

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - JULY 1990

SCHOOL OF LAW

1.	Certificate in Law -----	L	110	
2.	Criminal Law and Criminal Procedure -----	L	140	
3.	Constitutional Law -----	L	150	
4.	Legal Process -----	L	210	
5.	Legal Process Supplementary -----	L	210	
6.	Law of Contract -----	L	220	
7.	The Law of Tort -----	L	230	la
8.	The Law of Tort Supplementary -----	L	230	d
9.	Criminal Law and Criminal Procedure -----	L	240	he
10.	Constitutional Law -----	L	280	1
11.	Law of Evidence -----	L	310	
12.	Property Law and Succession -----	L	320	
13.	Property Law and Succession Supplerertary -----	L	320	
14.	Commercial Law -----	L	330	
15.	Commercial Law Supplementary -----	L	330	
16.	Administrative Law -----	L	340	
17.	Family Law -----	L	350	
18.	Jurisprudence -----	L	410	
19.	Jurisprudence Supplementary -----	L	410	m
20.	Business Associations -----	L	420	
21.	----- Supplementary -----	L	420	
22.	International Law -----	L	430	
23.	International Trade and Investment Law -----	L	450	
24.	----- Supplementary-----	L	450	
25.	Land Law, Cadastre and Survey -----			
	Regulations -----	SE	353/SE	553

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - SEPTEMBER, 1990

L 110

CERTIFICATE IN LAW

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

ANSWER: ANY FOUR QUESTIONS

1. The concept of judicial independence has been the subject of discussion for many years. It is argued that without judicial independence democracy is undermined. You have just returned to your station and your colleagues wish to be ^{appraised} on the law that deals with the concept of judicial independence in Zambia. Discuss, indicating whether in your opinion judicial independence exists in Zambia.
2. African Customary Law regulates the lives/close to 90% of the African population, particularly in matters related to inheritance, marriage, divorce and land. It is, however, clear that under certain circumstances African Customary Law cannot be enforced by the courts. Using suitable illustrative decided cases, indicate the circumstances when African Customary Law cannot be applied.
3. A layman is surprised to learn that although lawyers and judges constantly refer to one another as "learned", in practice, difficulties are experienced when the interpretation of statutes is in issue. Explain the causes of the difficulties and outline the rules that assist lawyers and judges in discovering the intention of Parliament from statutes.
4. The adversary system is enshrined in the constitution of Zambia and under this system, the judge is expected to behave as an umpire of a game to ensure that the game is played according to the rules. He is not expected to take an active part in the calling and examining of witness concerned. Given Zambia's level of social and economic development, do you consider this system suitable for Zambia.

5. Discuss the jurisdiction of the following courts:
- (i) Subordinate courts;
 - (ii) the Federation Supreme Court of Rhodesia and Nyasaland
 - (iii) Local Courts of Zambia.
6. Explain the reasons why the constitution of Zambia provides that Parliament may delegate some of its law making powers to another person or other authority.

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - JULY, 1990

L 140

CRIMINAL LAW AND CRIMINAL PROCEDURE

TIME: THREE HOURS (PLUS 15 MINUTES FOR READING QUESTION PAPER)

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

PENAL LAW STATUTES ARE ALLOWED IN THE EXAMINATION HALL

1. (a) Banda, a Resident Magistrate Stationed at Mongu is hearing a Preliminary Inquiry under sections 222, 223 and 224 of the Criminal Procedure Code, Cap. 140 in which Chulu, is charged with murder c/s 200 cap. 146 in that he murdered Mary Banda (his wife) at Mongu on 10th May, 1990. There were five witnesses to be called to give evidence during the Preliminary Inquiry, and four of those witnesses have given their depositions.

Before a fifth witness is called to give evidence Insp. Phiri, the Public Prosecutor Produces and presents to the Magistrate, a Certificate of Summary Committal signed by the Director of Public Prosecutions, for the matter to be heard before the High Court as a proper case for trial before the High Court for Zambia.

Banda, adjourns the proceedings and seeks for a legal advice from you on the matter and the evidence so far adduced was insufficient to warrant the case to be committed to the High Court. Can you advise Banda the course of action he should take, with the help of decided authorities and provisions of the statute.

- (b) What is meant by specified offence?

2. Buumba is very short of money. She meets Banda in the bar who says he can change a two kwacha note into fifty kwacha notes by using a secret magical formula. Buumba hands over 5 two kwacha notes to Banda, who mixes some leaves of certain trees and put them in a big pot together with two kwacha notes from Buumba and cover the pot. Banda informs Buumba to come at 05.00 hours to open the pot which will be filled with fifty kwacha notes. Thereafter, Banda removes the two kwacha notes and disappears. On the next morning Buumba checked the pot and found leaves without any money and Banda was nowhere to be seen. Banda was arrested by the Police after three months. The Police seek your legal advice as to the appropriate charge that would be framed against Banda.

L 140

What distinguishes Assault O.A.B.H from unlawful wounding?

For a defence of Provocation, a wrongful act or insult cannot relieve an accused person from murder only on its Provocative nature. Do you agree with this statement? Discuss with decided cases as to the truth of the statement.

Banji and Muntanga, the Constables in Zambia Police Force were on Patrol in a Police car along Chawama road to town when they spotted a land rover parked by the road side. The officers went to the vehicle to investigate, and found Dimba and a woman, Bupe in the vehicle both of whom were naked, at about 20.00 hours.

Constable Muntanga asked Dimba and his girl to drive to Lusaka Central Police, instead of doing so, Dimba drove to town city and asked his girl to go in a taxi that was parked there to take her home. The Constables followed them and asked Dimba why he did not follow their instructions. He replied that it was not necessary. Constable Muntanga grabbed Dimba by his shirt and pulled him to the Police car. Dimba shook him off and then punched constable Muntanga on the chest. The other constable joined in and managed to take him to Lusaka Central Police. At the Police Station Dimba was charged with Assault on a Police Officer c/s 250 (b) of cap. 146.

At the trial both Constables in giving evidence stated that they instructed Dimba to go to the Police Station where they intended to charge him with an offence under the Penal Code, cap. 146.

You are sitting as a magistrate. Can you write a judgement with the of the case.

Nyambe one Friday afternoon left his working Place earlier and passed through a Bar in town, where he met an old schoolmate. They started drinking beer up to 17.30 hours. He left for home and when he was about 200 metres away from his house, he saw a car parked at his house and Namakau his wife was standing by the driver's door. The driver was Mundia the elder brother to Nyambe who had passed by on his way to Chipata from Kitwe. Mundia without knowing that Nyambe was coming drove away and Namakau went in the house.

Nyambe entered the house and said to Namakau, "who was that man with a car, you have now decided to bring your boyfriend at my house, because I am poor and cannot afford to buy one". Before Namakau could reply, Nyambe slapped her and kicked her with his shoe. He rushed in his bedroom to fetch a pistol and failed to get it. He then went into the

L 140

3. What distinguishes Assault O.A.B.H from unlawful wounding?
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kitchen and got an iron bar. He hit Namakau with the iron bar several times on her body. Thereafter, the neighbours stopped the fight. They advised Namakau to go to the Police who could take her to the hospital. She declined and stated that it was too late and she will do that in the morning. She died six hours later. The medical evidence confirmed that if medical attention was sought in the earliest opportunity, Namakau would have ~~survived~~ from the internal injuries that caused her death.

Discuss Nyambe's Criminal Liability and any possible defence(s) that could be raised.

7. Peter, John and David were on their way home from New Londe Motel and met Phillip who was with Bupe, his girlfriend coming from the opposite direction.

Peter, John and David agreed amongst themselves to attack Phillip and not Bupe. They started assaulting Phillip who fell down unconscious, and then John ran after Bupe. John caught up with Bupe and thereafter raped her. Phillip was left lying there and was later taken to U.T.H. for treatment by a good samaritan. He died after a few days and medical evidence attributed the cause of death to the injuries inflicted during the assault.

The Police seek your advice as they intend to jointly charge them all with murder of Phillip and rape of Bupe. Consider the criminal liability of all three relating to the charges.

END OF EXAMINATION

CONSTITUTIONAL LAW

TIME: THREE HOURS

ANSWER: FOUR QUESTIONS

Candidates may refer to:

- (a) the Republican Constitution and amendments thereto;
 - (b) the UNIP Constitution and any amendments thereto.
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1. Write detailed notes on any three of the following:
 - (a) the case of Stephen Zombe Sinyangwe 1989/HP/1000, decided by Mambilima J.;
 - (b) the legal provisions in the Republican Constitution recognizing the concept of Party Supremacy;
 - (c) the changes in the composition of the Judicial Service Commission since 1964;
 - (d) the vetting of Parliamentary candidates by the Central Committee;
 - (e) Parliament and the ratification of treaties.
 2. Discuss in detail the case of *Kachasu v Attorney-General* (1967) Z.R. 145. Include in your answer how it compares with the Patel Currency case.
 3. Discuss in detail all the following:
 - (a) the grounds of detention under emergency powers and how holdings of the courts in relation to the period for furnishing grounds, the language at the grounds and their detail;
 - (b) the publication of a detention in the Gazette;
 - (c) the right of detained persons to damages.
 4. Discuss the extent to which the legal provisions governing the Commission for Investigations allow it to effectively play its role.
 5. Outline the reasons for the failure of the British system of government in Africa.
 6. Outline and explain the legislation passed in Zambia since 1964 regarding human rights and economic development and why it was enacted.
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END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - SEPTEMBER, 1990

L 210

LEGAL PROCESS

TIME: THREE HOURS (PLUS TEN (10) MINUTES TO READ THROUGH THE EXAMINATION PAPER)

ANSWER: ANY FOUR (4) QUESTIONS

1. The subject of the "independence of the judiciary" is once again the subject of intense debate in Zambia. Some supporters of the campaign for the re-introduction of "multi-partyism" are contending that "real independence of the judiciary" does not exist in Zambia whereas the Government counters that since independence in October 1964 the judiciary has enjoyed "judicial independence" in accordance with the provisions of the Constitution of Zambia and other relevant laws and that , therefore, the criticism is misguided and mischievous. In 1953 Professor S.A. de Smith in an article in the Modern Law Review stated:

"In any country, the independence of the judiciary is preserved more securely by constitutional practice than by rules of strict law. The good sense of Ministers, Legislators and the judges themselves, professional tradition , and the force of public of opinion, are surer safeguards than any formal guarantee.....The existence of guarantees mould and condition the habits of thought and conduct even where the guarantees are less formal than is generally believed".

In 1973 Mr Willa Mungomba (then Member of Parliament for Mporokoso South and a practising of considerable standing) stated:-

"In a developing country like ours the whole question of the independence of the judiciary must go deeper than the Constitutional guarantees as to tenure and salary. It must involve the entire attitude of Government and society to free institutions....."

An enlightened layman is worried by the claim that "real judicial independence" does not exist in Zambia since over the years lawyers have championed their clients cases before the courts and have even won cases in which the state was the defendant. He wishes to know what the concept of "judicial independence" entails and what the relevant law(s) in Zambia on this subject provide. Advise him.

2. Kapwasha is a very worried man. Recently his eldest daughter died "after a long illness". Kapwasha is worried for two reasons. Firstly he has learnt that the probable cause of death of his daughter was the dreaded sexually transmitted killer disease "AIDS". He recalled that on ^{many} ~~any~~ occasions his eldest daughter had complained of her husband's adulterous behaviour and that family meetings were held from time to time to deal with the problem but without much success. His son-in-law's parents had always argued that in Africa men had all liberty in the world to go about with as many women as they liked or could afford. His son-in-law is still in good health but there are four(4) young children to be looked after. Secondly a few days ago he was visited by his son-in-law's father who wished the "funeral rituals" to be concluded according to African Customary Law, and according to the relevant Customary Law the relatives of the deceased spouse are required to "cleanse" the surviving spouse by providing a partner of the opposite sex who should have sexual intercourse with the surviving spouse. Kapwasha is worried because compliance with the relevant Customary Law would entail his providing one of his young unmarried daughters for the purification ritual and as "AIDS" is suspected on the part of his son-in-law he is adamant that observance of Customary Law should not be allowed at all. He is aware however, that in recent times some Local Courts in his area have decided that in spite of the inherent dangers African Customary Law should be obeyed otherwise there will be a lot of people who will suffer

/3....

from "madness" if they are not purified after the death of their spouses.

He seeks your advise on what the legal position would if he took up the matter in Subordinate or the High Court.

Advice him (You are expected to cite relevant statutory provisions and suitable illustrative decided cases.)

3. (a) Should laymen be permitted to take a prominent and authoritative part in judicial proceedings? (Give reasons for your answer).
- (b) Outline the changes in Zambia's judicial system which have taken place since 1924 with particular reference to the following:-
 - (i) jurisdiction over persons;
 - (ii) appointment, qualifications and removal of judges and magistrates from office.

4. "Just as an English oak, so with the English common Law. You cannot transplant it to the African continent and expect it to retain the tough character which it has in England. It will flourish indeed but it needs careful tending. So with the common Law. It has many principles ^{of} justice and good sense which can be applied with advantage to the peoples of every race and colour all the world over! but it has also many refinements, subtleties and technicalities which are not suited to other folk. These off-shoots must be put away. In these far-off lands the people must have a law which they understand and which they will respect. The common law cannot fulfil this role except with considerable qualifications (NYALI v ATTORNEY-GENERAL(1965) 1Q-B 1 at-16-17.)

A layman has learnt that in Zambia both English judge made law and certain aspects of statutory law are in force. He is anxious to know the legal basis for this state ^{of} affairs and whether or not Zambian judges have modified the applicability of such law.

Explain the issues to him (You are expected to refer to the relevant statutory provisions and suitable illustrate decided cases on this matter).

5. Article 81(1) of the Constitution of Zambia provides:-

"Nothing in Article 63 shall prevent Parliament ^{confering} from/on any person or authority power to make statutory instruments".

Article 63 of the Constitutions of Zambia provides ^{that} / the legislative power of the Republic shall vest in the Parliament of Zambia.

In recent times there have been requests made to the Government that Parliament should delegate ^{of} more/its law-making powers to grassroots institutions such as District Councils so that the people in the various part of Zambia are able to adequately deal with developmental issues that affect their daily lives. On the other hand other people have cautioned that the time is not yet opportune for the people at the local level to be given more law-making powers insisting that District Councillors ^{spent alot of time discussing "petty"} in the past / issues and therefore that it would dangerous to give them more law-making powers.

Discuss the rationale for delegated legislation and the measures that are taken or may be taken to control the use of delegated law-making powers.

6. "In the system of trial which we have evolved in this country, the judge sits to hear and determine the issues raised by the parties, not to conduct an investigation or examination on behalf of society at large, as happens, we believe, in some foreign countries. Even in England, however, a judge is not a mere umpire to answer the question "How's that?" His object above all, is to find out the truth, and to do justice according to law; and in the daily pursuit of it the advocate plays an honourable and necessary role..

.....
.....Let the advocates one after the other

put the weights into the scales - the "nicely calculated less or more" - but the judge at the end decides which way the balance tilts, be it ever so slightly. So firmly is all this established in our law ^{that} / the judge is not allowed in a civil dispute to call a witness whom he thinks might throw some light on the facts. He must rest content with the witness called by the parties.....So also it is for the advocates, each in his turn to examine the witness, and not for the judge to take it on himself lest by so doing he appear to favour one side or the other. And it is for the advocate to state his case as fairly and strongly as he can, without undue interruption, lest the sequence of his argument be lost. The Judge's part in all this is to listen to the evidence, only himself asking questions of witnesses when it is necessary to clear up any point that has been overlooked or left obscure; to see that the advocates behave themselves seemly and keeps to the rules laid down by law; to exclude irrelevancies and discourage repetition; to make sure by wise intervention that he follows the points that the advocates are making and can assess their worth; and at the end to make up his mind where the truth lies..." (JONES v NTAIONAL COAL BOARD (1967) 2Q B. 55)

It is clear from Article 20 of the Constitution of Zambia that the ^{adversary} / system of justice described in the quotation appearing immediately above applies in the Zambia courts.

Discuss whether or not given Zambia's human resource base and the general condition of most litigants this system is deal for Zambia.

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - JULY, 1990

L 220

LAW OF CONTRACT

TIME: THREE HOURS (PLUS 10 MINUTES FOR READING THE QUESTION PAPER)

ANSWER: ANY FOUR QUESTIONS

1. Milile, a well known Lusaka "playboy", negotiates to buy Medson's Thunderbird car, which Medson bought while in the States studying for his PhD in mechanical engineering. Now Medson has decided to settle down, marry and build a house, and he no longer wants his flashy car, which costs a lot of money to run.

According to records in Medson's possession, the car is a 1980 model, had had two previous owners when he bought it, and had done 30,000 kilometers. The kilometer recorder shows 50,000 kilometers now.

Medson tells Milile that the engine is the original 1980 one, a piece of engineering famed for its reliability and advanced technology.

Impressed, Milile buys the car. However it turns out to be unsatisfactory. Some months later, Milile discovers that it is really a 1979 model, and that the engine is therefore not the revolutionary 1980 design. A mechanic friend tells him that the car has probably been driven much more than 50,000 kilometers, and that the kilometer recorder "seems to have been tampered with."

Milile wants to return the car and get his money back.

Advise him.

2. Nsomba, a UNZA Biology graduate, goes to work for Mapenzi Crocodile Farms after his graduation. His contract of employment provides that if he leaves their employment he will never again work for any enterprise engaged in crocodile farming, or any associated enterprise in Zambia or elsewhere, nor will he solicit any of Mapenzi's customers, nor will he

/2.....

divulge any of their secret processes, nor will he set up in competition with Mapenzi Crocodile Farms Limited.

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

Advise him.

3. Moneymakers Investments, owners of an international hotel in Ndola, contract with Uptown Enterprises to rehabilitate their pool and poolside facilities, including a 100 - seat restaurant. Moneymakers plan to reopen the area to coincide with a major trade fair due to be held in Ndola in six months' time.

Uptown work hard to complete the job, but there are many delays.

Uptown have construction jobs all over Ndola, and they find it hard to meet their commitments.

There are also unforeseen delays, not the fault of Uptown Enterprises, in the import of items for the pool and restaurant kitchen.

The work is not complete when the Trade Fair opens. The poolside area is finished, and guests can use it, but they cannot swim, as the pool filtration system has not arrived. The restaurant can only operate by bringing in "buffet-style" meals cooked in kitchens elsewhere in the hotel.

Moneymakers refuse to use the poolside facilities or restaurant during the Trade Fair, saying it would damage their reputation for excellence if they opened below-standard facilities. They claim that they have lost many thousands of kwacha in revenue from pool use, drinks service and a la carte restaurant meals service. They want to sue Uptown Enterprises for breach of contract.

Advise Moneymakers.

4. Green, an expatriate leaving the country at the end of his contract, advertises his Phillips colour TV for sale in the Daily Mail. Kangwa comes to see it, and offers K40,000, which Green agrees to accept. Kangwa wants to pay Green by cheque, but Green refuses.

Then Kangwa says "But I am Kangwa who reads the news on TV, don't you know me?" and produces a pass purporting to be official entry to the Mass Media Complex. Green, who made a point of never watching the news throughout his stay in the country, saying it was not worth watching compared to the TV news in his country, is impressed. He accepts the cheque, and lets Kangwa take the TV.

The cheque bounces and Green learns that Kangwa, who has no connection with the real Kangwa who does appear on TV, has disappeared after selling the TV set to an innocent third party, Wezi.

Does Green have any remedy against Kangwa and/or Wezi? Advise him.

5. Mavis is anxious to reach the University Teaching Hospital (UTH) as she has just heard that her brother has been admitted there, seriously ill. As Mavis is walking from campus to the Great East Road to book a taxi, Moses passes in his car. He stops and offers Mavis a lift to town. She explains the situation, and Moses says "No problem" and drops her at the UTH. As Mavis gets out of the car at the UTH, she promises to pay Moses K300 for his trouble, as she is so grateful.

It is now some weeks later and Mavis has still not paid the K300.

Moses seeks your advice as to whether or not Mavis's promise is legally enforceable.

Advise him.

6. Speedy construction Company enter into an agreement with GRZ to rehabilitate an existing primary school in Ndola, that has become very dilapidated. The forecast total cost of the project is K12 million.

Speedy Construction move on to the site and spend one month on preparatory work. They clear away debris and rubbish, they build a secure wall fence and they remove some internal walls, ready for the rehabilitation work to begin. At the time they move on to the site GRZ pay them an advance of ten per cent of the total estimated costs of the rehabilitation project.

Just before the rehabilitation itself begins GRZ announces that it has decided to close the primary school down instead. They will build a new school further out of town in its place. There will be no further need for the rehabilitation project, the funds set aside for it will be reallocated, and the work discontinued.

Advise Speedy Construction as to their legal position.

7. James, a businessman, travels from Lusaka to Ndola by air. In Ndola he hires a car to drive around as he conducts his business. At the car hire company offices, James is in a great hurry. He signs the hire form, but does not read it.

At lunch that day James takes a glass of beer. In the afternoon, while driving to his next appointment, James is hit from behind by a pirate taxi at a red robot. He immediately returns the hired car to the company, and explains what has happened. At the company, the employee who is dealing with James says "But, sir, I can smell from your breath that you have been drinking. Look, our contract excludes liability for any damage to the car in an accident after you have taken any amount of alcohol. Look, it says you will have to pay for the damage in such cases."

James is horrified at the thought that he may have to pay to have the car repaired. Advise him as to his legal position.

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - JULY, 1990

L 230

THE LAW OF TORT

TIME: THREE HOURS

ANSWER: ANY FOUR QUESTIONS

1. (a) A. employed B. as the driver of a mobile crane and let the crane together with the driver to C. The contract between A. and C. provided that B. should be the servant of C, but B. was paid by A, and A. alone had the power to dismiss B. In the course of loading a ship X. was injured by the negligent way in which B. worked the crane. At the time of the incident C. had the immediate direction and control of the operations to be executed by B, but he had no power to direct how B. should operate the crane.

X. wishes to sue but he is not sure whether to sue A, or C.
Advise X.
- (b) Discuss the liability of the Employer with regard to the negligence of the employee in the following cases:
 - (i) A bus driver who has taken some alcohol allows one of the passengers to drive the bus and due to the inexperience of the passenger the bus overturns injuring other passengers.
 - (ii) A truck driver who is under strick instruction of the employer not to carry any passengers faces a problem with the starter He then loads his truck with passengers so that should he stop on the way they can give him a push. In the process of driving the truck, it overturns injuring the passengers.
2. "The liability for neglience whether you style it as such or treat it as in other systems as a species of 'culpa', is no doubt based upon a general public sentiment of moral wrongdoing for which the offender must pay. But acts or omissions which any moral code would censure cannot in a practical world be treated so as to give a right to every person injured by them to demand relief. In this way rules of law arise which limit the range of complainants and the extent of their remedy".
Rogers W.V.H., Winfield and Jolowicz and Tort, p.68.
Discuss.

3. The Lusaka Rural District Council constructed a dam on a nearby river for the purpose of supplying water for irrigation and domestic use. Due to excessively heavy rains the water overflowed the banks of the dam and flooded farms around the dam. Mr. P./^ACommercial farmer whose crops have been destroyed by the flood wishes to sue the Council for damages.
- (a) On what grounds can he hope to succeed in his action?
 - (b) What difference, if any, would it make to the liability of the Council if the Council were to prove that the dam was to the general benefit of the farming community including Mr. P.?
4. With the use of Zambian cases as illustrations discuss the defences of justification, and fair comment.
- To what extent, if any, have the Zambian courts departed from English precedents with respect to the above defences?
5. Discuss briefly the following: &
- (a) popular innuendo.
 - (b) viz major.
 - (c) innocent misrepresentation.
6. With suitable illustrations discuss the relevance in the tort of nuisance of the following:
- (a) Motive
 - (b) Reasonableness
 - (c) Suitability of the locality.

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY SUPP/DEFERRED EXAMINATIONS - NOVEMBER, 1990

L 230

THE LAW OF TORT

TIME: THREE HOURS

ANSWER: ANY FOUR QUESTIONS

1. Discuss the significance of the following cases in the tort of negligence:
 - (a) Roe v. Minister of Health (1954) 2QB66
 - (b) Home Office v. Dorset Yacht Co. Ltd. (1970)AC 1004
 - (c) Mahon v. Osborne (1 39) 2KB.14
2. Peter and David were partners operating as business contractors. Peter was given the use of a vanette both for the work of the partnership as well as for his own private use. Following a dispute between the partners over the return of the vehicle, David made a false report to the Police alleging that his vanette had been stolen and later added to it that Peter was seen with it heading for Livingstone. Peter was arrested and charged with theft of a motor vehicle. Following representations by Peter's lawyers that the dispute was of a civil nature, Peter was released from custody and the charges dropped. Advise Peter as to his chances of success in an action against David for:-
 - (a) False imprisonment;
 - (b) Malicious prosecution.
3. "The policy underlying vicarious liability would have been jeopardised by a literal adherence to the control test, and courts have not hesitated to hold the employer answerable even though the work which the servant is employed to do is of a skilful or technical character as to the method of performing of which the employer himself is ignorant," John G. Fleming, The Law of Torts 4th ed., p.316.
 - (a) What is the policy underlying vicarious liability?
 - (b) Discuss the tools or mechanisms which the courts have developed to by-pass or modify the control test.

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

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

Jack sues the defendants, Zamprint, for libel

- (a) What will he have to establish to make a prima facie case?
 - (b) What possible defence or defences are open to the defendants?
 - (c) How is the matter likely to be decided by the Court?
5. "Until recently the decision in Derry v. Peek was generally regarded as having prevented the development of liability for negligent misrepresentation. The judgement in Hedley Byrne and Co. v. Heller and Partners provides a new starting point for development along this line. At the moment the boundaries of such future development are incapable of clear delineation." Wright, C.A., Cases on the Law of Torts, 4th ed., p.938

Discuss the above observations taking into account developments since Hedley Byrne.

6. (a) Discuss the doctrine of nova causa interveniens.
- (b) Mr. X. was driving an open vanette at the time of collision with another vehicle driven by Mr. Y. The collision took place in a large residential area late in the evening. The damage to the vanette was such that it was rendered incapable of self-propulsion. Mr. X. suffered some head injuries and was rushed to the hospital where he was detained for treatment. His vanette remained on the scene of the accident all night. The following morning Mr. X. arrived with a truck to tow the vanette but discovered to his shock that the goods which had been at the back of the vanette had disappeared, and all the tires had been removed. Mr. X. suffered nervous shock and was re-admitted in hospital for necessary treatment.

Mr. X. approaches you for advice to obtain compensation for personal injuries and the damage to his car and the loss of his property. Mr. Y. has admitted that he drove his car negligently.

Advise Mr. X.

END OF EXAMINATION

CRIMINAL LAW AND CRIMINAL PROCEDURE

TIME: THREE HOURS (PLUS 15 MINUTES FOR READING QUESTION PAPER)

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

PENAL LAW STATUTES ARE PERMITTED IN THE EXAMINATION HALL

1. (a) Zulu is charged with bigamy contrary to section 166 of the Penal Code, Cap. 146, and is brought before Mr. M. Banji, the Principal Resident Magistrate at the Ndola Subordinate Courts. He pleads not guilty, and also raises the issue of jurisdiction of the trial court. Mr. M. Banji adjourns the proceedings and seeks your legal advice on the issue of jurisdiction. Kindly give him the necessary legal advice.

(b) Chuulu is tried for burglary contrary to section 301 of Penal Code, cap. 146, before Mr. T. Mwansa a Magistrate Class II and is convicted of the offence charged and sentenced to 4 years imprisonment with hard labour. Chuulu approaches you and requests appeal against sentence. Prepare your grounds to appeal before High Court on behalf of Chuulu.
2. Phiri, who has a history of mental illness goes to a Party where he drinks a large quantity of alcohol. He is given some tablets by Mbewe, believes them to be a cure for his (Phiri's) headache but infact the tablets contain an hallucinatory drug, a fact known to Mbewe. Phiri forms a belief that the woman with whom he was dancing with was attacking him and Phiri then picks up a table knife from a nearby table and stabs her to death.

Afterwards, Phiri claims that he cannot remember any of the events. He is charged with murder and you are asked to give a legal advice as to his defence. What advice would you give?
3. Mweempe sets fire to his house intending to collect the insurance money on the house being assured. Unknown to him Muntanga a nephew to him was inside the house and is seriously injured. Muntanga refused to go to the hospital on religious beliefs and after one week Muntanga died of burn wounds. The medical officer attributed the cause of death to burn wounds. Advise the D.P.P as to the appropriate charge(s) or Criminal liability against Mweempe.

4. Chinondo is asleep one night in his house when he is awakened by the sound of his car alarm. He rushes to the bedroom window and sees a figure standing by his brand new BMW car with the door open. Believing it to be a thief, Chinondo gets a gun and shoots at the figure intending to disable him. However, he is so frightened that his hand shakes as he fires and the bullet hits the victim in the head killing him instantly.. It is later discovered that the "thief" was Chinondo's security guard, Mbewe, who had opened the car door to admire the new vehicle. Chinondo is charged with murder and you are a judge hearing the case, can you give your judgement with results.
5. Mundia, a member of dissident organisation is instructed by its leader, Mbonge, to rob a certain store in order to obtain more funds for the organisation. Mundia is warned that a failure to do so will result in "serious consequences" for him. Mundia, who is terrified of Mbonge agrees. He drives to the Store in a Car supplied by Mbao and successfully carries out the robbery by attacking the saleslady, Joy. Unknown to Mundia, Mbewe has been sent to the store by Mbonge with instructions to pose as a customer and assist Mundia if necessary. In fact no assistance is necessary and Mbewe takes no part in the crime. Upon being apprehended, Mbao claims that he believed his car was to be used to transport some stolen property and would not have allowed it to be used in a robbery had he known of the true purpose. Mundia, Mbonge, Mbao and Mbewe are all charged with robbery. Consider the criminal liability of each of them and the results in the case.
6. Theft by trick is the same as obtaining goods by false pretences. Discuss.
7. How do you understand the concept of deterrence in relation to theories of Punishment?

CONSTITUTIONAL LAW

TIME: THREE HOURS

ANSWER: FOUR QUESTIONS

Candidates may refer to:

- (a) The Republican Constitution and amendments thereto;
 - (b) The UNIP Constitutional and any amendments thereto;
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1. Discuss in detail the powers to detain in an emergency in Zambia and the extent to which a healthy balance has been maintained by the courts between the need to maintain law and order, and the need to safeguard personal liberties.
 2. Write comprehensive notes on any three of the following:
 - (a) The case of Stephen Zombe Sinyangwe 1989/HP/1000, decided by Mambilima J;
 - (b) The concept of Party Supremacy as it relates to the Government and Parliament;
 - (c) The powers of the Parliamentary Committee on Foreign Affairs and the President in relation to international agreements;
 - (d) The Committee of Chairmen and Parliamentary elections;
 - (e) The composition of the Judicial Service Commission.
 3. Discuss and explain fully the case of *Kachasu v Attorney-General* (1967) Z.R. 145 and its significance to the right of authorities to govern and the right to enjoyment of individual freedom.
 4. Discuss, giving practical examples, the juristic implications of military coups.
 5. What arguments would you raise for or against the workability of a Westminster system of government in Zambia?
 6. Discuss in detail how well, if at all, the Zambian Republican Constitution and Zambian legislation in general have held the balance between human rights and economic development. Include in the answer your own ideas about human rights.
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END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA
UNIVERSITY EXAMINATIONS - JULY, 1990

L 310

LAW OF EVIDENCE

TIME: THREE HOURS (PLUS 15 MINUTES FOR READING QUESTION PAPER.)

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

PENAL LAW STATUTES ARE ALLOWED IN THE EXAMINATION HALL.

1. (a) What cogency of evidence is required to prove a criminal matter?
(b) A spouse of an accused person is a competent and compellable witness for the prosecution in all criminal cases. Discuss.
2. Bwalya lost four goats. At the time the goats were stolen, were being looked after by his daughter Bupe aged 12 years, unusual though it was and she was raped by one of the thieves. The three men, Moonde, Banda and Mwiinga are subsequently arrested and charged with stock theft and Mwiinga is in addition charged with rape on Bupe. Bupe was called to give evidence and she was asked by the trial Court whether she goes to Church to which she replied no and further asked whether she knew what sin meant and replied no. But she further told the court that to tell the truth meant not to tell lies and meant stating what one saw or knows about the matter under inquiry. There is also evidence by one witness Peter that he found Moonde, Banda and Mwiinga slaughtering an animal. They claimed that they bought the animal at a neighbouring village, but when Peter promised to investigate they ran away into the bush. At the trial Moonde is pardoned and turns a prosecution witness and informs the court that he, Banda and Mwiinga stole the goats and that Mwiinga raped the young girl Bupe who was looking after the goats. The prosecution asks the court to convict Banda and Mwiinga of stock theft and in addition to convict Mwiinga of rape. They both deny the charges.
Discuss the admissibility of various items of evidence and competency of witnesses called.
3. Peter, a clerical officer in a private firm is charged with buggery. The complainant being a fellow clerk (mojo) aged 19 years. Peter denied the charge and declined to answer questions at the Police Station. At the trial the evidence for the prosecution included medical evidence that the complainant had been sexually interferred with
/2...

on the date in question 10th February, 1990 and also indecent photographs were found in Peter's house by constable Banda. Peter elects to give unsworn evidence in his statement while denying the charge, he states that the complainant had told him in his room on the afternoon in question that he had already on the same day allowed an act of gross indecency on his person and would do the same again for money. He asked the court to disbelieve the complainant because he was that sort of youngman. The prosecution introduced a number of previous convictions, some for theft, others for buggery and an acquittal for theft. The trial Magistrate rules that the prosecution is entitled to do so. The defence appeals, you asked to argue on its behalf. Discuss.

4. Mwenda was charged with defilement and was jointly charged with Njovu for the theft of a skirt and a doll. Mwenda is alleged to have committed this offence on the daughter of a colleague of his. The little girl aged 8 gave unsworn evidence describing what is supposed to have gone on. She sustained injuries to her private parts in the attack. The Police Officer and the mother testified that shortly after the incident the girl Muntinta had gone up to Mwenda and said this is the man. To this allegation Mwenda remained completely silent and said nothing. He in fact ran when he saw a police car passby. At the trial the grandmother of the girl gave evidence that Muntinta came home and she had blood stains on it she stated that she has been sexually assaulted by Mwenda. Njovu denied any involvement in the theft of the skirt but stated that he had been present when Mwenda sexually assaulted Muntinta. In addition, since the crime the police searched Mwenda's house without a warrant and found therein 8 pictures of nude young girls. Discuss the evidential issues that arise.

5. Give brief facts of D.P.P.V Boardman (1974) 3 ALLER 887 and its importance to similar facts evidence.

6. Phiri broke into and stole large quantity of property from the store of Mweenba. After some inquiries Phiri was arrested by constable Mbewe Jacob who brutally assaulted Phiri under interrogations. But Phiri did not say anything under such conditions. He was thereafter detained under a police detention order for 10 days. He later collected from the remand by Inspector Nyambe who took Phiri to the Police Station where Inspector Nyambe under warn and caution told Phiri to forget all what had happened to him 10 days ago, and tell Nyambe all what he knew in a friendly manner. Phiri told Nyambe that he broke into the store and took the property all valued at K20,000-00 which most of them were sold to unknown persons, but others were hidden in the bush and was prepared to show the police. Nyambe wrote all what was stated by Phiri, and

thereafter Phiri led Nyambe and other Police Officers to the bush where trousers, shirts, dresses and other properties were discovered valued at K6,000-00.

At the trial for store breaking the defence counsel objects to the admissibility of the statement made to Inspector Nyambe and the properties recovered without a search warrant, and the statement being made under the influence of assaults made by constable Mbeve. You are a prosecuting counsel what would be your argument against that of the defence.

7. Write short notes on two of the following:-
- (a) Presumption of death.
 - (b) Documentary evidence as to the admissibility of Public documents.
 - (c) When does the accused person lose his shield in the criminal matters.

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - JULY, 1990

L 320

PROPERTY LAW AND SUCCESSION

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

ANSWER: FOUR QUESTIONS- AT LEAST ONE FROM EACH SECTION

SECTION A

THE LAW OF SUCCESSION

1. (a) Evaluate the provisions safeguarding the interests of the beneficiaries from interference under the law of intestate succession in Zambia.
- (b) Mr. Abel, a self-employed mechanic was a contributor under the Zambia National Provident Fund Scheme at the time of his death. He was aged 50. He was survived by the following:
 - (i) Two wives; (a) June, the elder of the two who had lived with him for twenty-five years and a mother to his three children Xavier aged 21 (non-school going), Yona and Zelda aged 16 and 12 respectively, both attending school.
 - (b) May, the junior wife who had lived with the deceased for five years. She is a personnel manager of a company and contributes K2000 each month for the upkeep of the household. She did not have any children with the deceased but had introduced two dependants, Ben aged 19 (non-school going) and Charlotte aged 14, a Secondary School pupil, and
- (ii) A ~~paternal~~ uncle who is self-supporting. Both wives, children and dependants lived with the deceased under the same roof. The deceased left no will but under the National Provident Fund Scheme nominated his uncle as the sole beneficiary. His estate consisted of the following:
 1. A House valued at K200,000.
 2. ZNPF benefit of K60,000
 3. A car valued at K70,000
 4. A bank balance of K40,000
 5. Household goods worth K250,000.

The elder widow has obtained letters of administration and she comes to you for advice as to how to distribute the estate. She also states that the younger widow who needs the use of the car to go for work would like to have the car to herself.

Advise her as to the shares of the beneficiaries and what to do about the car.

2. (a) Compare and contrast the provisions of the Wills and Administration of Testate Estates Act, 1989 regarding the execution of wills with the provisions under the repealed Wills Act, 1837.
- (b) Mr Pongo was a very successful businessman owning a chain of motels. Two years previous to his death he was admitted in hospital for diarrhoea where he was diagnosed to be H.I.V. positive. Following this diagnosis he lost many friends and most of the hospital staff kept their distance except one nurse who was devoted to his care. Feeling no improvement to his health and having learned of the cause of his persistent ailment from the nurse resigned himself to the inevitable-death. On his 45th birthday he asked for a pen and paper and wrote what he called his will. His dispositions were as follows:
 - (i) A bequest of all his motels to his seven children in equal shares;
 - (ii) A legacy of K20,000 to his surviving spouse with the **explanation**: that she did not deserve anything from him because she had not visited him in hospital and that he believed she had passed on to him the virus;
 - (iii) A bequest of the house (matrimonial home) to the nurse, together with a legacy of K200,000.
 - (iv) The residue, including the sum of K500,000 to be shared by the children and the nurse.

The deceased signed the will in the presence of the nurse, the doctor and two other patients. All of them signed the will in the presence of one another, but at the time of signing, the testator had been removed from the room for him to undergo further tests. The testator died shortly thereafter.

The widow, who is gainfully employed with an income of K40,000 per annum and has invited and is living with her man-friend called Piet, an ambitious lawyer anxious to resuscitate his ailing law firm, in the matrimonial home, makes an application to the court alleging that the will was not properly executed and alternatively that:

- (i) The gifts to the nurse were unreasonable and under duress;
- (ii) that the testator had not made sufficient provision for her, bearing in mind her exquisite taste and style of living.

The executor of the will, a Mr. Willcox comes to you for your advice concerning the validity of the will and the probable decision of the court.

Advise him.

SECTION B

COMMERCIAL INTERESTS

3. (a) Trace the evolution of rent ^{control} ~~control~~ legislation in Zambia. To what extent ^{it} ~~has~~ been effective?
- (b) L is a proprietor of residential premises which he decided to let from year to year at the economic rental of K84,000 per annum payable in arrear. Being a brisk businessman, he drew up the lease himself. The lease made express provision for the rent and the duration, but as to other matters, L informed the tenant, T. that the "usual conditions" would apply. State consent was obtained and the agreed rental of K84,000 per annum was approved. After the expiration of one year however, L. doubled the rent on the pretext that the new rent would conform to the amount of rent being charged ^{for} ~~for~~ similar premises in the neighbourhood.

Hard pressed for money to meet the increase in rent, T. sublet the guest-house on the premises to A. without consulting L. Following a heavy storm the roof of the main house was blown off seriously exposing T.'s family. T. then spent a large sum of money in replacing the roof and decided to deduct his expenses from the rent due to L.

L. brings an action for the balance of the rent and gives T. six months notice to terminate the lease because he requires the premises to accommodate his female cousin estranged from her husband.

T. who has neither heard of "usual conditions" in a lease nor any relevant legislation to meet his situation comes to you for advice. Advise him.

What is the position of A. in the circumstances?

4. (a) Evaluate the role of various categories of land as security for a development loan.
- (b) In 1980 Mobil Oil Ltd, granted a 50 year lease of a filling station to X. at a rental of K12,000 per year. In 1990, X. received a loan from Mobil Oil Ltd., of K50,000 on the security of his lease. The mortgage contained a clause precluding X. from redeeming the mortgage during the remainder of his term less ten weeks and from purchasing petrol from any company other than Mobil Oil Ltd. during the continuance of the mortgage.

X. would now like to redeem the mortgage so as to enable him to purchase oil elsewhere.

Advise the parties as ^{to} their rights.

SECTION C

GENERAL

5. (a) Discuss the decisions in Bridget Mutwale v Professional Services Ltd; and Siulapwa v. Namusika
- (b) Chongo has just retired from ZIMCO where he has ^{been} employed for 30 years. He wishes to return to his home village in the North-Western Province, an area designated as Trustland. It is his intention to acquire land there for farming. He comes to you for advice on the following matters:
- (i) acquisition, transmission and extinction of rights to land under customary law;
 - (ii) the defects in customary land tenure;
 - (iii) any alternative system of land holding which can take him out of the ambit of customary law and how to go about bringing himself under such alternative system.
6. (a) What are the material considerations to which the Minister or the planning authority should have regard before granting planning permission under the Town and Country Planning Act, cap 475?

- (b) Allan who has a keen interest in small children converted a disused church building into a nursery school. In order to do this some internal structural changes to the church building had to be carried out. Allan's first intake was only twelve children under the age of seven. No application was ever made to the Lusaka Urban District Council for a building permit and planning permission under the impression that the establishment of a new nursery school was in the public interest as other nurseries schools in the area were charging exorbitant fees. He felt, therefore, that there was a need for his school in the area.

The Council took no action and the school operated for five months at the end of which it began to receive complaints from owners of surrounding dwelling houses that there was excessive noise from Allan's nursery school. Proprietors of other nurseries schools complained that the low fees charged by Allan undercut their profits as their nurseries lost children who drifted to Allan's nursery.

In response, the Council served Allan with a demolition order under the Public Health Building Regulations requiring him to demolish all structures he had erected within seven days. On the eighth day, the Council, having noticed that their demolition order had been ignored served Allan with an enforcement notice under section 29(1) of the Town and Country Planning Act, cap. 475. The enforcement notice required Allan to demolish all the structures he had erected and to cease to use the premises as a nursery school. He was given three weeks in which to comply with the enforcement notice.

Allan comes to you for advice. Advise him.

COMMERCIAL LAW

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

INSTRUCTIONS:

1. This is not an open book examination. Students may however take into the examination hall clean copies of any relevant statute.
 2. The paper is divided into 3 sections. Candidates are advised to attempt at least one question from each section.
 3. In all candidates must answer four questions
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SECTION A

1. (a) Aspect Muluya bought a second hand bicycle from Melody Chipuba in a local street. Aspect was well aware that Melody was a destitute and a jail bird who hardly spent a month out of prison. Melody only asked for K18 for the bicycle.
Having bought the bicycle. Aspect asked Galon Fwemba to sell it for him for K1,000. Galon sold the bicycle to Taulo Mwaibepa. It then transpired that Melody in fact stole the bicycle from Paison Kwekwe. Taulo handed over the bicycle to Paison. Taulo now threatens to sue Galon. Advise Galon as to his legal position.
- (b) With the help of decided cases discuss the requirements that must be satisfied in order for the doctrine of ratification to be effective.
2. Panjinga Limited, a local company based in Nega-Nega contracted to buy two lots of bicycles from Sellers in Kalikiliki. The first lot consisted of 100 bicycles described as "second-hand, low mileage, one clergyman owner" and was bought for K80,000. The second lot consisted of 100 bicycles bought from Chofweni, a toy wholesaler, for K160,000 under a signed written contract containing a clause which exempted the seller from "all liabilities for loss or damage, howsoever caused."
On arrival in Nega-Nega twenty bicycles in the first lot were found to have scratches which had not been apparent at the time of the contract. Panjinga Limited sent the entire lot back to the sellers. The second lot was sold to district nurses in a mountainous region of Nega-Nega where the roads are untarred and subject to flooding in the rainy season. The bicycles began to rust very quickly and had to be written off after one year. Further the wheels proved too fragile and too

narrow for use on such roads and consequently Panjinga Limited was liable to eight nurses who fell off and were injured.

Discuss the rights and liabilities if any of the sellers and of Panjinga Limited.

3. "In Sales transactions which call for full payment in exchange for the delivery of goods... there are compelling reasons for the remedy of rejection whenever the value of the seller's tendered performance falls short of the contract price. The buyer's right at a later date to recover damages is a lame answer to his need for protection from the seller's breach." (HONNOLD)

Critically discuss this passage and consider how far English Law so far as applies to Zambia does meet the buyer's 'need for protection' in domestic sales in the way the writer describes.

SECTION B

4. (a) Section 1(3) of the Sale of Goods Act of 1893 provides that an agreement to sale is a contract "where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled." On the other hand the essence of a hire purchase contract is that the goods are hired now but the hirer has an option to purchase them in future. It has been argued by some scholars that the distinction between an agreement to sell and a hire purchase contract is only jurisprudential and has no practical legal consequences. Do you agree? Give a critical comment.
- (b) Pinto Fulumuka bought some books from Greenson Chifundo and paid by cheque payable to Greenson Chifundo or order Greenson then indorsed the cheque in blank. Cheka Gallows, a thief stole the cheque and negotiated it to Bandulo Chakorwa. When Bandulo presented the cheque at Pinto's Bank it was dishonoured. Bandulo comes to you for advice. Advise.
- 5.(a) Sikini Chikumba was desirous of selling his Fiat 127 to Highway Manjanja for K160,000. He entered into an agreement with Highway where Sikini was to allow Highway to have the car on condition that Highway was to pay the purchase price in fifteen monthly instalments. After the tenth instalment Highway sold the car to Kwenda Kwenda, who resold it to Pijot Mpepo. On discovering this fact Sikini claimed the car from Pijot

L 330

but the latter refused to give it up. Sikini now comes to you for legal advice. What would your advice be?

Would your advice be different if the agreement between Sikini and Highway provided, inter alia, that Highway "shall not re-let, sell or part with the possession of the said motor vehicle...without the previous consent in writing of the owner," but Highway pledged the car to Majory Namakwenkwe who resisted Sikini's claim for the return of the vehicle?

- (b) "The most striking development in hire-purchase in this century is undoubtedly its popularity. To day hire-purchase has become respectable." (Diamond's).

With specific reference to the Zambian setting briefly comment on this remark.

6. In relation to negotiable instruments, critically discuss the essential characteristics of
- (a) a holder
 - (b) a holder for value
 - (c) a holder in due course
 - (d) An accommodation party.

SECTION C

7. (a) What do you understand by the maxim "in jure non remota causa sed proxima spectatur" in insurance law?
- (b) Bandela Batwa took out an insurance policy under which he was insured against accidental injury and not injury caused by disease. As was known to the insurance company however, Bandela was epileptic. One day while standing by the Goma Lakes. Bandela fell into the water in the course of an epileptic fit and he drowned? His executor wishes to know whether he can claim under the policy. Advise.
8. In relation to the Law of Insurance, write brief notes on the following:
- (a) Insurable interest
 - (b) Subrogation
 - (c) The doctrine of uberrima fides
 - (d) The principle of indemnity
 - (e) Notice clause

THE UNIVERSITY OF ZAMBIA

UNIVERSITY SUPP/DEFERRED EXAMINATIONS - NOVEMBER, 1990

L 330

COMMERCIAL LAW

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

ANSWER: CANDIDATES ARE ADVISED TO ANSWER FOUR QUESTIONS AT LEAST ONE QUESTION FROM EACH SECTION.

STUDENTS ARE ALLOWED TO TAKE INTO THE EXAMINATION ROOM, CLEAN COPIES OF THE SALE OF GOODS ACT AND THE FACTORS ACT.

SECTION A

1. Kwenga and Kwamba entered into a contract under which Kwenga was to sell 30 tons of chicken feed described as "the best ever obtainable." Kwenga knew that Kwamba intended to export the feed to the Republic of Kena where he has a large poultry farm and a pet food factory. In accordance with the contract, the goods are to be delivered to Kwamba's place of business in Kine, capital of Kena, in three lots of 10 tons each on the 5th, 12th and 19th September, 1990 in sealed containers marked "animal feed." Payment to be made with each delivery. When the first lot is opened on arrival in Kena, the feed proves to have deteriorated on the route to Kena as the truck delivering it broke down just before the border and was only repaired three days later. The second lot was in all appearances identical to the sample supplied but in fact it contains an invisible preservative which makes the feed toxic to chickens, though it is harmless to cattle and horses. The third lot was not in fact labelled but was in all other respects in conformity with the contract. This lot arrived in Kena on the 19th September, 1990 in the evening, and therefore could only be delivered to Kine very early the following day.

Can Kwenga sue for the price of any of the deliveries? Advise Kwamba as to his rights if any.

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2. "In Sales transactions which call for full payment in exchange for the delivery of goods...there are compelling reasons for the remedy of rejection whenever the value of the seller's tendered performance falls short of the contract price. The buyer's right at a later date to recover damages is a lame answer to his need for protection from the seller's breach." (HONWOLD)

Critically discuss this passage and consider how far English law so far as applies to Zambia does meet the buyer's 'need for protection' in domestic sales in the way the writer describes.

SECTION B

3. "A person may be liable as a principal when he is not actually a principal."

With suitable illustrations explain.

4. "The decision in Macaura v. Northern Assurance Company Limited (1925) A.C. 619 shows an apparent ignorance of principle, which is equalled only by its apparent indifference to ~~opinion~~ in Zambia of the London insurance market". Discuss

5. Can a third party dealing with an agent set off a debt from the agent to the third party against a debt/^{due}from the third party to the principal?

SECTION C

6. (a) Critically discuss the effect of forgery on
- (i) a bill of exchange
 - (ii) a cheque
 - (iii) a bank draft
- (b) Outline the duties of a banker to his customer.

7. X wishes to sell his car to Y for K70,000.00. He enters into an agreement with Y where X allows Y to have the car on condition that Y is to pay the purchase price in four monthly instalments. After the second instalment Y sells the car to K who resells it to M. On ^{discovering} // this fact X claims the car from M but the latter refuses to give it up. X comes to you for advice. Advise.

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - JULY, 1990

L 340

ADMINISTRATIVE LAW

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

ANSWER: ANY FOUR QUESTIONS

1. Outline the need and justifications for administrators to possess broad discretionary powers in Zambia, and discuss the problems of controlling administrative discretion.
2. Explain the powers and jurisdiction of the office of the Investigator - General and assess the contribution of the office to the protection of human rights in Zambia.
3. Are the courts capable of evolving new principles of administrative law to meet the needs of the modern Zambian state? Discuss.
4. Describe the principal judicial remedies controlling administrative acts or omissions. Discuss whether or not any reforms of these judicial remedies are necessary.
5. "I predict that administrative tribunals will eventually take over the functions of the courts - making the courts unnecessary inasfar as administrative law is concerned."
(Quote from a third year law student).
Discuss, with reference to the powers and functions of administrative tribunals in Zambian.
6. ".... constitutional law is concerned with the organisation and functions of government at rest, whilst administrative law is concerned with that organisation and those functions in motion." (Gerner, Administrative Law).
Taking the above quotation as your starting point, attempt a definition of administrative law. Include some discussion of its origins, purpose and scope. Refer to the views of authorities on administrative law in your answer.
7. To what extent have the courts evolved general principles of judicial review. What is the scope and content of those principles. Illustrate your answer by reference to appropriate case law.
8. Discuss and assess the effectiveness of the various means by which the Zambian Parliament attempts to control the operations of central government administration.

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - JULY, 1990

L 350

FAMILY LAW

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

INSTRUCTIONS: THIS EXAMINATION IS IN TWO PARTS. YOU ARE REQUIRED TO ANSWER FOUR QUESTIONS, AT LEAST ONE FROM EACH PART.

PART 1

1. Ben met Sally at a Yola Rhumba night. They fell in love and decided to get married. The next day, Sally introduced Ben to her uncle. Arrangements were made for their marriage in accordance with Tumbuka Customary Law. Lobola was paid and the parties were married in 1985. Ben and Sally were blessed with twins, both of them girls, in 1987. Ben and Sally decided that a marriage under the Marriage Act was more fashionable and went through a ceremony of marriage under the Act in April, 1990. Shortly afterwards, Ben's lifestyle changed. He started coming home in the early hours of the morning. Sally complained. Ben beat her and chased her out of the main bedroom so that she shared her two daughters' bedroom. One night she thought she heard voices from the main bedroom. She opened the door to the main bedroom. To her shock she saw a girl lying beside Ben. Ben told her to get out and not to disturb. The following morning, Sally collected all her belongings and told Ben she was leaving. Ben did not care but ordered Sally to leave their children with him. Sally left and went to see her lawyers. An attempt to reconcile them was made but all was lost. Sally petitioned the High Court for divorce and custody of the children. She is anxious to know whether;
- (a) The High Court will entertain her petition for divorce on point of jurisdiction or any other point.
- (b) What the possible outcome of her petition for divorce and custody would be if the petition were to be entertained by the court.
- Advise her fully.

L 350

2. (a) Briefly, explain the five common terms in a separation agreement.
- (b) Kope and Betty married under the Act in 1980. Since their marriage the two have never had any sexual intercourse and this has been due to the fact that Betty had an unusual thick hymen which made her have a cul-de-sac. Kope had several times tried to get his wife medical attention and each time he has been told by the doctor that despite the defect being curable, the operation required a lot of money. Kope has always insisted that Betty should pay for the required operation since her income was better than his, whilst Betty has rejected this arguing that being the husband and thus the master in the home, Kope should foot the bill. Due to the persistent demands from the husband for ^{her} to pay and undergo the operation, Betty intends to petition to have the marriage annulled. Nevertheless, before she could petition, the parties jointly adopted Ted aged 15 years of age. After the adoption, however, Betty now wants to seek an order of the Court annulling the marriage.

Advise her.

3. "To constitute the offence of bigamy under Section 166 of the Penal Code, the second marriage must be one capable of producing a valid marriage known and recognised by the law but for the subsequent first marriage. S/166 of the Penal Code contemplates that both the first and second unions of marriage should be christian or western type marriages. A customary union is not capable of being a valid marriage in the sense of a (monogamous) Marriage Act marriage," as per Care, J. in The People v Katongo.

Discuss this statement in relation to other decided Zambian cases on bigamy and Section 38 of the Marriage Act.

PART II

4. Brian, aged 23, was unmarried and lived in Kalundu. One day whilst on a drinking spree at Chainama Hotel he met Tina and they fell in love. They spent the night at Tina's house in Kaunda Square. Whilst there Brian met Mercy a 10 year old illegitimate daughter of Tina. The young girl looked hungry and dirty and it was evident that the mother could not support her. Brian felt pity for the small girl and decided to adopt her. Adoption Orders were granted by a Judge of the High Court who

L 350

sympathised with the girl. Thereafter Brian took care of Mercy and educated her.

Mercy, now 19 years of age, intends to get married under the Act to Manda, a school teacher. She has been advised by a friend that consent of the parents is necessary. She asked for Brian's consent which he gave.

However, Tina disapproves of Mercy getting married at that age since she wants her to go to the University and study medicine. She, thus, approached the Registrar of Marriages to lodge a caveat.

Mercy is determined to marry Manda at all costs and has approached you for help.

Advise her fully.

5. (a) State the circumstances which would render a statutory marriage void.
(b) Pete married Tracy who, unknown to him, was suffering from a deadly contagious venereal disease called Kanswende. Pete contracted the same disease from his wife and he died two months after they had married. The marriage was contracted under the statute.

Two months after Pete's death, his relatives wanted to share his property excluding Tracy on the grounds that she caused Pete's death and that she was five months pregnant.

Explain whether or not Pete's relatives have the right to challenge the validity of the marriage which existed between Tracy and Pete.

6. Martin and Lois got married under Statute and thereafter lived happily in a mansion which Lois had inherited from her Late father. The man was a Managing Director for a transport company and Lois was a devoted house wife who did all the household chores and looked after their two children.

From the husband's income and influence, the couple bought three taxis. A lot of money was realised from this and they opened a joint bank account. Another house was bought by the couple.

Three years later, Martin started misbehaving and one evening he was caught red-handed committing adultery on the matrimonial bed with Nandi, his wife's young sister. Lois petitioned for divorce and before a decree nisi could be granted by the court, she committed suicide.

/4...

Martin, after two years, married another woman, Sombo an accountant. She persuaded Martin to apply for court orders to entitle him to ownership of all the property including the mansion and the joint account.

What are his chances of succeeding?

7. "Marriage confers a status"

Discuss the significance of this statement with regard to the rights and obligations between husband and wife under a statutory marriage.

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS -- JULY, 1990

L 410

JURISPRUDENCE

TIME: THREE HOURS

INSTRUCTIONS:

1. ANSWER ANY FOUR QUESTIONS
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1. "Even though the writers of the so-called Analytical school of jurisprudence differ from one another about their view of law yet there is something common among them and their general approach is in marked contrast with that of the Historical and sociological schools of jurisprudence".

Analyse fully this statement by illustrating how the main writers of the Analytical school differ among themselves in their approach to the definition of law and then how they differ from the writers of other schools.

2. The positivist approach to the definition of law is hardly suited to a developing society such as Zambia experiencing troubled economic and social/conditions and having a constitutional commitment to certain cultural and moral values, and socio-economic commitment.

Critically comment to this assertion and present an alternative theory or theories of law which you consider to be more relatively appropriate to the circumstances of Zambia.

3. Assess any elements of truth in the claim that the Marxist theory of law and state offers a more vivid explanation of what is going on in Zambia to-day.
4. "In any society there is a close connection between social morality and legal order. There cannot be, and there never has been, a complete separation of law and morality".
- (a) Develop fully this proposition, bringing out clearly your understanding of the relationship between law and morality.
- (b) As instruments of social controls, in what ways is law and morality mutually different?
- (c) In your own opinion, which of these two means of social control is more effective than the other and how?

L 410

5. "The institution of law, to possess the respect and to inspire confidence in citizens, must closely be linked to the quest for justice".

Examine this proposition bringing out clearly your understanding of the concept of justice, how it is realised through legal provisions, its relationship to the ~~notion~~ of equality and finally its implications of on political stability.

6. From the following subjects choose two and make comprehensive comments.

- (a) Law and the need for social order
- (b) The Grundnom
- (c) Sources of Law
- (d) Law and Custom.

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY SUPPLEMENTARY/DEFERRED EXAMINATIONS - NOVEMBER 1990

L. 410

JURISPRUDENCE

INSTRUCTIONS:

1. TIME ALLOWED: THREE HOURS
2. ANSWER ANY FOUR QUESTIONS

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1. Give a detailed explanation why, hitherto, there has not been a universally agreed definition of the concept of law.
 2. Examine in detail why it is often said that the sociological theories of law which include Legal Realism are pertinent or relevant theoretical models in informing the definition, application, and utility of law in conditions of a developing country like Zambia.
 3. Examine the Kelsenian theory of "The Juristic Implications of a Revolution",
 4. Elucidate on the theory of 'Economic Determinism' as propounded by Karl Marx and Fredrich Engels. Is this theory any relevance in explaining the trends in the Zambian society at present? How?
 5. Write comprehensive notes on the following two subjects:
 - a) Roscoe Pound's 'Jurisprudence of interests'
 - b) Law and morality.
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END OR EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - JULY, 1990

L 420

BUSINESS ASSOCIATIONS

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

ANSWER: FOUR QUESTIONS (TWO FROM EACH SECTION)

SECTION A

1. (a) Explain with the help of decided cases why the promoter is neither an agent nor a trustee for the company he promotes but stands in a ^{fiduciary} ~~judiciary~~ position towards the company. (10 marks)
- (b) Mr Bossman Phiri, the only child of Mr Nshaba Phiri a wealthy groundnuts farmer in the Eastern Province, is the likely beneficiary of the father's fortune. He, however, has been warned by his father's brothers that in accordance with customary law, they are the only ones entitled to their brother's wealth.

Mr Bossman Phiri is very scared of the prospects of being disinherited by his uncles who have even threatened to bewitch him should he insist on heritage from his father. To safeguard his interests and avoid a possible confrontation with his uncles, Mr Bossman Phiri decided to promote a company together with his eldest son Tezi in which most of his father's wealth was to be channelled to himself.

Mr Bossman Phiri inserted in the Articles of Association of the intended company the provisions that as long as he lived he would be the Chief Executive of the company and that his wife and children would receive annual gratuity of K10,000-00 each for as long as the company operated profitably.

Mr Bossman Phiri has now divorced his wife and has instructed the company to cancel the annual gratuity to her. He has also threatened to mete out similar punishments to the children should they decide to follow their mother.

Tezi is not happy with what his father is doing and has consulted you to advise on whether and how his father could be replaced as Chief Executive and the mother's annual gratuity of K10,000 be reinstated.

(15 marks)

2. ✓ (a) Discuss the powers and duties of a member in a company. (10 marks)

(b) Mwafuluka and Chiliukotuya formed a company known as M and C Limited in 1980. As a result of a car accident in May, 1989 Chiliukotuya died, leaving Mwafuluka the sole shareholder of the company.

In January 1990 Mwafuluka approached Zambia National Commercial Bank Limited and borrowed K2 million to enable the company carry out its expansion programme. In April, 1990 Mwafuluka secured himself a job at the United Nations in New York and consequently he sold his interests in the Company to Sotambe Mwanza.

The loan from Zambia National Commercial Bank has not been serviced and the Bank has now sued M and C Limited and Sotambe Mwanza for the recovery of the K2 million loan plus interest at 35% per annum.

Assess the Bank's chances of winning the suit. (15 marks)

3. (a) Discuss critically the law in the following cases:

(i) Lonrho Limited v Shell Petroleum Company Limited [1980] 1 Q.B. 358; and

(ii) The Commissioner of Taxes v Nchanga Consolidated Copper Mines Limited [1964] A.C. 948. (10 marks)

(b) A director is primarily an officer of the company answerable to the shareholders as a whole but he could also be a representative of sectional interests within the company such as is the case in most transnational joint-ventures. When the latter happens, he is regarded as having assumed a dual capacity. Show whether or not there are problems when the director enjoys the aforesaid dual capacity. (15 marks)

SECTION B

4. (a) Compare the efficacy of the concept of corporate control in a parastatal company with that obtaining in a privately-owned limited liability company and show differences, if any, using illustrations. (10 marks)
- (b) "Who are you to talk to me like that", Mulenga was heard challenging Mwenso-Nimfwa when the latter announced to the former that he had been instructed by the Board of Directors of a parastatal company rejoicing in the name of Wamuyayaya Company Limited, where he, Mwenso-Nimfwa, is the Chairman, to relieve Mulenga of his responsibilities as General Manager of Ozakamba Limited, a subsidiary of Wamuyayaya Company Limited.

The following day Mulenga who is a Presidential appointee met Mwenso-Nimfwa in the elevator of the prestigious quisi Government building called Buntungwa House and reminded him that he should tread cautiously as his wings could be crippled since Mulenga was a shareholder of one share in Wamuyayaya Company Limited, holding the same as a nominee of the Minister of Financial Affairs. However, undaunted by the threat, Mwenso-Nimfwa wrote to Mulenga dismissing him as General Manager of Ozakamba Limited but Mulenga has refused to accept the dismissal and is holding on to the office of General Manager.

As a State Advocate, how would you advise the State to resolve the problem? (15 marks)

5. (a) The co-operative society and parastatal company are all instruments used by the Zambian Government to ensure that the 'commanding heights' of the economy of the country are in the hands of the nationals. Do you agree? If so give reasons, and if not, show how a co-operative society is different from a parastatal company. (10 marks)
- (b) Discuss the concept of the "Morrison Theory" ^{of arms length control} as it relates to co-operative societies and indicate areas in which the same Theory could be perfected for the betterment of Zambian co-operative societies. (15 marks)

- (a) Are there any requirements found in a written partnership agreement that are not found in an oral partnership agreement? Support your answer by giving authorities. (10 marks)
- (b) Discuss the problems associated with the recovery of partnership debts first where some of the partners are men of no means and secondly where the management of partnership has been specifically vested in the hands of only some of the partners. (15 marks)

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY SUPPLEMENTARY/DEFERRED EXAMINATIONS -- NOVEMBER 1990

L 420

BUSINESS ASSOCIATIONS

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

ANSWER: FOUR QUESTIONS: - QUESTIONS ONE AND TWO ARE COMPULSORY.

1. Sosi is a Managing Director of TIKA Ltd., a company registered under the provisions of the Companies Act. Article 20 of the articles of association of TIKA Ltd. provides that the Managing Director should serve the company for as long as he wished. This same provision was incorporated in the letter of appointment written to Sosi by the Chairman of TIKA Ltd. Now the company feels it does not require the services of Sosi and wishes to terminate his employment. Advise both the company and Sosi on their respective rights/obligations.
2. Write critically on the following:-
 - a) requirements for co-operative membership.
 - b) directorship in a parastatal company.
 - c) the memorandum of association of a company.
3. Compare and contrast the methods of corporate control under common law and under the Companies Act.
4. MONDECO Ltd. is a parastatal company formed under the provisions of the Companies Act. It is also a wholly-owned subsidiary of MONDEX, which is a government-owned holding company. The government, in its quest to control the affairs of all the parastatal companies, has appointed a Minister for Parastatals. Among other things, the Minister is empowered to appoint directors and to make regulations for the companies. The articles of association of MONDECO Ltd., on the other hand, provide that the shareholders shall appoint directors and shall make regulations for the company. How would you reconcile these two co-operant factors in the control of the parastatal companies?

5. How is statutory corporation distinguished from a parastatal company? Which of these two forms of organisation do you consider is best suited for running government business?
6. With respect to the pre-registration requirements of a co-operative society under the *Zambian Co-operative Societies Act*, explain the respective roles given to the Registrar and the Minister. In your opinion, is this a realistic way of distributing roles?
7. (a) Discuss either the terms found in a typical partnership agreement or the duties of the partners.
(b) Dixie Mabonzo, a prominent Lusaka businessman, for two years supplied large quantities of stationery to Bungwe Partners who are the publishers of a notorious Campus paper called "Monkology." When Dixie rendered his bill for settlement, he was informed by one of the partners that the partnership had been dissolved and firm assets had been distributed. The partners involved were - Ric Majoza, Mic Moja, Rose Kaku and Rommie Modesti. Upon hearing of the dissolution of the partnership, Dixie approached his lawyer who advised him to single out Ric and Mic for suing on a partnership debt on the ground that those two were in good employment. The Court of UNZA gave judgement to Dixie but the judgement remained unsatisfied for six months. Dixie was then advised to sue Rose Kaku and Rommie Modesti on the debt. But the two defendants applied to the Court to have the other two co-partners joined in as defendants. Advise the four partners on their respective rights and obligations.

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - JULY, 1990

L 430

INTERNATIONAL LAW

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

INSTRUCTIONS:

1. Students can bring into the examination room, the Vienna Convention on the Law of Treaties.
 2. Answer any four questions
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1. Describe and comment on the various sources of international law.
2. A Zambia Airways passenger aircraft is making a non-stop transit through the airspace of country X on a flight to New York at an altitude of 30,000 feet. No nationals of state X are on board the plane. A passenger in the plane assaults a steward. Both the passenger and the steward are Zambian nationals. If the passenger subsequently travels to country X, and is arrested and tried there for assault, does Zambia have any basis for complaint under international law.
3. An insurgency begins in the remote mountain areas of state A, a developing country. The insurgent chieftain is colourful and immensely popular with the foreign mass media. The insurgency is presented by the press to the world as very apt to succeed. As a result 80 states recognize the insurgents as the de jure government of state A, and this causes a severe flight of capital from state A that slows its rate of development from 6% to 1% per year, resulting in an estimated national accounts loss of one billion American dollars. State A, easily puts down the insurgency and then sues the 80 states that recognized the insurgents as the de jure government of state A for the above amount in damages. What would be your opinion as one of the judges of the International court of Justice before whom the matter has been brought.
4. "When an authority designed to adjudicate exclusively between states is in question, it is plain that the source of jurisdiction can only be found in consent by the parties to resort to the tribunal. There exists no superior power capable either in fact or in law of creating a jurisdiction or imposing resort to it."
Discuss the above statement in relation to the so called compulsory jurisdiction of the International Court of Justice.

5. Militant students from ZENDA studying in the Republic of TEZA entered their Embassy in the TEZAN capital city to deliver a petition protesting the unprecedented rise in the inflation rate in ZENDA. After they had staged an overnight "sleep-in" Embassy officials requested TEZA police to come to the Embassy. Several police officers, headed by an Assistant Superintendent, entered the Embassy and held discussions with the Ambassador who then gave the Assistant Superintendent a formal written request asking the police to enter the Embassy and eject the students from the premises. The Ambassador, in the presence of the police, asked the students to leave within five minutes. When they refused to depart they were placed under arrest and physically carried from the Embassy.
- The students are now appearing before you and they contend that TEZA police had no authority to enter the Embassy of ZENDA and arrest ZENDAN nationals for a crime committed within the confines of the Embassy. Examine the relevant international custom and treaties in order to ascertain the nature of the issues here involved^{and} pronounce a verdict.
6. Explain and comment upon the relationship between municipal law on the one hand and international law on the other.
7. War is illegal under international law and any state which wages or aids and abets another to wage war is in breach of international law. Consequently territory acquired as a result of the use of force is illegally held and can never give rise to a legal title.
- Discuss.

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - JULY, 1990

L 450

INTERNATIONAL TRADE AND INVESTMENT LAW

TIME: THREE HOURS

ANSWER: QUESTION 1 FROM SECTION A AND ANY THREE FROM SECTION B

SECTION A

1. Country A is a developing country that has been independent for a short period. It inherited an economy that is heavily controlled by foreign investors who own enterprises in the 'commanding heights' of the economy. At independence, the country also inherited a balance of payments deficit. The pressure is exacerbated by the flight of capital due to white settler emigration since independence. The government has tried to stem this outflow of capital by giving attractive investment incentives to both local and foreign investors, but this did not have much effect. Finally the government decided to nationalize foreign enterprises in the 'commanding heights' of the economy. The declaration speech stated that the state is also going to recover profits earned by foreign companies due to tax evasion and that the payment of compensation will be over a period of five years.

Country A's constitution permits expropriation in the same manner and within the premises the Zambian constitution permits expropriation.

Ms Bonzee is a national of another developing country but resident in country A. She has a number of companies in country A some of which have been nationalized as above stated.

Ms Bonzee has come to consult you on the legality of these nationalizations, and also on the principles applied in computing compensation. She feels that the government statement that compensation payment will be staggered over a period of five years is contrary to international law principles. She assures you that she is prepared to take this matter to the highest court.

Write a comprehensive brief advising Ms Bonzee on the legal questions, she has.

(40 marks)

SECTION B

2. UNCTAD (United Nations Conference on Trade and Devevelopment) is largely perceived as an Organization that takes care of developing countries' interests, a reaction to GATT (Generalized Agreement on Tariffs and Trade).

Analytically discuss the philosophical ^{underpinnings} that give each of these institutions its idiosyncratic character, using examples from their articles and/or functions. (30 marks)

3. Tukongote and Company is a fast growing company in Zambia specializing in agricultural implements. It wishes to enter into a technology transfer agreement with a foreign company. It has asked you to go through the draft agreement it wants to present to this foreign company. Write down the kind of clauses you would strike out of this agreement and discuss why. (30 marks)

4. Analyse the impact of Articles 3-5 of the International Monetary Fund on Zambia's development effort.

5. The Most Favoured Nation clause is the cornerstone of GATT. Discuss how it functions in relation to negotiations for tariff reductions. (30 marks)

6. The Preferential Trade Area for the Eastern and Southern African States is an exception to the GATT prohibition of discriminatory trade. Discuss the rational for this exception and reflect how the PTA seeks to achieve an ^{equitable} sharing of trade among its members in you answer. (30 marks)

7. Write briefly on each of the following.

- (a) The difference between an International Commodity Agreement and a Producer Cartel.
- (b) How the United Nations Common Fund assists international commodity trade. (30 marks)

THE UNIVERSITY OF ZAMBIA

UNIVERSITY DEFERRED/SUPPLEMENTARY EXAMINATIONS, NOVEMBER, 1990

L 450

INTERNATIONAL TRADE AND INVESTMENT LAW

: THREE HOURS

ER: FOUR (4) QUESTIONS, QUESTION 1 IS MANDATORY.

QUESTION 1 IS MANDATORY

State and discuss International Law principles relating to nationalization highlighting the main bones of contention between developing and developed nations over the years from the 1950s and clearly stating the current consensus.

(40 marks)

Discuss in what ways the most favoured nation clause of the Generalized Agreement on Tariffs and trade (GATT) coupled with the principles of comparative advantage in implementation result in the achievement of the aims of the GATT.

(20 marks)

What are the differences between Commodity Agreements, and Producer Cartels?

(20 marks)

Clearly analyse how the Investment Act of 1986 attempts to effect transfer of foreign technology into the country.

(20 marks)

Reconcile the aims of the Preferential Trade Area for Eastern and Southern African states and GATT's underlying Philosophy of Trade.

(20 marks)

In which ways is the United Nations Conference on Trade and Development a necessity for the development needs of developing countries?

(20 marks)

Looking at the aims of the International Monetary Fund, justify the fund's conditionality attached to the usage of its general resources.

(20 marks)

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - JULY, 1990

SE 353/SE 553

LAND LAW, CADASTRE AND SURVEY

LAND LAW, CADASTRE AND SURVEY REGULATIONS

TIME: THREE HOURS

ANSWER: ANY FOUR QUESTIONS

NOTE: CANDIDATES MAY CONSULT ANY RELEVANT STATUTES PROVIDED THEY ARE UNMARKED

1. On account of some malpractice Kanchule was suspended from practice as a land surveyor by the Survey Control Board. He subsequently joined a friend, Chibale who is a practising surveyor. On the 30th of April 1990, Kanchule was sent by Chibale to carry out some survey on Plot No. 1005 for the purpose of sub-dividing the plot into three parcels. Kanchule made the survey and prepared a general plan which he signed on behalf of Chibale. The general plan was filed at the Lands and Deeds Registry and title deeds were issued to the three occupants. On the 5th of June, Mumba, one of the occupants shifted one beacon on the ground that the boundary was wrongly placed. Investigations revealed that Kanchule had used an uncalibrated Dumpy level which gave faulty readings resulting in the errors in the general plan.

Discuss the legal issues involved and how this situation can be rectified, if at all.
2.
 - (a) Discuss a cadastre with regard to its definition, nature, purpose and its various forms.
 - (b) What is a cadastre survey and what are its objectives?
 - (c) Outline the various functions of a Land Surveyor in contemporary times.
3.
 - (a) What is a boundary and how is it marked? How many types of boundaries are there?
 - (b) Explain the meaning and purpose of a monument?
4. Chilambe has just retired from the Civil Service after 25 years of distinguished service. He wishes to acquire some land on which to settle and farm. He has decided to settle in Chief Chitina's area, an area classified as a Reserve. But, before he moves into the area he would like to know the following:

- (a) the rights in land under customary law and how they may be acquired, transmitted, and extinguished;
- (b) disadvantages, if any of customary land tenure;
- (c) Whether he can obtain documentary title to the land in the Reserves, and, if so, what procedure he must follow.

Advise him.

5. Briefly discuss the holding in the following cases:

- (a) Patel v. Ismail
- (b) Brian v. Coulson
- (c) Construction and Investment Holdings Ltd. v. William Jacks and Co. Ltd.

6. Mr. X, a retired politician owned residential property in Roma Township. On the 1st of January 1986 he entered into an oral agreement with Mr. Y whereby Mr. X was to let the said residential property to Mr. Y for one year with an option to renew. The rent was K20,000 per month payable monthly in advance. Mr. X insisted on this amount as rent because, he said, the property was in an exclusive low density area of Lusaka. This oral agreement was evidenced in a document entitled "Memorandum for an Oral Agreement". Mr. Y asked for a formal lease to be drawn believing this was necessary for registration, but Mr. X, thought that a formal lease was unnecessary because, in his view, an agreement for a lease was as good as a lease. No consent was obtained from the President as required by Section 13 of the Land (Conversion of Titles) Act, 1975.

At the expiration of one year, Mr. Y sought to exercise his option to renew, but Mr. X refused because he had already negotiated another lease in favour of a Multi-national corporation which would pay him rent in foreign currency. Mr. X subsequently wrote Mr. Y asking him to yield up possession as the option to renew was unenforceable for want of registration and non-compliance with Section 13 of the Land (Conversion of Titles) Act, 1975. Mr. Y ignored the request and refused to pay rent, believing that the payment of rent must, equally, be unenforceable.

After allowing Mr. Y to remain in possession for three months, Mr. X filed a suit for recovery of possession and the rent due.

Discuss the respective rights and liabilities of the two parties.