Rights of Persons with Disabilities (CRPD) since the International Bill of Rights seemed sufficient to protect the rights of persons with disabilities. Advise the new government. [9 Marks]

- (b) Briefly discuss the decision in the case of Purohit and others vs. The Gambia decided by the African Commission on Human and Peoples' Rights (ACHR 2003).

[5 Marks]

[14 Marks]

PART C

Question 4

- (a) The African Commission on Human and Peoples' Rights Special Rapporteur on the rights of persons with disabilities is visiting Zambia on a mandate tour under the Charter. One of the places he will be visiting is the Office of the Attorney General. In a pre-visit letter the Special Rapporteur states that he expects the Attorney General to prepare and present a detailed paper on how the Special Rapporteur mandate can be used to improve Zambia's ability to implement its obligations in the African Charter with respect to persons with disabilities.

You are the disability rights expert in the Attorney General's Chambers and he requests you to prepare the paper that he will present. Prepare the paper as requested.

[9 Marks]

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- (b) Briefly discuss the decision in the case of Purohit and others vs. The Gambia decided by the African Commission on Human and Peoples' Rights (ACHR 2003).

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You are the disability rights expert in the Attorney General's Chambers and he requests you to prepare the paper that he will present. Prepare the paper as requested.

[9 Marks]

Compare and contrast the social model and the human rights model of disability.

[5 Marks]

[14 Marks]

Question 5

(a) In Development of Disability Rights, Arlene Kanter states: -

"The right to live in the community for people with disabilities is not about being placed in a building zoned for residential use or in a building that is called a home but operates like an institution. The right to live in the community for people with disabilities is about being allowed to make a home for themselves, with support as needed, in the same way that people without disabilities make their homes in houses and apartments, in cities, towns and villages."

Using the above passage, critically discuss the right to independent and community living guaranteed by Article 19 of the Convention on the Rights of Persons with Disabilities (CRPD) within the Zambian context.

[9 Marks]

(b) In Disability rights hand book in Zambia the following passage is made regarding a model of disability: -

"...oh this poor woman, she won't be able to walk again after this accident and she won't get married. She should go to the hospital for therapy and an artificial leg so that she can be able to walk like everybody else"

Identify the appropriate disability model under which the above statement can be made and discuss the weakness of the model in protecting the rights of persons with disability.

[5 Marks]

[14 Marks]

Compare and contrast the social model and the human rights model of disability.

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(b) In Disability rights hand book in Zambia the following passage is made regarding a model of disability: -

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Identify the appropriate disability model under which the above statement can be made and discuss the weakness of the model in protecting the rights of persons with disability.

[5 Marks]

[14 Marks]

PART D

Question 6

- (a) Compare and contrast the mandate of the United Nations Special Rapporteur on the rights of persons with disabilities and that of the United Nations Committee on the rights of persons with disabilities.

[7 Marks]

- (b) Critically discuss the implications of the right to inclusive development in the Convention on the Rights of Persons with Disabilities (CRPD) for a developing country like Zambia.

[7 Marks]

[14 Marks]

Question 7

With the aid of decided cases, write short notes on ALL of the following concepts: -

- (i) Legal capacity;
- (ii) Reasonable accommodation;
- (iii) Accessibility; or
- (iv) Habilitation and Rehabilitation.

[14 Marks]

TOTAL 60 MARKS

THE END