

THE UNIVERSITY OF ZAMBIA

686872

UNIVERSITY EXAMINATION

AUGUST 1988

SCHOOL OF LAW

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LEGAL PROCESS

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

ANSWER: ANY FOUR(4) Questions

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

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

What are the reasons for the practice of consulting and following previous judgments? In your view is it a good practice?

2. Outline the jurisdiction of the following courts:-

- (a) Local Courts,
- (b) Subordinate Courts, and
- (c) Supreme Court.

3. A layman out of boredom decided to attend a High Court session and was surprised to learn that judges and lawyers in general have problems in finding the intention of Parliament from the laws (Acts of Parliament) which it enacts from time to time.

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

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

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

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - AUGUST - 1988

L 140

CRIMINAL LAW

TIME: THREE hours

ANSWER: Any FOUR questions.

Penal Law Statutes are allowed in the Examinations Hall

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

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

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

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

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

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

5. Describe carefully the facts and decision in THUKU v R (1965) E.A. 496, and show its importance to the law relating to Provocation.
6. Peter is out for a drive one afternoon. He has a lot on his mind - his wife has a boyfriend, the firm he works is losing money and his fourteen year old daughter Grace, left home four days ago.
- He stops at a bar - he does not normally come to this area but he is thirsty. Sipping his first beer he looks out of the door and sees his daughter, Grace. He gets up to speak to her but she runs away. Luckily enough he sees her run behind a bus shelter and he follows. She is standing behind the shelter together with Mulenga, a youngman who has a surprised look on his face. Before anyone can say anything Peter hits Mulenga.
- "Don't, shouts Grace, "I have never seen him before, he is only waiting for transport."
- "Isn't this the youngman who took you away?" asks Peter.
- "No, my boyfriend is in the bar,"
- Peter apologises to Mulenga who is stroking his jaw in a dazed fashion and then Peter goes to Akende the boyfriend.
- "Do you know I'm Grace's father and she is only fourteen?"
- "I know she is fourteen but she told me her father was dead and she lived alone in Lusaka." replies Akende.
- "This is disgusting the Police will hear about this" is Peter's comment.

The Police decide to prosecute:-

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

7. "The pain from punishment must exceed the pleasure
obtained from the criminal act, then man's will will
determine for him the desirability of non criminal
conduct."
Which theory of punishment is reflected and
advocated in this statement?

END OF EXAMINATION.

THE UNIVERSITY OF ZAMBIA
UNIVERSITY EXAMINATIONS - AUGUST - 1988

L 150

CONSTITUTIONAL LAW

TIME: THREE hours

INSTRUCTIONS:

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

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

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

/2....

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

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

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

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

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

SECTION TWO

Answer any two questions from this Section.

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

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

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

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - AUGUST, 1988

L 210

LEGAL PROCESS

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

ANSWER: ANY FOUR (4) QUESTIONS

1. "The circumstances in which a superior court can differ from a previous decision of its own are well-known and do not require extensive discussion. A more difficult problem arises when a High Court Judge or a magistrate has - or thinks he has - two conflicting decisions of this court before him, as in the present case we have some sympathy for the magistrate: he was entitled to prefer the reasoningⁱⁿ MACFADYEAN v THE PEOPLE (1965) Z.R I to that in PHIRI v THE PEOPLE (1973) Z.R. 168 and to say so. But he was not entitled to decline to follow the later case and to follow instead the earlier. There are several reasons why this is so" per BARON D. C.J when he delivered the judgment of the Supreme Court in Zambia in the case DAVIS JOKIE KASOTE v THE PEOPLE (1977) Z.R 75 at 79. With this quotation in mind critically discuss whether or not the doctrine of stare decisis should continue to apply in Zambia.
2. Recently the Youth League of the United National Independence Party resolved at an Annual Conference held at the now famous Chongwe Youth Memorial Camp that the Government should abolish all Local Courts currently operating in urban areas. The reason behind this resolution is that in the urban areas no clearly ascertainable system of African Customary Law exists as many Africans from all parts of Zambia and even from neighbouring countries have settled permanently in the urban areas clearly "divorced" from their tribal chiefs. It was argued at the Conference that Local Courts should continue to operate in rural areas because the traditional way of life is still followed and Local Courts do not have any problems in applying the African Customary Law prevalent in a particular area. It

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

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

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

4. Comment on the following subjects:-
 - (a) Whether or not the escalating crime rate would be reduced by the abandonment of the accusatorial system provided for by Article 20 of the Constitution of Zambia and the introduction of the inquisitorial system.
 - (b) Whether or not the statutory provisions which deal with the protection of tenure of judges and magistrates are adequate to secure the independence of the judiciary.
5. Article 20(2)(d) of the Constitution of Zambia provides that every person who is charged with a criminal offence shall be permitted to defend himself before a court of law in person or, at his own expense by a legal representative of his own choice. To assist indigent litigants the Government of the Republic of Zambia established the Directorate of Legal Aid in 1967. Legal Aid is provided in both civil and criminal cases. However, in recent times pressure has been brought to bear on the Government by certain sections of the Zambian Community that

3. L 210

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

6. Discuss the following:-

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

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - AUGUST - 1988

L 220

CONTRACT

TIME: THREE hours

INSTRUCTIONS

- (i) Read the questions carefully before you attempt an answer.
- (ii) Attempt any FOUR questions
- (iii) This is not an open book examination. However candidates can bring into the examination room all relevant and unmarked statutes.

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1. "The difficulty which is apparent through nearly all the reported cases is the reconciliation of two principles - - - (1) that of freedom of contract, by which a person is held bound by an agreement into which he has deliberately entered and (2) that of freedom of work by which an employer is prevented from restraining a servant from exercising his energies in work for himself or others to an extent greater than is necessary for the protection of the employer;" per Palmer A.J. in African Lakes Corporation Ltd v. Murray (1947) 6 L.R.N.R. 166

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

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

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

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

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

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

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

3. Question 3 continued - L 220

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

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

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

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

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

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

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

Advise the parties.

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

DEED OF SALE OF HOUSE ON KWACHA ROAD

Now therefore this deed witnesseth as follows:

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

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

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

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

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

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

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

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

Advise him.

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

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

Advise Grace.

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

SUPPLEMENTARY EXAMINATION - OCTOBER 1988

L220 - LAW OF CONTRACT

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

ANSWER: Any FOUR (4) questions

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

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

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

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

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

Advise Brenda.

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

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

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

Advise Simon.

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

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

Advise him.

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

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

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

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

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

Advise them.

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

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

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

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

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

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

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

Advise Kulira.

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA
UNIVERSITY EXAMINATIONS - AUGUST - 1988

L 230

THE LAW OF TORT

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

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

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

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

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

2. Briefly discuss any TWO of the following:

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

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

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

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

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

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

Comment on the above observations.

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

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

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

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

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

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

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY DEFERRED/SUPPLEMENTARY EXAMINATIONS-OCTOBER, 1988

L 230

THE LAW OF TORT

TIME: THREE HOURS (plus ten minutes to read the paper.)

ANSWER: ANY FOUR QUESTIONS

1. "In the development of our law two principles have striven for mastery. The first is the protection of property. No one can give a better title than he himself possesses. The second is the protection of commercial transactions. The person who takes in good faith and for value without notice should get a good title," per Denning L.J., in Bishopsgate Motor Finance Corporation Ltd. v. Transport Brakes Ltd. (1949) 1 ALL E.R. 37 at p. 46.
Discuss the above observation with reference to the development of the tort of conversion.
2. Discuss the liability of D. in the following:
 - (a) P. and D. were having a boxing match. Infuriated by P's blow, D. hit P. hard on the face. P. started bleeding from the mouth and he fell flat on the ground. While P. was on the ground, D. gave a few more hard blows on P's back. The referee managed to separate the two with some difficulty. P. sues D. for damages.
 - (b) P. requested D. for a ride in D's car. P. knew at that time that D. was drunk. Due to the rash and negligent driving of the car by D., an accident took place and P. was injured. P. sues D. to recover damages.
3. Compare and contrast the tort of nuisance with that of negligence on the one hand and the tort of strict liability as in Rylands v. Fletcher on the other.
4. "The view that the Law should take cognisance only of physical injury resulting from actual impact has been discarded and it is now well recognised that an action will lie for injury for shock sustained through the medium of the eye or the ear without direct contact." Winfield on Tort.
Comment.

5. Harrison Banda, a resident of Lusaka was reading his morning newspaper when he heard on his radio an announcement concerning the death of one Dickson Mutale in a car accident between Ndola and Kitwe. He knew that the young son of his friends and neighbours, Mr. and Mrs Paterson Mutale of that name was living in Ndola and often travelled on business to Kitwe. The radio announcement had infact mentioned the deceased Mutale as 45 years of age whereas the son of Mr and Mrs. Mutale was only 25 Harrison Banda missed this part of the radio announcement . Thinking that it was his friends' son who had been killed he rushed to their house and asked them if they had heard that thier son Dickson had been killed in a car accident. On hearing this, Mrs Mutale fainted, fell to the ground and sustained some injuries. Mr. Mutale sent his brother Gibson to the scene of the accident to bring the body of the deceased son home. On arrival at the scene of the accident Gibson found that it was another Dickson Mutale who had been killed in the accident. He went to Ndola, narrated to Dickson what had happened and with him returned to Lusaka.

Mr and Mrs. Mutale bring an attion against Harrison Banda to recover compensation for the losses sustained by them. Will the action succeed? What difference, if any, would it make to your answer if Harrison Banda had correctly heard the age of the deceased but had made the statement to Mr and Mrs Mutale by way of a practical joke?

6. "Arising out of the various and ever-increasing clashes of the activities of persons living in a common society, carrying on business in competition with fellow members of that society, owning property which may in any of a thousand ways affect the person or property of others - in short, doing all the things that constitute modern living - there must of necessity be losses, or injuries of many kinds sustained as a result of the activities of others. The purpose of the law of torts is to adjust these losses and afford compensation for injuries sustained as a result of the activities of others" Fleming: The Law of Torts. Explain the above and illustrate the purpose of the law of torts with suitable examples.

7. D was running a veterinary hospital in Ndola. A was his general assistant helping the doctor D. in his work. One day P brought her labrador bitch and her male cat to the hospital and gave clear instructions to A that the bitch was to be given a contraceptive injection to prevent her from coming on heat, and the cat was to be neutred or castrated. P. paid the necessary fees to A who told her to come after two days to collect the pets after the necessary treatment by the doctor.

Being somewhat overworked there was a mix-up in A's mind about P.'s instructions. He tied a label to the neck of the cat "Contraceptive injection to be given" and to that of the Bitch "To be neutred or castrated." On the appointed day P. came to the hospital and was horrified to discover that, contrary to her instructions the cat had been given contraceptive injection by the doctor and the ovaries of the bitch had been removed..

P. sues D. for damages. Will she succeed in her action. Give reasons for your answer.

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA
UNIVERSITY EXAMINATIONS - AUGUST - 1988

L240

CRIMINAL LAW

TIME: THREE hours

ANSWER: Any FOUR Questions.

Penal Law Statutes are allowed in the Examination Hall.

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

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

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

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

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

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

4. Theft which occurs by a means of a trick (constructive theft) is similar to obtaining by false pretences. But the two offences are distinguishable. Discuss the truth of this statement, with decided cases.
5. Describe carefully the facts and decision in CHIBANGU vs. THE PEOPLE (1978) Selected Judgment of Supreme Court of Zambia, No. 11, and show its importance to the law of Provocation as specified in Sections 205 and 206 of the Penal Code Cap. 146.
6. Malindi, a girl of nine years old, visits NIEC Stores Limited, with Mweemba her uncle. Mweemba sees a pair of shoes he would like but cannot afford to buy it. He leads Malindi out of the store and tells her to go back inside and take the shoes when no-one is looking. She refuses since she knows it is stealing. Mweemba replies that if she does not he will beat her so hard that she will cry for a week. Frightened Malindi re-enters the store whilst the uncle watches through the window. She takes the shoes but arrested outside the store.
 - (a) Malindi is charged with theft of the shoes. Can she raise any defence and if so, what defences are open to her?
 - (b) What is the criminal liability of Mweemba the uncle?

7.

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

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA
DEFERRED UNIVERSITY EXAMINATIONS - OCTOBER 1988

L 240

CRIMINAL LAW

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

ANSWER: Any FOUR Questions

Penal Law Statutes are allowed in the Examination
Hall

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

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

2. Mulenga, a boy of six years old, visits ZCBC Stores Limited, with Bupe his aunt. Bupe sees a necklace valued at K250, she would like to buy but she could not afford to do so, because she had no money. She leads Mulenga out of the shop and tells him to back inside and take the necklace when no-one is looking. Mulenga without any hesitation re-enters the store whilst the aunt watches through the window. He takes the necklace but arrested outside the store.
 - (a) Mulenga is charged with theft of the necklace. Can you advise the Police on Mulenga's criminal liability.
 - (b) What is the criminal liability of Bupe the aunt?
3. Describe carefully the facts and decision in CHIBEKA V R (1959) I R & N. 476, and show its importance to the law of provocation as specified in Sections 205 and 206 of the Penal Code Cap. 146.

4. With decided cases can you distinguish THEFT which occurs by a means of a trick (constructive thefit) from obtaining by false pretences.
5. Mweemba, who had been drinking for the greater part of the day came around 04.30hokurs and slept. At 06.00 hours he woke up and followed his wife to the kitchen where she was preparing some breakfast for him. Mweemba struck his wife with a kitchen axe. She fell down and died instantly.

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

Prepare a legal opinion for the High Court.

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

The father's skull was fractured and extensively bruised, and he died as a result. The medical evidence was that a considered amount of force must have been used to inflict these injuries. Subsequently Banda made a number of confessions, and on being charged said: "I admit the charge that I killed my father because he found a witch doctor who gave me medicine then my heart rose. When killing him

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

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

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

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

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

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

THE UNIVERSITY OF ZAMBIA
UNIVERSITY EXAMINATIONS - AUGUST - 1988

L 250

CONSTITUTIONAL LAW

TIME: THREE hours

INSTRUCTIONS:

1. You are advised to read carefully each question and to answer the question concisely.

 The Examination is in two Sections.
 2. Answer TWO Questions in SECTION ONE and TWO Questions in Section TWO.
 3. Candidates may bring in, and refer to, the Constitution of Zambia and the Constitution of the United States of America.
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SECTION ONE

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

1. (Obligatory Question)

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

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

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

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

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

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

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

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

SECTION TWO

Answer any two questions in this section.

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

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

5. (i) Examine carefully the provisions relating to restricted and detained persons contained in Article 27 of the Constitution of Zambia.
(ii) How have the Courts approached the interpretation of these provisions as reflected in some of the landmark decisions of the Zambian Courts?
6. Elaborate on the often expressed view that the 'principle of Party Supremacy' is indeed a constitutionally entrenched principle in Zambia as reflected both in the One-Party Constitution and in the High Court and Supreme Court decisions in the Harry Nkumbula and Simon Kapwepwe V. A. G. (1978).
7. Consider the observation that the Constitution (Amendment) Act, 1969 had far reaching implications for the protection of individual rights in the future and/^{for} the future economic structure of Zambia.

THE UNIVERSITY OF ZAMBIA
UNIVERSITY EXAMINATIONS - AUGUST - 1988

L 310

EVIDENCE

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

1. (a) Discuss briefly the competence and compellability of the following persons as **witnesses** for the prosecution:
- (i) The accused's spouse;
 - (ii) Mentally-ill patients;
 - (iii) Accomplices.
- (b) X was convicted of the defilement of an eleven-year-old girl. In the course of the voire dire the prosecutrix told the court:

"I know the need for telling the truth.

If I tell lies, God will punish me."

The trial magistrate then recorded that he was "satisfied that the witness of tender years knows the need for telling the truth." He added, "She can therefore be sworn on the Bible."

X wants to appeal on the ground that the evidence of the prosecutrix was improperly received.

Will he succeed?

/2.....

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

Is the evidence admissible?

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

Discuss its legitimacy.

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

What, if any, will be the result?

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

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

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

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

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

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

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

THE UNIVERSITY OF ZAMBIA
UNIVERSITY SUPPLEMENTARY EXAMINATIONS - OCTOBER, 1988

L 310

THE LAW OF EVIDENCE

TIME: THREE HOUR PLUS TEN MINUTES TO READ THE PAPER

ANSWER: ANY FOUR QUESTIONS

1. X. an employee of the Press Trading Company Ltd. is charged with the offence of theft by servant of the sum of K2,000. X. denies the charge and states in his defence that he gave the money to his manager who promised to return it to X. at the end of the month. X.'s manager denies any knowledge of such a transaction. Discuss the following evidential matters relating to the case :
 - (a) The evidence of Mary, X.'s assistant, who was present when X. gave the K2000 to his manager, but is reluctant to give evidence against the manager on the grounds that it may lead to her dismissal.
 - (b) The evidence of Y. another employee of Press Trading Company Ltd. whose evidence is to the effect that the manager obtained K100 from him on a previous occasion but later denied having received that money from Y.
 - (c) The evidence of the manager of "Moon City" who states that the manager of Press Training Company had an outstanding debt of K1,000 and that it was paid in full on the day that X states that he gave K2,00 to him.
2. John is charged with rape. The prosecution is in possession of evidence by a police officer of an oral and written statement made by Mweemba. The statement is of an incriminating nature. John, who is conducting his own defence, denies that he made the statement voluntarily. He says, several times, that the statement was obtained from him by means of a threat that if he did not speak, his wife would be arrested on an emeralds charge. He further states that it is ridiculous to suggest that he could ever have raped a woman as ugly as the complainant.

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

Discuss the evidential issues that arise.

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

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

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

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

Discuss.

5. Write brief notes on any two of the following:

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

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

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

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

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA
UNIVERSITY EXAMINATIONS - AUGUST - 1988

L 320

PROPERTY LAW AND SUCCESSION

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

ANSWER: ANY FOUR questions.

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

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

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

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

(10 marks)

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

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

(10 marks)

2. "The policy of the Rent Acts was and is to protect the tenant in his home, whether the threat be to extort a premium for the grant or renewal of his tenancy, to increase his rent, or to evict him. It is not a policy for the protection of an entrepreneur whose interest is exclusively commercial."
- Per Lord Scarman in Horford Investments Ltd. v. Lambert [1951] Ch. 39 at p. 52.

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

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

(25 marks)

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

(10 marks)

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

4. Question 3 (b) continued L 320

received complaints about the Cinema:

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

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

Advise him.

(15 marks)

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

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

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

(25 marks)

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

(25 marks)

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

(12.5 marks)

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

Advise the parties on their rights.

(12.5 marks)

7. (a) Discuss briefly:

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

(15 marks)

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

Discuss whether or not the will is valid.

(10 marks)

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY DEFERRED/SUPPLEMENTARY EXAMINATIONS-OCTOBER, 1988

L 230

THE LAW OF TORT

TIME: THREE HOURS (plus ten minutes to read the paper.

ANSWER: ANY FOUR QUESTIONS

1. "In the development of our law two principles have striven for mastery. The first is the protection of property. No one can give a better title than he himself possesses. The second is the protection of commercial transactions. The person who takes in good faith and for value without notice should get a good title," per Denning L.J., in Bishopsgate Motor Finance Corporation Ltd. v. Transport Brakes Ltd. (1949) 1 ALL E.R. 37 at p. 46.
Discuss the above observation with reference to the development of the tort of conversion.
2. Discuss the liability of D. in the following:
 - (a) P. and D. were having a boxing match. Infuriated by P's blow, D. hit P. hard on the face. P. started bleeding from the mouth and he fell flat on the ground. While P. was on the ground, D. gave a few more hard blows on P's back. The referee managed to separate the two with some difficulty. P. sues D. for damages.
 - (b) P. requested D. for a ride in D's car. P. knew at that time that D. was drunk. Due to the rash and negligent driving of the car by D., an accident took place and P. was injured. P. sues D. to recover damages.
3. Compare and contrast the tort of nuisance with that of negligence on the one hand and the tort of strict liability as in Rylands v. Fletcher on the other.
4. "The view that the Law should take cognisance only of physical injury resulting from actual impact has been discarded and it is now well recognised that an action will lie for injury for shock sustained through the medium of the eye or the ear without direct contact." Winfield on Tort.
Comment.

5. Harrison Banda, a resident of Lusaka was reading his morning newspaper when he heard on his radio an announcement concerning the death of one Dickson Mutale in a car accident between Ndola and Kitwe. He knew that the young son of his friends and neighbours, Mr. and Mrs Paterson Mutale of that name was living in Ndola and often travelled on business to Kitwe. The radio announcement had infact mentioned the deceased Mutale as 45 years of age whereas the son of Mr and Mrs. Mutale was only 25 Harrison Banda missed this part of the radio announcement . Thinking that it was his friends' son who had been killed he rushed to their house and asked them if they had heard that thier son Dickson had been killed in a car accident. On hearing this, Mrs Mutale fainted, fell to the ground and sustained some injuries. Mr. Mutale sent his brother Gibson to the scene of the accident to bring the body of the deceased son home. On arrival at the scene of the accident Gibson found that it was another Dickson Mutale who had been killed in the accident. He went to Ndola, narrated to Dickson what had happened and with him returned to Lusaka.

Mr and Mrs. Mutale bring an action against Harrison Banda to recover compensation for the losses sustained by them. Will the action succeed? What difference, if any, would it make to your answer if Harrison Banda had correctly heard the age of the deceased but had made the statement to Mr and Mrs Mutale by way of a practical joke?

6. "Arising out of the various and ever-increasing clashes of the activities of persons living in a common society, carrying on business in competition with fellow members of that society, owning property which may in any of a thousand ways affect the person or property of others - in short, doing all the things that constitute modern living - there must of necessity be losses, or injuries of many kinds sustained as a result of the activities of others. The purpose of the law of torts is to adjust these losses and afford compensation for injuries sustained as a result of the activities of others" Fleming: The Law of Torts. Explain the above and illustrate the purpose of the law of torts with suitable examples.

7. D was running a veterinary hospital in Ndola. A was his general assistant helping the doctor D. in his work. One day P brought her labrador bitch and her male cat to the hospital and gave clear instructions to A that the bitch was to be given a contraceptive injection to prevent her from coming on heat, and the cat was to be neutred or castrated. P. paid the necessary fees to A who told her to come after two days to collect the pets after the necessary treatment by the doctor.

Being somewhat overworked there was a mix-up in A's mind about P.'s instructions. He tied a label to the neck of the cat "Contraceptive injection to be given" and to that of the Bitch "To be neutred or castrated." On the appointed day P. came to the hospital and was horrified to discover that, contrary to her instructions the cat had been given contraceptive injection by the doctor and the ovaries of the bitch had been removed..

P. sues D. for damages. Will she succeed in her action. Give reasons for your answer.

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - AUGUST - 1988

L 330

COMMERCIAL LAW

TIME: THREE hours (plus 10 minutes to read the paper)

ANSWER: Any FOUR questions

1. Lonhro Fisheries Ltd of the United Kingdom sold two consignments of smoked and salted fish to Kariba Fishing Company Ltd of Lusaka, Zambia to be delivered in two instalments C.I.F. and to be similarly paid for. According to the contract, Barclays Bank of Zambia, the bankers for Kariba Fisheries Ltd. should in each case indorse the bill of lading and only then would they open a letter of Credit for Kariba their client for payments to Lonhro Fisheries.
- The first consignment arrived within contract time and a letter of credit was opened against the documents of title. Shortly after Kariba Fisheries received the first consignment, they sold it to Pamodzi Hotel where it was discovered that $\frac{1}{3}$ of the consignment had deteriorated. The Hotel rejected the whole consignment and asked Kariba Fisheries to collect it.
- Due to production problems at Lonhro Fisheries, the second consignment could not arrive within contract time. It arrived two months out of the stipulated time and when it did a quarter of the consignment was stolen at sea.
- However, Manica Freight, the agents for Kariba Fisheries accepted the documents of title on account of inadequate information on the quantity of the consignment and passed the documents to Barclays bank. The bank did not open the letter of credit

and refused to indorse the documents of title because of failure of the quantity of the consignment to comply with contract description.

But the Managing Director of Kariba Fisheries Mwape Mondoloka raised funds at another bank and paid Lonhro Fisheries in order to avoid unnecessary trade disputes'. However, the Board of Directors of Kariba Fisheries rejected their Managing Director's arrangement and directed that the contract be terminated and the money paid for the entire two consignments be recovered while proceedings for damages be instituted.

On the other hand, Lonhro Fisheries contended that a C.I.F. Indivisible contract could not be severed and since the bill of lading for the first consignment was accepted, title had passed in the entire contract goods and therefore risk too had simultaneously passed.

- (a) Advise Kariba Fisheries Ltd on their rights and Liabilities.
- (b) Can an indivisible contract of sale ever be severed?

2. Makasa was a businessman in Avondale, Lusaka whose business included buying fish from Siavonga and selling it in Lusaka and the Copperbelt. For this purpose he had a truck and a Land Rover station wagon which he bought from his pension money following his retirement from the Ministry of Higher Education.

He insured the truck with the Zambia State Insurance Corporation. By a declaration in the proposal form, both Makasa and the Insurance firm agreed to regard the questions in the form as warranties. By the same declaration, Makasa undertook to give notice to Zambia State Insurance Corporation of any alteration of risk and that repayment of renewals would be considered to reaffirm the answers previously made.

One of the questions in the proposal form was whether there had been any accidents, resulting in a claim or not in connection with any motor vehicle owned or driven by the proposer. Makasa's answer to this question was 'NO', which was true.

The policy excluded from the risk use for the carrying of explosives and use for any unusual or specially hazardous purpose and loss due to act of foreign enemy hostilities or warlike operations, whether war be declared or not were excepted.

After the policy had been issued, the Land Rover station wagon insured with Cairo Insurers, a different insurer, was damaged in the accident. No claim was made either for or against Mr. Makasa and the accident did not in fact alter the risk insured by the Zambia State Insurance Corporation in respect of the truck. While it was in Siavonga, the truck was blown up at a bridge near the boarder with Mozambique by members of RENAMO, a rebel group fighting the Mozambique government. RENAMO seized the truck, did away with its driver and passengers who were illegally offered a lift at a fee.

Although there was no declaration of war, there were hostilities in Mozambique between freedom fighters and government forces.

Zambia State Insurance repudiated liability and Makasa instituted the present proceedings to recover the value of the truck.

At pleadings, Zambia State Insurance Corporation contended that:-

- (a) the answer 'NO' to the question about previous accidents, reaffirmed by the payment of renewal premium entitled them to avoid the policy because:-

4. Question 2 (a) continued L 330

- (i) It was a warranty or
- (ii) It was a material misrepresentation even if the accident which had occurred did not alter the risk, since it was material for the defendant to know about the accident in order to decide whether the risk was altered;
- (b) The truck had not been used in accordance with the limitations on use but in a manner excluded from the risk and
- (c) the truck had been destroyed in the course of hostilities or warlike operations which were also excluded from the risk.

On the other hand, Makasa contended that:

- (1) by his contract he was required to disclose only alterations of the risk and had neither warranted the non-occurrence of accidents which did not alter the risk nor had he failed to disclose an accident which was material;
- (2) the limitations on use did not apply to use by the driver who was an unauthorized third party and
- (3) If it was possible to say in what circumstances the truck had been destroyed, it could not be said with certainty that they were circumstances which amounted to warlike operations.

Discuss the various issues of law raised and prepare the judgement of the court.

3. Makasa agreed to sell Avondale Ltd. the (plaintiff) a quantity of cement ex warehouse. The cement was in bags and was part of a cargo of cement which had been discharged at the warehouse. The plaintiff (Avondale Ltd.) paid the contract price and collected part of the agreed quantity. The remainder was damaged by the rain due to unsafe storage at the warehouse and the plaintiff refused to accept it. Chintu contended that the property in the cement had passed to the plaintiff before it was damaged there having been an unconditional appropriation of the cement to the contract through the action of the plaintiff of paying the contract price and collecting part of the agreed quantity. Avondale Ltd. argued that no property had passed in the remaining quantity as it was together with part of a cargo of cement and since the goods that had remained were yet unascertained, no property and hence no risk would pass from the seller to the buyer.

Advise both parties on their legal rights and liabilities.

4. You are an advocate with Sangwa Partners, a reputable law firm with offices in Lusaka and Kabwe. Your Senior Counsel Sangwa has referred to you this matter in which a three months bill was payable to the order of Chinungi, 'only' and crossed 'not negotiable'.

Your firm has been retained by the plaintiffs who are claiming as indorsees and holders for value. The issue is that the acceptors to whom Nsokolo, the transferee were indebted in a sum exceeding the amount of the bill, repudiated liability on the ground that the bill was not transferable.

Identify the issues of law involved and write an opinion for your Senior Counsel Sangwa.

5. (a) Describe various situations under which an undisclosed principal can intervene and take advantage of the benefit of a contract negotiated by his agent.

(b) Write short notes on ^{any three of} the following:-

- (i) Nature of F.O.B. contracts
- (ii) Exceptions to the Nemo dat quod non habet rule
- (iii) Jus tertii doctrine
- (iv) Subrogation
- (v) Ostensible Authority

6. Phiri and Mubanga were partners in a company which entered into a contract with the Zambia Army to supply generators. Payment was made by the army in instalments as and when each generator was supplied in the form of cheques which were Crossed 'X Co.' and marked 'Account Payee Only' and 'Not negotiable'. The partnership deposit card with the Partner's bank was marked 'All Parties To Sign Cheques'. One of the cheques made payable by the Army was taken by Phiri to Indo-Bank their joint bank, endorsed by Phiri alone to Mwelwa, one of Phiri's personal creditors and for whose credit Mubanga was not liable. Susan, the bank clerk collected the cheque and cleared it without due regard to the endorsement particularly that Phiri had done so sometime back in another transaction. After the cheque was cleared, the proceeds K20,000 was credited to Mwelwa's account and not to Phiri and Mubanga's joint account.

Mubanga has now brought an action against Indo-Bank in which he is urging the court to declare that the crediting of K20,000 to Mwelwa's account is improper and in breach of the duty of the banker to the customer. Explain Phiri's authority to endorse the cheque and analyse the liability of the Bank.

7. L 330

7. (a) Outline the duties of an agent to his Principal.
- (b) In your view does a contract of agency possess legal rationale?

END OF EXAMINATION

THE UNIVERSITY ZAMBIA
UNIVERSITY EXAMINATIONS - AUGUST, 1988

L 340

ADMINISTRATIVE LAW

• TIME: THREE HOURS PLUS TEN(10) minutes to read the paper.

ANSWER: ANY FOUR QUESTIONS

1. Discuss the objectives of the Zambian Government in social and economic development after 1964 and show how these influenced the development of Zambian Administrative Law.
2. Mbulukutu was employed as a teacher in Zambia. She played a leading role in demanding salary increments for teachers early this year. She subsequently received a letter from the Permanent Secretary in the Ministry of General Education and Culture informing her that her services in the teaching service had been terminated. Mbulukutu quickly lodged an appeal to the Teaching Service Commission. The latter ordered that she be reinstated. The matter was thereafter brought to the attention of the President. The President asked the Teaching Service Commission to reconsider its decision in the national interest. Consequently, the Teaching Service Commission wrote to Mbulukutu, informing her that it had reconsidered its decision and had now decided to terminate her services. Mbulukutu has approached you to prepare a legal argument on her behalf. She wants to know the legal grounds on which she can challenge the decision of the Teaching Service Commission to dismiss her from/ ^{her employment} Prepare her argument.
3. Evaluate the effectiveness of the Commission for Investigation as a defender of citizen's rights against administrative wrongs in Zambia.
4. Examine the use of Commissions of Inquiry in the Zambian administrative process. To what extent have Commissions of Inquiry been used to steer certain aspects of Government policy in Zambia?

5. Mwibu has been carrying on the business of retail trade for 10 years. On 2nd February 1988, his trading licence was revoked on grounds that he supplied essential commodities to the black market. Section 8 of the Retail Trade Act under which his licence was revoked provided that, "The President may at any time withdraw the licence of any trader whenever it appears to him that such a trader is engaged in unlawful business. A decision by the President under this Act shall not be appealed against in any court of law". Mwibu seeks legal advice on:

- (a) Whether the withdrawal of his licence was legal;
- (b) Whether he can successfully challenge the decision of the President; and
- (c) What remedies are available to him.

Advise Mwibu.

6. On 1st January 1988, the Minister of Commerce announced new prices for cooking oil, bread, soap and mealie meal. These prices were contained in a statutory instrument which was issued on 5th January, 1988. On 6th January, an alert Member of Parliament raised a point of order in the National Assembly and asked the Speaker to determine on whether it was in order for the Government to raise prices^{of} essential commodities at a time when people's living standards were adverse. The Speaker ruled the Government prices as being out of order on grounds that they were contrary to humanism. The Government has asked you in your capacity as Attorney General to advise it on the legality of the Speaker's determination. Advise the Government.

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - AUGUST - 1988

L 410

JURISPRUDENCE

TIME: THREE hours

ANSWER: ANY FOUR questions. You are advised to read carefully each question and answer the question concisely.

1. "Kelsen's doctrine is perhaps the most consistent expression of positivism in legal theory. For it is characteristic of legal positivism that it contemplates the form of law rather than its moral and social content, confines itself to the law as it is without regard to its justness or unjustness, and endeavours to free legal theory from all qualifications or value judgments of a moral, political, social, or economic nature."
 - (i) Elucidate on how Hans Kelsen went about formulating a theory of law that reflected the proposition stated above;
 - (ii) What would be the reaction of the natural law jurists and the Sociological Jurists to the position taken up by Kelsen as stated in the above proposition?
 - (iii) What is your own verdict on the question posed for debate in the instant case?

2. "It is perhaps the most characteristic facet of the American Realist Movement that law appears to the realist as a body of facts rather than a System of rules, a going institution rather than a set of norms. What judges, attorneys, police and prison officials actually do about law cases - essentially this, to the legal realist, appears to be the law itself."

Elaborate on this thesis demonstrating clearly your understanding of the implications of the teachings of the leading American Legal Realists.

3. Thrasymachus, in Plato's Republic, concludes that justice is no more than the way which the strong establish over the weak. Classical marxism, starting from the same view that law has nothing to do with justice, asserts that law is in fact a cloak for class interests. Natural Law, on the other hand, views law either as synonymous with justice, or as an artifact of justice.

Discuss these three postulates of the relationship between law and justice, and formulate your own views on the issue.

4. "Without law there is no order, and without order men are lost, not knowing where they go, not knowing what they do."

Outline an argument for the imposition of social order through law in society.

5. "laws and Morals", it is sometimes argued, "do not represent entirely separate or mutually exclusive vehicles of social control; they converge and overlap on various occasions in actual operation of a legal system", therefore, as Justica Cardozo has stated, "Judges will stretch a point here and there in response to a moral urge".

Critically comment on this proposition in the context of the available orthodox theories about the relationship between law and morality. Illustrate justice Cardozo's assertion in the above statement with any cases you have studied in any branch of law.

6. Elaborate on the main theses of the "Law and Social Change" movement in legal theory, illustrating your answer with concrete examples drawn from the Zambian experiences.
7. What is the nature, scope, objectives and methodology of Jurisprudence?

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY DEFERRED/SUPPLEMENTARY EXAMINATIONS-OCTOBER, 1988

L 410

JURISPRUDENCE

TIME: THREE HOURS

INSTRUCTIONS: Answer any FOUR questions

1. Analyse the principle teachings of the Sociological School of Jurisprudence.
2. What is the nature of the relationship between law and morality?
3. Discuss and evaluate the Austinian theory of Law.
4. What are the main arguments advanced by one Marxist exponents of the function of Law in Society?
5. What is the nature, objectives, and function of Jurisprudence.
6. Drawing experiences from explain what is implied in the theory of Law and Social change.

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA
UNIVERSITY EXAMINATIONS - AUGUST - 1988

L 420

BUSINESS ASSOCIATIONS

TIME: THREE hours (plus 10 minutes in which to read the question paper).
ANSWER: FOUR Questions (Two from each Section)

SECTION A

1. Imagine you are K.N., once a fourth year Law Student best remembered for missing Business Associations classes. You are now a legal practitioner and you have been approached by uncle Jere who has entrusted you with the responsibility of forming a company to specialise in the selling of Finkubala delicacies.

Trying to be a 'good' nephew you make arrangements for the intended company, to be known as "FOOLS ONLY TO PAY LIMITED" to buy Unza Students Canteen for purposes of your uncle's business out of the money to be borrowed from the Peoples Commercial Bank. Eventually the company is formed but for purposes of goodwill you have advised your uncle not to display the company's name and instead to trade under Unza Students Canteen.

Two months after the commencement of business the representatives of Unza Students Canteen demanded payment for their building or else they would throw your uncle out. You advise uncle Jere who is also the Company's Managing Director to pay them by signing two cheques bearing the name "FOOLS TO PAY." The cheques have bounced and the following persons intend to raise issues against uncle Jere, namely, the other shareholders of the company, the Registrar of Companies and the representatives of the Unza Students Canteen. What issues are they likely to raise and what would be your uncle's defence?

(25 marks)

2. (a) Relate the ultra vires rule to the objects clause as is demonstrated in the Zambian case of Kernezos v Hermes Safaris Ltd (1978) Z.R. 197.

(15 marks)

- (b) What are class rights as per Lord Evershed M.R. in White v Bristol Aeroplanes Co. Ltd. (1953) ch. 651, and what controversy has that definition given rise to?

(10 marks)

- (c) The rule in Foss v Harbottle has been further edged in the case of Daniels v Daniels (1978) 2 All E.R. 89. Explain to what extent this statement is true?

(10 marks)

3. (a) Discuss the directors' duties and offer suggestions for their improvement

(10 marks)

- (b) Mateyo is the Managing Director of MACO Ltd., which owns 99% shares in NECO Ltd. and is also the beneficial owner of 1% shares which are held by nominee shareholders. In addition, Mateyo is also the chairman of the Board of Directors of NECO Ltd.

On 20th August, 1988, Mateyo, without consulting the Board of Directors, wrote a letter to Mulilo Fire - who has been working as General Manager for NECO Ltd. for the past ten years - advising him of his immediate dismissal for social irresponsibility.

Prior to the letter of dismissal, Mulilo Fire had always been receiving instructions from Mateyo and had always executed those instructions to the letter. Mulilo Fire has refused to accept his dismissal and now questions the competence of Mateyo to dismiss him.

As Mulilo Fire's legal adviser, what advice can you give?

(15 marks)

SECTION B

4. (a) What is a take-over?

(5 marks)

- (b) INDECO Ltd. is a company wholly-owned by the Government. It was formed in 1960 under the then Companies Ordinance for the purpose of implementing the Northern Rhodesia Government's policy of industrialisation.

During the 1968 Economic Reforms the post independence government charged INDECO Ltd. with the responsibility of negotiating government take-over of 26 privately-owned companies and thereafter to hold shares which the government was to acquire in those companies. The companies to be taken over ranged from retail shops to transport and manufacturing undertakings.

As a result of the take-overs the then chairman of INDECO Ltd. realised that there was need to rationalise the Company's operations to ensure maximum control. Two proposals were put before him as follows:-

- (i) to form sub-holding companies to be responsible for retail shops, transport and manufacturing sectors; or
- (ii) to establish departments or divisions within INDECO Ltd, and the departments or divisions to be responsible for various sectors, namely, retail shops, transport and manufacturing.

If you were the chairman of INDECO Ltd. what proposition would you accept? Give reasons for your choice.

(20 marks)

5. (a) What is the concept of democratic control in a co-operative society, and how does it differ with a company?

(10 marks)

- (b) 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?

(15 marks)

6. (a) Discuss EITHER the terms found in a typical partnership agreement OR the duties of the partners.

(10 marks)

- (b) Chipata & Co. is a partnership composed of Banda, aged 25 years and Phiri, aged 15 years. The partnership is engaged in the business of selling an Eastern Province delicacy called Mbeba. This partnership arose out of an oral agreement between Banda and Phiri; and so far no formal deed of partnership setting out conditions and terms has been executed.

However, notwithstanding that most of the partnership work (especially digging and preparing mbeba) is done by Phiri, the profits are shared as follows:

Banda	60%
Phiri	40%

Phiri now wishes to pull out of the partnership and also wishes to be advised on his share of the capital.
Please advise.

(15 marks)

THE UNIVERSITY OF ZAMBIA
UNIVERSITY SUPPLEMENTARY EXAMINATION - OCTOBER 1988

L 420
BUSINESS ASSOCIATIONS

TIME: TWO OHOURS

ANSWER: FOUR QUESTIONS

1. Outline the procedure for changing a company's name and show in what material respects it differs from the reduction of share capital. (25 marks)
2. Explain the implications of the mandatory provisions of S.8 of the Companies Act with regard to a company limited by guarantee. (25 marks)
3. Mutale has been dismissed From Fish Farmers Limited where he has served for the past 20 years in various capacities, including that of executive director. Circumstances leading to his dismissal were as follows:

A board of Director's meeting to which Mutale was invited was convened sometime in 1984 to discuss localisation of the manpower in the Fish Farmers Limited which is based in Chiawa's Village. Mutale spoke against localisation and branded it as 'villagerisation' in disguise. He argued that it was contrary to the national motto of One Zambia One Nation.

After the meeting, one of the directors realised that apart from Mutale, they all came from Chiawa's village. He then vowed openly to remove Mutale from the Company. Consequently consultations were held with other directors and it was resolved to remove Mutale from the board and to dismiss him from his job as Technical Director.

To effect what was privately resolved, the Board Secretary was instructed to write to Mutale and inform him that the Board had decided to remove him from the position of director. The Legal Director who valued the services of Mutale reluctantly agreed to such a move.

A week later the Board Secretary met the Legal Director at Lusaka International Airport where he was boarding a plane to Ndola and informed him that a Board of Directors' meeting to discuss the fate of Mutale was scheduled for the following day at 9.00 hours at the usual venue. A board meeting was subsequently convened where both the Technical Director and the Legal Director were not present and where it was decided to dismiss Mutale. The Technical Director and the Legal Director have teamed up to challenge the board's decision. Advise all the parties concerned. (25 marks)

4. Discuss at least three main problems that are associated with the parastatal companies in Zambia. (25 marks)
5. Compare and contrast co-operative societies from companies formed under the Companies Act.
6. List the advantages and disadvantages of a partnership over a limited liability company. (25 marks)

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA
UNIVERSITY SUPPLEMENTARY EXAMINATION - OCTOBER 1988

L 420
BUSINESS ASSOCIATIONS

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END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - AUGUST, 1 988

L 430

PUBLIC INTERNATIONAL LAW

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

ANSWER: ANY FOUR QUESTIONS

1. The state of Midbari runs a state registered aircraft popularly known as the Husdrabal. One evening, the Husdrabal set on a flight to the United States via Shangri, the capital city of the Republic of Saaq. Aboard the Husdrabal from Midbari was a well known American personality, 30 ordinary American citizens and 50 Zambian citizens. At Shangri international airport 8 persons of unknown nationality boarded the Husdrabal. After the Husdrabal was in flight for two hours from Shangri, the 8 persons of unknown nationality announced that they had taken control of the Husdrabal and asked every one to comply with their instructions.

The Husdrabal landed at an airport in the state of Yokum where the 8 persons of unknown nationality informed the crew and passengers that they were members of the Society for World Justice.

The 8 members of the Society for World Justice were received by the Minister of Justice for the state of Yokum who described them as 'mankind's finest sons'. A prompt press conference was arranged at which one of the eight said that they were taking as hostages all persons aboard the Husdrabal in order to enforce their demands. Their demands were that the United States' Government should cease rendering any form of support to contra rebels in Nicaragua. A United States Government spokesman categorically rejected any possibility of meeting the demands, describing them as 'callous, ill conceived and irresponsible' and demanded that the 'terrorists' be extradited to the United States of America to stand trial for their action. Yokum's Minister of Justice declined to extradite 'Mankind's finest sons' on humanitarian grounds and expressed willingness to act as a go between in any negotiations between the United States Government and 8 members of the Society for World Justice

The Attorney General of the United States of America has now approached you for advice on the jurisdictional competence of the Governments of, the United States of America, Midbari and Yokum, including the latter's obligations, in this matter. Write a brief legal opinion on the various issues of law.

2. A Beilan owned cruise vessel was sailing through the coastal waters of the state of Mojo, about 10 nautical miles from the coast. Unknown to the Captain of the vessel, one of the members of the vessel's crew carried a powerful device for transmitting coded military messages. These messages were intercepted by Mojo state's counter espionage unit which traced the source of the messages to the Beilan vessel. Two coast guard patrol boats confronted the Beilan vessel and informed the captain of the vessel that they were under orders to search the vessel. The captain objected to the search of his vessel, arguing that the vessel had a right of innocent passage, and in any case, it was extraterritorial. The state of Mojo seeks your advice on:
 - (a) the exercise of the right of innocent passage by the Beilan vessel;
 - (b) the implications and significance of the extra territorial claim by the Beilan vessel; and
 - (c) whether Mojo state has capacity in international law to subject the Beilan vessel to its jurisdiction.

Advise the state of Mojo.;

3. Briefly describe the following and show their significance in the Law of Treaties:
 - (a) Negotiation;
 - (b) Adoption and authentication;
 - (c) Signature;
 - (d) Ratification.
4. Angola, an independent state in Southern Africa has experienced political turmoil due to civil strife between the rebel UNITA movement and the Government of Angola. Late one evening, Angolan Government forces bombarded UNITA strongholds. In the ensuing confusion, Chiba, an armed member of UNITA flee Angola into Zambia. He reported to the Zambian Immigration Officials and was granted refugee status on application. The Angolan

Government heard of the presence of Chiba in Zambia and made diplomatic representations requesting the Zambian Government to hand him over to the Angolan authorities. The Zambian Government has consulted you for legal advice on the following issues:

- (a) Whether it is lawful to extradite Chiba in spite of the none existence of a bilateral treaty of extradition between Zambia and Angola;
 - (b) Whether grant of refugee status to Chiba is, on legal grounds an act/^{of} hostility towards the Angolan Government;
 - (c) What options are open to the Zambian Government other than extraditing Chiba to Angola and continuing to give him asylum in Zambia?
5. Discuss the rationale and justification for diplomatic immunity. Do you think that such immunity should continue to be upheld in international law today? Give reasons for your answer.
6. The composition of permanent members of the Security Council of the United Nations was patterned on the need for realising a collective approach to international peace and security. How far has the United Nations, in your opinion, reflected this ideal in its efforts to maintain international peace and security?

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA
UNIVERSITY EXAMINATIONS - AUGUST - 1988

L 350

FAMILY LAW

TIME: THREE hours (plus 15 minutes to read the question paper).

INSTRUCTIONS:

- (i) Answer FOUR questions
 - (ii) All Relevant and Unmarked Statutes may be Brought into the Examination Room.
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1. The Matrimonial Causes Act, 1973 of England is applied in Zambia **under** the provisions in the High Court Act making the law of England 'for the time being in force' the law of Zambia in matrimonial causes'.
 - (a) Consider the desirability of this arrangement, and
 - (b) Give arguments for and against extending the maintenance and property provisions of the Matrimonial Causes Act to marriages contracted under customary law if such an arrangement were to be proposed.
2. "The capacity to marry is of little significance under customary law". Discuss the validity of this statement in relation to:
 - (a) the decision of Justice Woodman in the case of R v. Chinjamba (1949) 5 N R L R 384.
 - (b) The requirements of a valid customary law marriage.

3. Tina Mwenda was staying with her brother, Bonzo in Chelston, Lusaka, when she met her old boyfriend Tomu, Tina's father had a strong dislike for Tomu whom he called a notorious gangster and had turned down a proposed marriage between Tina and Tomu. Tina subsequently married Tomu under the Marriage Act (Cap. 211), against her father's wishes and without his knowledge. She was 15 years of age then. Tina's brother, Bonzo, pretended to be her father and gave consent to the marriage.

When Tina's father found out about the marriage, Tina already had two children of the marriage with Tomu. Tina's father was furious at Tina and her brother's deception about the marriage. Nevertheless he gave up his earlier objection against Tina and Tomu's marriage for the sake of the children of the marriage.

He accordingly gave his consent to the marriage and demanded for bride-price from Tomu. Tomu paid the bride-price and Tina and Tomu went through a ceremony of marriage under Ngoni customary law.

Tina and Tomu's marriage is on the rocks. Before petitioning for divorce, Tina is anxious to know:

- (a) The validity of her marriage.
- (b) The legal status of their children,
- (c) Whether repayment of bride-price to her husband will be required as a condition for divorce.

Advise Tina.

4. Bwalya married Maria in June 1980 under customary law. During all the years following, Maria was employed in various jobs. She helped in building their matrimonial home which was registered in Bwalya's name. Occasionally she paid the monthly mortgage instalments on a loan of K20,000 obtained by Bwalya to purchase the house.

All along the marriage has been a happy one. However, Bwalya won the Zambia State Lottery jackpot in January, 1987. Since then Bwalya's lifestyle has never been the same. He has turned to heavy drinking and spends much of his money on girl-friends. Maria wants to petition for divorce. However, she is worried that a decree of divorce might cost her the matrimonial home.

- (a) Advise Maria regarding her rights, if any, in the matrimonial home.
- (b) Would your advice be any different if Bwalya and Maria's marriage was contracted under the Marriage Act, Cap. 211?

5. In 1982 Rose married Mike under the Marriage Act, Cap. 211. In 1983, a baby girl was born, but to Mike's surprise a coloured. Mike protested and told Rose that the child could not be his. After beating her, Rose confessed that the child was that of John Smith, a man who had been her boy-friend since their marriage. The child was named Jude Smith. Nevertheless Mike accepted the child as his own and both him and Rose treated it as their own child all the time.

Another child, a boy was born to the couple in 1984. It was named Cabota.

Shortly after the birth of Cabota, Mike's behaviour changed. He started coming home late and sometimes sleeping out. He told Rose he had a beautiful girl friend and that he would fix her for her unfaithfulness with Smith. Rose protested and threatened to leave the matrimonial home unless Mike stopped seeing his girl-friend. This would not change Mike's

behaviour. Instead, he started spending weeks away from home, coming home at weekends only to deliver his clothes to his wife to wash. In addition, Mike frequently beat up Rose, and on one occasion he beat her so badly that she had to be hospitalised for two weeks.

- (a) Rose has petitioned for divorce. What are her chances of success?
- (b) Rose has also applied for maintenance by Mike of the two children. But Mike has ~~contested~~ her application in relation to Jude on the ground that she is not his child.

Advise Mike on the possible outcome of his contention.

6. While waiting for a bus at the City Centre one night, John met Mbuyu, a 22year old male dressed in a girl's wig and attire. Mbuyu has a feminine voice and looks. John immediately fell in love with Mbuyu and proposed marriage to which Mbuyu agreed. The next day Mbuyu and John met to arrange their wedding. At the same time Mbuyu confessed his true sex to John. obsessed with his love for him John assured Mbuyu there would be no problem as he would send him to South Africa for an operation to change his sex to that of a female. Two weeks later, Mbuyu was in South Africa and had a successful change of sex operation. Upon return Mbuyu and John married under the Marriage Act, Cap. 211.

The marriage was, however, short lived as Mbuyu took to excessive drinking and nagging and John grew totally fed up of his wife. John fell in love with Kangwa, a recent law graduate, aged 24 years. He married her under Bemba customary law. A few weeks later Kangwa threatened to leave John unless he married her under the Marriage Act. John obliged and went through a ceremony of marriage under the Marriage Act with Kangwa.

A Police Officer, who has closely followed John's activities and relationship with Mbuyu and Kangwa has sought your advice on:

- (a) The legal status of John's marriages to Mbuyu and Kangwa
- (b) The possibility of John ^{having} committed a criminal offence and the chances of success of a prosecution against him.

Advise the Police Officer.

- 7.
- (a) Write a brief statement on domicile with particular reference to contracting a valid marriage.
 - (b) ~~Antony~~ a domiciled Englishman and law professor was separated from his English wife. He came to Zambia to work on a short contract with the University of Zambia. He met seventeen year-old Susan whom he married under the Marriage Act Cap. 211. The marriage was conducted under the free to satisfy Baker's obsession for open air life and the Zambian sunshine. Susan and Baker had agreed that soon after the ceremony of marriage, they would fly to and permanently settle in Free country, a newly independent African state where Baker had just been offered a good job. Free country is an Islamic country and allows men to many more than one wife.
Consider the validity of Baker and Susan's marriage.

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA
UNIVERSITY EXAMINATIONS - AUGUST - 1988

L 470

CRIMINOLOGY

TIME: THREE hours

ANSWER: ANY FOUR questions.

11. Criminal statistics as contained in the Zambia Police Annual Reports are generally unreliable.

- (a) How would you account for this unreliability?
- (b) How could ~~the~~ unreliability of these statistics be minimized?

2. A case may reach the Subordinate Court from the Local Court by any of the following means:

- (a) Transfer of cases
- (b) Review of cases
- (c) Appeal process and
- (d) Committal for sentence.

Briefly, but critically describe each of these procedures.

Do you think these procedures adequately cover the functional relationship between the Subordinate and the Local Courts?

3. "Ideological questions often influence policy formulation and practices in the area of criminal justice."
With this view in mind, discuss how the Zambian Philosophy of Humanism explains or should explain the existence of crime and what theories of control it proposes or should propose.

4. In view of the ~~increasing~~ crime wave in Zambia, the country needs an efficient, well-trained and well equipped police force. At the same time, many people would like the police to carry out their duties according to law.

Suggest how a balance between police powers and practices on one hand and civil liberties on the other can be achieved in our country.

5. One evening in January this year Tembo and Banda entered a chemist shop in Cairo Road, Lusaka by breaking through the roof. They forced open the Dangerous Drugs cupboard and removed a large quantity of preparations containing controlled Drugs under Part I of the Dangerous Drugs Act, Cap. 549 of the Laws of Zambia including pethidine, morphine, diamorphine and methadone.

Tembo was arrested almost immediately as he was running away. A plastic bag containing all the stolen drugs carried by Banda was recovered from outside the shop together with a brown bag containing tools. The street value of the drugs was estimated at K20,000.00 though the retail value was some K800.00. Tembo admitted the offences when he was interviewed. He said that he had been taking hard drugs for about three years and he intended to keep the drugs for personal use.

Banda was arrested five (5) days later. He denied the offences: even though evidence connecting him with the offence was overwhelming.

Antecedents of the two men

Tembo: He is 24 and single. Since leaving school at the age of 15, he had had several jobs of short duration usually on building sites. In the two months prior to the offences he was unemployed, but recently he has been working as a painter. He has two previous convictions of malicious damage to property and burglary. At school he usually played traunt. He stays with the co-defendant, but before that, he for 2½ years lived with a divorced woman fourteen years his senior. He left her and her two children after a quarrel. His laywer argues that "I recognise the seriousness of the defendant's ~~criminal~~ activity but I suggest that both the defendant and society will ultimately benefit from a court decision that will allow him to retain his freedom. It is my opinion that the actual serving of a prison sentence would introduce the risk of confirming any elements of criminality whilst preventing him from remaing in work. Moreover my client pleaded guilty."

Banda: He is also 24 and single. Since leaving school at the age of 15 without passing any examination, he has worked as a painter, and labourer. He has been in employment for the past 15 months. He has three previous convictions of criminal tresspass, common assault and receiving stolen property.

Banda's mother has been married three times. He is a child of the second marriage and the fourth of five children. He has never experienced real parental love in his life. His counsel pleads for leniency because "Banda is a victim of his personal circumstances and he feels terribly rejected by society."

The maximum penalty for breaking into a building and committing /^afelony therein is 7 years and the maximum penalty for possession of controlled Drugs under Part 1 is 3 years.

You are sitting as a Class 1 Magistrate, how would you proceed to sentence Tembo and Banda?

Zambia is trying to break away from 'closed' to 'open air' prisons. Suggest how an ideal 'open air' prison should be constituted.

The Zambian people are at the moment genuinely concerned about the low level of morality among the young people especially promiscuity with its related problems of sexually transmitted diseases, teenage pregnancy etc.

Assume that Parliament wishes to introduce legislation which will make it a criminal offence to have sex before marriage - the offence to be punishable with a fine not exceeding K500.00 or imprisonment not more than three months in default or both fine and imprisonment.

What factors should M.Ps take into consideration in framing this legislation?

END OF EXAMINATION