

The University of Zambia
School of Law
2006/2007 Second semester examinations

1. L 222 Law of contract
2. L 232
3. L 242 Criminally law II
4. L 252 Constitutional law II
5. L 262 Family law
6. L 322 Law and customary systems of tenure
7. L 332 Commercial law II
8. L 342 Administrative law II
9. L 352 National human rights law
10. L 362 Civil and criminal procedure
11. L 382 Labor law
12. L 412 Jurisprudence II (law and society)
13. L 422 Business associations (company law)
14. L 432 Law of international organizations
15. L 452 International investment law
16. L 482 Alternative dispute resolution

THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW

2006 ACADEMIC YEAR SECOND SEMESTER
FINAL EXAMINATIONS, FEBRUARY 2007

L222: LAW OF CONTRACT

TIME: THREE (3) HOURS

INSTRUCTIONS: ANSWER QUESTION 1 AND ANY OTHER 3 QUESTIONS

1. John entered into a contract for the hire of Lusaka Opera House to enable him host a music concert in December. Tickets for the event were sold well in advance and artists contracted to perform. On the day of the concert however there was a freak thunderstorm and lightening struck an electricity substation cutting off electricity supply to the Opera House. John quickly contacted the power utility company to restore electricity but was told it would take days to rectify. The artists are from Europe and on a tour of Southern Africa and have a full schedule into the New Year; they are thus unable to adjust their program. John is facing claims from the proprietors of Lusaka Opera House and the artists whom he has not paid. John also has to consider whether he can obtain refunds for services which he had paid for but would no longer utilize such as a public address system and food and refreshments. If John does not collect all the monies for services prepaid but not utilized, he will not be able to make any refunds on the tickets sold.

Advise John

- b) Robert entered into a lease agreement with Ken under which Robert would lease a restaurant for 3 years. The lease provided that Robert would pay rent of K2million, three months in advance on the 1st of the month. The lease also provided in clause 10:

“The landlord accepts no responsibility for any temporary interference with the use of the premises owing to damage by fire, tempest, flood, earthquake, explosion or aircraft damage.”

On October 30th the premises was burnt down. On November 1st Robert failed to pay the K2million and Ken is threatening him with litigation to claim the rent. Robert replied that Ken could do what he liked because he was not going to continue to rent a burnt down restaurant. It would take at least 1 year to rebuild the premises.

The cause of the fire has not been established. One theory is that it was caused by the deep fry igniting when a cook carelessly splashed hot oil. Another view is that there was an electrical fault which caused a spark to ignite the oil in the deep fry unit.

Advise Robert.

2. **"The notion that a lawful threat may be illegitimate in the context of a claim of economic duress is unjustifiable and would introduce too much uncertainty into the doctrine."**

Discuss this statement with reference to appropriate case law authority.

3. **"The basic principle on which damages for breach of contract are awarded must not be disregarded even when it is merely the injured party's expenses which are being claimed and not a lost profit."**

Discuss

b) Barbara is in business. All businesses of her type are doing well as what they supply is greatly in demand. She decides to purchase a new piece of machinery to increase the capacity of her plant and increase the productivity of her business. She contracted with Steven for its supply. Steven was a month late in delivering the machinery. Barbara is seeking to recover for the additional profits she could have made during that month with the new machine. Her claim includes the loss of an unusually profitable order which she was unable to take on because she did not have the increased capacity which the new machinery would have given her.

Advise Barbara.

4. **"Where....the parties have decided that they wish to confer a benefit on a third party, and have put that clearly into their contract, the courts will be able to enforce their wishes directly....." (Stone, *The Modern Law of Contract*)**

Discuss this statement.

5. **Helen had lived with her parents in Lusaka until they were both killed in a car accident in 1999. Helen was then 22, and in order to sustain herself, she took a job as a waitress in a night club in Livingstone. Helen's only**

remaining relative was her aunt, Irene, who greatly disapproved of Helen's job. After Helen moved to Livingstone, Irene wrote to her on a number of occasions suggesting she come back to Lusaka, but each time Helen's reply was that she was earning more money than she could ever earn in Lusaka, that she had a pleasant apartment and that she enjoyed living on her own.

In June last year Irene wrote again to Helen, this time saying that if Helen came back and lived with her in Lusaka she would give Helen half a share in her house. As the house was worth over K350 million Helen agreed to return. She gave up her apartment, resigned her job and returned in October and has been living with her aunt since. Irene has still not had the necessary documents prepared to give Helen the half share in the house and appears reluctant to do so.

Helen wishes to enforce her aunt's promise. She comes to you for advice.

6. Musonda is beginning an accounting course at university and receives a scholarship from Ledger & Balance Chartered Accountants who have offices in Kitwe. The scholarship provides that Musonda will work for the firm while attending university part-time and in addition to his normal salary will have his lodging and text books paid for by the firm. The scholarship agreement contains further conditions as follows:

- i) Musonda will not, whilst employed by the firm work in any other employment.
- ii) In the event of Musonda leaving the employment of Ledger & Balance he will not set up business as an accountant, or work for an accountant anywhere in the Kitwe area for a period of one year after leaving the firm.
- iii) In the event of Musonda leaving the firm, he will not remove or copy any computer software applications used in the firm

Ledger and Balance seek your advice as to whether these conditions are enforceable against Musonda.

7. Moses and Kurt are artists who make their living by selling their works at the Sunday Art Show at the beach. One afternoon Kurt said to Moses, "I will swap this statue I am working on, for that (pointing to the canvass on which Moses was working) painting of yours." Moses replied, "It's a deal, but the statue is so heavy I think you should deliver it."

Their face to face meeting ended then without anything further being said. When Moses arrived home, his landlord Chanda, demanded the rent due. Moses admitted he had no money, but offered to transfer to

Chanda the right to receive the statue from Kurt. Chanda agreed, and Moses then stated “ all right, I transfer to you my right to receive from Kurt the statue he is currently working on as total discharge of my obligation to pay the rent now due.” Chanda and Moses reside at the same address.

Soon Moses and Kurt completed their projects. However, kurt had become very attached to the statue. Kurt and Moses subsequently agreed that Kurt could keep the statue and pay Moses K2million for the painting which Kurt did. Chanda learned of this and is determined to have the statue.

Chanda consults you and inquires as follows:

- i) Did Moses have a contract for the statue with Kurt?**
- ii) If so, can Chanda compel Kurt to deliver the statue to him?**
- iii) If Chanda cannot compel Kurt to deliver the statue to him, what obligation if any does Moses have to Chanda?**

Discuss.

L-232 Final Exam
January 26, 2007
Lecturer: Nick Kahn-Fogel

INSTRUCTIONS: Please answer **Question 1** and **FOUR** of the remaining six questions. **Question 1** will count for 60% of the test grade, and the remaining four questions you choose will count for 10% each. You will have three hours to complete the exam.

Question 1: Mr. Bwalya works as a teller for BandaBank, which is owned and managed by Mrs. Banda. In the course of a regular accounting procedure (conducted every three months) Mrs. Banda and other bank managers realize that Mr. Bwalya's password has been used to steal K 40 million from various corporate accounts, and Mr. Bwalya is the obvious suspect. Mrs. Banda fires Mr. Bwalya and holds a meeting with all BandaBank employees in which she says that Mr. Bwalya stole the K 40 million from the bank and that all BandaBank employees will be closely monitored to prevent recurrence of this kind of behavior.

Word of the embezzlement and Mr. Bwalya's firing gets out, and, subsequently, Gordon Gondwe, a journalist, writes an editorial in The Post in which he asserts that "criminals like Mr. Bwalya must be prevented from obtaining jobs in Zambian banks." Mr. Gondwe also writes that only poor oversight could have allowed Mr. Bwalya's theft to go unnoticed for so long and that, ultimately, the failure to catch Mr. Bwalya earlier results from "irresponsible management" by Mrs. Banda. Mr. Gondwe concludes that conducting audits only at three-month intervals is far too infrequent to catch day-to-day corrupt practices, and Mrs. Banda's failure to conduct more regular audits, as other banks do, "demonstrates her laziness."

John Sakala, a Member of Parliament, buys The Post from the Spar supermarket and reads Gondwe's editorial. Three days later, Mr. Sakala addresses his colleagues on the floor of the National Assembly. He says, "We must all be diligent to ensure that thieves like Mr. Bwalya and lazy managers like Mrs. Banda are not allowed to diminish the quality of our nation's banking industry." Mr. Sakala then repeats this statement during an interview at his home with reporters from Radio Phoenix.

(A) Please assess Mr. Bwalya's defamation claim against Mrs. Banda. (B) Assess Mr. Bwalya's and Mrs. Banda's defamation claims against Mr. Gondwe, against Spar, and against Mr. Sakala.

In your analysis, discuss the basis for each claim, any defenses available to the defendants, and the likelihood of success. Finally, for which claims will damages be presumed, and for which claims must the plaintiffs prove damages, and why?

Question 2: What are the five elements of a claim for deceit? (YOUR ANSWER COULD BE A LIST OR A SHORT PARAGRAPH).

Question 3: In recent years, courts in England have greatly expanded the boundaries of the breach of confidence action. Why might Zambian courts be less likely to interpret the action so liberally? (YOUR ANSWER SHOULD BE NO MORE THAN ONE PARAGRAPH).

Question 4: What criteria do courts use to determine whether the finder or the occupier has a superior title to found goods? (NO MORE THAN ONE PARAGRAPH).

Question 5: Describe, in no more than four sentences, the difference between trespass to goods and conversion.

Question 6: What are the three types of private nuisance action? (SHORT LIST).

Question 7: What criteria did Lord Cairns and Judge Blackburn articulate as the requirements to sustain an action under Rylands v. Fletcher?

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UNIVERSITY OF ZAMBIA
SCHOOL OF LAW
2006/2007 ACADEMIC YEAR: SECOND SEMESTER
L242 Criminal Law II: Specific Offences

Final Examination

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1. Write your comp. No. correctly on all answer books...
 2. Read the paper carefully.
 3. Answer four (4) Questions. Question One is compulsory [you must answer it], in addition to three(3) others(1+3=4).
 4. Clearly indicate the number of each question answered.
 5. Documents allowed: Penal Code ,cap 87; Penal Code(Amendment) Act no. 15 of 2005; the Computer Misuse and Crimes Act no. 13 of 2004.
 6. Time: Three(3) hours, plus five (5) minutes to read through the paper.
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Q. 1: (compulsory)

“The recognition and protection of property rights in any society raise deep questions... There is a tendency to associate property with “things” – to think of property in terms of objects endowed with spatial dimensions, that can be touched and seen... But property understood in the context of a legal system, is a legal phenomenon – and rights of property are not physical things but legal constructs.” Prof Simester and Sullivan(2003). Criminal Law: Theory and Doctrine. Portland: Hart Pub., p.423.

Guided by the above, write a critical evaluation of the actus reus and mens rea of any one offence(of your choice)against property as proscribed under the Penal Code, CAP 87. Cite three relevant decided cases from Zambia and two cases from other jurisdictions in support of your argument.

[21 marks]

Q. 2:

Many new technologies in the industrial era have created new opportunities for committing crime. Computers or computer systems can

be the object of the crime as well as the instrument of a crime. Many countries have responded to the threat of computer crime with legislations to deal with these new threats. In Zambia, the legislature responded to these threats with the Computer Misuse and Crimes Act, 2004.

1. Briefly list four computer crimes proscribed by the Computer Misuse and Crimes Act, 2004.
2. Describe the actus reus and mens rea of the offence of gaining access to a programme or data with intent to commit or facilitate the commission of an offence.
3. Identify the major components of a basic personal computer. Briefly, describe one of them.

[13 marks]

Q. 3:

Section 8 of the Criminal Code, 2003 of Butterland provides that:

- (1) Any person is guilty of rape if the person engages in vaginal intercourse with a woman or a girl –
 - (a) By force or threat of force against the will and without consent of the woman or girl: or
 - (b) Who is mentally defective, or mentally incapacitated, and the person performing the act knows or should reasonably know the other person is mentally defective or mentally incapacitated.
- (2) Any person... shall be liable, ... to a term of imprisonment for life.

Longwe is convicted under s 8(1)(b) and sentenced to twenty years...

You are required to explain how the prosecution convinced the trial court to convict and sentence Longwe ...

[13 marks]

Q. 4:

Why did the Supreme Court dismiss the appeal of the prisoner in the case *Esther Mwiimbi v The People* (1986) ZR 15? [support your contentions].

[13 marks]

Q. 5:

Chanza was owed K200,000 by Zulu. When Chanza asked for the repayment of the money owing, Zulu told Chanza that he was broke and

could not pay ... Angered by this, Chanza told Zulu that unless he hand over his Motorola handset 070(worth K195,000) in satisfaction of the debt he would, there and then, beat him up. Submissively, Zulu handed over the Motorola cell phone to Chanza.

Critically, examine Chanza's criminal liability.

[13 marks]

Q. 6:

Contrast the overt acts of the offence(s) a defendant may commit under sections 43 and 45 of the Penal Code, cap 87[Illustrate your answer].

[13 marks]

Q. 7:

Konkola is a reputable software developer. He was engaged by a security firm – Gold – foot to design a package of security software to prevent unauthorised access into the firm's computer systems. The contract provides that the software developer retains partial intellectual property rights in the software and that the title will only transfer, in whole to Gold – foot, upon full payment. Konkola designed the software as requested, but Gold – foot failed to honoured their contractual obligations. As a result, Konkola initiated a logic bomb that prevents the use of the software. Gold – foot reported the matter to the Police. Konkola was apprehended and charged under relevant provisions of the Computer Abuse Act, 1989 of Milkland, which provisions are similar to the provisions of Zambia's Computer Misuse and Crimes Act,2004.

Discuss the criminal liability of Konkola.

[13 marks]

Thus saith the Lord, keep ye judgment, and do justice: for my salvation is near to come, and my righteousness to be revealed. *ISAIAH 56:1*

**The University of Zambia
School of Law**

**SECOND SEMESTER EXAMINATIONS
FEBRUARY 8, 2007**

L-252: CONSTITUTIONAL LAW II

INSTRUCTIONS:

- 1. TIME: THREE HOURS, PLUS FIVE MINUTES TO READ THE QUESTION PAPER.**
 - 2. ANSWER ANY FOUR OF THE SEVEN QUESTIONS. EACH QUESTION WILL COUNT FOR 25% OF THE EXAM GRADE.**
 - 3. YOU ARE NOT PERMITTED TO BRING ANY OUTSIDE MATERIALS INTO THE EXAM.**
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1. Throughout the course of Zambia's history as an independent nation, the executive branch of government has been the dominant force of state power. Without sufficient checks and balances from the legislature and the judiciary, a country's citizenry may be susceptible to insufficient respect for and protection of basic human rights against abuse by an overbearing executive. You have been asked to give advice to a new constitutional review commission on how Zambia might enhance the independence of the legislature and the judiciary. Please prepare your brief on the matter for the attention of the Chairman of the Constitutional Review Commission.
2. In the case of *Christine Mulundika and Seven Others v. The People*, the Supreme Court held portions of the Public Order Act unconstitutional. As a result, the National Assembly passed amendments to the Public Order Act in 1996, in an attempt to bring the Act into conformity with the Constitution. Please advise the new Minister of Justice on:
 - (a) How the 1996 amendments to the Public Order Act have increased or detracted from protection of Articles 20 and 21, of the Constitution, and
 - (b) The constitutionality of these amendments.

NOTE: You have been given a copy of the 1996 amendments to the Public Order Act. However, please do not simply reproduce portions of the Act in your answer. You are expected to draw on your knowledge of relevant case law and Professor Chanda's commentary on the issue.

3. In *Liswaniso v. The People*, the Zambian Supreme Court held that evidence obtained as a result of an illegal search would nonetheless be admissible in court.

The United States Supreme Court came to the opposite conclusion in *Weeks v. United States*. Discuss:

- (a) The policy issues that weigh in favor of each approach.
- (b) Whether the alternative means of enforcing privacy rights favored by the Court in *Liswaniso* are adequate or not.

4. John Smith is studying law at Cambridge University in England and is in Zambia visiting friends. He happens to meet you and he is excited to learn that you are studying law at the University of Zambia. He has learnt that since independence four constitutional review commissions have been appointed all of them mandated to come up with a constitution that "would stand the test of time." Smith wants to know how suitable a constitutional review commission is as a means of arriving at a legitimate constitution.

5. In *Michael Sata v. The Post Newspapers*, Chief Justice Ngulube discussed international approaches to the question of defamation suits by public officials.

- (a) Examine the various restrictions put on such lawsuits in other countries, drawing on decided cases, and analyze the benefits and drawbacks of each approach.
- (b) Analyze the approach Chief Justice Ngulube took in *Sata v. The Post*.

6. Article 28(1) of the Constitution provides:

Subject to clause (5), if any person alleges that any of the provisions of Articles 11 to 26 inclusive has been, is being or is likely to be contravened in relation to him, then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply for redress to the High Court ---.

Musonda Mofya is a Zambian studying law at Cape Town University and he is intrigued by this provision. In South Africa the Constitutional Court has jurisdiction in all constitutional matters. He wants to know the position of the Zambian courts where the action or inaction complained of affects parts of the constitution other than the Bill of Rights.

7. Following the publication of the Constitution Review Commission Report in 2006, there is still discourse on the making of a constitution. One of the opposition parties has made representations to the government that Articles 30 and 31 as read together with Article 25 of the current Constitution should not be re-introduced in the new Constitution. They argue that these provisions

undermine rule of law and are not in furtherance of the country's commitment to good governance and democracy.

Article 30 reads:

(1) The President may, in consultation with Cabinet, at any time, by Proclamation published in the Gazette declare that a State of public emergency exists.

(2) A declaration made under clause (1) of this Article shall cease to have effect on the expiration of a period of seven days commencing with the day on which the declaration is made unless, before the expiration of such period, it has been approved by a resolution of the National Assembly supported by a majority of all the members thereof not counting the Speaker.

(3) In reckoning any period of seven days for the purposes of clause (2) account shall not be taken of any time during which Parliament is dissolved.

(4) A declaration made under clause (1) may, at any time before it has been approved by a resolution of the National Assembly, be revoked by the President by Proclamation published in the Gazette.

(5) Subject to clause (6) a resolution of the National Assembly under clause (2) will continue in force until the expiration of a period of three months commencing with the date of its being approved or until revoked at such earlier date of its being so approved or until such earlier date as may be specified in the resolution:

Provided that the National Assembly may, by majority of all the members thereof, not counting the Speaker extend the approval of the declaration for periods of not more than three months at a time.

(6) The National Assembly may, by resolution, at any time revoke a resolution made by it under this Article.

(7) Whenever an election to the office of President results in a change of the holder of that office, any declaration made under this Article and in force immediately before the day on which the President assumes office shall cease to have effect on the expiration of seven days commencing with that day.

(8) The expiration or revocation of any declaration or resolution made under this Article shall not affect the validity or anything previously done in reliance on such declaration.

Article 31 reads:

(1) The President may at any time by Proclamation published in the Gazette declare that a situation exists which, if is allowed to continue may lead to a state of public emergency.

(2) A declaration made under clause (1) of this Article shall cease to have effect on the expiration of a period of seven days commencing with the day on which the declaration is made unless, before the expiration of such period, it has been approved by a resolution of the National Assembly supported by a majority of all the members thereof not counting the Speaker.

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(5) Subject to clause (6) a resolution of the National Assembly under clause (2) will continue in force until the expiration of a period of three months commencing with the date of its being approved or until revoked on an earlier date of its being so approved or until such earlier date as may be specified in the resolution.

(6) The National Assembly may by resolution, at any time revoke a resolution made by it under this Article.

(7) Whenever an election to the office of President results in a change of the holder of that office, any declaration made under this Article and in force immediately before the day on which the President assumes office, shall cease to have effect on the expiration of seven days commencing with that day.

(8) The expiration or revocation of any declaration or resolution made under this Article shall not affect the validity or anything previously done in reliance on such declaration.

Article 25 provides:

Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of Articles 13, 16, 17, 19, 20, 21, 22, 23 or 24 to the extent that it is shown that the law in question authorises the taking, during any period when the Republic is at war or when a declaration under Article 30 is in force, of measures for the purpose of dealing with any situation existing or arising during that period; and nothing done by any person under the authority of any such law shall be held to be in contravention of any of the said provisions if it is shown that the measures taken were, having due regard to the circumstances prevailing at the time, reasonably required for the purpose of dealing with the situation in question. The argument advanced in support of this position is that the said Articles undermine the rule of law and are inconsistent with the country's commitment to democracy and good governance.

You are the Attorney General of the Republic and the President has asked for your opinion on this issue. Please prepare your opinion on the matter for the attention of the President.

----- END OF EXAMINATION -----

**THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW**

**UNIVERSITY OF ZAMBIA 2ND SEMESTER EXAMINATIONS -
2007**

L262 - FAMILY LAW

DATE: 22ND JANUARY 2007

TIME: 09.00 – 12.00 HOURS

ANSWER QUESTION 1 AND 3 OTHERS. ALL CARRY EQUAL MARKS, UNLESS OTHERWISE INDICATED.

NO STATUTES ALLOWED

Question 1

Felicity and Felaz married 10 years ago in Ndola at the Urban District Council. They have twins Fil and Elly, now 8. When they married, they agreed that if Felaz's widowed mother Monde became unable to look after herself, she could come and live with them. The same would apply to Felicity's mother.

Six months ago, Felaz's mother, Monde, became ill and moved in with Felicity and Felaz. Monde has always been a difficult woman, criticising Felicity's cooking, her upbringing of the twins and caring for Felaz. When Felicity and Felaz differ, Monde sides with Felaz. Matrimonial rows have increased and Felicity cannot take it any more. Felicity has told Felaz that either his mother leaves or she, Felicity, leaves. Felaz says Felicity over reacts, at which Felicity storms out.

Advise Felicity.

- (a) Whether she can divorce Felaz.

[5 marks]

- (b) Whether she can exclude Monde, Felaz's mother, from the matrimonial home, in the event of there being no divorce.

[5 marks]

- (c) Whether she can prevent Monde from meddling in the raising of the twins, or prevent her from seeing them.

[5 marks]

Question 2

Mela and Wanga married 5 years ago after the death of Wanga's first wife Changu. Wanga and Changu had 2 children, Lulu aged 14 and Rita aged 12. Wanga and Mela have one child, Zatu aged 3. Wanga owns the matrimonial home which is a four-bedroomed executive house, valued at K850 million. When Zatu was born, Mela used her entire savings of K25 million to build an extension to the house, which included a children's play room. She has no further savings and has not worked since before Zatu was born. Wanga's income is K20 million per month.

The marriage has encountered problems and both parties agree that a divorce is the best option for them. Lulu and Rita will remain with Wanga while Zatu will be in the care of Mela. Mela wants to obtain periodical payments for herself and Zatu, and a lump sum to enable her to buy a new home. Wanga is quite reasonable and feels a settlement can be reached out of court.

Advise Mela on her entitlements in view of the proposed out of court settlement.

[15 marks]

Question 3

The Ministers of Justice in the SADC Region are considering legalizing partnerships between unmarried couples. You are required to write an opinion for the Minister of Justice on Zambia's legal position and whether the rights of cohabitants should be assimilated to those of married couples.

[15 marks]

Question 4

- (a) What is the difference between a decree nisi and a decree absolute?

[8 marks]

- (b) Faith Zuze was granted a decree nisi in divorce proceedings on 2nd November 2006. On 21st January 2007 she went through a ceremony of marriage with Frank Chiti. Advise Faith and Frank as to the legal effect of the ceremony.

[7 marks]

Question 5

Jane and Jerry, both aged 15, wish to be married as soon as it is legally possible. They seek your legal advice as to the legal requirements they must observe. Advise them.

[15 marks]

Question 6

Explain and Distinguish between a decree of nullity of marriage and a decree of divorce. For what legal reasons may each be obtained?

[15 marks]

Question 7

- (a) What are the legal requirements of a valid will? [8 marks]
- (b) On what grounds and to what extent may a court alter contents of a will?

[7 marks]

END OF 2ND SEMESTER L262 EXAMINATION

THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW

UNIVERSITY OF ZAMBIA 2ND SEMESTER EXAMINATIONS – 2007
L 322 – LAND LAW AND CUSTOMARY SYSTEMS OF TENURE

INSTRUCTIONS:

TIME : THREE (3) HOURS

ANSWER : QUESTION ONE AND ANY OTHER THREE

**NO STATUTES ALLOWED IN THE EXAMINATION
ROOM. USE OF CORRECT AUTHORITIES WILL BE
HIGHLY REWARDING**

=====

QUESTION 1

- (a) The Town and Country Planning Act provides for a comprehensive planning Control and imposes a significant limitation on the freedom which the common law allowed for landowners to build on their land, or to change the use to which their land and buildings were put. Discuss. [20 MARKS]
- (b) Some early writers, unable to grasp the clusters of rights and claims which may be involved in any given situation, endeavored to make a distinction that Customary Land tenure involved the use or usufruct of land in contrast to ownership. Discuss. [20 MARKS]

QUESTION 2

Write short notes on the following;

- (a) The principle of Adverse possession at common Law.
- (b) Constitutional Amendment No. 5 (Act No. 33) of 1969.
- (c) Tenure in Statutory and Improvement areas under the Housing (Statutory and Improvement Areas) Act
- (d) Compulsory acquisition [20 MARKS]

QUESTION 3

- (a) Section 6 of the Lands and Deeds Registry Act [EFFECT of LACK OF REGISTRATION] has been a subject of Judicial Interpretation by the Courts. Discuss [10 MARKS]
- (b) Rights over a parcel of land for residential or arable use are acquired by Individuals and exercised by Individuals. Discuss the methods of acquisition of rights in Land under Customary holding in Zambia. [10 MARKS]

QUESTION 4

- (a) With the aid of Case Law discuss how security of tenure is achieved under the Landlord and Tenant (Business premises) Act. [12 MARKS]
- (b) With the aid of Case Law discuss the Jurisdiction of the Lands Tribunal created under the 1995 Lands Act. [8 MARKS]

QUESTION 5

- (a) Discuss the efficacy of the Statutory protection of tenants of dwelling houses in Zambia. [10 MARKS]
- (b) You are a legal officer at the Ministry of Lands. This morning the Commissioner of Lands has requested you for an opinion on caveats. The Commissioner of Lands would want to know what a caveat is, who may place a caveat, the effect of a caveat and any matter incidental hereto. Proceed. [10 MARKS]

QUESTION 6

- (a) You are a research assistant to professor Sangwapo who is writing a book on the Zambian Land Law. Professor Sangwapo has requested you to contribute to a chapter in his book entitled "Critique of the 1995 LANDS ACT." Proceed. [20 MARKS]

QUESTION 7

- (a) Discuss the Mungomba Constitutional Review Commission recommendations as they relate to the land tenure [12 MARKS]
- (b) Discuss the decision in MPONGWE FARMS LIMITED AND TWO OTHERS Vs THE ATTORNEY GENERAL – 2004/HP/0010 [8 MARKS]

THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW

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L342

**UNIVERSITY OF ZAMBIA
SECOND SEMESTER EXAMINATION
ADMINISTRATIVE LAW II**

ANSWER 4 OUT OF 7 QUESTIONS

**TIME THREE HOURS 5 MINUTES FOR READING
EXAMINATION QUESTIONS.**

**YOU CAN BRING THE CONSTITUTION IN THE EXAMINATION
ROOM**

QUESTION 1 COMPULSORY: 40 MARKS

- Q1.** A student was expelled from International School which is privately funded for smoking Cannabis by the principal. The Disciplinary Rules stipulated that students should be given not less than 24 hours to exculpate themselves. The student was not given an opportunity to exculpate himself. The parents of the student brought Judicial Review proceedings against International School. You have been retained by International School as Counsel. Give a comprehensive legal opinion to the school.
- Q2.** Why should leave be obtained in Judicial Review and How **(20 marks)**

- Q3. Critically analyze the Zambia Supreme Court decision in Nyampala Safaris (z) Limited and other v Zambia Wildlife Authority and others SCZ No.6 of 2004. (20 marks)
- Q4. Judicial Review is not concerned with the merits of the decision but the decision making process itself- **Discuss** the grounds of Judicial Review (20 marks)
- Q5. The doctrine of 'Ultra Vires' is cornerstone of administrative law – **Discuss** with reference to decided cases (20 marks)
- Q6. Judicial Review may be excluded by statutory provisions. However, the court in most cases have gone round such provisions – **Discuss** (20 marks)
- Q7. The concept of Legitimate Expectation is controversial in administrative law – **Discuss**. (20 marks)

UNIVERSITY OF ZAMBIA
SECOND SEMESTER EXAMINATION
ADMINISTRATIVE LAW II

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UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

SECOND SEMESTER EXAMINATION – 23RD JANUARY 2007

L. 352 – NATIONAL HUMAN RIGHTS LAW

Attempt any FOUR questions. Each question carries 15 marks.

Document allowed: The Bill of Rights (Part III of the Constitution)

Time allowed: Three Hours

1. Mr. Musonda marries Miss Bwalya. He wishes to use his wife's surname, rather than his own so that they would then be known as Mr. And Mrs. Bwalya. But to do this Mr. Musonda would have to comply with certain formalities prescribed by a recently enacted Act of Parliament. In terms of the statute a man on marriage must comply with the formalities stipulated therein. By contrast, a woman on marriage may keep her surname, or alternatively she may elect, if she so wishes, to use her husband's surname as her surname. In making that election she is not obliged to comply with any formalities. Mr. Musonda is unhappy with this law. He applies to the High Court to declare the Act of Parliament in question unconstitutional. He also requests that he be allowed to use his wife's surname without the need to comply with any formalities. The nub of his case is that the impugned statute infringes his rights under the Constitution to equality before the law and freedom from discrimination on the grounds of sex. The High Court dismissed Mr. Musonda's application. He appealed to the Supreme Court.

Mr. Musonda now consults you. He says he is not happy with the way his lawyer argued the case in the High Court and that he does not know exactly why the Court dismissed his case. He wants you to take up the matter and argue the appeal in the Supreme Court. However, he would first of all want to know from you: (i) the reasons why the High Court dismissed his application, and (ii) how the Supreme Court is likely to interpret Article 23 of the Constitution which gives protection from discrimination.

Advise Mr. Musonda on these two points.

2. The High Court sitting at Livingston convicted Lukase Hapunda to two counts of murder and sentenced him to life imprisonment on each count, both sentences to run concurrently. Counsel for Mr. Hapunda appealed to the Supreme Court against the sentence. The one omnibus ground of appeal recites that the life sentence is "excessive, unwarranted and cannot be supported having regard to the

evidence". In arguing the appeal counsel for the appellant made the bold submission that a sentence of life imprisonment amounts to a death sentence, indistinguishable from 'the death phenomenon' and amounts to "torture, or to inhuman or degrading punishment or treatment" absolutely prohibited by Article 15 of the Constitution. Counsel therefore submitted with force that a sentence of life imprisonment albeit provided by law is unconstitutional.

Consider the merit of this argument.

3. In *Fred M'membe & 3 Ors v. The People* (1996) the indictment alleged defamation of President contrary to section 69 of the Penal Code. The prosecution's case was that the appellants published in *The Post* defamatory or insulting matters concerning the President with intent to bring him into hatred, ridicule or contempt. At the trial in the Magistrate's Court appellants challenged the constitutionality of section 69 arguing that it was in conflict with Articles 20 and 23 of the Constitution. The Magistrate's Court referred this constitutional issue to the High Court for determination. Justice Chitengi in the High Court ruled against the appellants. He held that freedom of expression was not absolute but subject to derogations and that section 69 was reasonably required for the sake of public order. He also held that appellants had not shown that their fundamental right to freedom of expression had been contravened and that they had also not shown that section 69 is not reasonably justified in a democratic society. Regarding the issue whether section 69 conflicts with Article 23 in that it is discriminatory in its effect the Judge held that matters enumerated in clause 3 of Article 23 were exhaustive and not illustrative and that therefore section 69 was not in conflict with the said provision of the Constitution. On appeal, the Supreme agreed with the High Court, dismissed the appeal and ordered the trial in the Magistrate's Court to proceed.
 - (i) ***Consider the tenor*** of Article 20 (protection of freedom of expression);
 - (ii) ***Who bears the burden of proof*** under the permissible restrictions in Article 20 (3);
 - (iii) ***Comment*** on the following statement of Ngulube CJ (as he then was) in reply to appellants' arguments that criminal libel is dated and had no place in an open democratic society and that section 69 violated the principle of equality before the law: "It was also attempted [by counsel for the appellants] to reduce to the common ranks the central executive authority and first citizen of the country. The election of any person to the office of President, I would have thought to be self-evident, has legal and constitutional consequences, quite apart from any other result. The constitution itself ordains that he becomes Head of State and of Government, that the executive power of the state vest in him and that he be endowed with the various matters, powers and functions described in the constitution. I do not see how it can be argued that the President should stand before the law equally with the rest of us when,

for example, Article 43 grants him immunity from civil and criminal suits while he occupies that high office. If the constitution itself makes the President not equal to everyone else, how can the accused's arguments be maintainable?"

4. "The right to life or the right to die?" **Consider** Article 12 of the Constitution (protection of right to life) in the light of the Termination of Pregnancy Act, the Suicide Act, capital punishment and euthanasia.
5. **Critically consider** the content, language and relevance of the Directive Principles of State Policy as formulated in Part IX of the Constitution.
6. "Every citizen shall have the right and the opportunity ... (a) to take part in the conduct of public affairs, directly or through freely chosen representatives; (b) to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors." (ICCPR, article 25)

Show the extent to which the Electoral Commission in Zambia contributes to ensuring the enjoyment of these critical human rights.

Professor C Anyangwe

**UNIVERSITY OF ZAMBIA
SCHOOL OF LAW**

SECOND SEMESTER EXAMINATIONS

Course: Civil and Criminal Procedure L362

Date: 6th February, 2007

Time: 09:00 Hours

Instructions:

- (a) Question is compulsory and answer any other three questions
 - (b) The duration of the Examinations is Three (3) hours
 - (c) Students are allowed the following statutes:
 - (i) Supreme Court Act Cap 25
 - (ii) High Court Act Cap 27
 - (iii) Subordinate Court Act Cap 28
 - (iv) Criminal Procedure Code Cap 88
-

Question 1 Compulsory

You are a prominent lawyer and you represent a client one Mr. Tinkale Bwino trading as Best Furniture Enterprise who has sued the state for non-payment for Furniture supplied, and valued at K400, 000, 000.00 (6) six months ago, to the Ministry of Home Affairs. You have conducted a search at the High court and it has been one month since you filed your Writ of Summons and Statement of Claim in the High Court and the Defendant has not filed a Defence or entered an Appearance. You have therefore advised your client of the provisions that relate to entering judgement in default of Appearance and Defence.

Draft:

- (a) the appropriate summons; and
- (b) the Supporting Affidavit

21 Marks

Question 2

As a senior counsel in Billmore Chambers you have conduct of a matter before the High Court and you represent the Defendant in the matter. However, your client was very sure that he would win the case but the judgment is clearly in favour of the Plaintiff and the Plaintiff is preparing to execute against your client. Using Authorities draft a legal brief for your client advising him on his right of Appeal and Stay of execution.

13 Marks

Question 3

You are prominent Prosecutor employed by Zambia Police and a docket is allocated to you. The docket contains a complaint in which one Ms Victim Banda alleges that one Rifraf Pamodzi stole her TV, Laptop and DSTV Decoder from her house and assaulted and battered her with a shambok on 31st December, 2006 at her residence in Longarces Lusaka. The complaint also states that Rifraf at the material time also had a rifle in his possession. As a senior prosecutor Draft the two possible counts against Rifraf Pamodzi.

13 Marks

Question 4

Write brief notes on any four of the following

- (a) Confirmation of sentences under the C.P.C Cap 88 of the Laws of Zambia
- (b) Plea and mention
- (c) Arrests
- (d) Search warrants
- (e) Institution of criminal proceeding
- (f) Nolle prosequi

13 Marks

Question 5

You are a prominent Kitwe lawyer and you represent a client one Ms Fast Fingers who is charged with theft in the Subordinate court. Your client has however been detained and has been in Police custody for 2 days. Your client will appear before the senior Resident Magistrate on Wednesday 7th February, 2006 for plea and mention and you have instructions from your client when she appears in court to apply for Bail. Draft your submissions, on behalf of client to be made in court.

13 Marks

Question 6

Write notes on any four of the following

- (a) Interpleader proceedings
- (b) Writ of *fifa*
- (c) Injunctions
- (d) Adjournments and Orders for Directions
- (e) Security for Costs
- (f) Record of Appeal in the Supreme Court

13 Marks

Question 7

It follows that once you have filed your application in court and you are required to serve the said documents on the other parties under Question 1 above, subject to said facts in question draft the Affidavit of Service showing proof of service of the filed documents.

13 Marks

END OF L362 EXAMINATION

THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW

UNIVERSITY OF ZAMBIA 2ND SEMESTER DEFFERED EXAMINATIONS
– 2007 L.382 - LABOUR LAW

INSTRUCTIONS:

TIME : THREE (3) HOURS

ANSWER : QUESTION ONE AND ANY THREE

**NO STATUTES ALLOWED IN THE EXAMINATION
ROOM. USE OF CORRECT AUTHORITIES WILL BE
HIGHLY REWARDING**

=====

QUESTION 1

- (a) The express terms of the contract of Employment will govern any aspect of the relationship between the parties which fall within those terms. But in practice many aspects of the relationship will be left to implied terms which the parties must have intended to be incorporated into the contract. Discuss. [20 MARKS]
- (b) The ordinary Common Law remedy for breach of the contract of Employment is a claim for damages. Yet the remedy which a wrongfully dismissed employee may really want is reinstatement, particularly in times of unemployment. With the aid of case law discuss the approach taken by the Courts in Zambia in granting the remedy of reinstatement to a wrongfully dismissed employee. [20 MARKS]

QUESTION 2

Write short notes on the following;

- (a) Sources of Employment Law.
- (b) The decision in McClell and V. Northern Ireland General Health Services Board (1957) I.W.L.R. 594.
- (c) Unfair dismissal
- (d) Condonation In Employment Law [20 MARKS]

QUESTION 3

The contract of Employment may come to an end in a number of different ways. Discuss the various ways in which a contract of Employment may come to an end. [20 marks]

QUESTION 4

- (a) Discuss the decision in *S. A Mumba V. Zambia Fisheries and Fish Marketing Corporation Limited* (1980) Z.R. 135 [8 MARKS]
- (b) With the aid of case law discuss the effect in law of any unilateral variation of a basic term or condition of employment by the employer. [12 MARKS]

QUESTION 5

- (a) Discuss the employer's obligations arising under a contract of Employment. [12 MARKS]
- (b) Employees in Zambia have certain rights in respect of trade union and its activities. Discuss with the aid of case law. [8 MARKS]

QUESTION 6

The relationship of employer and employed, of master and servant, is according to the common law, a voluntary relationship into which the parties may enter on terms laid down by the parties within limitations imposed only by the general law of contract. Discuss. [20 MARKS]

QUESTION 7

With the aid of case law discuss the Jurisdiction of the Industrial and Labour Relations Court established under the Industrial and Labour Relations Act of 1993 as amended. [20 MARKS]

UNIVERSITY OF ZAMBIA
SCHOOL OF LAW
2006/2007 ACADEMIC YEAR – SECOND
SEMESTER
L412- Jurisprudence II(Law and Society)
Final Examination

1. **READ EACH QUESTION CAREFULLY.**
 2. **CLEARLY INDICATE THE NUMBER OF EACH QUESTION ANSWERED.**
 3. **ANSWER FOUR (4) QUESTIONS. QUESTION ONE IS COMPULSORY(1+3=4).**
 4. **DOCUMENTS ALLOWED: THE CONSTITUTION OF ZAMBIA; ANY OTHER RECOMMENDED STATUTES (e.g. Public Order Act).**
 5. **TIME: THREE(3) HOURS + Five (5) MINUTES TO READ THROUGH THE PAPER.**
-

Q. 1: (compulsory)

“When an individual takes something to the exclusion of others, he does not count in the particular or in any way that differentiates him from others but only as a person. The fact therefore that it is this individual rather than that who is owner is a matter of complete indifference. Ownership represents the exercise of the moral powers that are shared identically by all. The exclusivity of the right merely reflects the fact that ownership is a complete exercise of these powers in any given instance... The normative significance of the exclusive right is that the juridical personality which is identical in everyone has been accorded respect in a way that exhibits the fact that the general and equal authorization to use things can be a basis for interpersonal claims... Understood in this way, the right to property is a doctrine that can belong to a liberalism of freedom.” Prof P Benson -- the University of Toronto.

DISCUSS.(clue: private property is one among several institutions of society that distribute benefits and burdens)[Be sure to support your claim].

[21 marks]

Q. 2:

In his ‘In Defense of Anarchism’, Robert Paul Wolf(1970) distinguished between power and authority. He said to have power is to have the ability to compel compliance. To have authority is to have the right to rule.

Carefully, explain[Give concrete examples].

[13 marks]

Q. 3:

“Genuine public participation at all levels of a nation’s life provides a foundation for democratic and responsive government. Participation will not cure all of the ills of government, including the limits of democracy itself, but it will go some distance to alleviating the ills of the politics of social justice and in particular development policy reform”[emphasis ours] Prof Todaro and Smith(2003). Economic Development, p. 751.

As an Attorney General of Silver-valley Republic, write a legal exposition based on the preceding extract for presentation to a Cabinet Meeting, highlighting on at least seven elements of genuine public participation. Include relevant citations in your brief.

[13 marks]

Q. 4:

It is argued that “ all organizations that seek to adopt a right – based approach to democracy and development should focus their work on dramatically improving the rule of law at the level of daily life. It is worth nothing to have laws and policies -- even if these laws and policies conform to human rights standards – if they are not implemented, if certain groups are excluded from them, if the relevant facts are not known to most people, if channels of redress do not function, if laws are systematically circumvented, or if money, guns, and political influence always tend to get the better of them. It is therefore a fact that rule of law is crucial to a right – based approach to democracy and development because it empowers ordinary people and this will definitely enhance social change.”[emphasis ours] [Peter Uvin(2005). Human Rights and development.

You are requested to write a laudable and lucid legal essay on how to promote rule of law improvement in a contemporary democratic nation state[you are reminded that **rule of law** is not the same as democracy].

[13 marks]

Q. 5:

In a class discussion, a student defines law as “a set of rules or norms of conduct permitting or preventing specified behaviour or relationship of persons, legal or natural, with punishments and remedies according to the type of matter under consideration,”

Do you disagree?[support your answer].

[13 marks]

Q. 6:

It is claimed that “to have an obligation is to have a reason to act or refrain from acting – a reason with which one is in some sense bound to conform...” Prof L Green -- York University, Toronto.

Critically examine the merits and demerits of the preceding proposition.[support your argument].

[13 marks]

Q. 7:

The controversies surrounding MORALITY is merely a matter of semantics. Whether one distinguishes between law and morality or not that makes no any difference to persons other than Finnis(Oxford Un.), Fuller; H L A Hart(inclusive), Dworkin[third way], Coleman[inclusive](Yale Un.), Shapiro[exclusive](Yeshiva Un.), and many others, both past and present.

DISCUSS[You must avoid speculative pondering].

[13 marks]

Whoso loveth instruction loveth knowledge. *Proverbs 12: 1*

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The University of Zambia
SCHOOL OF LAW

ANSWER FOUR (4) QUESTIONS. QUESTION 1 AND 2 ARE MANDATORY

TIME: THREE (3) HOURS

1. M & M LIMITED IS A TRADING COMPANY THAT HAS BEEN STABLE AND IN OPERATION FOR MANY YEARS. FIVE YEARS AGO IT HAD SERIOUS CASH FLOW PROBLEMS. IT BORROWED K50 BILLION KWACHA BELIEVING THAT WITH THE GROWING ECONOMY IT WILL MAKE SUFFICIENT PROFITS TO REPAY WITHOUT PROBLEMS. THIS LOAN WAS SPLIT BETWEEN TEN DEBENTURE HOLDERS. WANTING TO GET ADVANTAGE OF THE ECONOMIC PERFORMANCE, AND WISHING TO DIVERSITY INTO DIAMOND MINING IN WESTERN PROVINCE, THE COMPANY DECIDED TO DISSOLVE VOLUNTARILY, SO THAT THE MAIN SHAREHOLDERS COULD REGROUP AND SPLIT INTO TRADING AND MINING. HOWEVER, CREDITORS STARTED TO PANICK DUE TO A RUMOUR OF A BIG FINANCIAL SCANDAL IN M & M LIMITED. GIVE LEGAL ADVISE TO DIRECTORS WHO WANT YOUR LEGAL ADVISE ON WHETHER WHAT THEY HAVE DONE SO FAR IS LEGAL.
2. ON THE SAME FACTS AS IN QUESTION ONE ABOVE, GIVE LEGAL ADVISE TO CREDITORS WHO WANT TO KNOW HOW THEY CAN PROTECT THEIR RIGHTS.
3. THE DOCTRINE OF ULTRA VIRES IS PROTECTIVE OF SHAREHOLDERS, THE PUBLIC, AND THE COMPANY. DISCUSS
4. MOONDE IS A WIDOWER WHO HAS COME TO YOU FOR A LEGAL OPINION. HIS WIFE DIED SOME MONTHS BACK, AND SHE LEFT 1000 SHARES IN CEMENT & CO, A COMPANY LIMITED BY SHARES. HIS PROBLEM IS THAT HIS WIFE'S UNCLES WHO BELIEVE THEY HAVE A BETTER CLAIM THAN HIM HAVE DISTRIBUTED THE SHARES AMONGST THEMSELVES ARGUING THAT THEY DO NOT FORM PART OF HIS LATE WIFE'S ESTATE. GIVE HIM A LEGAL OPION.

5. DISCUSS THE IMPORTANCE OF NOTICES FOR MEETINGS, AND THEIR TYPES IN THE CONTEXT OF A REQUISITIONED MEETING

UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

SECOND SEMESTER EXAMS – 30TH JANUARY 2007

L432 – LAW OF INTERNATIONAL ORGANIZATIONS

Attempt Question 4 and three other questions.

Candidates may consult the Charter of the United Nations.

Time allowed: 3 Hours.

1. Consider:
 - (a) The role of the United Nations Security Council in the pacific settlement of disputes between States; **(7 marks)**
 - (b) The general limitations on the powers of the United Nations. **(7 Marks)**
2.
 - (a) Are regional arrangements for the pacific settlement of disputes and for collective action of a coercive character complementary to or in substitution for those embraced by the United Nations and its agencies? **(7 marks)**
 - (b) Outline the composition and jurisdiction of the ILO Administrative Tribunal. **(7 marks)**
3.
 - (a) Trace the historical development of international organizations. **(7 marks)**
 - (b) What is meant by 'Specialized Agency' of the United Nations? Outline one such agency you have studied. **(7 marks)**
4. A bilateral treaty between Quintaland and Ruritania contains the following arbitration clause:

“Any dispute concerning the interpretation or application of this Treaty which cannot be settled by negotiation, shall be referred at the request of either Party to a Tribunal composed of one representative of each party and a third member (the umpire) selected by mutual agreement of the parties from nationals of a third country. Failing agreement within one month on the appointment of the third member, the Secretary-General of the United Nations may be requested by either Party to make the appointment. The decision of the Tribunal shall be accepted by the Parties as final and binding.”

The treaty has been registered with the United Nations as required by Article 102 of the Charter and in principle, the Secretary-General has agreed to discharge the function entrusted to him by the Parties.

A dispute has arisen over the interpretation of the Treaty. The Quintaland Government notifies the Government of Ruritania that it wishes to invoke the above arbitration clause. It gives at the same time the name of its national representative and invites the Ruritanian Government to make its own nomination. The Government of Ruritania replies that direct negotiations between the Parties had not been exhausted and declines to nominate its representative. A month later the Government of Quintaland applies to the Secretary-General of the United Nations, requesting him to appoint the third member of the Tribunal.

Advise the Secretary-General whether in the circumstances he is entitled to make the appointment. **(9 marks)**

Assume that the Tribunal has been established. Discuss the following issues which have now arisen:

- The Government of Ruritania maintains that the dispute can still be settled by negotiation, that, therefore, the Tribunal is incompetent to be seised of the case, and that Ruritania is under no obligation to appear before the Tribunal. Counsel for Quintaland requests the Tribunal to declare in a preliminary judgment that the Tribunal is competent to decide on the merits of the case.
(3 marks)
- The Treaty being silent on the matter, the arbitrators are in disagreement as to whether the Tribunal may decide by a majority vote of its members.
(3 marks)
- After the proceedings have commenced, a member of the Tribunal informs the Umpire that he has received instructions from his home government on the policy he should follow in deciding the case. He asks the Umpire's advice on the appropriate line to adopt. **(3 marks)**

5. A xenophobic extreme rightwing organization in Kuvaland calling itself the 'Kuvalander National Auto-Defence Group' persistently harasses and ill-treats nationals of Ambazonia resident in Kuvaland. The Government of Kuvaland, a member of the United Nations, has refused to take action against the organization. Ambazonia, a permanent member of the UN Security Council considers this behaviour to be in flagrant breach of international law. The Ambazonian Government makes repeated protests to the Kuvalander Government, which responds by breaking diplomatic relations with Ambazonia. Ambazonia lands strong detachments of marines in Kuvaland. The latter, strongly supported by Solwezistan, another permanent member of the Security Council, appeals to the Council to put an end to "these acts of imperialist aggression". Discuss.
(14 marks)

6. Bembaland, a member of the United Nations, has brought before the Security Council a dispute with Sandland, a non-member State, regarding the alleged ill-treatment of an ethnic minority in Sandland. It is contended on behalf of Bembaland that the treatment meted out by Sandland to the minority in question is contrary to a treaty between the two States and in "flagrant contradiction to the most elementary standards of human decency". The Security Council has requested from the International Court of Justice an advisory opinion on whether it is competent to deal with the dispute. The Foreign Minister of Sandland informs the Court that his Government does not recognize the United Nations and that, in any case, the matter is essentially within Sandland's domestic jurisdiction.

Outline the advisory opinion of the Court. **(14 marks)**

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SECOND SEMESTER EXAMINATION – FEBRUARY 2007

L452 INTERNATIONAL INVESTMENT LAW

INSTRUCTIONS

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

NO STATUTES ARE PERMITTED IN THE EXAMINATION ROOM

ANSWER QUESTION **ONE** AND **THREE** OTHERS

QUESTION ONE

- (a) Over the last two years there has been a serious debate in Zambia concerning foreign direct investment and the benefits Zambia is deriving from the said foreign direct investment. The majority of Zambians feel that despite Zambia having abundant natural resources the country as well as its people have benefited little from the exploitation of its natural resources by foreign investors. Some Zambians argue that the foreign investment has not created quality employment and almost all the money generated in Zambia by foreign investors is taken outside the country. Zambia has in place the Investment Act and related laws, which regulate foreign direct investment. The Investment Act, it has been argued by some Zambians, is weak and as such cannot help Zambia maximize its benefits and minimize losses from foreign direct investment.

Realizing the concerns raised by the Zambian people the Minister of Commerce, Trade and Industry has been requested by the President to come up with a paper to address the concerns raised by Zambians on foreign direct investment and to amend the Investment Act. The paper will be tabled to Cabinet for discussion. You are a trade and investment law expert employed by the Ministry of Commerce, Trade and Industry, and the Minister has tasked you to prepare a detailed paper which identifies

the **weaknesses** of the Investment Act and related laws and make **proposals** that you feel should be included in the new Investment Act so as to make Zambia and its people fully benefit from foreign direct investment.

Please do so.

[22 Marks]

- (b) Discuss the benefits and costs of foreign direct investment to a host country.

[12 Marks]

- (c) Explain the legal problems that multinational companies raise or create in the host country.

[6 Marks]

QUESTION TWO

Discuss the role the World Bank plays in the promotion and encouragement of foreign direct investment in developing countries.

[20 Marks]

QUESTION THREE

Zambia has privatized most of its public enterprises or parastatals by using various methods of privatization. With the aid of examples, discuss at least three modes of privatization that Zambia has used in privatizing its public enterprises, including the merits and demerits of such modes of privatization.

[20 Marks]

QUESTION FOUR

You are a lecturer in International Investment Law at the University of Lusaka. You have been asked by the Economic Association of Zambia to present a paper on what factors influence foreigner investors to undertake foreign direct investment in developing countries and what risks, if any, the foreigner investors encounter in undertaking the said investment.

Please do so.

[20 Marks]

QUESTION FIVE

- (a) Critically discuss the pros and cons of bilateral investment treaties (BITs)

[10 Marks]

- (b) Explain the principal issues treated or incorporated in the bilateral investment treaties (BITs)

[10 Marks]

QUESTION SIX

Write short notes on the following:

- (a) International Development Association (IDA)

[7 Marks]

- (b) International Finance Corporation (IFC)

[7 Marks]

- (c) Expropriation

[6 Marks]

QUESTION SEVEN

- (a) Examine the differences between portfolio foreign investment and foreign direct investment.

[6 Marks]

- (b) Discuss the legal framework for regulating portfolio investment in Zambia.

[14 Marks]

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SCHOOL OF LAW

SECOND SEMESTER FINAL EXAMINATION – L472

Instructions:

- 1 Answer any four questions in any order. Each question carries a total of 25 marks
 - 2 You are free to refer to any unmarked statutes during the examination. Class notes and other study materials are not allowed in the examination hall.
 - 3 You are allowed five minutes to read through the paper and three hours to answer the questions.
 - 4 You shall not leave the examination hall 30 minutes into the examination and 30 minutes before the end.
 - 5 Good luck.
-

QUESTION ONE:

Clarence is a corporal in the army in country D. A military dictator rules his country, which in the past three years has signed three international human rights conventions. For ten years Clarence has been the driver of a high-ranking officer member of the secret police. His boss loves him for he is a good worker. He has often driven his boss on secret missions. He describes to you how his boss used to abduct opponents in the street and how they would then be driven to secret locations where they would be tortured and detained. Clarence was often asked to act as a sentry outside these secret locations as the torture would be going on, he would also be the one to drive the prisoners back to other locations or the graveyard. After six years of working as a driver, he decided he had had enough, he requested for a transfer which was rejected. He then decided to leave the country and landed in Zambia seeking to be recognized as a refugee. He states that he is disgusted by his work and that since he left without authority he is a deserter and a traitor and if he was to be returned he would face physical torture and other vices.

With the help of both case and statutory authorities analyse this case. 25 Marks

QUESTION TWO:

Zambia pursues an open door policy to the protection of refugees and guarantees refugees enjoyment of many human rights as contained in the many instruments to which she is party. However the enjoyment of these rights as guaranteed is not absolute. Discuss.
25 Marks

QUESTION THREE:

Refugee protection is not restricted to refugee instruments alone. The system does not operate in isolation. Several systems compliment it in order that the protection is realized at all levels. One such system is the human rights system and it operates side by side with the refugee protection system.

With the help of relevant authorities discuss three human rights instruments you have studied which have a direct bearing on refugee protection. 25 Marks

QUESTION FOUR:

Asylum has been defined in the UDHR as a fundamental human right. Critically discuss. 25 Marks.

QUESTION FIVE:

Using relevant and suitable authorities, analyse the OAU convention definition of a refugee clearly highlighting the factors distinguishing refugees from other categories of persons. 25 Marks

QUESTION SIX:

The UNHCR is the body charged with the responsibility of looking into the affairs of refugees. Its mandate is to provide international protection to refugees and to seek permanent solutions to their plight.

With the help of suitable authorities and examples, discuss the three main solutions to refugee problems worldwide. 25 Marks

QUESTION SEVEN:

Compare and contrast the following in sufficient detail and clarity highlighting the UNHCR's involvement with the two groups:

Refugees Vs Internally Displaced Persons.

End of Examination
February, 2007

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

ADR L482 – ALTERNATIVE DISPUTE RESOLUTION

INSTRUCTIONS:

- 1. DURATION: THREE HOURS**
 - 2. ANSWER FOUR QUESTIONS**
 - 3. YOU MAY CONSULT UNMARKED CLEAN COPIES OF ACTS OF PARLIAMENT OR STATUTORY INSTRUMENTS**
-

QUESTION ONE

You have been approached by Messrs Lungu and Company, as well as, Messrs Bwalya and Associates, to arbitrate a dispute involving their respective clients. What immediate steps would you take and what is the nature of the business you would transact before commencement of the arbitration proceedings.

QUESTION TWO

During the first day of the hearing Counsel for the respondent raises a preliminary issue arguing that you have no authority to act as an arbitrator because you were appointed by the Vice-Chairman of the Zambia Centre for Dispute Resolution Limited, instead of the Chairman of Zambia Centre for Dispute Resolution Limited. It is further argued that you are incompetent to act otherwise you would have noticed the anomaly pointed out. In the premises, counsel for the respondent demands that you should step down immediately and without much ado.

How would you react and give reasons to support or justify your reaction.

QUESTION THREE

During the Preliminary Meeting counsel representing the parties to the arbitration requests your guidance as an arbitrator whether formal pleadings should be settled or alternatively a statement of case would suffice.

What guidance or advice would you provide.

QUESTION FOUR

During the Preliminary Meeting Charles Banda, who is the Claimant indicates to you as an arbitrator that he was not sure whether or not the monies he will spend on legal fees will be recovered in event that he succeeds in his claim.

Explain to Charles Banda the rules that are applicable to recovery of the monies in question.

QUESTION FIVE

Identify and briefly describe at least seven items which would be included in the structure of an award.

QUESTION SIX

Write short notes on any of the following:

- (a) objectives of pleadings;
- (b) Multi-Party arbitrations;
- (c) Witness of opinion;
- (d) Documents only – procedure; and
- (e) Re-examination of witnesses.

QUESTION SEVEN

“An arbitrator has a duty to keep the party incurred costs within reasonable bounds and can do so because of his ability to control the preparations and because of the variety of procedures open to him”. Handbook of Arbitration Practice by R. Bernttein et al.

Explain what processes you would introduce at the preliminary stage with a view of keeping time and costs down in the course of the arbitration.

END OF ADR L482 EXAMINATION

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

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