

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

SECOND SEMESTER EXAMINATION 2009

1. L 242 CRIMINAL LAW
2. L 252 CONSTITUTIONAL LAW
3. L 262 FAMILY LAW
4. L 322 LAND LAW
5. L 352 NATIONAL HUMAN RIGHT LAW
6. L 362 CIVIL AND CRIMINAL PROCEDURE
7. L 382 INDUSTRIAL LAW
8. L 392 GENDER DISCRIMINATION AND THE LAW
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THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

**2009 – 2010 ACADEMIC YEAR, SECOND SEMESTER
L242, CRIMINAL LAW II EXAMINATIONS APRIL, 2010**

INSTRUCTIONS: This examination paper has seven questions. Candidates are required to answer only four questions. Question one is compulsory, which means that all candidates must answer it. You are permitted to refer to clean, unannotated copies of the Penal Code. The total marks for the whole examination is 60 marks.

TIME: Three Hours (including 5 minutes for reading the question paper).

PART A

QUESTION ONE (COMPULSORY QUESTION) (18 MARKS)

Richard Card, in his book **CRIMINAL LAW**, 18th edition, Oxford University Press 2008, page 57, states that “The accused’s blameworthy conduct is not the factual cause of the specified consequence unless that consequence would not have occurred, when and as it did, but for that conduct.” In simple terms, the basic rule of causation is that the prosecution must prove that the illegal act was caused by the unlawful conduct of the accused [R. v. Hayward (1908) 21 Cox CC 692 and R. v. Smith (1959) 2 QB 35].

Bearing in mind these two statements on causation, analyze the scenario given below and state whether the accused could be convicted of murder as

charged or not. In the course of your discussion define the offence of murder, bringing out all the four essential elements of this offence. And cite at least two decided cases in which causation was argued.

FACTS OF THE CASE

David Zulu quarreled with Peter Mulenga as the two men drank beer at the West Bank of the Zambezi river in Zambezi District, in the North Western Province of Zambia. Time was 20:00 hours on a dark night. When Zulu produced a knife from his jacket pocket, and angrily advanced towards Mulenga, Mulenga got frightened and jumped into the crocodile – infested Zambezi River with the intention of crossing over to the other bank of the River. Unfortunately, Mulenga did not manage to cross the River because he was caught and killed by a crocodile. David Zulu has been charged with the murder of Peter Mulenga.

QUESTION TWO (14 MARKS)

The rule of *proximity* is cardinal in attempted offences. It assists the courts in determining whether the alleged attempted crime was committed or not.

On January 5th, 2010, Mwalimu Moono met Gertrude Sakala on a lonely footpath in Chisamba Farming Area, North of Lusaka. There were no other persons in the vicinity at the time when Moono and Sakala had walked past each other. About two seconds after the two persons had passed by each other; Moono turned round and grabbed Gertrude by her waist and legs, lifted her up and walked into the bush with her, away from the footpath. Sakala screamed and struggled to set herself free, but Moono held her firmly. When he took her twenty metres away from the footpath, Dickson Bwalya arrived at the scene by bicycle. Without asking any questions, Bwalya

grabbed Moono and punched him hard in the abdomen four times in quick succession, forcing him to release Gertrude. With the help of other passersby Moono was apprehended and taken to the Chisamba Police Station, where Sakala and Bwalya made statements as to what happened at the scene.

Moono has been charged with attempted rape, contrary to section 132 of the Penal Code. Discuss this case, and cite at least one decided case to support your answer.

PART B

QUESTION THREE

The Federal State of Zambaland comprises three states of Kafue State, Luangwa State and Richmond State. In the last five years Richmond State has been agitating for an autonomous status but to stay within the Federation. As a result of the ambivalence on the part of the federal government on its demand, the Richmond state has decided to take unilateral steps to achieve its autonomy. It has unilaterally repealed a number of federal laws that were applied to the state and has enacted some new laws that are in direct conflict with some federal laws.

Have the principal officers of Richmond State committed any criminal offence? Discuss.

QUESTION FOUR

The Zambian Anti-Corruption Commission Act No. 42 of 1996 deals with corruption in both public and private institutions. Point out the law in this Act which:

- (a) Criminalises the giving of gratification by a private individual to a public officer for the purpose of inducing the public officer to forbear to do something which the public officer is legally required to do.
- (b) States that a private individual commits a corrupt practice if he offers a gratification to a private company human resources officer in order to get employment in the company.

QUESTION FIVE

Chilufya Chipasha has broken into Jim Makayi's cardboard shelter which Makayi uses for rest on hot days. He does not sleep in it. Chilufya intended to steal food or any other valuable household item that he would sell. He found nothing worth stealing. He has been apprehended and taken to the Police Station. In your opinion with what offence should the police charge Chilufya, if any? Discuss. Refer to at least one authority in the course of your discussion.

QUESTION SIX

Some criminal offences are said to be offences of direct intent, while others are said to be offences of basic intent. Name and discuss two offences of direct intent and two offences of basic intent.

QUESTION SEVEN

According to Zambian law a woman or girl cannot be guilty of the offence of rape. She can however, be tried and convicted of some other sexual offenses, such as incest. Apart from incest, name and describe one other sexual offence which a female may be convicted of in Zambia.

END OF EXAMINATION

UNIVERSITY OF ZAMBIA
SCHOOL OF LAW
L 252 CONSTITUTIONAL LAW FINAL SEMESTER
EXAMINATION – SECOND SEMESTER

- (1) TIME:** FIVE (5) MINUTES TO READ THE PAPER AND THREE (3) HOURS TO ANSWER.
- (2)** ANSWER FOUR (4) QUESTIONS OUT OF SEVEN (7).
- (3)** YOU CAN BRING THE CONSTITUTION AND OTHER RELEVANT UNMARKED STATUTES.
- (4)** QUESTION ONE 18 MARKS OTHERS 14 MARKS.

QUESTION ONE COMPULSORY: *18 Marks*

Nkumbula V Attorney General (1972) ZR 244 changed Zambia's Political, Democratic and Human Rights Landscape – Discuss.

QUESTION TWO:

Write short notes on:

- (i) Constitutionalism
- (ii) A Democratic or constitutionalistic constitution
- (iii) The saying that, 'your rights end where they start harming others'

14 Marks

QUESTION THREE:

The republic of Kudu which was a one-party state amended the constitution to become a multi-party state. When campaigning the President banned government owned radio, television and newspapers from covering opposition rallies. The opposition parties come to you for legal advice, render an opinion.

14 Marks

QUESTION FOUR:

What are the elements of free and fair elections? Are they present in Zambia's electoral system?

14 Marks

QUESTION FIVE:

John your client's brother is apprehended for aggravated robbery and detained at the central police station, from where he escapes. In order to quickly recapture him the police detained his sister and mother as hostages, so that he can surrender. While in police custody they are denied food and deprived sleep. John has come to you for legal advice.

14 Marks

QUESTION SIX:

Explain the following concepts

- (i) The Rule of Law;
- (ii) Constitutional Supremacy;
- (iii) The public official doctrine in defamation cases.

14 Marks

QUESTION SEVEN:

Your client is a female who conceived two children from a civil union. She is proceeding to England for studies and her sponsor is ready to provide her with sufficient allowances to look after herself and the two children. She applies for a passport, but under *Zambian Law* the father of the children must consent to the children's names being included in her passport and the father has refused. She has approached you for a legal opinion – advise.

14 Marks



THE UNIVERSITY OF ZAMBIA SCHOOL OF LAW

2010 SEMESTER 1 EXAMINATION

L262 FAMILY LAW

DATE: 30 APRIL 2010

**TIME: 3 HOURS PLUS 5 MINUTES
TO READ THE QUESTION PAPER**

INSTRUCTIONS: ANSWER 4 QUESTIONS

**QUESTION 1 IS COMPULSORY AND AT
LEAST ONE QUESTION FROM EACH
SECTION**

**QUESTION 1 CARRIES 18 MARKS AND THE
OTHERS 14 MARKS EACH, AS SHOWN**

TOTAL MARKS = 60

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

2010 SEMISTER 1 EXAMINATION

L262 FAMILY LAW

DATE: 30TH APRIL, 2010

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

INSTRUCTIONS: ANSWER 4 QUESTIONS, QUESTION 1 AND AT
LEAST ONE QUESTION FROM EACH
SECTION

**QUESTION 1 CARRIES 18 MARKS AND THE
OTHERS 14 MARKS EACH, AS SHOWN**

TOTAL MARKS = 60

PART A

QUESTION 1

Mary and Kamfwa were married in 2005 and there are two children of the family, Mooya aged 10, being Kamfwa's daughter from the previous marriage, and Chuma, born to the couple in 2006. Mary and Kamfwa's relationship since 2008 has been less than cordial and many arguments have ensued, although there has only been one occasion when aggression was shown, when as a result of a disagreement Mary threw a saucepan at Kamfwa hitting him on the arm. In May, 2009 Mary left Kamfwa taking the two children with her and went to live with Zuma until 30th March, 2010 when their relationship ended. She and the two children are now living with

QUESTION 3

Mwaka petitioned for divorce from her husband Zuze on the basis of 5 years separation. Zuze had been sentenced to 12 years imprisonment and even with remission still has to serve another 3 years. He does not want a divorce.

Advice Mwaka and Zuze with regard to the relevant law of divorce.

[14 marks]

QUESTION 4

In the generality of marriage the wife bears and rears children and minds the home. She thereby frees the husband for his economic activities. Since it is the performance of her functions which enables the husband to perform his, she is in justice entitled to a share in the fruits of the marriage.

Consider the status of a divorced woman who was married under customary law with regard to matrimonial property, maintenance, and custody of children.

[14 marks]

PART C

QUESTION 5

Pepe leaves all his property to all his workers at Shamba Farm where he spent the last two happy years before his death. Pepe's wife Kale and his six children who live with Kale's parents are omitted in the will, and have neither a roof of their own over their head nor an income to live on.

Advice Kale on what remedies are available to her and her children.

[14 marks]

QUESTION 6

In the eyes of the law some marriages suffer from impediments which lead to them being either void or voidable.

Briefly discuss reasons for which a marriage may be said to be

(i) void **(7 marks)**

(ii) voidable **(7 marks)**

[14 marks]

QUESTION 7

Write short notes on the following

(a) codicil **(5 marks)**

(b) filius nullius **(4 marks)**

(c) bona vacantia **(5 marks)**

[14 marks]

THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW

SECOND SEMESTER FINAL EXAMINATION
APRIL, 2010

L322 LAND LAW

- INSTRUCTIONS:**
- 1. ANSWER FOUR QUESTIONS.**
 - 2. QUESTION ONE IS COMPULSORY.**
 - 3. ANSWER AT LEAST ONE QUESTION FROM EACH SECTION.**
 - 4. EACH QUESTION CARRIES 15 MARKS**
 - 5. TIME: THREE HOURS**
-

SECTION A

QUESTION 1.

"Land Tenure systems are not static; they respond to changes in society. They are modified, redefined or restructured in response to many factors such as population growth and density, conflicts of interests or changes in the political and economic organization of society"

Per Mphanza P. Mvunga, in "The Colonial Foundations of Zambia's Land Tenure System". [National Educational Company of Zambia Limited, 1980] P1.

Discuss briefly the major factors that influenced Zambia's Land Tenure System between 1889 and 1964.

SECTION B

QUESTION 2.

Samson Banda is the registered owner of subdivision 87 of subdivision A of farm number 401a, Lusaka. The farm comprises 1,000 hectares, and is 10 Kilometres from the Central Business District. [CBD] of the city of Lusaka. The Farm has been lying idle for about twenty five years.

Messrs Swift Action Limited is interested in developing the farm into a private housing estate. Thus, Mr. Initiative Bwalya, the Managing Director of Swift Action Limited decides to request the Town Clerk of Lusaka City Council, Mr. Flexible Banda, to cause the compulsory acquisition of Samson Banda's Farm.

In response, Mr. Flexible Banda writes to the Republican President, His Excellency Dr. Speedwell Phiri to cause the compulsory acquisition of Samson Banda's Farm. The Republican President seeks the counsel of his Special Assistant - Legal Affairs - Ms. Patricia Lubinda, SC. Ms. Lubinda SC advises the Republican President that he has absolute and unquestionable power to compulsory acquire any property without let or

hindrance. The Republican President decides immediately to compulsorily acquire Samson Banda's farm and also give Samson Banda, thirty days notice to vacate the farm. Further, the Republican President directs the Commissioner of Lands, Ms. Mwila Fintunibwangu Chintu, to allocate Samson Banda's farm to Messrs Swift Action Limited. Accordingly the Commissioner of Lands allocates the land to Messrs Swift Action Limited. Samson Banda is perturbed and infuriated at the turn of the events and decides to approach you for advice.

Advise.

QUESTION 3.

The African urban environmental legislation is a product of historical accidents and a colonial remnant. Most of the developing countries in the African region do not have comprehensive human settlement legislation. Numerous piecemeal and ad hoc ordinances, and codes attempt to regulate the acquisition, development, and use of land in the urban and rural areas. The Town and Country Planning Acts in force are old, absolute and not effective. They neither serve the present needs nor respond to changing conditions. The Acts are rudimentary and do not require comprehensive land use decisions. In short, Town and Country Planning legislation in most of the African countries linked by three factors, its British roots, its need to be brought up to date, and its necessity to be made relevant and responsive to the problems and potentials of the African environment. Urban Planning and housing operate without the statutory framework and often without much coordination and co-operation and often with overlapping powers and functions and jurisdictions".

Professor Vogale L. K. "A paper presented to the University of Zambia Commonwealth Programme African Centre Planning Legislation for African Nations Conference 12th to 16th May, 1986.

Discuss the relevance of the preceding statement in the Zambian context.

SECTION C

QUESTION FOUR.

Mr. David Mubanga is the Town Clerk for the City of Ndola. The City of Ndola is surrounded by squatter settlements. The squatter settlements house two thirds of the city's population. There is no prospect or likelihood that people living in squatter settlements would be provided by the Council with decent housing in the near future.

Mr. David Mubanga is anxious that persons living in squatter settlements should:

- a. be offered security of tenure;
- b. individual occupants should be issued with documents to evidence their interest in the land that they occupy; and
- c. the documents evidencing interest in the land should enable the occupants to access housing finance to enable them improve their houses.

Mr. David Mubanga decides to instruct you to prepare a legal brief or opinion that will enable the Councilors of the City of Ndola to make the appropriate Council resolution.

Draft the Legal brief or opinion.

QUESTION 5.

"The Rent Act is to a large extent out of touch with the realities..... It is safe to say that rent control has had unsuccessful history in Zambia".

Per Frederick S. Mudenda in "Land Law in Zambia; Cases and Materials" [UNZA Press, 2007] P 546.

Discuss briefly the validity of the assertion and conclusion quoted above.

SECTION D

QUESTION 6.

Patrick Musankwa leased stand 760 Kitwe to Mary Mundia. The duration of the lease was for a period of six months. Patrick Musankwa and Mary Mundia enjoyed a cordial

relationship. Mary Mundia carried on the business of photocopying and printing on the premises. During the tenure of the lease however, the relationship between Patrick Musankwa and Mary Mundia soured.

As a result, Patrick Musankwa issued a notice to Mary Mundia stating that at the expiry of the lease, he would not renew the lease. The reason that Patrick Musankwa advanced in support of his decision was that he intended to lease the property to his brother, Brian Musankwa.

In view of the foregoing, Mary Mundia decided, pursuant to the Landlord and Tenant [Business Premises Act], Chapter 193 of the Laws of Zambia, to apply to the High Court for a new tenancy.

The trial judge rejected Mary Mundia's application for a new tenancy on the following grounds:-

- a. that the tenancy did not qualify for protection under the Landlord and Tenant [Business Premises] Act, because in terms of section [2] thereof, "*tenancy*" means a tenancy of business premises [whether written or verbal], for a term years certain not exceeding twenty one years. Thus, the trial judge held that a tenancy for a period of six months was not a tenancy for term of years;
- b. that in any case, Patrick Musankwa as landlord, was entitled to oppose the application for a new tenancy on the ground that he intended to lease the property to his brother, Brian Musankwa. To this end, the trial judge remarked that, "*after all, blood is thicker than water.*"

Mary Mundia decides to appeal against the judgment of the trial judge and approaches you for advice

Advise.

QUESTION 7:

Mukela Liswaniso is the registered owner of stand number 50 Mongu. She was allocated the stand on 10th November 2005. The lease stipulated that the property was required to be developed within a period of twenty four months. However, due to financial difficulties, Mukela Liswaniso was unable to develop the property within the stipulated period.

Mukela Liswaniso's neighbour, Mwangala Lubasi has always wanted to acquire her neighbour's stand number 50 Mongu. As a result, Mukela Liswaniso decided to approach the Principal Lands Officer in Mongu, Akapelwa Akapelwa and instigated him to repossess the property from Mukela Liswaniso. Akapelwa Akapelwa accordingly issued a 30 day notice to Mukela Liswaniso requesting her to develop the property, else the property would be repossessed.

At the expiry of the 30 day period, Mukela Liswaniso failed to develop the property. The property was accordingly repossessed from Mukela Liswaniso, and re-allocated to Mwangala Lubasi. The allocation of the property to Mwangala Lubasi resulted in the development of a very acrimonious, relationship between Mukela Liswaniso, and Mwangala Lubasi. Mwangala Lubasi could not withstand the acrimony, and therefore decided to sell the property to Maimbolwa Maimbolwa.

Mukela Liswaniso is aggrieved by the loss of the property and therefore decides to seek your advice regarding her intended legal action to challenge the ownership of the property in question by Maimbolwa Maimbolwa.

Advise.

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

SEMESTER 2009/2 FINAL EXAMINATION

L352 NATIONAL HUMAN RIGHTS LAW

Instructions:

- a) Question one is compulsory and carries 21 marks.
- b) Students must answer one question from each of the other sections. Each question carries 13 marks
- c) You have 5 minutes to read through the paper and three hours in which to answer four questions
- d) You are allowed to refer to the constitutions of Zambia past and present
- e) Examination mark is 60

Section A COMPULSORY

- 1 The Judiciary in any democracy has been known to be the pillar of the realization of human rights for the citizenry. From the colonial times, Zambia's legal system created a judiciary whose major function has been the settlement of disputes over a variety of issues.

Critically discuss the role that the judiciary in Zambia has played over the years in the realization of human rights in the country. You are required to cite suitable case and statutory authorities to support your answer.

Section B

- 2 Constitutional making in Zambia has gone through various stages. What stands out is the fact that whenever there is a constitutional review, the President by the powers vested in him through the Inquiries Act appoints a Commission of inquiry to gather views from the people in relation to the constitution. In 2003, the then President appointed the Mungo'mba constitutional review commission. A draft constitution was produced by this commission. The manner of adopting the said constitution has seen a lot of discussions back and forth. This led to the creation in 2008 of the National Constitutional Conference pursuant to the Constitutional Conference Act of the same year.

In January, 2010, the conference sitting at Mulungushi Conference Centre in Lusaka adopted for inclusion in the Republican Constitution a clause requiring any presidential aspirant to be a degree holder. The adoption of this clause raised suspicion and speculation has been that it is targeted at a named individual. These suspicions are not new in Zambia.

Critically discuss the inclusion of this clause in light of human rights protection and enjoyment in the country.

- 3 It seems to be that every president who ascends to power finds that the constitution is inadequate in addressing the issues in the country. The Chiluba government found the 1991 constitution to be inadequate and created the 1996 constitution through Amendment Act number 18 of 1996. This was found to be inadequate by the Mwanawasa administration.

Analyse the flaws in the 1996 constitution clearly stating what impact these have on the general populace if at all.

Section C

- 4 Judge Francis in the case of *R Vs De Jager* (1931-37) LRNR 13 stated among other things that “it was permissible for the local legislation to pass laws which might not be compatible with the principles of English Law as what may be appropriate in England may not always be expected in an African colonial dependency”. This was in a case where De Jager a Jehovah’s Witness was found in possession of prohibited literature contrary to Proclamation number 9 of 1935. He was arrested and was prosecuted for the offence.

Discuss the enjoyment of human rights by Africans during the colonial era citing the actual rights available to them and their practical reality.

- 5 Discuss the enjoyment of human rights during an emergency both during the colonial era and after independence. You are required to use both case and statutory authorities to support your discussion.

Section D

- 6 Northern Rhodesia had its first constitution in 1963 when self rule was allowed in the territory. This constitution had a bill of rights incorporated.

Analyse the value added to the enjoyment of human rights by this introduction.

- 7 The protection from Torture and inhuman and degrading treatment or punishment is one of the rights guaranteed in the Republican constitution from the time a bill of rights was introduced.

With the help of suitable authorities, discuss the enjoyment of this right clearly stating reasons why and how it has flourished or not.



THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

2009 Second Semester Final Examination

Date: Monday 19 April 2010

Time: 14:00 – 17:00 hours

Course: Civil and Criminal Procedure (L362)

Instructions:

- 1. The question paper is divided into two parts, Part A and Part B. Please note that question 1 under each part is compulsory and carries 18 marks.**
 - 2. Answer any other 2 questions from either part.**
 - 3. Apart from the compulsory questions, each question carries 12 marks and the total mark for the exam is 60 marks.**
 - 4. Time: Three (3) hours plus five (5) minutes to read the paper.**
 - 5. Students are allowed to consult the following unmarked statutes in the exam room:**
 - i. Supreme Court Act, Cap 25**
 - ii. High Court Act. Cap 27**
 - iii. Subordinate Court Act, Cap 28**
 - iv. Juveniles Act, Cap 53**
 - v. Adoption Act, Cap 54**
 - vi. Penal Code, Cap 87**
 - vii. Criminal Procedure Code, Cap 88**
-

Part A Civil Procedure

Question 1A - Compulsory

You are a lawyer in the firm of Messers Black, White and Associates. You have been approached by a client Jack Buffi who has requested that you represent him. He is the third defendant in a civil suit in the Subordinate Court. The plaintiff is Neil Banda, the 1st defendant is Sunshine Phiri and the 2nd defendant is Grook Xulu. Your client and the 1st and 2nd defendants have been sued for breach of contract. The plaintiff is claiming among other things, damages for breach of a contract signed in 2009, in which the three defendants were supposed to supply the plaintiff with office equipment at quarterly periods throughout the year 2009 but which they did not do.

Your client insists that while he is Jack Buffi, he did not enter into and sign any contract in 2009 for the supply of office equipment to Neil Banda. Your client points out that he is a medical doctor by profession and does not supply office equipment or own any such business. He also adds that he does not know the plaintiff and the 1st and 2nd defendants. He points out that he has been wrongly sued and wants to be removed from proceedings; he asks if that is possible.

- a) Briefly discuss the relevant order, highlighting the rule applicable to your clients case and advise your client on the action the firm will take in this matter.
- b) Draft the Affidavit in Support to be filed with the relevant summons (draft only the Affidavit).

18 marks

Question 2A

You are a legal intern in the firm of Messers LLB, THREE and Associates. The senior partner walks into your office with a file, she tells you that the firm has a matter in the Subordinate Court and the suit is about a house. In this matter Messers LLB, THREE and Associates is representing the defendant Sarai Zulu. Sarai Zulu was at Messers LLB, THREE and Associates offices, she told the senior partner that the plaintiff in the matter who is also her ex-husband, is planning on destroying the house. Sarai Zulu said she discovered that her ex-husband has contracted a company to go to the house

situated in Long Acres, Lusaka at 8 am tomorrow to raze the house to the ground. Sarai Zulu is apprehensive that her ex-husband will successfully destroy the house. The senior partner indicating that the matter is urgent, asks you to draft an appropriate summons with reference to the applicable order.

- a) List the various legal documents to be filed in the circumstances of this case
- b) Draft the appropriate summons and the necessary supportive document

12 marks

Question 3A

Billee Kunta is a student in his 3rd year of law school. He has studied Order 14 and Order 16 of the High Court Act. Despite thoroughly reading the two Orders, he has not understood them and approaches you for an explanation.

Explain

12 marks

Question 4A

There are various methods of executing orders or judgments of the court. Discuss four principle modes of execution of judgment.

12 marks

Part B Criminal Procedure

Question 1B – Compulsory

You are a legal intern at a Law firm in Lusaka. You have been called by a partner who heads the Conveyance department of the law firm and consequently he's not familiar with criminal law and procedure. In particular he is doubtful about the following matters:

- a) Whether or not witnesses would be permitted to sit in court during the course of trial
- b) What steps or measures could be taken if witnesses fail to attend court

Advise

12 marks

Question 2B

Atom Ant is a student of L362 and he recalled that during the course of the year, the lecturer had stated that most trials are summary trials. Atom Ant is nevertheless unsure about what a summary trial is. He approaches you and requests you to explain what a summary trial is.

Explain

12 marks

Question 3B

A client comes to your law firm where you are a lawyer. He explains that his cousin was arrested by a police officer. Upon his arrest, his cousin demanded that the police officer produce a warrant of arrest, the police officer failed to do so. The client's cousin is aggrieved by the failure of the police officer to produce a warrant of arrest. As a result he seeks your opinion regarding his cousin's arrest without a warrant.

Advise

12 marks

END OF EXAMINATION



THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

2ND SEMESTER 2010 L382 INDUSTRIAL LAW

INSTRUCTIONS:

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

ANSWER: ONE QUESTION FROM EACH PART

NO STATUTES ALLOWED IN THE EXAMINATION ROOM

PART ONE

1. [a] Mubita Lifasi was employed by Zambezi Holdings Limited as an engineer. In 2006 Mubita wanted to advance his academic qualifications and in consequence he applied and was accepted at a University in the USA to study Electrical and Electronic Engineering and his employer sponsored him for this three-year course. Mubita successfully completed this course and came back home in 2009 and reported to his employer. After his return problems started. He had no office as someone occupied the office he occupied before he left for studies. He was not given a replacement job after attaining higher education. He had discussion with the Human Resources Manager about the problems he was facing and verbally asked for absence from work so that management is given time to sort out the problem. He also saw the Managing Director over this and they were agreeable that he stays away while management attended to his problems. Whilst he was at home he was written a letter by his immediate boss who wanted to know why he was not reporting for work. He replied to this query the same day and to make the point that he had authority to stay away, he asked his supervisor to see the Human Resources Manager. After this communication, nothing transpired until he was called to appear before the Board of Directors to explain his absence.

After he appeared before the Board of Directors, the matter was then referred to the Disciplinary Committee to deal and the Committee acted according to the Board's decision that Mubita deserved severe disciplinary action and he was dismissed. His appeals to the Managing Director and the Board were unsuccessful.

Mubita has called on you this morning for advice over his dismissal. Advise him on the merits of his intended Court action and the nature of

reliefs he may seek from Court from the given facts. Advise him also on the appropriate Court whereat he may institute his action.

[10 MARKS]

[b] Discuss with the aid of case law the nature and extent of an employee's duties to account and indemnify the employer.

[8 MARKS]

PART TWO

2. Contracts of employment which unduly restrict the employee in the exercise of his profession or calling may, in certain circumstances, be subject to the doctrine of restraint of trade; that doctrine will also apply to covenants imposed upon an employee which restrict his freedom of action after the termination of his contract.

Discuss the above statement with aid of case law.

[14MARKS]

3.(a) How far is the law governing the individual employment relationship an application of the general principles of the law of contract, and how far is it a separate and distinct body.

[8 MARKS]

(b) Discuss the case law that has been degenerated on the effect of unilateral variation of contracts of employment.

[6 MARKS]

PART THREE

4.The International Labour Organization(ILO) ,set up in 1919, has over the years produced a very large number of Conventions and recommendations embodying standards covering most aspects of employment relationships. Zambia has been a member of ILO since 1964 and has ratified a number of Conventions.

Discuss the major ILO Conventions that Zambia has ratified and the extent to which the same have been domesticated in Zambia.

[14 MARKS]

5. There are a number of theories that have been put forward to explain the behaviour of participants in industrial relations. Identify the participants in industrial relations and discuss the classic theories of industrial relations. Which theory best explains or describes the Zambian situation.

[14 MARKS]

PART FOUR

6. Write short notes on the following

(a) The decision in *Boston Deep Sea Fishing and Ice Co. v. Ansell* [1888] 39 Ch.D.339.

(b) Employees' rights in respect of trade union and its activities in Zambia

(c) The legal nature of contracts of apprenticeship and how the same differs from a contract of employment.

(d) Waiver in Employment law

[14 MARKS]

7. With the aid of case law discuss the various ways by which a contract of employment may come to an end.

[14 MARKS]

END OF EXAMINATION



THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

EXAMINATIONS 2009 SEMESTER 2

L392 Gender Discrimination and the Law

Instructions

1. ANSWER one question from each part. Question one carries 18 marks and the remainder of the questions carry 14 marks each. The total examination mark is 60

2. No statutes or international instruments are permitted in the examination room.

Part A

Q. 1

"The analytic frames of patriarchal law are not the spaces within which to create visions of feminist futures" H. Wishik (1985) Berkley Women's L.J. 64

DISCUSS

Part B

Q.2

Country X can choose to be a party to either or both of the documents containing the following clauses:

"States parties shall accord to women equality with men before the law" Convention on the Elimination of all forms of Discrimination Against Women Art. 15(1)

"States parties shall ...include in their national constitutions and other legislative instruments...the principle of equality between women and men and ensure its effective application." Additional Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa Art. 2(1)(a)

Based only on the content of the above clauses, **ADVISE the Minister of Justice who is responsible for ratification of the international instruments on how to proceed.**

Q.3

Article 23 provides as follows:

"(1) Subject to the provisions of clause (4)... no law shall make any provision that is discriminatory either of itself or in its effect.

(2).....

(3) In this article, the expression "discriminatory" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, tribe, sex, place of origin, marital status, political opinions, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject to or are accorded privileges or advantages which are not accorded to persons of another such description.

(4) Clause (1) shall not apply to any law so far as that law makes provision:

(a).....

(b).....

(c) with respect to adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law;

The National Constitutional Conference is rewriting Zambia's Constitution and would like to know why the Women's movement finds the above Article problematic. **Provide an OPINION.**

Part C

Q.4

Radical feminists place matters of sexuality at the root of women's subordination in almost all cultures. Indeed an African feminist has stated as follows about female genital mutilation (FGM):

Removal of the female genitalia is informed by a patriarchal belief system which defines the female genitals as unclean, therefore the claim that circumcising cleanses; by a system of beliefs which define the female as sexually promiscuous, therefore the importance of removing the clitoris and outer genitalia in order to impose chastity and sexual control in or out of marriage; a system which defines the female as an object of exchange between men – fathers and in-laws, brothers (through the levirate); and a system which considers the female person essentially in terms of her reproductive/productive functions *vis a vis* the rest of humankind, therefore the restriction of sex and sexuality to the sphere of marriage and child bearing...MacFadden 'Sex, Sexuality and the Problems of AIDS in Africa', in Ruth Meena (ed.) Gender in Southern Africa: conceptual and theoretical Issues, SAPES Books, Harare, 1992, pp167-177.

Use McFadden's theory to ANALYSE one Zambian customary law practice.

Q.5

The Local Court's Act, Chapter 29 of the Laws of Zambia provides as follows:

S. 35 (1) Subject to the provisions of this Act or of any other written law, and the limitations imposed by its court warrant, a local court, in cases of a civil nature, may

...

(d) make an order for the payment of such monthly sum for the maintenance of a divorced spouse as the court may consider just and reasonable having regard to the means and circumstances of

the parties for a period not exceeding three years from the date of divorce or until re-marriage whichever is the earlier.

EXPLAIN the merits and demerits of the provision.

Part D

Q.6

The Permanent Secretary in the Ministry of Labour and Social Services Dr Winnie Mwenda is planning a meeting with the Chairperson of the Council of the University of Zambia, Dr Tukiya Mabula on the impact of university education on gender equality in the employment sector. Both women are lawyers and former lecturers in the School of Law at the University of Zambia. Dr Mwenda would like you to draft a set of recommendations that she can put to her counterpart. **DRAFT the main points of that document.**

Q.7

You come across the following statement in your gender law class text book:

"The classification of a prosecutrix in a sexual assault case as a 'suspect witness' is a glaring example of bias in the Zambian courts." **DEFEND IT.**

End of Examination

The University of Zambia

School of Law

2009/2010 Academic Year Second Semester Examinations

Jurisprudence I- L412

Instructions

1. Maximum time allowed is three (3) hours plus five (5) minutes to read through the paper.
 2. Answer four (4) questions, at least two (2) from each part and all questions carry equal marks.
 3. Answer all questions in full.
 3. No statutes and or texts are allowed into the Examination Hall.
-

PART 1

Question One

The government of the Republic of Zambia (“**GRZ**”) has decided to privatise the Zambia Telecommunications Company Limited (“**Zamtel**”) by selling to a private entity its 75% shareholding therein.

One of the opposition political parties has labelled the process of privatising Zamtel as not being transparent, corrupt and against public interest. This political party has threatened that when it comes to power after the 2011 presidential and parliamentary elections, it will re-nationalise Zamtel as it is in the public interest that the majority of shares in Zamtel are held by GRZ.

You have just been given an internship by one of the corporate law firms in Lusaka, one of whose clients is a multinational telecommunications company bidding for Zamtel’s shares. This multinational company is concerned with the threats by the opposition political party and has approached your firm for an opinion on the legal viability of the threats.

Your principal has asked you to attend to the client’s instructions. Using your just acquired jurisprudential understanding of the law as an instrument of social engineering and the appropriate legal authorities, write a short opinion advising your principal on:

- (a) whether the threats by the opposition political party to reverse the privatisation of Zamtel are legally tenable;
- (b) what recourse would the multinational telecommunications company have in the event that the opposition political party proceeded with its threats.

15 Marks

Question Two

Zambia’s 2011 presidential and general elections are fast approaching. The election period in Zambia is characterised by a lot of lawlessness ranging from breach of election rules to breach of criminal law. Insults, assaults and corruption are rampant. All this is an indication of the insatiable appetite for political power by the political parties involved.

Your pastor who knows you as a final year law student approaches you wondering whether there is in fact any positive relationship between the law and political power.

Advise your pastor.

15 Marks

Question Three

importance of the role of the law and the justice system in the development of a country like Zambia is undoubted. However, the Zambian public opinion of the law, lawyers and the justice system has not at all been favourable.

opinion of lawyers as held by the Zambian public may not be unique and surprising. Over years ago, Jonathan Swift, the satirist, described lawyers as a:

“... society of men among us, bred up from their youth in the art of proving by words that white is black and black is white the result depending on the answer the person paying wants. To this society all the rest of the people are slaves.”

Judges have similarly been targeted for criticism as being isolated, lazy and arrogant.

“These judges are persons appointed to decide all controversies of property, as well as for the trial of criminals and picked out from the most dexterous lawyers who are grown old and lazy.”

Whether the powers of the court to punish for contempt are viewed as a way of avoiding scrutiny or criticism.

The Supreme Court of Zambia recently convicted and sentenced to 3 years imprisonment (one of which was suspended) a litigant and his lawyer for contempt for alleging nepotism and corruption against the judges and branding the court's decision as ***“a stupid judgment by stupid judges.”***

critique the decision of the Supreme Court to punish a litigant and his lawyer for contempt.

Marks

Question 4

The Zambian constitution in Article 1(2) provides:

“All power resides in the people who shall exercise their sovereignty through the democratic institutions of the state in accordance with the constitution.”

Further, the preamble's second paragraph of the Zambian constitution states that the people are determined to uphold their ***“inherent and inviolable right as a people to decide, appoint and proclaim the means and style to govern ourselves.”***

Professor Friedman in his book Legal Theory (5th Ed) at page 51 states:

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Professor Friedman in his book Legal Theory (5th Ed) at page 51 states:

“The theories of both Locke and Rousseau suffer from their failure to explain how the supreme right of the majority can go together with the inalienable rights of the individual.”

Discuss the social contract theory as espoused by John Locke and Jean-Jacques Rousseau and demonstrate its impact on the development of human rights and democracy.

15 Marks

PART 2

Question 5

Full discuss principle of law enunciated by the case of *Match Corporation Limited -vs- Development Bank of Zambia and the Attorney General*.

15 Marks

Question 6

The development of the liberal democracy school of thought was a reaction to the *laissez faire* economics, autocratic rule of monarchs and Hobbesian notion of the need to sublimate personal freedoms to secure public order and peace.

Using the *Mulundika and 7 others -vs- The People (1995 -1997) ZR 20* case, discuss the regulatory role of the law in a liberal democracy.

15 Marks

Question 7

Answer the entire question below.

- (a) Section 40 of the Interpretation and General Provisions Act, Chapter 2 of the Laws of Zambia provides:

“The imposition of a penalty or a fine by or under the authority of any written law shall not, in the absence of express provision to the contrary, relieve any person from liability to answer for damages to any person injured.”

Briefly state what section 40 above means?

- (b) Contrast *ratio decidendi* with *obiter dicta*;
- (b) Other than the law, name 2 other instruments of social control.

15 Marks

End of Examination