

THE UNIVERSITY OF ZAMBIA

686078

UNIVERSITY EXAMINATION

AUGUST 1988

SCHOOL OF LAW

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LEGAL PROCESS

TIME: THREE(3) HOURS (Plus Ten Minutes to read through the Examination paper).

ANSWER: ANY FOUR(4) Questions

1. "It is revolting to have no better reason for a rule of law than that it was laid down in the time of Henry IV. It is still more revolting if the grounds upon which it was laid down have vanished since and the rule simply persists from blind imitation of the past."

These are the words of Justice Holmes of the United States Supreme Court.

What are the reasons for the practice of consulting and following previous judgments? In your view is it a good practice?
2. Outline the jurisdiction of the following courts:-
 - (a) Local Courts;
 - (b) Subordinate Courts; and
 - (c) Supreme Court.
3. A layman out of boredom decided to attend a High Court session and was surprised to learn that judges and lawyers in general have problems in finding the intention of Parliament from the laws (Acts of Parliament) which it enacts from time to time.

The layman is surprised because lawyers always refer to themselves as "Learned" after having spent many years of study in Universities and Inns of Court. In his view all that a judge or even a lawyer needs to do when confronted with a case is to listen attentively to the evidence, find the right "Chapter" of the law and within that "Chapter" on appropriate section to cover the situation in dispute and thereafter, the judge or lawyer, as the case may be can resolve the case without difficulty. After all, he argues, law students spend nearly all their time studying laws.

He is anxious to know what the source of the problems that judges and lawyers have in interpreting statute is and how such problems are resolved.

4. Smart Kambombo is a very sad man. Recently his nephew an outstanding motor mechanic was killed in a fight that took place at an illegal drinking place. His nephew's alleged assailant is standing trial in the High Court. To Kambombo's utter disbelief the state has through its Legal Aid Department assigned a Senior Legal Aid Counsel to defend the assailant. He is furious. He does not believe that in a Humanist state where human life is highly valued, criminals of any description should be provided legal assistance at the taxpayers expense. Advise him on why it is necessary to provide legal aid to accused persons.
5. A layman is shocked to learn that English Law applies to-day in Zambia. Explain to him the laws that have made this possible and whether this state of affairs can be justified any longer.
6. Legislation in Zambia authorises courts to use assessors. In practice, however, assessors are used rarely. In your opinion should assessors be used more often. Give reasons for your answer.

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - AUGUST - 1988

L 140

CRIMINAL LAW

TIME: THREE hours

ANSWER: Any FOUR questions.

Penal Law Statutes are allowed in the Examinations Hall

11. State, giving reasons, whether theft has occurred in any of the following situations:
- (a) Musumba is a forestry expert and runs a small nursery. One night he hears his dogs barking and he rushes out to find thieves digging his trees. The men run away leaving two trees uprooted and one still fixed in the earth.
 - (b) Mwape hires a car from Siame for two days. He takes the car to Ntobolo, and states he is the owner and on the strength of this security obtains a loan from Ntobolo. Mwape returns the car after two days.
 - (c) Moole runs a Small Zoo and amongst other things, a large Lizard. The Lizard escapes over the wall and Moole chases it out of the Zoo. Finally he gives up and returns. A fourteen year old boy sees it the next day and catches it to keep it for himself.
 - (d) Chanda is short of money one week and decides to borrow from the Petty Cash in the office. He has no permission but leaves a note saying, "I am an honest person and have borrowed K25. Please deduct the same from my next salary cheque."

Consider whether there is a defence of mistake of fact in the following:-

- (a) After work Punza cycles to a bar leaving his black bicycle outside he enters the bar for a drink. After a couple of hours he leaves and begins looking for his bicycle. The problem is that there are so many black bicycles outside that he has difficulty identifying his own. Still he sees one of the same make, although he notices it has a better saddle, and takes this thinking someone else can have his bicycle. He is charged with theft of the bicycle.
- (b) Chola was deserted by her husband and was reliably informed by officials that he had boarded a plane for Angola which had crashed. After five years, believing herself to be a widow she married Phiri. Her husband then reappeared. She was charged with bigamy (i.e. entering into a marriage ceremony whilst still married).

"The defence of 'Bona fide claim of right' only applies to cases of theft".

Do you agree with this statement? Give reasons for your answer with decided cases.

Choonga died of neglect and starvation in the house of Moomba. In what circumstances can Moomba be successfully prosecuted, and what criminal offences if any? Would the offence differ if Choonga was aged 12 years?

Describe carefully the facts and decision in THUKU v R (1965) E.A. 496, and show its importance to the law relating to Provocation.

Peter is out for a drive one afternoon. He has a lot on his mind - his wife has a boyfriend, the firm he works is losing money and his fourteen year old daughter Grace, left home four days ago.

He stops at a bar - he does not normally come to this area but he is thirsty. Sipping his first beer he looks out of the door and sees his daughter, Grace. He gets up to speak to her but she runs away. Luckily enough he sees her run behind a bus shelter and he follows. She is standing behind the shelter together with Mulenga, a youngman who has a surprised look on his face. Before anyone can say anything Peter hits Mulenga.

"Don't, shouts Grace, "I have never seen him before, he is only waiting for transport."

"Isn't this the youngman who took you away?" asks Peter.

"No, my boyfriend is in the bar."

Peter apologises to Mulenga who is stroking his jaw in a dazed fashion and then Peter goes to Akende the boyfriend.

"Do you know I'm Grace's father and she is only fourteen?"

"I know she is fourteen but she told me her father was dead and she lived alone in Lusaka," replies Akende.

"This is disgusting the Police will hear about this" is Peter's comment.

The Police decide to prosecute:-

- (a) What crimes, if any has Peter committed?
Can he raise any defence?
- (b) Akende is to be prosecuted under Section 136
of the Penal Code Cap. 146. What would be
the result?

7. "The pain from punishment must exceed the pleasure
obtained from the criminal act, then man's will will
determine for him the desirability of non criminal
conduct."

Which theory of punishment is reflected and
advocated in this statement?

END OF EXAMINATION.

UNIVERSITY EXAMINATIONS - AUGUST - 1988

L 150

CONSTITUTIONAL LAW

TIME: THREE hours

INSTRUCTIONS:

1. You are advised to read carefully each question and answer the question concisely.
 2. This examination is in TWO SECTIONS. You are to answer TWO Questions from EACH SECTION a total of FOUR QUESTIONS
 3. Candidates may bring in, and refer to, the Constitution of Zambia and the Constitution of the United States.
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SECTION ONE

Question 1 is an OBLIGATORY QUESTION. Answer it and any ONE other question in this Section.

1. (Obligatory) ;
Assume that the National Assembly of Zambia and the Congress of the United States have each enacted legislation (approved by the respective Presidents) requiring males between the ages of 18 and 35 to register for compulsory military service. The statutes authorize implementing regulations, by a Ministry in Zambiaa and by an administrative agency in the United States, specifying the time, place, and manner of registration. Such regulations have been adopted.

/2....

In each country a man of 18 years, deeply religious, consults a legal practitioner regarding his obligation to register for military service. Each tells the lawyer about the tenets of his religion prohibiting military activity. Neither lawyer can find any provision in the Statute or regulations exempting persons from the requirements of the law due to their religious beliefs. The lawyers are thus considering possible constitutional objections to their clients being required to register for military service.

What specific constitutional objections may the lawyer raise in Zambia? In the United States? How would the Supreme Court of each country analyse the problem and what result would you expect each to reach?

2. The High Court and the Supreme Court of Zambia have upon occasion determined the constitutionality of Acts of the National Assembly and of Statutory Instruments. Similarly, courts of the United States, including the Supreme Court, have passed upon the validity of Acts of Congress and those of State Legislatures.

Where do the courts of these two countries obtain their authority to pass upon the validity of acts of other branches of government? Discuss fully

3. Choose three of the following and write comments thereon:
 - (a) The difference between a rigid and a flexible constitution.
 - (b) The nature of an unwritten constitution
 - (c) The function of the doctrine of separation of powers.
 - (d) The role of the Prime Minister in the government of the United Kingdom.

SECTION TWO

Answer any two questions from this Section.

4. State the facts of the Patel Currency Case (1968) bringing out clearly the arguments by the applicant and the Attorney-General on behalf of the State. Discuss the judgment of Justice Magnus.
5. Examine the role played by the Zambian Courts in the protection of the Constitutional Safeguards accorded to restricted and detained persons under the Constitution of Zambia.

Discuss in the light of some of the landmark decisions reached by the Courts in Zambia on these matters.

- 6.1 Discuss the Constitutional basis of the principle of 'Party Supremacy'. To what extent has the decision in the Nkumbula and Kapwepwe Case (1978) contributed to the legal entrenchment of this principle?
7. What do you understand by the notion of the 'Independence of the Judiciary' and how has the Zambian Constitution attempted its entrenchment? Is the Zambian Judiciary Truly independent?

END OF EXAMINATION

L 210

LEGAL PROCESS

ME: THREE HOURS (Plus ten minutes for Reading through the examination paper.

SWER: ANY FOUR (4) QUESTIONS

"The circumstances in which a superior court can differ from a previous decision of its own are well-known and do not require extensive discussion. A more difficult problem arises when a High Court Judge or a magistrate has - or thinks he has - two conflicting decisions of this court before him, as in the present case we have some sympathy for the magistrate: he was entitled to prefer the reasoning/ⁱⁿMACFADYEAN v THE PEOPLE (1965) Z.R I to that in PHIRI v THE PEOPLE (1973) Z.R. 168 and to say so. But he was not entitled to decline to follow the later case and to follow instead the earlier. There are several reasons why this is so" per BARON D. C.J when he delivered the judgment of the Supreme Court in Zambia in the case DAVIS JOKIE KASOTE v THE PEOPLE (1977) Z.R 75 at 79. With this quotation in mind critically discuss whether or not the doctrine of stare decisis should continue to apply in Zambia.

Recently the Youth League of the United National Independence Party resolved at an Annual Conference held at the now famous Chongwe Youth Memorial Camp that the Government should abolish all Local Courts currently operating in urban areas. The reason behind this resolution is that in the urban areas no clearly ascertainable system of African Customary Law exists as many Africans from all parts of Zambia and even from neighbouring countries have settled permanently in the urban areas clearly "divorced" from their tribal chiefs. It was argued at the Conference that Local Courts should continue to operate in rural areas because the traditional way of life is still followed and Local Courts do not have any problems in applying the African Customary Law prevalent in a particular area. It

was recommended that in the urban areas justice can be dispensed quite satisfactorily by legally trained magistrates and judges. You are the Legal Adviser to the Central Committee of the United National Independence Party and have been requested to advise that Committee on the merits or otherwise of adopting for implementation the resolution passed by the Youth League. Tender your advice.

A layman has discovered that despite Zambia having a National Assembly which is empowered by the Republican Constitution to enact new laws and repeal old ones which are no longer suitable for this country's changed circumstances, there are still on the "Statute Book" ^{laws} ~~laws~~ ^{currently} ~~currently~~ in force in England on certain specified subjects to have the force of law in Zambia. The layman is disgusted and puzzled because Members of Parliament in recent years have been very vocal and critical on various issues affecting the welfare of Zambians. Furthermore the Legal profession is full of indigenous Zambians.

He is anxious to know why this state of affairs has been allowed to continue so many years after Zambia's independence. Advise him.

Comment on the following subjects:-

- (a) Whether or not the escalating crime rate would be reduced by the abandonment of the accusatorial system provided for by Article 20 of the Constitution of Zambia and the introduction of the inquisitorial system.
- (b) Whether or not the statutory provisions which deal with the protection of tenure of judges and magistrates are adequate to secure the independence of the judiciary.

Article 20(2)(d) of the Constitution of Zambia provides that every person who is charged with a criminal offence shall be permitted to defend himself before a court of law in person or, at his own expense by a legal representative of his own choice. To assist indigent litigants the Government of the Republic of Zambia established the Directorate of Legal Aid in 1967. Legal Aid is provided in both civil and criminal cases. However, in recent times pressure has been brought to bear on the Government by certain sections of the Zambian Community that

3. L 210

legal aid in criminal cases should be abolished. A group of concerned Zambians who do not wish the situation changed have approached you to prepare a document to justify the continuance of legal aid in criminal cases. Do this.

Discuss the following:-

- (a) the work of the Federal Supreme Court of the Federation of Rhodesia and Nyasaland in the period 1955 to 1965.
- (b) appeals to the Judicial Committee of the Privy Council from the protectorate of Northern Rhodesia.
- (c) Native Courts in the period 1929 to 1964.

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY SUPPLEMENTARY/DEFERRED EXAMINATIONS - OCTOBER 1988

L 210

LEGAL PROCESS

ME: THREE(3) HOURS (PLUS TEN(10) MINUTES TO READ THROUGH
THE PAPER)

ANSWER: ANY FOUR(4) QUESTIONS

A layman has discovered that in Zambia's legal system African Customary Law is enforceable only in certain circumstances although various political pronouncements have emphasised the need for Zambians to preserve and promote their cultural heritage. He is naturally outraged and wished to know why African Customary Law occupies a "second" position. Discuss (you are expected to refer to the provisions of relevant statutes and suitable illustrative cases).

In recent times the concept of "power to the people" has become a major subject of debate in political and legal circles. Some believe the Zambian general public is not yet ready for a system under which major developmental issues are discussed and resolved at the grassroots level. The people in this group believe that it would be dangerous to give such power to the people and that Parliament should, therefore, guard against delegating its law making powers widely. As you are aware provision exists in the Constitution of Zambia for Parliament to do this.

- (a) give the rationale for allowing Parliament to delegate some of its law making powers;
- (b) do you support the concept of "power to the people"? (Whether your answer is "yes" or "no" you are expected to give reasons).

Lay (non-layer) participation in judicial proceedings has both its supporters and critics. In Zambia, for example, provision exists for courts of law to call to their assistance the services of "assessors" in both civil and criminal cases. Supporters of lay participation argue that when justice is administered by professional lawyers only - that is to say - without an input from non-lawyers, the citizen suffers greatly because lawyers are most of the time pre-occupied with "technicalities" and less with the issues which concern ordinary people. In Zambia, in practice, however, the courts have used "assessors" only very sparingly. What are the reasons behind this judicial reluctance? Are these justifiable?

Discuss the work of the following courts:

- (a) the Administrator's Court in Barotseland North-Western Rhodesia;
- (b) the Rhodesia and Nyasaland Court of Appeal;
- (c) the Police Magistrates Courts.

The right of a person charged with a criminal offence to defend himself and to testify on his own behalf is enshrined in the Constitution of Zambia. The Constitution and the Criminal Procedure Code also provide, however, that an accused person cannot be obliged to testify and that his failure to do so must not be the subject of comment by the prosecution. This is what is popularly known as the "right to silence". Many people in Zambia are convinced that the "right to silence" has no foundation in Zambian traditional adjudication methods and therefore, wish the "right to silence" abolished forthwith in order that "criminals" are dealt with properly.

Comment.

After having studied five (5) law courses you should have realised the important role that principles of English Common Law and Doctrines of Equity play in Zambia's judicial system. In the famous case of NYALI V ATTORNEY-GERNERAL Lord Denning an equally famous English judge warned that English Law can only flourish and promote justice in far-off foreign countries if it is properly tended and modified to suit local circumstances otherwise the foreign populations will not respect it.

In your view, to what extent (if any) have Zambian courts adhered to Lord Dennings advise?

End of Examination

THE UNIVERSITY OF ZAMBIA

UNIVERSITY SUPPLEMENTARY/DEFERRED EXAMINATIONS - OCTOBER 1988

L 210

LEGAL PROCESS

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THE PAPER)

ANSWER: ANY FOUR(4) QUESTIONS

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In recent times the concept of "power to the people" has become a major subject of debate in political and legal circle. Some believe the Zambian general public is not yet ready for a system under which major developmental issues are discussed and resolved at the grassroots level. The people in this group believe that it would be dangerous to give such power to the people and that Parliament should, therefore, guard against delegating its law making powers widely. As you are aware provision exists in the Constitution of Zambia for Parliament to do this.

- (a) give the rationale for allowing Parliament to delegate some of its law making powers;
- (b) do you support the concept of "power to the people"? (Whether your answer is "yes" or "no" you are expected to give reasons).

Lay (non-lawyer) participation in judicial proceedings has both its supporters and critics. In Zambia, for example, provision exists for courts of law to call to their assistance the services of "assessors" in both civil and criminal cases. Supporters of lay participation argue that when justice is administered by professional lawyers only - that is to say - without an input from non-lawyers, the citizen suffers greatly because lawyers are most of the time pre-occupied with "technicalities" and less with the issues which concern ordinary people. In Zambia, in practice, however, the courts have used "assessors" only very sparingly. What are the reasons behind this judicial reluctance? Are these justifiable?

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Comment.

After having studied five (5) law courses you should have realised the important role that principles of English Common Law and Doctrines of Equity play in Zambia's judicial system. In the famous case of NYALI V ATTORNEY-GERNERAL Lord Denning an equally famous English judge warned that English Law can only flourish and promote justice in far-off foreign countries if it is properly tended and modified to suit local circumstances otherwise the foreign populations will not respect it.

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End of Examination

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - AUGUST - 1988

L 220

CONTRACT

TIME: THREE hours

INSTRUCTIONS

- (i) Read the questions carefully before you attempt an answer.
 - (ii) Attempt any FOUR questions
 - (iii) This is not an open book examination. However candidates can bring into the examination room all relevant and unmarked statutes.
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"The difficulty which is apparent through nearly all the reported cases is the reconciliation of two principles - - - - (1) that of freedom of contract, by which a person is held bound by an agreement into which he has deliberately entered and (2) that of freedom of work by which an employer is prevented from restraining a servant from exercising his energies in work for himself or others to an extent greater than is necessary for the protection of the employer;" per Palmer A.J. in African Lakes Corporation Ltd v. Murray (1947) 6 L.R.N.R. 166

Is it valid to talk of reconciliation of the two principles rather than a sacrifice of either?

Mulungushi Textiles are concerned about the growing profiteering in their 'Chitenge' products. To check this they printed and attached to each bale and to each piece of their cotton material a condition saying that 'no wholesale or retail dealer shall sell materials above the price fixed by Mulungushi Textiles and acceptance of the goods will be deemed a contract between the dealer and Mulungushi Textiles. In the case of a purchase by a retail dealer through a wholesale dealer, the latter shall be deemed to be the agent of Mulungushi Textiles.'

Mulungushi Textiles sold and supplied five bales of cotton materials to Tusabulozi and Co. upon the terms stipulated above. Tusabulozi and Co. in turn sold and supplied a bale to Kuzionela, a retailer, who, though he was aware of Mulungushi Textiles condition, sold the materials well above the stipulated price.

Mulungushi Textiles are now infuriated by this blatant exploitation of man by man and they have approached you for advice on the possibility of instituting legal proceedings.

Mr. Phiri is a seventeen year old undergraduate at Unza Law School. He is married with one child. His father is a Managing Director of Chibote Enterprises Ltd., a giant state conglomerate with interests in farming, brewing and farm machinery spares.

Mr. Phiri rents a two bed-roomed flat in Bwafya Township, an exclusive area. He obtained the following items on credit from the University Bookshop:

- (a) Prescribed and recommended books for K1,000.00
- (b) Lady Charterleys Lover and James Hardley Chase novels worth K300.00
- (c) Selected works of Karl Marx and Frederich Engels, three volumes of Lenin's collected works and other works of communist literature worth K200.00.

A Manager of Minimart Supermarket knows both Mr. Phiri and his father and is a friend of the family. Phiri was getting groceries from Minimart Supermarket for the maintenance of his family, mainly on credit. In the first nine months he used to pay whenever the bill was presented at the end of each month. He has failed to pay for the last three months a total bill of K1,400.00.

Two months ago, Phiri celebrated his third wedding anniversary in style. He requested Minimart Supermarket to supply him on credit, Mosi beer, meat, soft drinks, chicken, wines, brandy and whisky and numerous other items for the occasion. The bill came to K3,000. Phiri also obtained from Messers Charles Harris and Co. three suits of the most up-date fashion worth K2,400. He already had two suits but not of the latest fashion.

Mr. Phiri has failed to pay the University Bookshop, Minimart Supermarket and Charles Harris and Co. They now ask you to advise them of their legal rights in these circumstances.

In March 1987, Mangamanga Builders Ltd. entered into a contract with Kwacha University to build a new hall of residence in consideration of the sum of two hundred thousand kwacha (K200,000.00). The completion date was fixed as 30 September 1987. It was further agreed that the sum of five hundred kwacha (K500) per day would be payable to the said Kwacha University as liquidated and ascertained damages¹ for each day, after the completion date, during which the hall remained uncompleted.

By the middle of June 1987, prices of building materials quadrupled owing to the devaluation of the Kwacha. Most of the workforce also went on sporadic wildcat strikes demanding huge salary increases to offset the steep rise in the cost of living triggered by the devaluation. On 1 August 1987 the contract was varied - at Mangamanga instance to raise the considera-

tion by another fifty thousand kwacha (K50,000). By the completion date, the works were far from complete, but Kwacha University had by then paid the plaintiff some two hundred thousand kwacha (K200,000) on account of the contract.

Fed up with the delays and anxious to have the work completed in time before the new academic year in October, Kwacha University wrote to Mangamanga Builders Ltd. threatening to terminate the contract, sue for damages for breach of contract and invocation of the penalty clause. Mangamanga Builders Ltd. deny the breach of contract and in the alternative plead the doctrine of frustration.

Advise the parties.

Musonda and Phiri decided to enter into an agreement of sale of a house and drew up the following document:

DEED OF SALE OF HOUSE ON KWACHA ROAD

Now therefore this deed witnesseth as follows:

1. In consideration of the sum of K100,000 payable by the Purchaser to the Vendor, the Vendor agrees to transfer ownership of the said house to the Purchaser.
2. The said sum of K100,000 is payable in four equal instalments of K25,000. the first such instalment being payable at the execution of this deed and receipt of which the Vendor hereby acknowledges.
3. The other instalments of the purchase money are payable in three months of the execution of this deed, one instalment being paid every month.

4. The purchaser hereby acknowledges that he has examined the house and the documents of title relating thereto and is satisfied as to quality and freedom from encumbrance.

In witness whereof the parties hereunto have set their hands on this 13th day of March, 1988.

| | |
|----------------|-----------|
| Sgd - Musonda | Vendor |
| Sgd - Phiri | Purchaser |
| Signed- Chanda | Witness |

It had been arranged that Phiri would hand over the first instalment of the purchase price before Musonda signed the deed. On the day the deed was signed Phiri did not bring any money. He told Musonda, 'Let us sign the document, money is not a problem. I am expecting a lot of money from my shop and I will give you the deposit tomorrow.' Both signed the deed and the following day Phiri left the country and came back a month later.

Musonda then demanded K50,000 from Phiri but the latter refused alleging that Musonda had tried to 'swindle' him and that he should clarify which house was being sold. In fact Musonda had two houses on Kwacha Road. One was a six bedroomed house valued at K120,000 and the other was a four bedroomed house valued at K90,000. Phiri insists that he had the former house in mind at the time of the contract.

Having instituted a suit against Phiri in which he had pleaded the deed, Musonda is now wondering whether he could prove:

- (a) that the agreement was exacted from him by fraud;
- (b) that it was the four bedroomed house which was meant to be the subject of sale
- (c) that he had never received any part of the purchase money.

Advise him.

What would be the effect on the transaction of proving any of the above?

Grace, a young girl of 18 went into Kabulonga Supermarket. She had with her a list of commodities which her mother had sent her to buy. While in the shop, Grace saw a packet of Black Magic chocolates priced at K30,00, picked it up/^{and} placed/^{it} in her shopping basket and continued picking other provisions as indicated on the list. On realising that she could not manage to pay for all the items on the list she decided to return the chocolates to the shelf but was stopped by the attendant saying, 'I am sorry you cannot return them as you have bought them already.'

Advise Grace.

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

SUPPLEMENTARY EXAMINATION - OCTOBER 1988

0 - LAW OF CONTRACT

E: Three (3) hours (plus 10 minutes for reading the question paper)

WER: Any FOUR (4) questions

E: All your answers should include reference to relevant decided case authorities.

Brenda, a dressmaker, urgently needs money, K2,500, to buy materials so that she can fill an order placed by Mrs Mwangilwa, wife of a Lusaka "bigshot". Brenda is sure that if she impresses Mrs Mwangilwa by fulfilling the order quickly, she may get more business in future.

So Brenda goes to a friend and borrows the K2,500, promising to pay it back in three months' time.

After only one month, the friend runs very short of money. She goes to Brenda and tells her that if she pays K1,500 now she will accept it as full and final satisfaction of Brenda's debt.

Brenda manages to raise the money, and pays back K1,500. Now her friend is demanding the balance of K1000.

Advise Brenda.

Moses and Simon, who went to UNZA Law School together some years ago, meet by chance at a well-known Lusaka "watering hole". They are delighted to see one another, and begin toasting one another's health in their favourite "Mosi". It turns out that Moses has been working as a Law Lecturer in a nearby country and has recently returned. During the evening of talking and drinking Simon signs a piece of paper saying that he will buy a car stereo system from Moses for K17,000.

The next morning, Simon cannot remember anything about this arrangement. He does not even have a car, so he does not need a car stereo. He thinks K17,000 is a very high price.

He does not want to go through with the "contract" and comes to you for legal advice.

Advise Simon.

3. Nsomba, an UNZA Biology graduate, goes to work for Mapenzi Crocodile Farms after his graduation. His contract of employment provides that if he leaves their employment he will never again work for any enterprise in crocodile farming or associated industries in Zambia or elsewhere, nor will he solicit any of Mapenzi's customers, nor will he divulge any of their secret processes, nor will he set up in competition with Mapenzi Crocodile Farms Limited.

Nsomba is now considering leaving Mapenzi's employment. He comes to you for advice on the extent to which, if he does leave, he will be bound by his contract of employment.

Advise him.

4. Moneymakers Investments, owners of an international hotel in Lusaka, contract with Midtown Enterprises to renovate their pool, and poolside facilities, including a 200-seat restaurant. They plan to reopen the area to coincide with a major PTA Fair due to be held in Lusaka in six months' time.

Midtown work hard to complete the job, but there are numerous delays. They have construction jobs all over town, and find it difficult to meet their commitments.

There are also unforeseen delays (not the fault of Midtown Enterprises) in the importation of important items for the pool and restaurant kitchens.

The work is still not completed when the PTA Fair opens. The poolside gardens are finished, and guests can use them, but they cannot swim, because the pool filtration system is not complete. The restaurant can only operate by bringing in "buffet-style" meals cooked in kitchens elsewhere in the hotel.

Moneymakers refuse to use the pool or poolside garden restaurant area during the fair, saying that it would damage their reputation for excellence if they opened facilities that were below standards. They claim that they have lost many thousands of Kwacha in revenue from pool users, drinks service and restaurant meals. They want to sue Midtown Enterprises for breach of contract.

Advise them.

Bonzo, an expatriate leaving the country at the end of his contract, advertises his Sony Video system for sale in the Times. Maduma comes to see it, and offers K20,000, which Bonzo readily agrees to. Maduma wants to pay Bonzo by cheque, but Bonzo refuses.

Maduma then says "But I am Maduma, who reads the news on TV, don't you know me?" and produces a pass purporting to be entry to Mass Media Complex. Bonzo, who used to turn off the news whenever it began, saying it was not worth watching compared to TV news in his country, is impressed. He now accepts the cheque, and lets Maduma take the video.

The cheque bounces and Bonzo learns that Maduma, who has no connection with the real Maduma who does appear on TV, has disappeared after reselling the video to an innocent third party, Mulenga.

Does Bonzo have any remedy against Maduma and/or Mulenga? Advise him.

Kulira writes to Desmond offering to buy a Toyota Corolla which Desmond has offered for sale.

Desmond accepts the offer and posts a letter of acceptance on October 3. On October 7, before Kulira received the letter of acceptance, Desmond changes his mind. He sends Kulira a telegram withdrawing his acceptance of the offer.

Kulira is very disappointed. He comes to you to find out if he can make Desmond stick to his original acceptance.

Advise Kulira.

END OF EXAMINATION

L 230

THE LAW OF TORT

TIME: THREE hours plus 10 minutes to read the question paper.

ANSWER: Any FOUR questions.

1. The Eastern Railway Company owned and operated trains two of which collided due to defective signalling equipment. A number of persons were severely injured and about 40 passengers had been trapped inside the trains involved in the accident. The Eastern Railway Company admitted negligence on the part of their employees who should have repaired the defective equipment.

Mr. Banda, an employee of Hassan Textile Company, volunteered and worked at the scene of the accident a whole day, rescuing the injured and removing the dead. As a result of his experience, he suffered nervous shock and was hospitalised for one month. Because of his hospitalisation, his employer was deprived of his services and production went down at the textile factory.

Mr. Banda wishes to sue the Eastern Railway Company for damages in negligence. Hassan Textile Company, Mr. Banda's employer, also wishes to sue for loss due to the absence of Mr. Banda from the factory. Both Mr. Banda and Hassan Textile Company come to you for advice.

- (a) What would be your advice?
(b) Would your advice to Mr. Banda be different if Mr. Banda had been hired/employed by the Eastern Railway Company for the rescue operations

2. Briefly discuss any TWO of the following:

- (a) Vis major;
- (b) Innuendo;
- (c) Res ipsa loquitur;
- (d) Volenti non fit injuria.

3. "The policy underlying vicarious liability would have been jeopardised by a literal adherence to the control test, and courts have not hesitated to hold the employer answerable even though the work which the servant is employed to do is of a skilful or technical character as to the method of performing^{of} which the employer himself is ignorant." John G. Fleming, The Law of Torts, 4th Ed., p. 316.

- (a) What is the policy underlying vicarious liability?
- (b) What are the tools or mechanisms which the courts have developed to by-pass or modify the control test?

4. Peter and David were partners in the business of building contractors. Peter was given the use of a Datsun vanette both for the work of the partnership as well as for his own private use. Following a dispute between the partners over the return of the vehicle, David made a false report to the Police that his vanette had been stolen and later added to it that Peter was seen with it heading to Livingstone. Peter was arrested and charged with theft. Following representations by Peter's lawyers that the dispute was of a civil nature, Peter was released from custody. Advise Peter as to his chances of **success** in^{an} action against David for:-

- (a) false imprisonment;
- (b) Malicious prosecution.

5. "Until recently the decision in Derry v. Peek was generally regarded as having prevented the development of liability for negligent misrepresentation. The judgment in Hedley Byrne and Co. v. Heller ... provides a new starting point for development along this line. At the moment the boundaries of such future development are incapable of clear delineation." Wright C.A., Cases on the Law of Torts, 4th Edition, p. 938.

Comment on the above observations.

6. Jack is the chairman of a voluntary organisation. Among the objectives of the organisation is that of collecting funds from the public for the benefit of the handicapped in Zambia. Zamprint, the defendants, proprietors of the Daily Times, published in the paper a report from a correspondent, Kwame, a free-lance journalist, to the effect that out of the thousands of kwacha collected by the organisation from the public in the course of the previous year, hardly any amount was spent on the professed objective of helping the handicapped. The report went on to say that it seemed the only beneficiaries of the organisation were its office bearers. In its editorial the paper noted:

"We have known for some time what was going on in the organisation. There is no place in this country for cheats. The organisation must either put its house in order or disband. No one can be allowed to swindle public funds. Jack sues the defendants, Zamprint, for libel.

- (a) What will he have to establish to make a prima facie case?
- (b) What possible defence or defences can the defendants plead?
- (c) How is the matter likely to be decided by a court of law?

7. The Lusaka Rural District Council had constructed a dam on a nearby river with a view to storing water to be supplied to the people for drinking and other purposes. Due to excessively heavy rains, the water overflowed the banks of the river causing considerable destruction to the crops to Mr. P., a commercial farmer.

Mr. P. wishes to sue the Lusaka Rural District Council for damages for the loss sustained by him.

- (a) On what grounds can he hope to succeed in his action?
- (b) What difference, if any, would it make to the liability of the defendant if the Council can prove that the water in the dam was being used not only for drinking and other household purposes, but also for the irrigation of the land belonging to surrounding farmers, including Mr. P.?

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - AUGUST - 1988

L240

CRIMINAL LAW

ME: THREE hours

SWER: Any FOUR Questions.

Penal Law Statutes are allowed in the Examination Hall.

"In Modern Societies Criminals get involved in Criminal activities due to social and economical hardships which should be taken into consideration when imposing a sentence on a convicted person, as a way of helping the Society and the Convict."

In terms of theory of Punishment, what does the speaker conceive to be the purposes of punishment for crime?

Mulenga and his wife Bupe, had been having bad feelings between them. This dated to the Mulenga discovered that his wife, Bupe, had an affair with another man in the village. From that there were continuous quarrels between them. Mulenga began believing that his wife was bewitching him. On her part the wife was trying to alienate the children of the marriage home access. One day Mulenga returned home to find that Bupe had taken away their little girl. He was very angry. He went to where she was seated with two other children, and stabbed her six times in the chest. Bupe died immediately. After he had stabbed her, Mulenga hid by the side of a hedge of the compound while some people came in response to the children's cries. He then frightened them away by throwing stones at the house. After

they had left, he set fire to the hut with the body of Bupe still in it. Thereafter he disappeared until he was arrested nearly a month later at a village far from his home. At the trial the Psychiatrist stated that the appellant was in a state of depression when he committed the crime. Depression is a Pathological State of physical and mental showing. Four years previous to the crime Mulenga had been mad for a period of two years. At his trial Mulenga is convicted of murder. He appeals, decide the appeal.

Mweempe (who had been previously drinking heavily, but was then sober) made an attack upon his sister-in-law Mrs. Mudenda, threw her down, and cut her throat with a knife. Ordinarily he was a very mild, quiet, peacable, well behaved man and on friendly terms with her.

At the Police Station he said, "the man in the moon told me to do it. I had to commit murder, as I must be hanged." He was examined by two medical men, who found him suffering from delirium tremens, resulting from over-indulgence in drink. According to their evidence he would know what he was doing, but his actions would not be under control. In their judgment neither fear of punishment nor legal or moral considerations would have deterred him nothing short of actual physical restraint would have prevented him acting as he did. He was disordered in his senses, and would not be^{able} to distinguish between moral right and wrong at the time he committed the act. Under proper care and treatment he recovered in a weak, and then perfectly sensible. He was charged with murder, what result?

Theft which occurs by a means of a trick (constructive theft) is similar to obtaining by false pretences. But the two offences are distinguishable. Discuss the truth of this statement, with decided cases.

Describe carefully the facts and decision in CHIBANGU vs. THE PEOPLE (1978) Selected Judgment of Supreme Court of Zambia, No. 11, and show its importance to the law of Provocation as specified in Sections 205 and 206 of the Penal Code Cap. 146.

Malindi, a girl of nine years old, visits NIEC Stores Limited, with Mweemba her uncle. Mweemba sees a pair of shoes he would like but cannot afford to buy it. He leads Malindi out of the store and tells her to go back inside and take the shoes when no-one is looking. She refuses since she knows it is stealing. Mweemba replies that if she does not he will beat her so hard that she will cry for a week. Frightened Malindi re-enters the store whilst the uncle watches through the window. She takes the shoes but arrested outside the store.

- (a) Malindi is charged with theft of the shoes. Can she raise any defence and if so, what defences are open to her?
- (b) What is the criminal liability of Mweemba the uncle?

Dimba was asleep, and at about 01.00 hours, he was awakened by the barking of the dogs. He got up, picked his firearm and loaded it. He then rushed to the piggery pen where he was experiencing thefts. He saw two persons standing by the piggery pen door whom he believed to be thieves. But these two persons turned out to be Moonga, his daughter who had secretly slipped out of the house to meet Mwenda, her boyfriend, as she used doing that. Mwenda on seeing Dimba started running away and Moonga remained standing. Dimba fired a shot at Mwenda whom he missed. Mwenda then disappeared in the bush. Dimba returned to where Moonga was standing. On sensing danger Moonga shouted "it is me", but Dimba in reply said "yes it is you thief" and shot Moonga through the chest who fell down. On checking his victim, Dimba was surprised to find out that he had shot his daughter Moonga. However, he left her lying in the cold bleeding and died five hours later of shock exposure and hemorrhage. When his wife asked him about the shooting. Dimba replied that he shot one thief dead and the other one ran away. He was charged with murder and was acquitted. The trial judge stated that Dimba had successfully raised the defences of mistake of fact and defence of property, and that the prosecution failed to prove it case beyond reasonable doubt as to the cause of death. As a State Advocate prepare a brief for appeal before the Supreme Court against the decision of the trial judge.

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

DEFERRED UNIVERSITY EXAMINATIONS - OCTOBER 1988

L 240

CRIMINAL LAW

TIME: THREE HOURS - PLUS 15 MINUTES FOR READING THE QUESTION PAPER

ANSWER: Any FOUR Questions

Penal Law Statutes are allowed in the Examination Hall

1. "The pain from punishment must exceed the pleasure obtained from the criminal act, then man's will will determine from him the desirability of non-criminal conduct".

Which theory of punishment is reflected and advocated in the above statement?

Mulenga, a boy of six years old, visits ZCBC Stores Limited, with Bupe his aunt. Bupe sees a necklace valued at K250, she would like to buy but she could not afford to do so, because she had no money. She leads Mulenga out of the shop and tells him to back inside and take the necklace when no-one is looking. Mulenga without any hesitation re-enters the store whilst the aunt watches through the window. He takes the necklace but arrested outside the store.

(a) Mulenga is charged with theft of the necklace.

Can you advise the Police on Mulenga's criminal liability.

(b) What is the criminal liability of Bupe the aunt?

Describe carefully the facts and decision in CHIBEKA V R (1959) 1 R & N. 476, and show its importance to the law of provocation as specified in Sections 205 and 206 of the Penal Code Cap. 146.

With decided cases can you distinguish THEFT which occurs by a means of a trick (constructive theft) from obtaining by false pretences.

Mweemba, who had been drinking for the greater part of the day came around 04.30 hours and slept. At 06.00 hours he woke up and followed his wife to the kitchen where she was preparing some breakfast for him. Mweemba struck his wife with a kitchen axe. She fell down and died instantly.

During the trial for murder of his wife, Mweemba said that he struck his wife because he had seen her the previous day in very suspicious circumstances with her boss, and his friend Moomba had earlier informed him that she was having an affair with the boss. Mweemba also claimed that he was still in a drunken state and he could not have formed an intention to kill his wife.

Prepare a legal opinion for the High Court.

Banda who is a villager living on his own farm in Chongwe Village began exhibiting symptoms of being mentally unbalanced. On the 19th September, he had a quarrel with his wife, his father, and his uncle. Tembo intervened and restrained him. Later that day at about 18.00 hours Banda came running up to the house where his father and uncle were, carrying a pounding stick and shouting, "I am going to chase you away from this village." His actions and demeanour frightened his father and uncle who ran off with Banda in pursuit. Banda overtook his father and struck him to the ground with the pounding stick. As he lay on the ground, Banda struck him (the father) again with the pounding stick.

The father's skull was fractured and extensively lacerated, and he died as a result. The medical evidence was that a considerable amount of force must have been used to inflict these injuries. Subsequently Banda made a number of confessions, and on being charged said: "I admit the charge that I killed my father because he found a witch doctor

I did not know what I was doing, from when I was born I have never fought with him.

Banda is charged with murder. What would be the result of the trial? ✓

Tembo was out of home and at about 01.00 hours he returned home. While parking his car, he noticed two persons standing by the grocery door whom he believed to be thieves. But these two persons turned out to be Mary, his niece who had secretly slipped out of the house to meet John, her boyfriend. John on seeing Tembo started running away and Mary remained standing. Tembo got a pistol from his jacket and fired two shots at John whom he missed. John disappeared in the bush.

Tembo returned to where Mary was standing. On sensing danger Mary shouted "it is me", but Tembo in reply said, "yes it is you burglar and you will see today", and shot Mary through the chest twice who fell down. On checking his victim, Tembo was surprised to find out that he had shot his niece Mary who lives with them. However, he left her lying and bleeding in the cold, and died four hours later of shock, exposure and hemorrhage. When his wife asked him about the shooting, Tembo replied that the shooting occurred in the neighbour's home.

He was charged with murder and was acquitted. The trial judge stated that Tembo had successfully raised the defences of mistake of fact and defence of property, and that the prosecution failed to prove its case beyond reasonable doubt as to the cause of death.

As a State Advocate prepare a brief of appeal before the Supreme Court of Zambia against the decision of the trial judge.

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - AUGUST - 1988

L 250

CONSTITUTIONAL LAW

TIME: THREE hours

INSTRUCTIONS:

1. You are advised to read carefully each question and to answer the question concisely.
The Examination is in two Sections.
 2. Answer TWO Questions in SECTION ONE and TWO Questions in Section TWO.
 3. Candidates may bring in, and refer to, the Constitution of Zambia and the Constitution of the United States of America.
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SECTION ONE

Question Number 1 is obligatory. Answer it and either Question Number 2 or Question Number 3.

1. (Obligatory Question)

Assume that the National Assembly of Zambia has enacted legislation (approved by the President) requiring all motor vehicles registered in Zambia to carry, in addition to the plate designating the number of the vehicle, a plate reading, "One Zambia, One Nation". The government is to furnish the plates, and the registration fee is raised to cover the cost.

Also assume that New Hampshire, one of the United States, has enacted a law requiring all motor vehicle licence plates to carry the words "Live Free or Die", the state motto.

Assume that both in Zambia and New Hampshire some Jehovah's Witnesses object on religious grounds to being required to display these mottoes on their private automobiles. In both places they mount court challenges to the requirements on Constitutional grounds.

What specific objections may their lawyers raise under the Constitution of Zambia and the Constitution of the United States, and how would you expect the respective Supreme Courts to resolve the matters? Discuss fully.

2. It is sometimes said that the concept of the Supremacy of Parliament is the one fundamental law of the Constitution.

To what extent is this true in the United Kingdom? In Zambia? In the United States? Discuss fully.

3. "That there is a formal written constitution according to whose provisions a government is conducted is not necessarily conclusive evidence that the government is a constitutional one ... There are indeed many countries in the world today with written constitutions but without constitutionalism." B. O. Nwabueze.

Explain the meaning and significance of these statements, both of which have the appearance of being internally contradictory.

SECTION TWO

Answer any two questions in this section.

4. It is sometimes said that a necessary condition of securing individual liberty in any state is the preservation of the State itself. If the security of the State is threatened, it is therefore permissible to relax the Common Law and the Constitutional Safeguards of individual liberty to the extent necessary to meet the threat.

Critically comment on this view with particular reference to Article 30 and Article 26 of the Constitution of Zambia.

5. (i) Examine carefully the provisions relating to restricted and detained persons contained in Article 27 of the Constitution of Zambia.
- (ii) How have the Courts approached the interpretation of these provisions as reflected in some of the landmark decisions of the Zambian Courts?

Elaborate on the often expressed view that the 'principle of Party Supremacy' is indeed a constitutionally entrenched principle in Zambia as reflected both in the One-Party Constitution and in the High Court and Supreme Court decisions in the Harry Nkumbula and Simon Kapwepwe V. A. G. (1978).

Consider the observation that the Constitution (Amendment) Act, 1969 had far reaching implications for the protection of individual rights in the future and/^{for} the future economic structure of Zambia.

THE UNIVERSITY OF ZAMBIA
UNIVERSITY EXAMINATIONS - AUGUST - 1988

L 310

EVIDENCE

THREE hours plus 10 minutes to read the question paper.
Any FOUR questions.

- (a) Discuss briefly the competence and compellability of the following persons as witnesses for the prosecution:
- (i) The accused's spouse;
 - (ii) Mentally-ill patients;
 - (iii) Accomplices.
- (b) X was convicted of the defilement of an eleven-year-old girl. In the course of the voire dire the prosecutrix told the court:
- "I know the need for telling the truth.
If I tell lies, God will punish me."
- The trial magistrate then recorded that he was "satisfied that the witness of tender years knows the need for telling the truth." He added, "She can therefore be sworn on the Bible."
- X wants to appeal on the ground that the evidence of the prosecutrix was improperly received.
- Will he succeed?

Mr. Banda was charged with obtaining a motorcycle by false pretences concerning the state of his family and the state of his bank account. At the trial evidence was adduced to show that he had obtained cigarettes by false pretences concerning the state of his business.

Is the evidence admissible?

- (a) On August the 1st, Tom who was married to Sarah died. On August the 3rd Sarah married Eddie. On March 30th a bouncy male child was born.

Discuss its legitimacy.

- (b) X married A in 1964 and four years later, in 1968, he went through another ceremony of marriage with B. In the same year (1968) he was convicted of bigamy for having "married" B in the lifetime of A. After serving his term of imprisonment X. went through another ceremony of marriage with C., in 1980 and then again, this time with D. in 1985. X has been charged with bigamy for marrying D. during the life of C. X wishes to prove the previous conviction for bigamy showing that A., his first wife, was alive in 1968.

What, if any, will be the result?

Citing relevant cases for purposes of illustration discuss any TWO of the following:

- (a) Res gestae;
- (b) Dying declarations;
- (c) Privilege based on public policy;
- (d) Expert opinion.

Manda, a professional thief, uses a stolen vehicle to get to Mandevu compound where he breaks into the house of Miss G. and therein commits rape with her. At the trial Manda says that Miss G., who is called to give evidence by the prosecution, had invited him into the house and that he had had sexual relations with her on previous occasions with her consent.

Does this entitle the prosecution to cross-examine Manda about a previous conviction, or a previous acquittal, for fraud?

Zimba and Mwansa were picked up by party militant after a shop had been broken into in Kanyama. They were taken to the party chairman. Throughout the journey to the chairman's house they received severe beatings from the party militants. On arrival, they were questioned by the party chairman in the presence of the party militants. They admitted breaking into the shop. The party chairman wrote on a piece of paper that both Zimba and Mwansa admitted burglary and asked them to sign the piece of paper which they did. He then handed them to the Police. The Police kept them in a cell for a week and, just before the Police took them to court, constable Chanda came in the cell and asked them whether they wished to make any statement. He was very polite to them and gave them the customary caution. They made statements admitting that they had broken into the shop in question but alleged that they had been sent by Mr. Banda to obtain a T.V. set from the shop. At the trial Banda is jointly charged with them. These statements are the only evidence against Banda. Discuss the admissibility of:

- (a) The paper they signed in the presence of the party chairman;
- (b) The statements made to constable Chanda.

"The judges and sages of the law have laid it down that there is but one general rule of evidence, the best that the nature of the case will allow." Per Lord Hardwicke in Omychund v. Barker.
Discuss.

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA
UNIVERSITY SUPPLEMENTARY EXAMINATIONS - OCTOBER, 1988

L 310

THE LAW OF EVIDENCE

TIME: THREE HOUR PLUS TEN MINUTES TO READ THE PAPER
NUMBER: ANY FOUR QUESTIONS

X, an employee of the Press Trading Company Ltd. is charged with the offence of theft by servant of the sum of K2,000. X. denies the charge and states in his defence that he gave the money to his manager who promised to return it to X. at the end of the month. X.'s manager denies any knowledge of such a transaction. Discuss the following evidential matters relating to the case :

- (a) The evidence of Mary, X.'s assistant, who was present when X. gave the K2000 to his manager, but is reluctant to give evidence against the manager on the grounds that it may lead to her dismissal.
- (b) The evidence of Y. another employee of Press Trading Company Ltd. whose evidence is to the effect that the manager obtained K100 from him on a previous occasion but later denied having received that money from Y.
- (c) The evidence of the manager of "Moon City" who states that the manager of Press Training Company had an outstanding debt of K1,000 and that it was paid in full on the day that X states that he gave K2,00 to him.

John is charged with rape. The prosecution is in possession of evidence by a police officer of an oral and written statement made by Mweemba. The statement is of an incriminating nature. John, who is conducting his own defence, denies that he made the statement voluntarily. He says, several times, that the statement was obtained from him by means of a threat that if he did not speak, his wife would be arrested on an emeralds charge. He further states that it is ridiculous to suggest that he could ever have raped a woman as ugly as the complainant.

At the close of the case the prosecution, John elects to give evidence on oath. The prosecution then seeks to elicit from him, in cross-examination, the fact that he has several previous convictions for theft and that he was acquitted only last week on a similar charge. John objects and says that that kind of cross-examination is not allowed.

Discuss the evidential issues that arise.

John Zulu and Peter Chileshe are very good friends and both are police officers. John Zulu, who is the more competent and intelligent of the two has recently had rapid promotions. Peter Chileshe very resentful of Zulu, planned to upset Zulu's progress. He took some pistols uniforms and stationery belonging to the Police Force and planted them in Zulu's flat. He then went to the Officer-in-charge and reported that he suspected his friend Zulu, of engaging in illegal activities. The officer-in-charge subsequently instructed two of his men to watch Zulu. But the two officers overzealous to get John Zulu prosecuted, illegally broke into his apartment and discovered quite a large quantity of police property in the flat.

Zulu has been charged with theft and at the trial the officer-in-charge who is called to give evidence informed the court that the investigations started after he has received some information from an informant. John Zulu, who knows that Peter Chileshe is the informant wished to seek permission of the court to disclose his identity. John Zulu seeks your advise on this matter. Advise him of the relevant law relating to the issue or issues that arise on the facts.

On the 11th of September, 1988, Doris the wife of Banda was seen with John, by Mary, who passed them on her way to a stream where she was going to fetch water. On her back, Mary passed them again. About three minutes after she had passed them she heard Doris saying: "Oh sister Mary, although you are going, John is killing me". Mary ran away because she was afraid. Moonze, who was nearby

heard the shouting a little later from the direction of the stream; he went towards the stream and saw Doris coming along holding her gut and crying: "John has killed me". John is charged with murder. At his trial the prosecution contends that the words heard by Mary and Moonze are admissible.

Discuss.

Write brief notes on any two of the following:

- (a) opinion evidence
- (b) judges rules
- (c) previous consistent statements
- (d) voire dire.

"Judicial notice refers to facts which a judge can be called upon to receive and act upon either from his general knowledge of them or from inquiries to be made by himself for his own information from sources which it is proper for him to refer"; per Lord Sumner in Commonwealth Shipping Representative v P. and O. Branch Services (1923) A.C. 191 atp. 212.

With this quotation in mind discuss the matters that judges and magistrates in Zambia may take judicial notice of and the rationale for this principle.

Discuss with suitable illustrations the law relating to corroboration. In what circumstances is corroboration required as a matter of law and in what circumstances is it required as a matter of practice?

END OF EXAMINATION

L 320

PROPERTY LAW AND SUCCESSION

THREE hours (plus 15 minutes to read the examination Paper).

ANY FOUR questions.

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

- (a) Explain fully the Common Law Rule Against Perpetuities and compare and contrast it with the Trusts Restriction Act, CAP. 76.
- (15 marks)

- (b) Evaluate the validity of one of the following dispositions both at Common Law and under the Trusts Restriction Act, CAP. 76.

- (i) A testatrix left gifts by will in favour of such of the grandchildren of Mr. Mumba "as shall be living at my death or born within five years therefrom who shall attain the age of 21 years or being female marry under that age in equal shares." At the date of the death, there were two children and one grandchild of Mr. Mumba alive.

(10 marks)

- (ii) By his will Musonda devised and bequeathed his residuary real and personal estate on trust for his widow for life and then for their children, and, if none (as happened), on trust

for the children of his brothers and sisters. By a codicil he declared that his widow's life interest should be terminable on her remarriage unless such remarriage should be with a true Zambian; and that on her death the trustees should hold the residuary estate on trust for the children of his brothers and sisters who should be living at the death of his wife or born at any time afterwards before any one of them.... attained a vested interest and who being a son attained 21 or being a daughter attained that age or married. The widow married a Zimbabwean. At the date of the testator's death (without issue) his parents were both aged 72. All his brothers and sisters were over 30 years old and all had infant children, one of whom was born after the remarriage of the widow.

(10 marks)

"The policy of the Rent Acts was and is to protect the tenant in his home, whether the threat be to extort a premium for the grant or renewal of his tenancy, to increase his rent, or to evict him. It is not a policy for the protection of an entrepreneur whose interest is exclusively commercial."

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

- (i) Discuss how the Rent Act, CAP. 432, seeks to achieve the objects specified above. To what extent ^{has} rent control been successful in Zambia?

- (ii) How does the protection accorded to a tenant under the Rent Act differ from that accorded to a tenant under the Landlord and Tenant (Business Premises) Act, CAP. 440?
- (iii) What is the effect of S13 of the Land (Conversion of Titles) Act, 1975 on Rent Legislation?

(25 marks)

- (a) How have the courts defined 'development' under the Town and Country Planning Act, CAP. 475?

(10 marks)

- (b) Lungu, after winning a 'Pick-A-Lot' jackpot of K90,000 decided to invest the money in some profitable venture in Mumbwa District. After carrying out a survey of business opportunities existing in the District he concluded that establishing a Cinema would be the most profitable venture. He thereupon applied to the Mumbwa District Council for a plot in a residential area on which to construct the cinema. Eager for such investment the Council had no hesitation in granting him a plot. He contracted Zecco Ltd. to construct the Cinema at a cost of K100,000 after the Council had approved his building plans. When construction was completed he had the building approved by the Council and the Health Authorities. He was then granted permission to commence business. At no time did he or the Council apply to the Southern Planning Authority, the Planning Authority for the area, for development permission in respect of the use of the plot or in relation to the building he had erected. As time went on the Southern Planning Authority

received complaints about the Cinema:

- (i) from residents of the adjoining houses who complained of excessive noise
- (ii) owners of bars who complained that since the opening of the Cinema their business had gone down as most of their former patrons were now frequenting the Cinema.

The Southern Planning Authority subsequently served Lungu with an enforcement notice under s29(1) of the Town and Country Planning Act, CAP. 475. It required him to demolish all buildings on the plot used for the Cinema and to cease to use the plot for that purpose. He was given 22 days in which to effect the demolition. He tearfully comes to you for assistance.

Advise him.

(15 marks)

"The next fact which it is important to bear in mind in order to understand the native law is that the notion of individual ownership is foreign to native ideas. Land belongs to the community, the village or the family, never to the individual".

(Amodu Tijani v. The Secretary, Southern Nigeria
(1921) A.C. 399, 404-5)

- (a) Discuss this dictum in the light of your knowledge of interests in land at customary law.
- (b) Outline how a holder of a village plot in a Reserve or Trustland may exclude the application of customary law thereto.

(25 marks)

What is the purpose of land registration? Is this objective being achieved by Zambia's system of land registration?

(25 marks)

- (a) Discuss the various ways in which a mortgage may be created in Zambia and how a mortgagee may enforce his security.

(12.5 marks)

- (b) In 1970 Caltex (Z) Ltd. granted a 50 year lease of a filling station to Musonda at a rent of K12,000 per year. In 1982 Musonda was desirous of expanding his business but he needed a lot of money. Caltex (Z) Ltd. agreed to loan him K50,000. He therefore executed a mortgage of his lease for K50,000, which contained a clause precluding him from redeeming the mortgage during the remainder of his term less ten weeks, and from purchasing petrol from any company other than Caltex (Z) Ltd during the continuance of the mortgage. Musonda would now like to redeem the mortgage so that he could be free to purchase petrol from elsewhere.

Advise the parties on their rights.

(12.5 marks)

(a) Discuss briefly:

- (i) the administration of estates under the received English Law in Zambia; and
- (ii) the administration of estates falling under customary law in Zambia.

(15 marks)

(b) Mutakasha in the presence of Hilda, produced a document which she stated was her will, and signed it, after which Hilda subscribed her name as witness. Mutakasha and Hilda then went to a neighbour's house (Liboma), where Mutakasha in the presence of Hilda, asked Liboma to witness her will, saying: "This is my will which Hilda has already witnessed." Liboma thereupon subscribed her name as witness in the presence of Mutakasha and Hilda. Hilda is in fact one of the beneficiaries named in the will.

Discuss whether or not the will is valid.

(10 marks)

END OF EXAMINATION