

**THE UNIVERSITY OF ZAMBIA**  
**SCHOOL OF LAW**  
**2016/2017**

LPR	2920	THE LAW OF CONTRACT
LPR	2920	LAW OF TORTS
LPR	3115	EMPLOYMENT LAW
LPR	3920	LAND LAW AND PROPERTY RELATIONS
LPR	3940	FAMILY LAW AND SUCCESSION
LPR	3952	CIVIAL AND CRIMINAL PROCEDURE
LPR	4155	ALTERNTIVE DISPUTE RESOLUTION
LPR	4920	JURISPRUDENCE
LPU	2940	CRIMINAL LAW
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**THE UNIVERSITY OF ZAMBIA**

**SCHOOL OF LAW**

**END OF YEAR EXAMINATIONS**

**THE LAW OF CONTRACT – LPR 2920**

**SEPTEMBER 2017**

**INSTRUCTIONS:**

- Answer Four (4) questions, one from each part. Question 1 is compulsory
  - Time allowed: Three (3) hours plus five (5) minutes
  - This examination carries a total of 60 marks
  - Mobile telephones; Tablets or any form of computing instruments are not allowed into the Examination Room
  - Candidates are not permitted to bring any statutes into the examination room
  - This subject is for Candidates in 2<sup>nd</sup> Year of LLB
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## **PART A (COMPLUSORY)**

### **Question One**

(a) In 2015, Tinto, a music promoter, spotted Anita, 17, and Joel, 18, playing music on the pavement along Cairo Road Lusaka. Tinto told the duo that they were very talented and he could make them rich and famous. Tinto told them that he was prepared to invest his time and money if they committed themselves to his management. Tinto offered the duo a contract which contained the following terms:-

- (i) Anita and Joel agree not to write and/or play music for any recording artist(s) or record label.
- (ii) The contract is for a period of five (5) years. At the end of this period, the contract can be renewed for another five years at the exclusive option of Tinto.

Anita and Joel both signed the contract. Since 2015, they have had considerable success both nationally and internationally. They have now been offered a lucrative contract by Mundo Records, a rival management company, which they wish to accept.

This morning the duo have called on you for legal advice. Advise them

**(9 Marks)**

- (b) Illegality may affect a contract in two principal ways. In the first place, the illegality may relate to the formation of the contract. Secondly, the illegality may arise in the performance of an otherwise valid and enforceable contract.

With the aid of case law, discuss the above statement.

**(9Marks)**

**[Total: 18 Marks]**

## **PART B**

### **Question Two**

- (a) With the aid of case law, discuss how the Courts have dealt with the situation where a person makes a contract pretending to be someone he is not.

**(8 Marks)**

- (b) Kintu, a tailor enters into a contract with Mbindo to make him a work suit for K1, 000. Before Kintu has started to make the suit, Mbindo informs him that he no longer wants it and will not accept delivery of it. Kintu nevertheless makes the work suit, which Mbindo has rejected.

Advise Kintu on his contractual rights.

**(6 Marks)**

[Total:14 marks]

### Question Three

The classic statement of the rules regarding remoteness of damage in contract is found in the Judgment of the Court of Exchequer in *Hadley v Baxendale* (1854) 9 Exch 341, as interpreted in later cases.

With the aid of case law, discuss the rules regarding remoteness of damage clearly pointing out the range of recoverable loss following breach of contract.

[Total:14 Marks]

## PART C

### Question Four

- (a) Prince Mubukwanu of Barotseland announces his engagement to Princess Mphaso of Nyasaland and confirms that his royal wedding will take place on 30<sup>th</sup> August 2017. Following the wedding ceremony, there will be a parade through the centre of Mongu city up to Limulunga's Nayuma harbour and from there, there would be a boat cruise to Lealui.

Masilinga enters into a contract with Masiliso to rent an apartment that has a good view of the parade route. The contract price is K10, 000 of which K7, 000 was paid in advance and the balance of K3, 000 upon the end of procession. Masiliso buys new furniture and engages a cleaning company to clean the apartment.

On the morning of 30<sup>th</sup> August, 2017 at 06:00 hours the Ngambela of Barotseland (Prime Minister) issued a decree banning all events of entertainment nature following attempts to overthrow the King of Barotseland by the Linyungu Ndambo Movement.

Around 10:00 hours on the same day, Fwelu enters into a contract with Sitwala for the hire of a speed boat to enable the latter view and follow the procession from Nayuma harbour to Lealui.

This morning, Masilinga and Fwelu have called on you for legal advice over what has transpired.

Advise the duo on their contractual rights.

(9 Marks)

- (b) With the aid of case law, discuss the doctrine of economic duress.

(5 Marks)

[Total: 14 Marks]

### Question Five

- (a) It is quite possible and common for the parties to agree between themselves the amount of damages that will be awarded in the event of breach of contract. Damages that are agreed between the parties are referred to as liquidated damages. The Courts draw a distinction between liquidated damages clauses and penalty clauses.

With the aid of case law, discuss the principles, which the Courts have developed to distinguish a liquidated damage clause from a penalty clause.

**(9 Marks)**

- (b) Discuss the equitable doctrine of undue influence.

**(5 Marks)**

**[Total: 14 Marks]**

### PART D

#### Question Six

Ewan Mackendrick has observed thus with regard to exclusion clauses:-

*"A contracting party who wishes to include an exclusion clause in a contract must overcome three hurdles before he can do so. First, it must be shown that the exclusion clause is properly incorporated into the contracts. Secondly, it must be shown that properly interpreted the exclusion clause covers the loss, which has arisen. Thirdly, there must be no other rule of law which would invalidate the exclusion clause", Ewan Mackendrick Contract Law 7<sup>th</sup> edition, Palgrave Macmillan 2007, p. 225.*

Discuss the above statement with the aid of case law.

**[Total:14 Marks]**

#### Question Seven

Write short notes on the following:-

- (a) The Proferentem Rule **(4 Marks)**
- (b) The Parol Evidence Rule **(3 Marks)**
- (c) The doctrine of fundamental breach **(4 Marks)**
- (d) The duty to disclose material facts in one's possession before entering into a contract **(3 Marks)**

**[Total:14 Marks]**



**THE UNIVERSITY OF ZAMBIA**

**SCHOOL OF LAW**

**LAW OF TORTS, LPR 2930**

**FINAL EXAMINATION**

**AUGUST, 2017**

**INSTRUCTIONS:**

- Students must answer a total of four questions, one from each part. Part A (Question One) is compulsory.
- Time allowed: Three (3) Hours plus five (5) minutes to read through the paper.
- This examination carries a total of 60 marks.
- Candidates are not permitted to bring any statutes in the examination room.
- Candidates must NOT turn this page until the invigilator tells them to do so.

## PART A (COMPULSORY)

### Question One

Musonda was considering using his hard earned gratuity in the sum of K500 Million to buy a business, CDE Limited, which specialised in ordering maize for resale to the Food Reserve Agency. He however, needed additional finance to complete the purchase and wanted to make sure he was investing wisely. He therefore approached Bob Business, who had only just set up as a business consultancy, working as a volunteer for a publicly funded advice service for small businesses. He requested Bob Business to prepare a Professional Report advising on the prospects of the business and whether CDE Ltd would be a suitable investment. Musonda told Bob Business that the Professional Report would be shown to potential investors. Bob Business' Professional Report was highly favourable and concluded that the business was presently sound and had good prospects for the future. Acting on the information contained in the Professional Report, Musonda decided to invest in the business.

Additional funding was to come from Musonda's bank and his friend Clive Tamanga. Musonda showed Bob Business' Professional Report to Clive Tamanga. Clive Tamanga subsequently invested a large amount of money in the purchase of CDE Limited. Musonda then sent a copy of the Professional Report to his bank, to support his application for a business loan. In fact, the bank manager had already signed all the documentation approving the loan, as it was the bank's custom and practice to rely upon its own assessment of the business when making loan decisions. Nevertheless the bank manager was impressed by what he read in the Professional Report.

It has now come to light that, when Bob Business prepared the Professional Report, he did not inspect CDE Limited's accounts so he was unaware that the business was in a poor financial position. Bob Business had not read a recent article in the Business Consultants' Gazette talking about forthcoming changes to maize marketing and related aspects, and stating that businesses offering purchase, sale and resale of maize and related products were no longer considered a sound investment. In fact Bob Business, (who was rather new to the profession as noted above), was unaware of the Business Consultants' Gazette although it was widely read in the profession.

Musonda invested his entire gratuity in the sum of K500 Million in CDE Limited. Subsequently business declined disastrously, Musonda was unable to repay the bank loan and CDE Limited went into liquidation. Musonda, Clive Tamanga and the Peoples Bank all lost their investment.

Advise Musonda, Clive Tamanga, and the Peoples' Bank of their possible claims in the law of torts. (18 marks)

## PART B

### Question Two

(a) On 28th April, 2017, all online and hard print news outlets carried the story of the acquittal of a Radio Director on assault charges. The substance of the story was that the Radio Director was accused of occasioning actual grievous bodily harm on a police officer but the Court had found that the Radio Director had acted in self-defence against all the police officers. On a second charge of common assault on a police officer, the Court also acquitted the Radio Director. The Court further found that the police were over-enthusiastic in all their actions in this case.

The acquitted Radio Director has now come to you, seeking advice on whether there is anything she can do about all this “persecution” that she suffered at the hands of the police officers. Write a legal brief outlining the legal advice you would offer, citing applicable case law and providing any applicable rationale for your answer. **(10 marks)**

(b) Compare and contrast public and private nuisance. **(4 marks)**

### Question Three

Amai Sarah owned a speedboat. Sometime during the course of 2017, she started a business offering trips from the harbour on Lake Tanganyika. She placed the following notice on the harbour wall:

***Thrilling high-speedboat trips K250...***

***Lifejackets provided...***

***Passengers ride at their own risk.***

On 15 August 2017, Bwale and Chingaïpe were looking at the notice. Amai Sarah asked them if they wanted to go on a trip. They both said they were worried about the risks and Amai Sarah assured them that, although there were always risks in boat trips, they would be quite safe. She said they would have an exciting trip as she would be sailing very fast. Bwale and Chingaïpe decided to go ahead and paid Amai Sarah for the trip. On the trip, Amai Sarah went too fast, lost control of her boat and hit into a rock. Chingaïpe suffered severe bruising to his chest. Bwale was thrown into the boat's controls and was blinded in one eye. Both Chingaïpe and Bwale were taken to hospital. Amai Sarah was not injured in the collision. A few months after the collision, Bwale returns to work as a mechanic at Tangawiza Limited. Despite his injury, Tangawiza Limited fail to provide him with safety goggles. Whilst fitting a new exhaust to the underneath of a car, a bolt falls into his good eye, causing serious injury.

Advise all the parties of any potential liability in the law of torts. **(14 marks)**



## PART C

### Question Four

The following is an excerpt from an article entitled, '*A Matter of Justice: Costly lesson for tabloid that picked on a Chief Justice*', C. Rickard, Legal Brief: A matter of justice, Issue No. 55, 9<sup>th</sup> May, 2017, available at [www.legalbrief.co.za](http://www.legalbrief.co.za) :

Not a good idea to defame a Chief Justice, even one that has retired. But media outfit Red Pepper did the unthinkable and in October 2015 ran a cover story headlined: 'Exposed! 100 most indebted personalities revealed'.

Red Pepper's story about Wambuzi, the retired Chief Justice of Uganda, told readers that he was the 'proprietor of the posh Namuwongo-based Greenhill schools' and included a photograph of him. It turned out that almost every element of the story was false, and that Red Pepper had not asked Wambuzi for his comment before running it.

Litigation began in December 2015 and on 4 May 2017, the High Court in Kampala delivered its findings: as Red Pepper conceded, the story was false; the allegations were in fact defamatory of Wambuzi; the apology could not "by any measure" qualify as such; the 'apology' was followed by an unsuccessful plea of 'truth' by the publication; and the retired chief justice was entitled to general damages as well as 'exemplary damages', plus his costs. How much should he be awarded? Red Pepper submitted on this question by saying "should the court find that the publication was defamatory and award damages, the former Chief Justice should be entitled to 'nominal damages' only." Counsel for Red Pepper argued that an amount of Sh.18 000 (Ugandan Shillings) would be appropriate as Wambuzi was 'retired and aged 85 years'. The former Chief Justice was "no longer in-service and the publication is not likely to have any major impact on (his) life or cause him damage."

But Wambuzi himself had a different view of the damage done to himself and said he felt 'very strongly wronged and greatly damaged in his reputation' by the article. Judge Patricia Basaza-Wasswa said she agreed. "I am satisfied that in the mind and eyes of the reasonable reader/person, the same natural and ordinary meanings they assign to the false statements in the publication would be imputed. Particularly the absurd meaning that (Wambuzi) is of dishonest and pretentious character." She further said Red Pepper "no doubt disparaged (Wambuzi) in his highly esteemed reputation as three time Chief Justice of Uganda. It lowered him in the estimation of right-thinking members of society. The picture painted of him by far breached all tenets of professional ethics and conduct of a retired judicial officer of his stature."

The judge continued to say that in reaching the sum of damages she particularly took into account Wambuzi's reputation; the 'gravity of the libel'; the wide circulation of the publication in Uganda; the highly sensational headline and the publication's failure to verify that the story was true or to ask Wambuzi for comment; the failure to apologise and the fact that Red Pepper 'have taken (him) through a full-blown suit' and the amounts awarded in earlier defamation cases. The final result was no mere "nominal damages" as the court awarded Sh. 1.4m for general damages and a further Sh. 186 000 in "exemplary damages", not to mention Wambuzi's legal costs.

With specific reference to the excerpt above and the law of torts generally, answer the following:

- (a) What are “damages”? (5 marks)
- (b) Explain the award of Sh. 186 000 as “exemplary damages” and clearly explain the rationale for this type of damages in Zambia. (7 marks)
- (c) Evaluate the defence of “truth” in relation to the given facts and settled law. (2 marks)

### Question Five

“Fake news is among the latest phenomena highlighting the law’s struggle to keep pace with technology. Its consequences could pose serious security threats, but fears are mounting that moves to counter it will lead to censorship.”

International Bar Association Global Insight, June/July, 2017 at 17.

Critically discuss the quotation above, in the context of the rationale for the law of defamation in a changing technological era, clearly explaining any applicable international and Zambian cases and legislation. (14 marks)

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## PART D

### Question Six

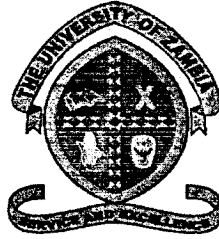
Write short and clear notes on each of the following:

- (i) Act of God (4 marks)
- (ii) Prescription (3 marks)
- (iv) Fair Comment (3 marks)
- (v) Rationale for economic torts (4 marks)

### Question Seven

- (a) With relevant Zambian and British case law to support your arguments, critically examine the objectives of the law of torts generally. (9 marks)
- (b) Under the rule in *Ryland's v. Fletcher* [1868] UKHL 1, a successful litigant is entitled to recover damages and possibly an injunction as remedies. Discuss this statement clearly stating whether or not you agree with it. (5 marks)

**END OF EXAMINATION**



**THE UNIVERSITY OF ZAMBIA**  
**SCHOOL OF LAW**  
**END OF YEAR EXAMINATIONS**  
**ADMINISTRATIVE LAW – LPU2962**  
**15<sup>TH</sup> SEPTEMBER 2017**

**INSTRUCTIONS:**

1. Answer Four (4) questions, one from each Part. Question one is compulsory
  2. Time Allowed: Three (3) hours plus five (5) minutes
  3. This examination carries a total of 60 marks
  4. Mobile telephones; Tablets or any form of computing instruments are not allowed into the Examination Room
  5. Candidates are permitted to bring the following statutes into the examination room:
    - (i) Constitution of the Republic of Zambia
    - (ii) Order 53 of the Rules of the Supreme Court of England, 1999 (White Book)
  6. This subject is for candidates in 2nd Year of LLB
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## PART A

### Question 1 (Compulsory)

Isaac Tedashi wants to contest for President of the University of Zambia Students' Union (UNZASU) in the academic year commencing in October 2017. He explains that he had approached the Chairperson of the UNZASU Electoral Commission to inquire on the roadmap for the coming elections and was advised that there would be no election in the year until further notice. He was advised that this is because the Minister of Higher Education on or about 30<sup>th</sup> March 2017 banned all student union activities indefinitely. He also shows you a copy of the *Zambia Daily Mail* Newspaper dated 30<sup>th</sup> March 2017 which quoted the Minister as follows:

We have discovered that these riots are organised by students who aspire to be union leaders. I will use my authority which is within the Act to suspend all union activities until further notice.

Isaac Tedashi further narrates that the Chairperson of the UNZASU Electoral Commission referred him to the Secretary General of UNZASU who confirmed the position. He also says the Union had not been consulted before the Minister announced her decision. Isaac Tedashi is worried the prolonged suspension of union activities. He is also concerned about the effect of the suspension on his rights of membership prescribed by section 16(3) of the UNZASU Constitution. The current academic year is scheduled to end on 6<sup>th</sup> October 2017. He hands you extracts of the UNZASU Constitution which provide for rights of members and the provisions regarding elections (annexed hereto). Also annexed are relevant sections of the Higher Education Act – Section 13: Powers of the Minister; sections 26 and 27: Students; and part VII: general provisions.

- a) Using relevant authorities, advise Isaac Tedashi concerning his rights against UNZASU and the Minister. (9 Marks)
- b) What legal action(s) can Isaac Tedashi or UNZASU take against the decision of Minister? (9 Marks)

[Total: 18 Marks]

## **PART B**

### **Question 2**

Section 34 of the National Assembly Powers and Privileges Act provides:

Neither the Assembly, the Speaker nor any officer shall be subject to the jurisdiction of any court in respect of the exercise of any power conferred on or vested in the Assembly, the Speaker or such officer by or under the Constitution, the Standing Orders and this Act.

Critically evaluate the section.

**[Total: 14 Marks]**

### **Question 3**

Melody Kambikambi has sought leave to commence judicial review proceedings against the Law Association of Zambia (LAZ) on grounds of procedural impropriety. Melody Kambikambi's law practice licence has been suspended by the Association for alleged misconduct. This was following a complaint by Joe Chime, one of Melody Kambikambi's clients, that she had misconducted herself as a practitioner when she terminated her legal services to Joe Chime on grounds that he belonged to a different political party as herself. On Monday, 17th July 2017, the Legal Practitioners' Committee of LAZ wrote to Melody Kambikambi to inform her of the allegations and requested her to respond in writing within 7 days of the complaint. The hearing of the complaint was set for 1st August 2017. Melody did not submit a written response but attended before the Committee to seek an adjournment. She advised the Committee that she had not been able to submit a written submission as she had been out of the country, even though the letter from the Committee had been duly acknowledged by her law firm. The Committee refused to adjourn the hearing saying that the Complainant had travelled a long distance from Kabwe. Melody on that basis refused to participate in the hearing as she had not been given ample opportunity to present her defence. She also alleges that the Committee was biased against her as the chairperson of the Committee had, in the year 2013, lost an election as LAZ Secretary to Melody Kambikambi.

LAZ contends that Melody Kambikambi was given an opportunity to respond to the allegations in writing as well as orally when the hearing was convened on 1st August 2017. It also contends that the application is premature as the applicant is currently appearing before the Disciplinary Committee established under the Legal Practitioners' Act for her possible removal from the Bar of Legal Practitioners. LAZ also cites rule 16 of the Law Association of Zambia (General) Rules to argue that the applicant has not exhausted all local remedies as required by 53 of the Rules of the Supreme Court.

Rule 16, Law Association of Zambia (General) Rules provides:

Any question or difference between the Association and member or between members relating to professional conduct, etiquette or practice, shall be resolved in accordance with the Arbitration Act with such modifications as circumstances may permit.

Advise the parties.

**[Total: 14 Marks]**

## **PART C**

### **Question 4**

Critically discuss the role of Parliament in controlling exercise of administrative power.

**[Total: 14 Marks]**

### **Question 5**

- a) Discuss the significance of the public/private law divide to administrative law  
(7 Marks)
- b) Using practical examples, demonstrate how decentralisation and/or devolution of power furthers objectives of administrative law.

**(7 Marks)**

**[Total: 14 Marks]**

## **PART D**

### **Question 6**

Explain the effect of constitutional values and principles on administrative law.

**[Total: 14 Marks]**

### **Question 7**

Compare and contrast tribunals and the courts as means of controlling administrative authority in Zambia.

**[Total: 14 Marks]**

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## **ANNEX – QUESTION 1**

### **HIGHER EDUCATION ACT, NO. 4 OF 2013**

- s. 13.** (1) The Minister may give to a higher education institution general or specific directives which are consistent with the national policies and the provisions of this Act.
- (2) A higher education institution shall keep the Minister informed of matters of public interest concerning it and shall furnish the Minister with such information as the Minister may request on any particular matter concerning the higher education institution.
- (3) The Minister may, where the Minister reasonably believes that it is necessary to do so, take such steps as the Minister considers necessary in the best interest of the higher education institution.
- s. 27.** (1) There shall be a students' union in a higher education institution.
- (2) Where a higher education institution has more than one campus, there shall be a branch of the students' union on each campus.
- (3) All registered students of the higher education institution shall be members of the students' union.
- (4) A students' union shall have a constitution which shall provide for such matters as may be prescribed.
- s. 46.** A person aggrieved with the decision of the Minister under this Act may appeal to the High Court within thirty days of the service of the decision on that person.
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### **THE 2015 UNZASU CONSTITUTION**

#### **RIGHTS OF UNZASU MEMBERS**

7. (1) Subject to the provision of this constitution, every member of UNZASU shall have the right to:
- (a) participate in all general activities of UNZASU;
  - (b) vote and, subject to reservations on eligibility criteria in Article 15, hold office in UNZASU when elected or appointed;

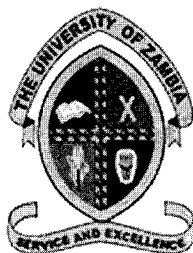


- (c) access all documentary information of UNZASU upon request provided it is not privileged information at law;
- (d) request and receive any or all publications of UNZASU;
- (e) appear before and appeal to bodies that may; determine the members' vital interest for UNZASU and the University as a whole;
- (f) be heard and to express themselves freely before any or all structures or UNZASU and any or its media:

### **ELECTION TO UNZASU EXECUTIVE AND COUNCIL OF HALL REPRESENTATIVES**

18. (1) The Electoral Commission shall hold elections for a new UNZASU Executive and Council of Hall Representatives every academic year and whenever a seat falls vacant.

- (2) The elections for the Council of Hall Representatives shall be conducted first and shall be held on a Friday two weeks before the UNZASU elections.
- (3) UNZASU general elections shall be held on a Friday two (2) and a half months before the end of an academic year.
- (4) Subject to Article 7, all registered students of the University of Zambia shall be eligible to vote.
- (5) The Electoral Commission shall declare an unopposed candidate as duly elected.
- (6) Elections shall be by secret ballot and winning shall be by simple majority.
- (7) The new UNZASU Executive shall take office within seven (7) days of the confirmation of election results at a public meeting attended by the Dean of Students and during which certificates of service prepared by the office of the Dean of Students shall be awarded to deserving members of the outgoing Executive:



**THE UNIVERSITY OF ZAMBIA**

**SCHOOL OF LAW**

**END OF YEAR EXAMINATIONS**

**EMPLOYMENT LAW – LPR 3115**

**AUGUST 2017**

**INSTRUCTIONS:**

- Answer Four (4) questions, one from each part. Question 1 is compulsory
  - Time allowed: Three (3) hours plus five (5) minutes
  - This examination carries a total of 60 marks
  - Mobile telephones; Tablets or any form of computing instruments are not allowed into the Examination Room
  - Candidates are permitted to bring the following statutes into the examination room:
    - (i) Employment Act, Chapter 268 of the Laws of Zambia
    - (ii) Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia
    - (iii) Minimum Wages and Conditions of Employment Statutory Instrument No. 1, 2 and 3 of 2011
  - This subject is for Candidates in 3<sup>rd</sup> Year of LLB
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## **PART A (COMPULSORY)**

### **QUESTION ONE**

Hastings Tembo has been working for Mwambona Mining Limited based on the Copperbelt Province of Zambia for the past five years. He was on the 12<sup>th</sup> July, 2017 served with a letter of termination stating in part, “you have been relieved of your duties forthwith and you shall receive six months basic pay in lieu of notice.....” Hastings is infuriated with the action of the company and believes that his loss of employment is attributable to the altercation he had with his immediate supervisor regarding his promotion which he thought was long overdue. He threatens to institute legal action against the company and hopes to be reinstated.

Meanwhile, Mwambona Mining Limited has amalgamated with Little Diamond Mining Limited to form a giant mining company by the name of Colossal Mining Limited with operations scheduled to start in Egypt as well as Ghana. Due to the huge scale at which the resultant mine will be operating, the management of the new mine has decided hire new staff with the requisite skills suited for the new operations. The Managing Director has, however, directed that those willing to continue working for the company should be ready either to go for further skills training or be redeployed elsewhere where their current skills maybe needed. He further stated that for those choosing to be redeployed, he could not guarantee that the terms and conditions would be as good as those they enjoyed in their current positions. “Change of management entails a lot of strategic repositioning in the market and may have adverse effects on the workers emoluments, this is inevitable,” said the Managing Director. One excited worker by the name of Jangulo Lukombo, calls his fellow workers by the side telling them that, “I can tell you something for free. My uncle is a lawyer, and what is happening and being suggested in this company constitutes firing of workers through the backdoor. But before we leave, we must demand for our benefits!”

The information regarding the pending loss of employment has reached the union who has since given the Management of the company one week to rescind its decision, failure to which workers would proceed on strike. The union is of the view that before such a drastic decision was reached, it ought to have been informed so that it could be heard on the matter.

- (a) With aid of authorities, advise Hastings Tembo as to his legal rights against Mwambona Mine Limited, if any, and the chances of being reinstated in his job.  
(5 marks)
- (b) Advise Mwambona Mining Limited on the legal implications of its amalgamation with Little Diamonds with regards to its employees and its further pronouncements.  
(8 marks)
- (c) Provide a legal opinion to the union on whether the action it threatens to take is legally justifiable. (5 marks)

**[Total: 18 marks]**

## PART B

### Question Two

The Ministry of Labour and Social Security has issued circular number 30 of 2017. The said circular has instructed all employers, current and prospective to desist from entering into oral contracts of employment with its employees; but instead ensure that only written ones are executed which must mandatorily be attested by a proper officer. It justified its position by stating that in the past, it has experienced numerous problems relating to the settlement of disputes between employers and employees involving oral contracts which results in employees losing out. The said circular is said to come into effect on the 2<sup>nd</sup> October, 2017. Unsatisfied with the development, the Zambia Federation of Employers has approached you for advice on whether it should adhere to the circular or not.

Proceed to advise the Federation as requested. **[Total: 14 marks]**

### Question Three

- (A) The case of *Council of the University of Zambia and Another v University of Zambia Allied Workers Union*, 2003 ZR, seems to suggest that although employers and employees are free to bargain collectively, this freedom is not without encumbrances. Discuss (7 marks)
- (B) Briefly give an account of how the case of *Ngwira v Zambia National Insurance Brokers Limited* (1993-1994) ZR, created uncertainties with respect to the interpretation of the phrase "Social Status" and how this position was later clarified. (7 marks)

**[Total 14 marks]**

## PART C

### Question Four

The Human Resource Manager of Ubuntu Care which is specialized in helping the needy in society especially the sick and elderly, had an orientation exercise on the 25<sup>th</sup> July, 2017, for its newly recruited workers. He emphasized on the need to be courteous and polite to all clients regardless of whatever circumstances. He invited all the workers to pay attention to the terms and conditions governing the employment relationship. He brought the workshop to a close by stating, "Like all other employing organisations, our interpretation of rights and duties is not confined exclusively to what is appearing on the face of the contract of employment as doing so would be a distortion of the contractual cartography"

Mwemba Chalwe, one of the newly recruited staff is unclear as to what the Human Resource Manager is trying to convey.

Advise **[Total: 14 Marks]**

### **Question Five**

“Do you recall? Do you recall the days when the earth would shake? When the nation would buzz with excitement, when the trade unions would call one of those crucial meetings to plot counter measures against adverse Government decisions? Do you remember the days of unionism as a counter-force to one-partyism? How the political system paled at the voice of the workers? You must. For it is all memory.....” By Special Correspondent, Sunday Times of Zambia, 4th September 1994.

Discuss the rise and continued decline of trade unionism in Zambia [**Total: 14 marks**]

### **PART D**

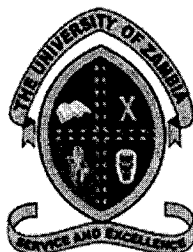
#### **Question Six**

Critically evaluate how a contract of employment is distinguished from a contract for employment and how this position may have been affected by Employment (Amendment) Act 2015. [**Total: 14 Marks**]

#### **Question Seven**

Grey Ngungulu is a reliable and almost indispensable resource personnel for Dunlop Tyre Limited. On 14<sup>th</sup> March 2017, Dunlop Tyre Limited entered into an agreement with Toyota Zambia for the supply of tyres for a period of two years. Grey Ngungulu signed the contract in question on behalf of the Company. He on the 21<sup>st</sup> July, 2017 demanded that he be promoted to the position of Manager ‘Retail Department’ or he would quit his job. The company tried to reason with him that the position he wanted already had a substantive holder but could instead raise his pay equivalent to that of the Retail Department Manager. This persuasion, however, did not yield any joy as the following day, on the 22<sup>nd</sup> July, 2017, Grey Ngungulu decided to tender his letter of resignation. The company has declined to accept resignation on ground that it would suffer irreparable loss if he was allowed to leave. The company wishes to obtain an injunction to restrain him from leaving his employment as it views his demands as unreasonable and a sheer blackmail

The company approaches you with a view to taking the matter to court. Advise the company on the legal issues arising. [**Total: 14 marks**]



**THE UNIVERSITY OF ZAMBIA**

**SCHOOL OF LAW**

**END OF YEAR EXAMINATIONS**

**LAND LAW AND PROPERTY RELATIONS – LPR 3920**

**SEPTEMBER 2017**

**INSTRUCTIONS:**

- Answer Four (4) questions, one from each part. Question 1 is compulsory
  - Time allowed: Three (3) hours plus five (5) minutes
  - This examination carries a total of 60 marks
  - Mobile telephones; Tablets or any form of computing instruments are not allowed into the Examination Room
  - Candidates are permitted to bring the following statutes into the examination room
    - (i) Lands Act, Chapter 184 of the Laws of Zambia
    - (ii) Lands and Deeds Registry Act, Chapter 185 of the Laws of Zambia
  - This subject is for Candidates in 3<sup>rd</sup> Year of LLB
-

## **PART A (COMPULSORY)**

### **Question One**

Khozani, a well-known business entrepreneur, agreed to purchase land known as Plot 1259 Ndola on 1<sup>st</sup> January 2014 from Freddie, a long-time friend. Knowing that Freddie was an estate agent Khozani signed the contract without conducting a search at the Lands and Deeds registry. Khozani paid the 10% deposit on the purchase price to Freddie as required by the general conditions of sale.

Later, Khozani discovered that the Certificate of Title showed that the owner of the property was Davey. At a meeting between Freddie, Davey and Khozani it came to light that Davey had been served with a notice of re-entry by the state as regards Plot 1259. A further search at the Ministry of Lands revealed that the land was in the process of being repossessed from Davey due to underdevelopment. However no certificate of re-entry had been entered on the register.

Freddie assured Khozani that if he paid half the purchase price the issue of re-entry will be cleared out by him. Khozani wanted to purchase the plot and therefore paid the money to Freddie.

Two years later, when Khozani had completed the construction of the main office block on Plot 1259, he receives a re-entry certificate from Davey and a demand letter for payment of the remaining part of the purchase price or in the alternate vacant possession of the plot 1259. According to Khozani the agreement between him and Freddie was that he would pay the balance of the purchase price upon registration of title in his name and he is really shocked by the documents he has received from Davey.

- (a) Using decided cases, identify the cause of action available in Land law, specifically analysing the parties and the elements of the cause of action available for Khozani to protect his interest and investment in Plot 1259. **(6 marks)**
- (b) Advise the appropriate forum for this case **(6 marks)**
- (c) Evaluate the remedies available to the successful party on the above facts and explain why it would be the most appropriate remedy. **(6 marks)**

**[Total: 18 marks]**

## **PART B**

### **Question Two**

Designer Bakery Limited and Rosewell signed a document entitled 'Tenancy Agreement' for Stand No. 203, Gooddale which had been drawn up by Rosewell's brother, a Learner Legal practitioner in your law Firm. The agreement was in respect of a residential house and a small bakery business operating in what was the garage of the original building. The agreement stated that the commencement date would be 1<sup>st</sup> February 2015. The duration of the agreement was stated as one year. The rentals were to be paid quarterly in advance. The agreement was registered at the Lands and Deeds Registry. It was clearly stated in the agreement that either party could terminate the agreement by giving the other party one months' written notice.

In July 2015 the tenant and the current manger of Designer Bakery who resided at the premises was involved in a car accident and was unable to operate the Bakery for the month of July and

August 2015. The rental payment that was due for the quarter ending July 2015 were not paid until the end of August 2015. The landlord accepted the late payment of the 2<sup>nd</sup> quarter but warned the tenant that the next payment should be made on time. Once again for the third quarter the tenant delayed in paying the rentals on time.

The landlord served a letter dated 31<sup>st</sup> August 2015 on the tenant giving one months' notice to vacate the premises at the same time he further threatened to send bailiffs to evict the tenant for using the residential property as a business premises.

The manager of Designer Bakery, Rosewell and her brother the Learner Legal practitioner in your law firm have arranged a meeting with you as the senior partner to advise the landlord and the tenant.

- (a) Citing the correct law draw up an opinion on whether the document entitled 'tenancy agreement' is valid or not and what would be the effect of notice served by the landlord on the tenant. (5 marks)
- (b) The landlord wants the tenant to vacate his premises and gives you instructions to file an action. Advise her. (5 marks)
- (c) Evaluate if the tenant is protected in the above scenario. (4 marks)

**[Total 14 marks]**

### **Question Three**

*The need for a plaintiff to rely on part performance arises from the modern application of the Statute of Frauds requirement that contracts for the sale of land be in writing. Part performance is the equitable counterpart to relieve the sometimes harsh consequences of the application of that writing requirement.*

(Per Susy Frankel in 'The Uncertain Doctrine of Part Performance' (2011), p 38)

The conditions required for the doctrine of part performance to be invoked were discussed by Lord Simon in *Steadman v Steadman* [1974] 2 ALL ER 977 as cited above.

- (a) With the aid of decided cases critically evaluate the quotation by Frankel in light of the modern application of the Statute of Frauds and the equitable doctrine of part performance in Zambia. (7 marks)
- (b) Using the case of *Steadman v Steadman* cited above illustrate what can be held to be sufficient or insufficient acts of part performance by the courts of law in Zambia.

**(7 marks)**

**[Total: 14 marks]**



## PART C

### Question Four

Allanor was the owner of a small holding farm in Lusaka West, Plot 123A and his neighbour, Bettymore was the owner of Plot 123B. Both reared goats for sale at the nearby market.

Allanor had purchased the Plot in 2011 and had reserved a small portion of the land at the rear of his house as a grazing field for the goats. He had put up a wooden fence around the portion of the land to prevent the goats from getting into his vegetable garden.

In 2012 when Bettymore purchased the adjoining plot it was usual for the goats from both the owner to stray into the reserved portion of the land on Allanor's plot. The situation was acceptable by both parties until Bettymore sold Plot 123B to Jinja, a small scale farmer rearing goats. No mention was made by Bettymore that her goats had been grazing together with Allanors goats on plot 123A after the sale.

A dispute over the total number of goats missing from Allanors herd forced him to put up an electric fence thus preventing Jinja's goats from grazing on his land.

- (a) With the aid of decided cases write a legal brief illustrating Jinija's rights, if any, over his neighbours land (8 marks)
- (b) Using Zambian case law differentiate between an easement and a *profit a prendre* (6 marks)

[Total: 14 marks]

### Question Five

Briefly analyse and discuss the following statements:

- (a) Contractual right to redeem, equitable right to redeem and Equity of Redemption (5 marks)
- (b) The distinction between registration of titles and registration of deeds (5 marks)
- (c) *Quicquid plantatur solo solo credit* (4 marks)

[Total: 14 marks]

## PART D

### Question Six

The enactment of the New Constitution in Zambia with an expanded Draft Bill of Rights is imperative for the realization of gender equality and inclusive development. One of the provisions in the draft Constitution states that: 'Equitable access to land and associated resources must be secured'.

- (a) Discuss the above statement with reference to women's access to land in Zambia

- (b) Explain how the current Draft Land Policy in Zambia has addressed the issues governing customary land tenure. (7marks)

[Total: 14 marks]

### Question Seven

Property rights in general are derivative or transaction-based rather than rights of an original character arising in spontaneous vindication of free-standing perceptions of human worth and therefore land law and human rights seem like polar extremes. This view has been challenged by some writers. Professor C.B. Macpherson pointed out that the idea of property should be broadened to include a 'right to a kind of society or set of power relations which will enable the individual to live a fully human life.'

- (a) Critically analyse the discourse between human rights and land law in view of Professor C.B. Macpherson's argument. (9marks)
- (b) Explain property absolutist and property relativist (5marks)

[Total: 14 Marks]



**THE UNIVERSITY OF ZAMBIA**

**SCHOOL OF LAW**

**END OF YEAR EXAMINATIONS**

**FAMILY LAW AND SUCCESSION – LPP3940**

**13<sup>TH</sup> SEPTEMBER 2017**

**INSTRUCTIONS:**

- Answer Four (4) questions, one from each Part. Question one is compulsory
  - Time Allowed: Three (3) hours plus five (5) minutes
  - This examination carries a total of 60 marks
  - Mobile telephones; Tablets or any form of computing instruments are not allowed into the Examination Room
  - Candidates are not permitted to bring any statutes into the examination room
  - This subject is for candidates in 3rd Year of LLB
-

## PART A

### Question 1 (Compulsory)

In 2012, Choolwe and Thompson were fourth year law students at UNZA who wished to marry as soon as they graduated. During their four years at UNZA, the two had been seeing each other, and they had introduced one another to their respective families. One day, Thompson's Uncle approached Thompson and said to him, "I think it's time we take the *tumbale* to Choolwe's family". Thompson agreed and that was done. Upon arrival at Choolwe's parents' home, Thompson's Uncle and the other people whom he went with were told by Choolwe's father that he would be more comfortable to receive the *tumbale* after the two graduated and were able to fend for themselves. "In the meantime, I can accept that you simply *kobekela* her instead", Choolwe's father said. Thompson's family accepted the counter offer made by Choolwe's father and a traditional engagement was concluded between the parties.

One year later (i.e. in 2013), the parties married traditionally. Thompson's Uncle paid *lobola* and Choolwe's family took her to her new matrimonial home. Unfortunately, as they had just graduated and they were paying for themselves at ZIALE, Thompson and Choolwe could not afford to have the white wedding ceremony that Choolwe had always dreamt of. Thus they agreed that they would have a white wedding in two years' time after they raise the required funds. In 2015, Thompson and Choolwe went to Church of Miracles where a Pastor pronounced them husband and wife and blessed their union. From Church, the couple proceeded to the Civic Centre in Lusaka and signed a marriage certificate there. To crown it all, from Civic Centre, Choolwe had her dream come true as the wedding reception was held on the Protea Hotel Cruise Ship in Livingstone for two days.

Choolwe and Thompson have been trying to have a baby since 2013. After several failed attempts, Choolwe went for a medical check-up fearing that she might be barren. The results showed that she is not. She shared the great news with Thompson, and asked him to also undergo tests and he replied, "That will not be necessary. I know I am impotent." Choolwe was confused and distraught, especially because some of Thompson's Aunts had been speaking ill about her and asking why she still had not borne them any children and Thompson had been quiet about it. She decided to leave the matrimonial home and go back to her parents.

Choolwe spent two and a half years at her parents' home, while contemplating filing for divorce. During that period, Thompson and Choolwe visited one another; and Choolwe insisted that Thompson should continue to maintain her as he had gotten her used to a certain lifestyle which she could not afford on her own. For example, Thompson used to buy her Brazilian hair because he didn't like her "weak short hair" as he called it; and every year, they went to Dubai on holiday and to shop. Thompson obliged.

Based on the above facts, answer the following questions:

- (i) What are the requirements for a valid civil marriage? Have Thompson and Choolwe complied with all of them? Substantiate. **(6 marks)**
- (ii) Is Thompson's conduct regarding his impotency a violation of any written law? Elaborate. **(3 marks)**
- (iii) Assume that Choolwe has filed for divorce. Does she have a valid ground on which to base such an application? Explain with reference to case law. **(6 marks)**
- (iv) What is maintenance; and is Choolwe entitled to it? Substantiate with authority. **(3 marks)**

**[Total: 18 marks]**

## **PART B**

### **Question 2**

Is there any conflict between the living Zambian customary laws of inheritance and the Intestate Succession Act? Discuss with the help of examples; and propose a feasible way of resolving such conflict if it exists.

**[Total: 14 marks]**

### **Question 3**

Samson was married to Esther and they had four children named Tom, Patrick, Susan and Chipso. Samson served in the Zambian army, and he was deployed as a peace keeping soldier to the Democratic Republic of Congo (DRC). While on duty in the DRC, Samson was shot and he lost his sight. Upon his return to Zambia, Esther divorced Samson and moved out together with their four children. For the next five years, Samson was looked after by the maid, Sasha.

Miraculously, Samson regained his sight. He married Sasha and together they had two children, Mary and Mark. Samson died testate in 2009 leaving five residential houses, two commercial buildings, six vehicles and three bank accounts holding the total sum of four million kwacha(K4,000,000;00). In his will, Samson left to his children from his first marriage a vehicle each; one house for them to hold as tenants in common; and twenty thousand kwacha to each child. The residue of the estate was left to Sasha, Mary and Mark.

Susan was unhappy with the provisions of the will, thus she petitioned the High Court stating that the provisions of the will were unfair as her father had favoured his second wife and the children that he had with her. In her testimony she said that although she was 24 years old and comfortably married she was due more from her father's estate than what was left to her in the will.

- (i) Assume that you are a High Court Judge and Susan's application has come before you. Would you grant her application; and if so, on what basis? **(7 marks)**
- (ii) Assume that Samson wrote his will during the time when he was blind and when he had lost all hope of recovery. Despite his visual impairment, Samson was able to type and print his will. He called Sasha and his nephew Mutale and asked them to witness the will. Sasha signed the will, left the room and continued with her house chores before Mutale arrived. After his arrival two hours later, Mutale equally signed the will. Is Samson's will valid? Explain. **(7 marks)**

**[Total: 14 marks]**

## **PART C**

### **Question 4**

Write an essay outlining the rights of a child as provided for in at least ten pieces of legislation in Zambia.

**[Total: 14 marks]**

### **Question 5**

The following is an excerpt from the *Atlantic Daily Newsletter* dated 27 April 2016:

Around the world, an average of 60 percent of children receive some kind of physical punishment, according to UNICEF. And the most common form is spanking. ... The question of whether parents should spank their children to

correct misbehaviour sits at a nexus of arguments from ethical, religious, and human rights perspectives.

- (i) With reference to authority, define corporal punishment and explain whether or not spanking by parents is a form of corporal punishment. (6 marks)
- (ii) What human rights arguments can be made for spanking children? (4 marks)
- (iii) What human rights arguments can be made against spanking children?(4 marks)

**[Total: 14 marks]**

## **PART D**

### **Question 6**

What is the hierarchy of the sources of Family Law in Zambia? Discuss with reference to legislation, Article 23(4) of the 1991 Constitution, as well as Article 7 of the Constitution of Zambia Amendment Act No. 2 of 2016. **[Total: 14 marks]**

### **Question 7**

Write short notes on the following:

- (i) Gender based violence; (3 marks)
- (ii) Residence or dependence as basis for legal family; (3 marks)
- (iii) Co-habitation and common law marriage; (4 marks)
- (iv) Void marriage. (4 marks)

**[Total: 14 marks]**



**THE UNIVERSITY OF ZAMBIA**  
**SCHOOL OF LAW**  
**END OF YEAR EXAMINATIONS**  
**CIVIL AND CRIMINAL PROCEDURE LPR- 3952**  
**FINAL EXAMINATION**  
**7<sup>TH</sup> SEPTEMBER, 2017**

**INSTRUCTIONS:**

1. The exam is marked out of 60 marks. The Examination is divided into four Parts. Part A contains Question one (1) which is compulsory and carries 18 marks
  2. Answer any other four questions from Parts B, C and D. Please note that you cannot answer more than two questions from any one part. Questions from Parts B, C and D carry 14 Marks each
  3. The Duration of the Examination is three (3) hours
  4. You are allowed to bring unmarked copies of the following statutes:
    - a) High Court Act, Cap 27
    - b) Subordinate Court Act, Cap 28
    - c) Penal Code, Cap 87
    - d) Criminal Procedure Code, Cap 88
-



## PART A

### Question 1 (Compulsory)

You are the Senior Resident Magistrate who has been allocated a court record in which the accused person has been charged with the offence of Murder contrary to Section 200 of the Penal Code, Cap 87 of the Laws of Zambia. The High Court has given permission for you to try the case. Your view of the charge sheet after the accused has been called to plead to the charge of murder is that the charge is not only defective but that the particulars of the offence for murder are at variance with the key elements of murder and you think that the particulars of the offence may be more suited for the offence of manslaughter.

Discuss whether:

- a) As a magistrate you have the power to order the amendment of the offence in the charge; **(8 Marks)**
- b) Subject to your answer in a) above draft an order explaining the procedure to be followed by the parties in the matter **(6 Marks)**; and
- c) If the charge is amended will the accused person be required to plead to an offence; State which offence and should the accused person refuse to plead write explanatory notes to be placed on the record on how the proceedings will be completed? **(4 Marks)**

**(18 Marks)**

## PART B

### Question 2

- a) Critically compare and contrast the following:
  - (i) *Nolle prosequi v Autrefois* acquit **(3 Marks)**
  - (ii) Preliminary Inquiry v Trials **(3 Marks)**
- b) You are a defense counsel representing an accused person Mr Jones Apamwamba who has been charged with the offence of supplying drugs to procure his girl friend Lulu Miles, to abort a child or cause a miscarriage contrary to Section 153 of the Penal Code Cap 87 of the Laws of Zambia. Your client has been released on bail pending trial. A trial date has been set but your client is so embarrassed about attending court in person because he has not told anyone. Your client fears that if his wife or friends find out that he has been charged for the offence of supplying drugs to

procure an abortion his wife will divorce him and his friends and the church will ostracize him! Your client cannot even begin to imagine the shame his children will endure if his appearance at court is made public. Your client informs you that someone told him that he could apply to court to dispense with his personal attendance at court in order to keep the court case a secret from his family and friends. Your client now seeks your advice on whether he can apply to have his personal attendance at court dispensed with. Advise your client accordingly. **(8 Marks)**

**(14 Marks)**

### **Question 3**

You are a Prosecutor in the office of the National Prosecutions Authority. You have been presented with a Complaint filed and signed by one Charles Muffins following a series of facts as stated below. An offender while acting with other unknown persons on or about 4<sup>th</sup> January 2017 around 02:45am at the Long Acres Total filling station in Lusaka did rob one Charles Muffins of his motor vehicle, an S class Mercedes Benz, gold in colour, chassis no. 757473 with the aid of firearms. In the process of the robbery Charles Muffins was injured and sustained a broken arm. After a complaint filed by Mr Muffins at the Long Acres Police Station investigations by the police were conducted and a warrant of arrest has been issued against an identified suspect one Moosa Njuka and other unknown persons.

a) Under the circumstances, explain the most appropriate method the police will use to compel the attendance of the accused at court; and **(4 Marks)**

b) Draw up the charge you will file in court indicating the counts to be made against the accused persons. **(10 Marks)**

**(14 Marks)**

## **PART C**

### **Question 4**

The Managing Director of Loreal Fashions Limited the Plaintiff company in a matter under cause no. 2017/HP/500 between Loreal Fashions and Mr Price Zambia the defendant company approaches your firm seeking legal advice. The Managing Director informs you that the matter was first filed in court on 7<sup>th</sup> May 2017 wherein the plaintiff is seeking damages for breach of a 5 year contract worth Two Hundred Million kwacha for the supply of casual children's wear. The matter came up for trial on 10<sup>th</sup> July, 2017 but the case was adjourned to 16<sup>th</sup> September, 2017. However, the initial counsel who had conduct of the case

and had commenced the action on behalf of the Plaintiff has died. The plaintiffs therefore are looking for another lawyer to represent them.

- a) Explain the procedure you will follow and the document you will prepare and file to notify the court that you have been appointed as a legal practitioner representing the Plaintiff company; **( 3 Marks)**
- b) The Managing Director of the Plaintiff company further informs you that the company is unable to locate their file with the court documents filed in court so far. Before you file the document in a) above, explain what due diligence steps you would follow to establish the status of the case in court and copies of the documents on the court record. **(3 Marks)**
- c) The Managing Director also informs you that the spelling of the plaintiff company on the current court record is wrong it was spelt as 'Lureel' Fashions instead of Loreal Fashions:
  - (i) Advise your clients on the action you need to take and name the court documents you will file to ensure the correct name of the Plaintiff company is reflected on the court record; **(2 Marks)** and
  - (ii) Draft the supporting affidavit that you will file before court to effect the action you have recommended under paragraph (i) above **(6 Marks)**

**(14 Marks)**

#### **Question 5**

- a) Using the decision in the case *Kabwe Transport Company Ltd v Press Transport* (1975) Ltd (1984) ZLR 43 critically discuss the distinction between criminal proceedings and civil proceedings. **(7 Marks)**
- b) Using decided cases, explain the standard expected by a court for a party to justify sufficient interest to be joined as a party to a civil action. **(7 Marks)**

**(14 Marks)**

#### **PART D**

#### **Question 6**

With the aid of decided cases critically discuss:

- a) The role of pleadings in civil proceedings; **(7 Marks)** and
- b) The appropriate contents of a good judgment. **(7 Marks)**

**(14 Marks)**

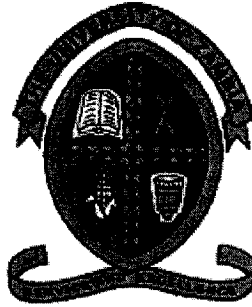
**Question 7**

Write brief explanatory notes on the following:

- a) Joinder of Actions **(3.5 Marks)**
- b) Proceedings against the State **(3.5 Marks)**
- c) Multiplicity of Actions **(3.5 Marks)**
- d) Preliminary Issues **(3.5 Marks)**

**(14 Marks)**

**END OF EXAMINATION !!**



**THE UNIVERSITY OF ZAMBIA  
SCHOOL OF LAW**

**END OF YEAR EXAMINATION**

**ALTERNATIVE DISPUTE RESOLUTION – LPR 4155**

**6<sup>TH</sup> SEPTEMBER, 2017**

**0900 – 1205 HOURS**

**INSTRUCTIONS:**

- **Answer FOUR (4) questions, one from each part. Question 1 is compulsory**
- **Time Allowed: Three (3) hours plus five (5) minutes**
- **This examination paper carries a total of 60 marks**
- **Mobile telephones; Tablets or any form of computing instrument are not allowed into the examination Room**
- **Candidates are permitted to bring the following statutes into the examination room**
  - (i) Arbitration Act No. 19 of 2000**
  - (ii) English Arbitration Act, 1996**
- **This subject is for Candidates in 4<sup>th</sup> Year of LLB**

## **PART A**

### **QUESTION ONE: COMPULSORY**

A dispute arose between parties to a railway concession agreement. The parties were the government of the Republic of Zambia and an English Company Water Wheels International. The railway was wholly owned by the Zambian Government. The Concession Agreement contained two important clauses among others:

- (i) The Government could terminate the concession in public interest upon payment of compensation.
- (ii) If a dispute or a difference arose it shall be referred to arbitration since England and Zambia had both domesticated the New York Convention and UNCITRAL Model Law, the arbitrators can apply either statute in default. The seat of arbitration was Lusaka.

During the currency of the arbitration one of the arbitrators was appointed a Minister in the Zambian Government, but never resigned from the arbitration. The Tribunal rendered an award in favour of the English Company and awarded damages.

The Zambian Government was dissatisfied by the award of damages instead of compensation, while the English company was dissatisfied with the amount awarded. There was in the High Court of Zambia an application by the Government to set aside the award and the English Company made a similar application to the same court.

You are the Judge's Clerk, who has been asked to render an opinion on these facts, for the Judge's consideration, why the award should or should not be set aside.

**18 marks**

## **PART B**

### **QUESTION TWO**

- (a) You are Counsel to a multi-national company intending to invest millions of dollars in Zambia. The Company asks you to draft an arbitration agreement. Prepare a check list of items which should be included in the agreement.

**7 marks**

- (b) Discuss the concept of Separability in arbitration law.

**7 marks**

### **QUESTION THREE**

The Zambian Government and a foreign company Guaxi Ju, executed a contract to construct water reticulation plant for Two Million Kwacha (K2m).

The Government of Zambia delayed to pay Guaxi Ju after they had completed work. The foreign company declared a dispute as the contract contained an arbitration clause the arbitration to be presided over by a single arbitrator.

The company claimed Two Million Kwacha plus eight Million Kwacha as loss of opportunity plus interest. The single arbitrator awarded both amounts. The Government applied to set aside the award. The High Court Judge asked the arbitrator to revisit the award as loss of opportunity was unknown to Zambian law. When the arbitrator restated his earlier award, the High Court Judge set aside the award. The foreign company appeals to the Court of Appeal and retains you as Counsel.

Write a brief for your State Counsel who will argue the appeal in the Court of Appeal.

**14 marks**

## **PART C**

### **QUESTION FOUR**

- (a) In a dispute between Grindrod Corporation and Petersen Corporation, Mr Guanju was appointed as chairman of a three-man arbitral tribunal. During the currency of the arbitration Grindrod Corporation appointed Mr Guanju, as an arbitrator in another dispute between Grindrod Corporation and Nelson Investments Corporation.

In both arbitrations Grindrod Corporation was awarded damages. Mr Guanju had not disclosed the appointment in later proceedings during the Grindrod versus Petersen Corporation proceedings. Petersen Corporation seeks to have the award against them set aside.

Advise Petersen Corporation.

**10 marks**

- (b) Critically discuss the difference between recognition and enforcement.

**4 marks**

### **QUESTION FIVE**

- (a) Discuss the concept of party – autonomy in arbitration.

**7 marks**



- (b) Discuss the role of the arbitrator in an arbitration.

**7 marks**

## **PART D**

### **QUESTION SIX**

- (a) A son and father who were both Tanzanians entered into an agreement for the son to sell imported shoes to the father who had businesses in Zambia. There was an arbitration agreement. The seat of arbitration was Arusha in Tanzania and the applicable law was that of Tanzania.

The son was smuggling shoes from South Africa into Zambia, which he was selling to the father. The son sued the father for breach of contract. The arbitrator decided in the son's favour. He sought enforcement of award in the High Court of Zambia, is the award enforceable in Zambia?

**10 marks**

- (b) What are the advantages of mini-trial over litigation?

**4 marks**

### **QUESTION SEVEN**

- (a) There are more than 120 countries that have signed on to the New York Convention 1958 and UNCITRAL Model Law – what are the advantages?

**7 marks**

- (b) What are advantages of the State of Lagos and Singapore giving arbitrators Jurisdiction to issue orders and deal with Interlocutory applications ordinarily dealt with by High Courts in other convention states?

**7 marks**

**END OF THE EXAMINATION**

**TOTAL**

**60 marks**

\*\*\*\*\*



**THE UNIVERSITY OF ZAMBIA**  
**SCHOOL OF LAW**  
**JURISPRUDENCE – LPR 4920**  
**END OF YEAR EXAMINATION**

**28<sup>th</sup> AUGUST 2017**

**INSTRUCTIONS:**

- 1. Answer four (4) questions, one from each part.**
- 2. Time allowed is three (3) hours plus five minutes to read through the examination paper.**
- 3. This examination carries a total of 60 marks.**
- 4. Candidates are allowed to bring in unmarked and pre-verified statutes into the examination.**
- 5. Mobile phones, Tablets or any form of computing instruments are not allowed into the examination room**
- 6. Candidates must not turn this page until the Invigilator tells them to do so.**
- 7. This paper is for Candidates in 4<sup>th</sup> Year of LLB**

## PART A (Compulsory)

### Question one

- (a) The Republic of Azania has just come out of a presidential and parliamentary election. The ruling Azania Democratic Congress (ADC) has retained power winning both the presidency and the majority in parliament. The main opposition party the Nation Progress Party (NPP) is dissatisfied with the results of the elections and claims that they were not free and fair.

The results of the elections divide Azania in regional and tribal lines. Violence occurs in most parts of the country due to the regional and tribal tensions. A total of 158 people are reported dead as a result of the country wide violence. The President decides to invoke his powers under the constitution and declares a full State of Emergency. The measures put in place under the State of Emergency include:

- i) Persons from the Umofia, Zahara and Mashosho regions to carry passes , while the rest of the citizens need not carry passes.
- ii) All political gatherings except those of the ruling party are not allowed.
- iii) Police allowed to detain without warrant or arrest.
- iv) Private media forbidden to publish tribal or violence inciting stories critical of the state.
- v) No political statements or opinion on social media.
- vi) Death penalty to be effected without presidential warrant for those found guilty of politically motivated treason.

The NPP is aggrieved with the declaration calling it an insult to democracy, the rule of law and human rights. The government spokes person however, stresses that the measures are within the law and therefore legal and necessary to preserve peace and security.

You are an expert in Legal Systems and Legal Theory working under the office of the Country Representative of the United Nations. The Council of Ambassadors in Azania intends to have a meeting with the government on the situation. Before they meet they would like a well reasoned and argued opinion from which they will take a position to discuss with the ruling government. The country representative, as head of the Council of Ambassadors in Azania requests you to prepare the opinion for the Council's consideration.

Note that the State of Azania has the same legal system, Constitution and laws as those of Zambia.

Prepare your well reasoned opinion.

[ 12 marks ]

- (b) In *Lloyds, Introduction to Jurisprudence*, 8th edition, M.D.A Freeman postulates as follows:

*"What is Jurisprudence? To ask this question is to be asked the old age quot homines, tot sententiae. For not only does every Jurist have his own notion of the subject matter and proper limits of jurisprudence, but his approach is governed by his allegiances, or those of his society."*

Discuss the above passage.

[ 6 marks ]

## PART B

### Question Two

- (a) In 2016, the government of the Republic of Buranda enacted the Wages and Income tax harmonization Act. In that light wages of all degree holders who worked for parastatals were frozen for five (5) years while those of Civil Servants in line Ministries would be subject to an increase further to a Collective bargaining process. The law also abolished the brackets systems and instead imposed a flat tax of 35% for every working person. The government through the Minister of Labour and Industrial Harmony stated in a press briefing that *"the new law was enacted in line with government's deep desire to achieve distributive justice in Buranda."*

The parastatal workers Union (PWU) is enraged with the wage free part of new law as it disadvantages their members compared to Civil Servants in line Ministries. On the other hand the Civil Service workers Union (CSWU) is enraged with the flat tax liability as has a

greater impact on their *"take home pay"* compared to the parastatals who will not feel the tax as their take home remains high despite the flat tax.

After a meeting between the two unions, the leadership collectively come to you as an expert in the theories of justice. They would like to start an action challenging the new law despite their differences. Using your expertise in the theories of justice, advise them on the prospects, if any of success in the intended action.

[ 9 marks ]

- (b) Briefly discuss Justice Oliver Wendell Holmes' *"Bad man theory"* under the American School of realism.

[ 5 marks ]

### Question Three

- (a) In 2016, Zambia retained the *"Declaration of the Republic as a Christian nation"* in the Constitution under Act No. 2 of the 2016.

The *"Friends of Marx"*, a group of Marxist political Economists who believe in Marxist legal theory were not pleased with the retention of the declaration arguing that it reinforces capitalism and religion as an *"opium of the people."* They want to challenge the declaration in the Constitutional Court.

You are a bright Lawyer in the Ministry of Justice and are well known for your understanding of Marxist legal theory. The Attorney General asks you for an opinion on the prospects of this intended action.

Prepare the opinion.

[ 8 marks ]

- (b) Compare and contrast the Functional and the Historical theories of law in Jurisprudence.

[ 6marks ]

## PART C

### Question four

- (a) Isaac Kupwalala is a well known Import Car dealer operating at Lusaka's Katondo Street. In February 2017 he was driving from Durban, South Africa with a Client where they had gone to pick up a car for the Client.

When they reached the boarder in Zambia, Isaac's bag was searched and two kilograms of Heroin was found in the bag. Unknown to Kupwalala, his Client John Kupitisa had put the two Kilograms of the heroin in his bag. Kupwalala was arrested for possession and trafficking of Heroin under the Narcotic Drugs and Phychotropic Substances Act. Kupwalala tried to explain that despite the drugs being found in his bag he did not how they came to be in his possession nor were the said drugs his but this explanation was fruitless.

You are a brilliant Lawyer working at the Legal Aid Board. Kupwalala's wife comes to your office requesting for your assistance. Using your knowledge on ownership and possession, prepare a brief that you will use in Kupwalalas's defence.

[ 8 marks ]

- (b) Provide a brief outline of Han Kelsen's "*Pure theory of Law*".

[ 6 marks ]

### Question Five

- (a) R.V.M. Dais, in *Dais on Jurisprudence*, 4th edition states as follows:

"If Y has a claim, there must be a duty in X. A duty in X Implies the absence of a liberty in X. Therefore, a claim in Y implies the absence of a liberty in X."

Discuss the above passage using Hohfelds analysis of Jural relations.

[ 7 marks ]

- (b) The Global Alliance on Gender Education (GAGE) will be hosting a two days Conference in September 2017, under the theme *"Women, Sustainable development goals and Affirmative action."* You are an expert on feminist legal theory based in the school of school, at the University of Zambia. GAGE writes to you requesting that you present a paper under the Title *"should Affirmative action end in the Primary and Secondary system in Zambia"*. You gladly accept to present the paper upon which you are asked to prepare an abstract.

Prepare the abstract for the paper you will present.

[ 7 marks ]

## PART C

### Question 6

- (a) In *Things Fall Apart*, Chinua Achebe writes:

*"... Obierika paused for a long time and then said: 'I told you on my last visit to Mbanta how they hanged Aneto.'*

*'You told me, but what happened to that piece of land in dispute' asked Okonkwo.*

*'The white man's Court has decided that it should belong to Nnama's family.*

*'Does the white man understand our custom about land'*

*'How can he when he does not even speak our tongue? But he says that our customs are bad; our own brothers who have taken up his religion also say that our customs are bad.*



*The white man is very clever. He came quietly and peaceably with his religion. We were amused at his foolishness and allowed him to stay. Now he has won our brother, and our clan no longer act like one. He has put a knife on the things that held us together and we have fallen apart."*

**Chinua Achebe, *Things Fall Apart*.**

Using the above passage from '*Things Fall Apart*' critically discuss the de-coloniality approach to law in the context of critical race theory of law.

**[ 9 marks ]**

(b) Write short notes on the following:-

- (i) "The living law"
- (ii) Corrective Justice.

**[ 5 marks ]**

### **Question Seven**

- (a) Under the United States of America's electoral systems, American citizens head to the polls to cast their vote for President. However, the tally of these votes – The popular vote – does not determine who becomes President. Instead, Presidential elections use the electoral college systems where 538 individuals called electors decide who becomes President. On the other hand in Zambia's electoral system, Zambian citizens decide who becomes President through a majority of 50% plus one of the total votes cast.

Using the above passage, critically discuss the principle of "Rule by the majority" as a fundamental principle/pillar of Democracy and the rule of law.

**[ 8 marks ]**

- (b) Discuss the decision in the case of *R v. Instan* (1893) 1 Q.B. 450

**[6marks ]**



# **THE UNIVERSITY OF ZAMBIA**

## **SCHOOL OF LAW**

### **END OF YEAR EXAMINATIONS**

### **CRIMINAL LAW - LPU 2940**

**September 2017**

#### **INSTRUCTIONS:**

- Answer FOUR (4) questions, one from each Part.
- Time Allowed: Three (3) hours plus five (5) minutes.
- This examination paper carries a total of 60 marks.
- Mobile telephones, tablets or any form of computing instruments are not allowed into the Examination Room
- Candidates are permitted to bring the following statutes into the examination room
  - (i) Penal Code, Chapter 87 of the Laws of Zambia
- This subject is for Candidates in 2<sup>nd</sup> Year of LLB

## **PART A**

### **QUESTION ONE IS COMPULSORY**

The accused Mobile City was convicted of the offence of murder. It was alleged that on 23 November, 2016 at Garden in the Midlands province of the Republic of Chalochatu, he murdered his wife Chicago Zed City (hereinafter referred to as the deceased). On 23 November, 2016 Mama Trends, a neighbour to the deceased was at her home when the deceased ran into her house with Mobile City in hot pursuit.

The background to the incident was that the accused was suspicious that the deceased had been cheating on him, on the basis that he had found text messages suggesting that deceased had a man friend. Mama Trends ran out of the house to call for help from her immediate neighbour Jembe Joseph. Mama Trend and Jembe Joseph arrived back at the house, just at the time when the accused Mobile City emerged from the house with his clothes and hands covered in blood.

He informed Jembe that he had killed his wife. The deceased's body was found in a pool of blood, face down on the floor of Mama Trends house and the matter was reported to the police immediately. However, Mobile was nowhere to be found. It was only a week later that he surrendered himself at Midlands Police Station where he was charged with the offence of murder.

In defence the accused argued he was induced to kill the wife. A friend had informed him that he had seen his wife having dinner with a man. He acted in the manner he did because the wife was his first love and he could not stand the idea of her falling in love with another man. However, few days after trial, accused claimed that he was an epileptic patient under treatment at the time the offence was committed. Consequently, he had no idea of the nature of his act or that it was illegal. Due to his illness, he could not remember what exactly happened.

- (i) With the aid of the relevant authorities, relying on legal issues raised above discuss the ingredients of the offence of murder.

**(10**

**Marks)**

- (ii) With reference to relevant authorities, discuss defences that accused can seek to rely upon in order to escape criminal liability for the offence of murder.

**(8 Marks)**

**[Total 18 marks]**

## **PART B**

### **QUESTION TWO**

- a) Kanya Fanta was convicted by Mpuma Subordinate Court of the offence of rape. It was established that on 10 June, 2015, in Mwandia, Kanya had unlawful carnal knowledge of a woman without her consent.

The Prosecutrix explained that on the material day she met her assailant when she was walking home around 19:30 hrs. She knew the accused as she was seeing him for the second time, she had previously seen him at the bus stop. Kanya dragged her through the security lights. As he was dragging her, he was joined by two friends who helped him to drag her to a nearby bush where she was pushed to the ground and raped while his friends helped to pin her down.

While raping her, Kanya was suddenly disturbed by about four people who were heading in their direction and this led to him and his friends to run away. When the people approached the scene, Kanya was seen to be standing from a distance, later Kanya came back to the scene and pretended to be passing by. When the prosecutrix informed the people at the scene that he was the one that had raped her, he ran away. The matter was reported to the police and with the help of the public Kanya was arrested.

Kanya was identified at the police station by the prosecutrix. In his defence, Kanya argued that he had a long term relationship with the prosecutrix. Matter was referred to the High Court for sentencing and Kanya was sentenced to 30 years imprisonment with hard labour. Kanya seeks to appeal the conviction and sentence. You are called upon to determine the probability for Kanya succeeding on the appeal.

Based on legal issues raised above, draft a well-reasoned opinion to determine the chances of Kanya succeeding on the appeal.

**(10 Marks)**

- b) With the aid of relevant authorities, compare and contrast the two different kinds of burden of proof; (i) Evidential burden of proof and (ii) the Legal burden of proof.

**(4 Marks)**

**[Total 14 Marks]**

### **QUESTION THREE**

- a) Makeni Mall on the 12 January, 2016, in the Roma District of the Chawama Province of the Republic of Malawi, and while acting jointly with other persons unknown and armed with a firearm attempted to steal K50,000 from a Total service station shop. While the victim Manzi Valley was on duty, on that fateful day, around 20:00 hrs, a Toyota Spacio with four men inside pulled up in front of the shop. Three of those men got out of the vehicle and walked inside the shop and confronted her with a firearm. They forced her to open the till, lie down on the floor of the shop and made efforts to grab cash from the till.

Unfortunately Shot Gun, the owner and Managing Director of the Service Station appeared at the scene. Makeni Mall was in the process of getting into the car when Shot Gun took out his own firearm and started shooting at the car and the robbers. The car sped off.

Makeni who had not yet completely got into the car, was shot consequently he fell to the ground and which point a group of people surrounded him, started beating him up and calling him a thief. Shot Gun called the Police Officers from C5 Section who immediately came to the scene. Following treatment of the gun wounds at Roma Medical Teaching hospital, Makeni was taken to Roma Police Station. There he was arrested and charged with attempted Aggravated Robbery.

With the aid of relevant authorities, relying on the issues raised above, establish criminal liability for the offence of attempted aggravated robbery.

**(7 Marks)**

- b) The classic statement with regards to the question of fitness or unfitness to plead is found in the leading case *Pritchard* (1836) 173 ER 135, as interpreted in the later cases.

With the aid of relevant authorities, discuss the rules regarding fitness to plead before an accused is subjected to criminal proceedings.

**(7 Marks)**

**[Total 14 Marks]**

## **PART C**

### **QUESTION FOUR**

- a) Olympia Extension, Phi Kalundu and Manda Hill have just been convicted for the offence of manslaughter. They jointly on unknown dates but between the 12<sup>th</sup> and 14<sup>th</sup> June, 2013 administered a lethal injection on their grandfather's arm after tricking him that he would be healed of his persistent and recurring cough.

Olympia, in her mitigation informed the court that she had ulcers and as a result she had a special diet which she was sure could not be availed to her in prison. Olympia was 15 when the offence was committed and has now turned 19. Phi is now 20 and Manda is 22.

Phi and Manda in their mitigation persuaded the court that their act was founded on their firm belief that the deceased was a witch who was responsible for the death of their cousin in March 2013. The High Court Judge has since sentenced the trio to 7 years imprisonment, suspended for 5 years.

A second year student from the University of Zambia attached to your firm is confused with the judgment of the High Court. The student approaches you looking puzzled, "Counsel, I do not know, but I strongly believe this Judgment is flawed"

With the aid of relevant authorities, discuss the legal issues raised above.

**(10 Marks)**

- b) With the aid of case law, distinguish voluntary manslaughter and involuntary manslaughter.

**(4 Marks)**

[Total 14 Marks]

**QUESTION FIVE**

- (a) Compare and contrast the defences of self-defence and diminished responsibility using relevant authorities to support your arguments.

**(8 Marks)**

- (b) Discuss the following:

- (i) the doctrine of innocent agent;

**(2 Marks)**

- (ii) the doctrine of recent possession;

**(2 Marks)**

- (iii) the defence of consent;

**(2 Marks)**

[Total 14 Marks]

**PART D**

**QUESTION SIX**

Criminal law protects victims of gender based violence.

Discuss this statement citing relevant authorities to support your arguments.

[Total 14 Marks]

**QUESTION SEVEN**

Judy Law is arrested and charged with the offence of seditious practices on the basis that the accused, on unknown date but between 1st July, 2015 and 11th April, 2016 whilst acting together with other unknown persons had in her possession, seditious materials without lawful excuse.

The accused needs counsel on the possibility of being escaping criminal liability for the offence of seditious practices.

With the aid of relevant authorities, advise Law on the ingredients of the offence of seditious practices and availability of defences that accused can rely upon in order to escape criminal liability.

[Total 14 Marks]

**End of Examination**



THE UNIVERSITY OF ZAMBIA  
SCHOOL OF LAW

**END OF YEAR EXAMINATIONS**  
**COMMERCIAL LAW – LPU 3930**  
**SEPTEMBER 2017**

**INSTRUCTIONS:**

- Answer Four (4) questions, one from each part. Question 1 is compulsory
- Time allowed: Three (3) hours plus five (5) minutes
- This examination carries a total of 60 marks
- Mobile telephones; Tablets or any form of computing instruments are not allowed into the Examination Room
- Candidates are permitted to bring the following statutes into the examination room
  - (i) Sale of Goods Act 1893
  - (ii) Hire Purchase Act Cap 399
  - (iii) Bill of Exchange Act 1882

## PART A

### QUESTION 1 (COMPULSORY)

Tandabale Limited is in transport business and owns 3 trucks. Sando is the director of Tandabale. In order to provide money for operations, Tandabale Limited approached Merchant Bank for a loan of K600,000 which was granted, secured by Plot 7124 owned by Sando in Libala township of Lusaka. The business for Tandabale was not performing well, and the company was failing to service the loan which had now grown to K780,000. After several discussions with Sando, the bank engaged a debt collector who was to explore ways in which Tandabale could liquidate the debt.

The debt collector suggested to Sando that the bank could use one of his trucks to ferry items for various supplies of the bank and it would earn K12,000 per month which could be used directly by the bank to settle the loan.

Sando agreed to the arrangement. He was also told to surrender the registration book of the truck to the bank because those who hire trucks demand that the owners prove ownership of trucks. For this purpose only, Sando signed a document signifying to the Road Transport and Safety Agency that the bank is the absolute owner of the truck that was registered under Tandabale Transport Limited. On two occasions, Sando witnessed his truck ferrying supplies and assumed that his loan was being paid.

Unknown to Sando and Tandabale Limited, the debt collector, who was under pressure from the director of loans at Merchant Bank, forged a letter purporting to have been signed by Tandabale Transport Limited allowing the bank to sell off the truck. The bank, acting on the strength of the letter, sold off the truck to an innocent buyer, Gonda Limited. The truck was sold for K300,000. The bank paid the debt collector K50,000 and used K250,000 to reduce Sando's loan. With no further payments the loan deteriorated and the bank repossessed Sando's house in Libala in accordance with the mortgage agreement.

Sando is furious at the bank's deceit and wants to take action for the return of his truck or money equivalent. Sando claims that the bank sold his truck cheaply, its real value was K450,000. Sando also wants to challenge the repossession of his house because the truck business should have been used to liquidate the loan as was agreed with the bank's debt collector. The bank has denied responsibility on grounds that they had to sell the truck because they were the absolute owners according to the documentation in their possession. They also insist on their right to sell Sando's house because Tandabale Transport Limited still has a huge outstanding loan that is not being serviced.

Advise Sando.

[18 Marks]



## PART B

### QUESTION 2

- a) Gogo Limited are in the business of warehousing in Mwanabombwe. Madala Security Limited provide security services to the warehouse. Dong Jinai International Limited used the Gogo warehouse to store building materials for a number of schools they were building for the Government of Zambia in Luapula Province. The warehouse together with the goods were destroyed by a fire. Dong Jinai had insured their materials with Mutenguleni Insurance Company of Lusaka who made a full value payment of K1,700,000.

The fire which destroyed the property was attributed to the negligence of a shift officer working for Madala Security Limited. In an action for negligence commenced by Dong Jinai International Limited, the court awarded K1,300,000 as compensation for the lost property. Mutenguleni Insurance Company has learnt of this development and have written to Dong Jinai International to hand over the money to them. Dong Jinai have refused.

With the aid of authorities, explain if Mutenguleni Insurance Company can recover the money from Dong Jinai International Company Limited.

(9Marks)

- b) Explain what is meant by insurable interest. Why is this significant?

(5 Marks)

[14 Marks]

### QUESTION 3

- a) Define and explain a hire purchase agreement. (5Marks)
- b) Hire Purchase laws were enacted to strike at the root of many injustices which were perpetuated by unscrupulous business people. Critically evaluate this statement in relation to the Hire Purchase Act, Chapter 399 of the Laws of Zambia. (9Marks)

[14 Marks]

## PART C

### QUESTION 4

- a) Outline the circumstances in which agency relationship may be terminated by operation of law. (5Marks)
- b) Muke Limited received a large concession of forests in Mufumbwe intended for a timber logging business. In order to transport the timber to Lusaka, Muke Limited entered into a contract with Roadmaster Transport Limited. The contract was to run for a period of 5 years.

Two and a half years in the logging business, Muke Limited decided to diversify into eco-tourism business. They would now use the forests for Game Ranching. Accordingly, the contract with Roadmaster Transport was terminated as there was no more timber to be brought from Mufumbwe.

Roadmaster Transport have instituted legal action contending that the decision by Muke Limited has caused them loss of business for which they must be compensated.

With the aid of case law, write an opinion how this matter should be decided.

(9Marks)

[14 Marks]

### QUESTION 5

- a) In relation to the law of negotiable instruments, distinguish a holder for value from a holder in due course. (5Marks)
- b) Esther is an agent for Mutolo, a dealer in selling musical equipment imported from Italy. Mutolo sold his last consignment of imported musical equipment to Annastasia, another musical equipment dealer in Mazabuka. The invoice to Annastasia was for K300,000 and she was told to pass the money to Esther of Lusaka. Instead of sending a bank cheque or transferring cash, Annastasia endorsed to Esther a bill of exchange with a face value of K300,000 which was given to her by Sakeni of Siavonga. The bill was to mature on Monday the 4<sup>th</sup> of September and Esther endorsed it to Mutolo with the words “without recourse” before her signature
  - i. Explain whether Esther can be held liable to Mutolo on this bill. Who else, if any, can be compelled to honor this instrument? (6Marks)
  - ii. What would you state as the last day for presentation of the bill in question for payment. (3Marks)

[14 Marks]

## PART D

### QUESTION 6

“In the development of our law, two principles have striven for mastery, the first is for the protection of property; no one can give a better title than he himself possesses. The second is for the protection of commercial transactions; the person who takes in good faith and for value without notice should get a better title. The first principle has held sway for a long time, but has been modified by the common law and by statute so as to meet the needs of our times”. Per Lord Denning in *Bishopsgate Motor Finance Corporation v Transport Brakes Limited* [1949] 1 K B 332, 336-7.

With appropriate authorities, appraise the above statement.

[14Marks]

### QUESTION 7

Write short notes on the following .

- i. Principle of Subrogation (4Marks)
- ii. Retrospective principle of ratification (3Marks)
- iii. Noting and Protesting of Negotiable Instruments (4Marks)
- iv. Transfer of Unascertained Goods (3Marks)

[14 Marks]

END OF EXAMINATION



# THE UNIVERSITY OF ZAMBIA

## SCHOOL OF LAW

### LPU 4072 INVESTMENT LAW FINAL EXAMINATIONS

4<sup>th</sup> SEPTEMBER 2017

14:00hrs

#### INSTRUCTIONS:

1. Answer **FOUR (4) questions**, one from each Part. Part one is compulsory.
2. Time Allowed: **Three (3) hours plus five (5) minutes** to read through the examination paper.
3. This examination paper carries a total of **60 marks**.
4. Candidates **are not permitted to bring statutes** into the examination room.
5. Candidates must **not turn this page** until the invigilator tells them to do so.

## **PART A**

### **Question 1**

In 2005 Colby Co., an American oil company was awarded an oil concession by King Galen of Moldavia. Under the said agreement, Colby Co. was to explore and exploit Moldavia's vast oil reserves. Article 52 of the concession agreement between the Kingdom of Moldavia and Colby Co. provided as follows:

“The Government of the Kingdom of Moldavia shall not take any legislative or administrative action that diminishes the rights contained within this concession for a period of 20 years without the prior consent of Colby Co”.

In 2016, the Monarchy was overthrown in a military coup staged at the royal wedding of Prince Michael. The entire royal family was killed at the said wedding. Moldavia is taken over by General Blake Carrington who constitutes the Republic of Moldavia. In order to fulfil his vision of stamping a national identity on all industries, General Carrington decides to nationalise all foreign owned entities, including the oil fields belonging to Colby Co.

- (a) Advise General Carrington as to the legality of the nationalisation in this instance. **[12 Marks]**
- (b) Briefly describe other means through which Colby Co. may recover their money in the event that the Moldavian government declines to compensate them. **[6 Marks]**

**[Total 18 Marks]**

## **PART B**

### **Question 2**

(i) Lihanna Obama Ltd (LOL) acquired a 78% stake in the Salaam biscuit factory in Afghanistan. The factory was recently blown up during a cross fire between Coalition forces and ISIS, causing \$100 million worth of damage.

Advise the LOL as to whether they qualify for investment insurance under Multilateral Investment Guarantee Agency (MIGA). **[10 Marks]**

(ii) Would your answer be any different if the LOL had made the investment in a developed country such as Belgium? **[4 Marks]**

**[14 Marks]**

### Question 3

Citing key provisions, discuss whether the Zambia Development Agency Act No. 11 of 2006 goes far enough in attracting foreign direct investment.

[14 Marks]

## PART C

### Question 4

“A doctrinal issue that arises for stabilization clauses in general is whether they will bind the host state or whether the sovereignty of the state will operate to allow a change of the stabilization clause itself”. Rudolph Dolzer and Christoph Schreuer, *Principles of International Investment Law* (OUP 2012) pg. 83

Discuss the statement.

[14 Marks]

### Question 5

“‘Resource nationalism’ is a cyclical phenomenon. The cycle is driven by exogenous and endogenous drivers. The exogenous drivers concern the state of ideology with respect to the state intervention in the economy... The endogenous drivers relate to a number of factors. Of key importance is the state of the ‘obsolescing bargain’ in terms of its own natural cycle” Paul Stevens “National oil companies and International Oil Companies in the Middle East: Under the Shadow of Government and the Resource Nationalism Cycle” (2008) 1 *Journal of World Energy Law & Business* 5

Using Zambia as a case study, discuss the statement above.

[14 Marks]

## PART D

### Question 6

JR Ewing, an American Oil Tycoon enters into a joint-venture agreement with the Angolan government to build an oil rig off the coast of Angola. Article 12 of the said joint-venture agreement states the following:

All disputes arising out of this contract shall be settled by arbitration at the International Centre for Settlement of Investment Disputes (ICSID) headquarters

in Washington, District of Columbia before a panel of three arbitrators. The arbitrators must speak fluent Mandarin and be engineering experts.

The joint venture agreement, it turns out, was signed by the Angolan Minister of Energy instead of the Head of State. The government of Angola thus believes it is under no obligation to uphold the said agreement. JR Ewing thus initiates arbitral proceedings pursuant to Article 12 of the agreement. During the proceedings the Government of Angola makes the following contentions:

- i) There was no contract between the Angola and JR Ewing and therefore no valid agreement to arbitrate.
- ii) Since there is no valid agreement to arbitrate, the arbitral tribunal has no jurisdiction.

a) Advise JR Ewing. **[9 Marks]**

b) Would your answer be any different if the arbitral tribunal consisted of five French speaking experts in fashion design? **[5 Marks]**

**[14 Marks]**

### **Question 7**

“Although the arbitral tribunals do not explicitly endorse the Hull Principle, it is still clear that the principles adopted under the aforementioned standard are recognised. This is reflected in the fact that arbitral tribunals invariably recognize that lost future profits should be included in the compensation award...” Sangwani Patrick Ng’ambi, *Resource Nationalism in International Investment Law* (2016 Routledge) pg. 83

Critically analyse the above statement.

**[14 Marks]**

**END OF EXAMINATION**



# **THE UNIVERSITY OF ZAMBIA**

## **SCHOOL OF LAW**

### **ENVIRONMENTAL LAW- LPU 4085**

#### **FINAL EXAMINATION**

**AUGUST, 2017**

#### **INSTRUCTIONS:**

1. Students must answer a total of four questions, one from each part. Part A (question one) is compulsory.
  2. Time allowed: three (3) hours plus five (5) minutes to read through the paper.
  3. This examination carries a total of 60 marks.
  4. Candidates are not permitted to bring any statutes in the examination room.
  5. Candidates must not turn this page until the invigilator tells them to do so.
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## PART A (COMPULSORY)

### Question One

On 16 July 2015, a UK based law firm, Hausfeld Global Litigation Solutions filed a claim in the English High Court against Vedanta Resources Plc (Vedanta) and its subsidiary Konkola Copper Mines plc (KCM). This was on behalf of hundreds of villagers from Chingola, many of whom are farmers and fishermen, severely affected by the direct disposal of contaminated effluent and tailing waste into the surrounding rivers and lands from KCM's extensive mining operations. These issues were considered in the case of *Nyasulu and 2000 Others v. Konkola Copper Mines, Environmental Council of Zambia and Chingola Municipal Council 2007/HP/1286*. These proceedings were in the Zambian courts over a long running battle of nine years, culminating in the decision of the Supreme Court on 2 April 2015, upholding a High Court verdict that KCM was responsible for major water contamination which poisoned thousands of people and turned the Kafue River acidic.

The 2011 Lusaka High Court decision noted, *inter alia* that:

There was gross recklessness as to whether human beings died or not. They deprived Chingola residents of the right to life which is fundamental to our Constitution [...]. [KCM], must bare (sic) moral, criminal, and civil liability for this appalling tragedy. Here is a Multinational Enterprise which has no regard for human life for the sake of profit and turned the residents of Chingola into 'guinea pigs' and showed no remorse. In the countries of origin such recklessness would have been visited by severe criminal and civil sanctions.

KCM was ordered to pay each claimant 4 million Kwacha as general damages and 1 million Kwacha in punitive damages, an award that has been criticised as grossly inadequate.

- (a) With specific reference to the foregoing, critically evaluate the concept of environmental democracy in Zambia, drawing from as many local and international authorities as are relevant. **(13 marks)**
  - (b) What role should gender considerations play in facilitating environmental wellbeing in Zambia? **(5 marks)**
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## PART B

### Question Two

- (a) Discuss the sources of environmental law in Zambia. **(4 marks)**

- (b) Critically analyse the extent to which international law defines Zambian environmental law. **(10 marks)**

### **Question Three**

The enactment of the Environmental Management Act, No. 12 of 2011 has been hailed as a move towards the right direction in environmental management in Zambia. To what extent will the powers given to the Zambia Environmental Management Agency under this relatively new piece of legislation enable the Agency to become a more effective regulator?

**(14 marks)**

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## **PART C**

### **Question Four**

Klaus Toepfer, past Executive Director of the United Nations Environment Programme, in his statement to the 57<sup>th</sup> Session of the Commission on Human Rights in 2001 reflected as follows:

Human rights cannot be secured in a degraded or polluted environment. The fundamental right to life is threatened by soil degradation and deforestation and by exposures to toxic chemicals, hazardous wastes and contaminated drinking water. Environmental conditions clearly help to determine the extent to which people enjoy their basic rights to life, health, adequate food and housing, and traditional livelihood and culture. It is time to recognize that those who pollute or destroy the natural environment are not just committing a crime against nature, but are violating human rights as well.

Imagine that it is the year 2050 and the constitutional environmental right is enshrined in the Zambian Bill of Rights and provides that “a person has the right to a safe, clean and healthy environment.”

Critically discuss the concept of environmental human rights with specific reference to Zambia. **(14 marks)**

### **Question Five**

- (a) Why is the conservation of biological diversity a common concern? **(4 marks)**
- (b) What is the relevance of the Convention on Biological Diversity to Zambia? **(4 marks)**

- (c) What are the objectives of the Convention on Biological Diversity and how achievable are they from the Zambian perspective?

(6 marks)

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## **PART D**

### **Question Six**

On 22<sup>nd</sup> August, 2016, a scientific news item available on <http://www.reuters.com/journalists/alister-doyle> stated as follows:

After the scorching heat, the Earth is likely to get respite in 2017. The Earth is likely to get relief in 2017 from record scorching temperatures that bolstered governments' resolve last year in reaching a deal to address this vexing and widespread problem, scientists said on Wednesday. July was the hottest single month since records began in the 19th century, driven by greenhouse gases and an El Nino event warming the Pacific. The National Aeronautics and Space Administration (NASA), an independent agency of the executive branch of the United States federal government responsible for the civilian space program, as well as aeronautics and aerospace research, this week cited a 99 percent chance that 2016 will be the warmest year, ahead of 2015 and 2014.

- (a) What is the "vexing widespread problem" that is being referred to in the excerpt? Explain whether or not you agree that it is vexing and widespread. (7 marks)
- (b) Briefly explain the national and international legal framework for addressing the problem under discussion in the excerpt.

(7 marks)

### **Question Seven**

Section 6 of the Environmental Management Act No. 12 of 2011 provides for the application of various environmental law principles in fulfilling its objectives. Discuss any four (4) of these principles, with reference to decided cases and international environmental law, clearly outlining their origins and legal significance in Zambia. (14 marks)

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**END OF EXAMINATION**