

**SCHOOL OF LAW
FIRST SEMISTER 2004**

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SHORT LOAN COLLECTION

UNIVERSITY OF ZAMBIA SCHOOL OF LAW

L111 – LEGAL PROCESS EXAMINATION

28 June 2004

Attempt Any 4 Questions. Each question carries 15 marks.

1. What are the sources of Zambian law?
2. Explain the following statutory rules of interpretation: the mischief rule, the literal rule, the golden rule.
3. Name the various courts in Zambia and state the jurisdiction of any one of them
4. Why do people generally obey the law?
5. Distinguish between the Common Law and the Civil Law systems.

End of Exams

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

UNIVERSITY FIRST SEMESTER EXAMINATIONS, JUNE 2004

L141 – CRIMINAL LAW I: INTRODUCTION TO CRIMINAL LAW

INSTRUCTIONS

TIME : THREE(3) HOURS [PLUS 5 MINUTES FOR READING THROUGH THE PAPER]

DOCUMENTS: Penal Code, cap 87, Criminal Procedure Code, cap 88

QUESTIONS: Seven(7) Questions: Answer any Four(4) Questions

QUESTION ONE

No act is punishable if it is done involuntarily. Do you agree? (Cite two decided cases).

[15 MARKS]

QUESTION TWO

Write short notes on **two(2)** of the following:

- (a) Kabongo v. The People (1974) ZR 83 (Supreme Court).
- (b) Thabo Meli v. R (1954) 1 ALL ER 373 (Privy Council).
- (c) The People v. Mudewa (1973) ZR 147 (High Court).
- (d) Educative deterrence.
- (e) Mohan v. R (1967) 2 AC 187 (Privy Council).

[15 MARKS]

QUESTION THREE

A court by or before which a person is convicted of an offence may make an order discharging her absolutely or subject to certain conditions.... Carefully explain.

[15 MARKS]

QUESTION FOUR

Section 205(2) of the Penal Code of Zambia provides:

The provisions of this section shall not apply unless the court is satisfied that the act which causes death bears a reasonable relationship to the provocation. Explain the legal implications of this subsection as regards the defence of provocation.

[15 MARKS]

QUESTION FIVE

As a general rule: intoxication shall not constitute a defence to any criminal charge. Describe two exceptions to this rule under the Penal Code of Zambia.

[15 MARKS]

QUESTION SIX

God never intended barbarous punishments and consequently far more appropriate than the gallows is the prison conducted on humane principles to encourage improvement in the character of the offender. Illustrate how punishment may lead to the 'improvement in the character of the offender'.

[15 MARKS]

QUESTION SEVEN

'Mens rea'. Explain (Be sure to make reference to two decided cases).

[15 MARKS]

END OF EXAMINATION!

UNIVERSITY OF ZAMBIA SCHOOL OF LAW

L211 – LEGAL PROCESS EXAMINATION

21 June 2004

Attempt Any 4 Questions. Each question carries 15 marks.

1. Critically discuss the quantum of English law received in Zambia.
2. Discuss the meaning and implications of the doctrine of hierarchy of norms.
3. With the aid of decided cases, show how the repugnancy clause has been used to proscribe certain customs in Zambia.
4. Carefully examine the following concepts: overriding, distinguishing, *ratio decidendi*.
5. (a) What are the sources of Islamic law?
(b) What do you understand by the Civil Law system?
(c) Explain any three maxims of equity you know.
6. “We fully endorse the cardinal rule of construction of statutory interpretation ... that the intention of the legislature ... is to be ascertained by taking the words in their natural, literal and usual sense.”

Per Ngulube CJ (as he then was) in **Edward Mweshi Chileshe v Zambia Consolidated Copper Mines Ltd** (1996) SCZ Judgment No.10 of 1996, unreported.

Elucidate.

End of Exam

THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW
FIRST SEMESTER EXAMINATIONS – JUNE 2004

L221
LAW OF CONTRACT

TIME: **THREE (3) HOURS**

INSTRUCTIONS: **ANSWER QUESTION ONE (1) AND ANY OTHER THREE (3) QUESTIONS**

1. From time to time, Peter sold surplus stock from his warehouse after advertising it in the *Lusaka Telegraph*. On June 30th the following appeared in the *Telegraph*:

“For sale, two new digital cameras – a Sony X80 at a reserve price of K3 million and a Samsung 220 at the reserve price of K1.5 million: Bids can be submitted on Saturday 3rd July between 14:00hrs and 16:00hrs at the warehouse in the industrial area. Sale subject to Peter’s standard terms and conditions. The highest bidder will be the lucky one.”

At the warehouse was a box marked “bids for today’s sale items” and on the wall was a poster setting out Peter’s “terms and conditions”. One of the terms provided:

“All offers for sale items will be considered up to the close of business on the Monday following the day for submitting bids on these premises.”

Another term provided:

“This sale is a matter of honor only and no legal action may be brought nor are any guarantees given regarding performance.”

Musonda, having seen the advertisement, telephone Peter on 1st July and offered him K3.5 million for the Sony. Peter accepted the offer immediately and arranged the following advertisement to appear in the *Telegraph* of 2nd July:

“Owing to unforeseen circumstances Peter has been obliged to replace the Sony X80 with a Vivitar Ti0 in today’s sale.”

Charles who did not see the second advertisement, placed a bid in the box at 14:00 on July 3rd, offering to buy the Sony X80 for K3.2million. Chanda placed a bid in the box soon afterwards offering to buy the Samsung 220 for K1.7. Neither

Charles nor Chanda read Peters terms and conditions. Each of their bids was the highest in the box for the respective items.

On Tuesday 6th July, Joy met Peter and offered him K1.5 for the Samsung 220 saying that she needed it as a present for her parents. As the parents were friends of Peter, he accepted this offer.

Advise Peter on his legal position with regard to Charles and Chanda.

2. Bright Colours Ltd, a small construction company, has just started a great contract to renovate a nice Mediterranean style house in Kabulonga. The owners, whose only son was getting married in February 2005, were preparing a lavish home reception. The contract involved not only pure construction work but also some decoration of two bathrooms, a kitchen and a patio. Bright Colours Ltd are inexperienced in decorating so they decided to offer that part of the job to a well known decorator Easy Living Ltd. On Wednesday, March 24th, 2004, they sent a fax to "Easy Living" with a complete description of the work saying: "We are offering to pay you K80million if you can finish your work in three weeks. Please reply as soon as possible if you are accepting our offer." "Easy Living" accepted the offer a day later by fax: "We accept your offer. We will get our designers in action immediately."

Unfortunately, nobody from "Bright Colours" saw the faxed acceptance from "Easy Living" as Bright Colours' fax machine was out of ink until the following Monday March 29th, 2004. In the meantime, "Bright colours", not hearing from "Easy Living" for more than three days, had already contracted with another decorating company, "Classy Inc", to do the work. "Bright Colours" mailed a nice thank you card to "Easy Living" on Wednesday March 31st saying "Sorry, we had to accept another offer."

"Easy Living" received the card from "Bright Colours" on Friday April 2nd, 2004, but they had already ordered expensive European bathroom and patio furniture to be used in the decorating job described in "Bright Colours" fax of March 24th. The following morning on April 3rd, they mailed back to "Bright Colours" an angry letter, saying that "Easy Living" had already accepted the offer and that they would do anything to get this job.

In the meantime, "Bright Colours" and "Classy Inc" were working hard on the house to meet the deadline. However, on Saturday April 10th, the manager of "Classy Inc" called the manager of "Bright Colours" on his mobile phone to tell him that some Italian bathroom ceramics were temporarily unavailable from their regular Lusaka supplier and that they would be late unless they went to Johannesburg to get them from a more expensive South African company. Also, Classy Inc asked for an extra K20million for their labour. "Bright Colours" said

that that was outrageous, but at the end of the conversation they agreed to pay more, aware of serious financial problems and loss of credibility they could be facing if they were late with the job.

When the job was completed, the house owners were very happy, and paid and praised "Bright Colours" for their great work. "Bright Colours" on the other hand paid "Classy Inc" only the initially agreed K80million and refused to pay the extra K20million. Now, both "Easy Living" and "Classy Inc" are suing "Bright Colours" claiming that "Bright Colours" failed to perform its contractual obligation. Advise "Bright Colours."

3. Write brief note on the following

- (i) The rule in Pinnels case
- (ii) Contra proferentum rule
- (iii) Parol evidence rule.

4. James had his hair cut by Mwenya, the Barber, on about five to six occasions previously. On the mirror, in front of the barbers chair there is a notice in capital letters which states,

"I will accept no liability for any damage of any kind whatsoever caused to patrons of this shop."

Once when James asked Mwenya what the sign meant, Mwenya replied that it only meant James could not sue if he did not like the haircut.

Last week after James paid for his haircut, Mwenya handed him a receipt. James placed it in his pocket without reading it. Yesterday, he was told by his doctor that he had contracted a severe case of dermatitis owing to Mwenya's negligence in failing to sterilize his instruments properly from his last haircut. On reading the back of the receipt, James sees that it is headed "conditions" and includes, inter alia, the following clause:

"Liability for any injury or loss sustained as a result of any hair treatment is hereby excluded"

James seeks your advice on whether he can succeed in an action against Mwenya.

5. John is a 17 year old student studying for a degree in agricultural sciences at Chalimbana University. Whilst shopping at Trendtech stores he is persuaded by a sales assistant to procure a laptop computer which the assistant indicates would be

useful to him. John agrees to buy one, however he indicates that he does not have money to pay cash upfront for the computer. The assistant then indicates that "Trendtech" is able to secure a credit facility for him from a local bank, he is then given a form from "Consumer Bank Ltd" to complete and is asked to return after two days to pick up the laptop. Realizing how easy it is to procure from "Trendtech" John also includes in his intended purchase the very latest satellite phone. John returns two days later and picks up the phone and laptop. After two months John realizes that he cannot afford to maintain the phone and sells it to Ben in disregard of the terms of the sale which prohibit John from selling items procured on credit without the consent of "Trendtech." John has in the meantime not made any payments to "Consumer Bank" to service his indebtedness. When the bank sends him a letter of demand he responds by stating that the laptop supplied to him was defective and he will not pay. Advise "Trendtech" and "Consumer Bank" of their respective rights against John.

6. In June 2003 David decided to hire a tractor and plough from a local hiring service Lima Ltd in order to till 20 hectares of land. Consequently David spoke to the manager of Lima Ltd, he explained that the land he wanted to till was hilly and rocky and therefore would need equipment suited to this terrain. During their conversation, David made it clear that the equipment he hired must have the capacity to till at least 3 hectares a day. The manager of "Lima" replied that he guaranteed that the equipment he had available was capable of meeting David's requirements. In addition, David pointed out that because of the limited resources at his disposal the fuel economy of the tractor was absolutely essential. The manager of "Lima" said that his tractor used no more than 10 litres of diesel fuel per hour; satisfied David replied that he would hire the tractor for 8 days. The manager then handed him the company's standard hiring contract form which David signed without reading. The contract form, however made no mention of the fuel consumption of the tractor.

David then paid the hire fee and was handed a receipt which on its face contained a clause stating that no warranties were given as to the state or suitability of the equipment leased.

When David used the tractor he found that it was underpowered and could only till 1 hectare per day. In addition the tractor used over 30 litres of diesel in an hour.

Advise David whether he can succeed in an action against Lima Ltd .

7. "The simple fact is that the effect of the case of *Williams v Roffey Bros. & Nicholls(Contractors) Ltd* [1990]2WLR 1153 is that the law no longer requires that contracts be supported by consideration. The law need now only refer to

principles of equity and estoppel in order to give effect to the intentions of the parties to an agreement.”

Critically discuss this statement in the light of appropriate case law.

UNIVERSITY OF ZAMBIA

FIRST SEMESTER EXAMINATIONS –JUNE, 2004
2003/2004 ACADEMIC YEAR.

L.231, LAW OF TORTS,

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

INSTRUCTIONS: ANSWER QUESTIONS ONE AND ANY OTHER THREE QUESTIONS. QUESTION ONE IS COMPULSORY. STATUTES AND OTHER MATERIALS ON TORTS ARE NOT ALLOWED IN THE EXAMINATION ROOM.

QUESTION ONE: (A compulsory question)

Numerous attempts have been made by writers on the law of torts, including Winfield and Salmon, to formulate a single, generally acceptable definition of the term 'tort'. The attempts have resulted in varying degrees of failure. Winfield's proposition of the essence of a tort has four elements Identify the four elements in Winfield's proposition and explain each one of them. In discussing each element, cite a decided case or an appropriate hypothetical situation.

QUESTION TWO

The mental concepts of 'intention' malice' and ' motive' are generally not relevant in the law of torts, except where they form part of the ingredients of a specific tort. In the course of discussion these mental elements in the case of **Bradford Corporation V. Pickles (1895) A.C.567**, Lord Macnaghten said it is the act, not the motive for the act that must be regarded: That reasoning was reaffirmed in the case of **Allen V. Flood (1898) A.C.1**

Apart from the two precedents cited above, mention two other decided cases where one, two or all of the three mental concepts stated above was or were issues for determination by the court.

QUESTION THREE

The principle of 'fault' is the dominant feature in tortious liability. There are, however, other principles of liability where a defendant is adjudged responsible for a tort which he did not himself commit or where the harm caused to the plaintiff is either negligible or non-existent. These other principles are collectively known as 'Strict liability' rules. Some of these rules are of common law origin while others have been created by statutes. Mention two rules of strict liability that were created by statute and one rule of strict liability that originated from common law. Discuss each of these three rules of strict liability and give a precedent in each rule to support your answer.

QUESTION FOUR

Hakaloba Hampongo was beaten up by Mwansa Bwalya and Chimtengo Phiri on 10th December, 2003. Bwalya had attacked Hampongo with a wooden stick at Chinika Bar in Kanyama Area of Lusaka West at 15.00 hours on that day of 10th December, 2003, while Phiri hit him with an iron bar all over the body in chelston in Lusaka East at 1930 hours of the same day. Hampongo sustained two broken ribs on the right side of his chest and a crack in the skull. Each incident was witnessed by three independent persons, who are willing to testify for Hampongo at the trial.

It is not known which of the two assailants caused the personal injuries on Hmpongo. He had therefore decided to sue both of them in the tort of battery. Bearing in mind the various kinds of tortuous liability, discuss the type of liability of the two assailants in the court found that both assailants were equally responsible for all the personal injuries on Hampongo and awarded him K58,000,000(fifty eight million Kwacha).

Advise Hampongo if he can recover all the fifty million Kwacha from both his assailants or from only one of them. Illustrate this liability with one judicial precedent.

QUESTION FIVE

A Parent is not generally liable for the torts of his children, except where the principle of vicarious liability is applied under certain circumstances.

In **Beebe V. Sales (1916)** 32 T.L.R. \$13, a father had bought an air gun for his son. The son had smashed the window of their neighbour's house with a pellet fired from it. The neighbour complained to the father about the incident, but the father allowed his son to keep the gun and the son continued to use it.

A few weeks later the son shot a boy in the eye and injured him.

The court found the father liable in the tort of negligence.

Why do you think the court found the father liable in this case? Discuss also one change in the law which was brought about by the **Law Reform (Married Women and Tattersall's) Act, 1935**.

QUESTION SIX

The OLD ROCK QUARRY in Kabwe has three hundred employees, who have formed the OLD ROCK QUARRY WORKERS ASSOCIATION and they intend to register it into a trade union. Three months ago, in March 2004, eighty-two of the employees conducted a violent demonstration against the Quarry management, breaking sixteen windows of the Quarry buildings offices.

The management of the Quarry has retained you as their legal counsel to advise them as to whether they can safely sue their employees association in the tort of trespass to property. They would also wish to know what the name of the defendant would be in the writ of summons. You are expected to support your answer with at least one decided authority.

QUESTION SEVEN

In 1996 Saukani Sakala trespassed on Mubita Simasiku's farm in Mumbwa District. The trespass took the form of walking ten metres across the corner of Simasiku's farm where there were no crops. That part of the farm was a mere sandy patch. Simasiku has come to you for advice as to whether he can sue Sakala for the trespass. Simasiku-Sakala intends to advance the defence that his trespass did not cause any harm at all to Simasiku's farm. Name the legal maximum for that defence and comment further on it.

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

UNIVERSITY FIRST SEMESTER EXAMINATIONS, JUNE 2004

L241 – CRIMINAL LAW I: INTRODUCTION TO CRIMINAL LAW

INSTRUCTIONS

TIME : THREE(3) HOURS [PLUS 5 MINUTES FOR READING THROUGH THE PAPER]

DOCUMENTS: Penal Code, cap 87, Criminal Procedure Code, cap 88

**THE PAPER: Seven(7) Questions: Answer any Four(4) Questions.
You must comply with all the Requirements of each
Question you wish to answer.**

QUESTION ONE

- (a) "Punishment is justified only on the ground that wrongdoing merits punishment. It is morally fitting that a person who does wrong should suffer in proportion to his wrongdoing. That a criminal should be punished follows from his guilt, and the severity of the appropriate punishment depends on the depravity of the act. The state of affairs where a wrongdoer suffers punishment is morally better than one where he does not, and is so irrespective of consequences". [John Rawls].
- (b) "That which is past is gone and irrecoverable, and wise men have enough to do with things present and to come: therefore they do but trifle with themselves that Labour in past matters". [Francis Bacon].

Discuss [Give concrete examples].

[15 MARKS]

QUESTION TWO

Write short notes on three(3) of the following:

- (a) E.M. Tembo v. The People (1980) ZR 209 (SC).

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

UNIVERSITY FIRST SEMESTER EXAMINATIONS, JUNE 2004

L241 – CRIMINAL LAW I: INTRODUCTION TO CRIMINAL LAW

INSTRUCTIONS

- TIME :** THREE(3) HOURS [PLUS 5 MINUTES FOR READING THROUGH THE PAPER]
- DOCUMENTS:** Penal Code, cap 87, Criminal Procedure Code, cap 88
- THE PAPER:** Seven(7) Questions: Answer any Four(4) Questions. You must comply with all the Requirements of each Question you wish to answer.
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QUESTION ONE

- (a) "Punishment is justified only on the ground that wrongdoing merits punishment. It is morally fitting that a person who does wrong should suffer in proportion to his wrongdoing. That a criminal should be punished follows from his guilt, and the severity of the appropriate punishment depends on the depravity of the act. The state of affairs where a wrongdoer suffers punishment is morally better than one where he does not, and is so irrespective of consequences". [John Rawls].
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Discuss [Give concrete examples].

[15 MARKS]

QUESTION TWO

Write short notes on three(3) of the following:

- (a) E.M. Tembo v. The People (1980) ZR 209 (SC).

- (b) Patel's Bazaar Ltd v. The People (1965) SJZ 10 of 1965.
- (c) Nyambe M. Liyumbi v. The People (1978) ZR 25 (SC).
- (d) Lubendae v. The People (1982) ZR 54 (SC).
- (e) Community sentence (for adults).

[15 MARKS]

QUESTION THREE

In Criminal Law, the term 'necessity' is sometimes used indiscriminately referring to a number of defences which may excuse or justify otherwise criminal acts. This proposition is or is not incorrect. Explain [Be sure to cite **three(3)** decided cases].

[15 MARKS]

QUESTION FOUR

On several occasions Kofi (a Congolese fugitive) made offensive remarks about Lungu, the father of Banda, in the presence of Banda and other friends. Banda on two previous occasions was enraged: he told Kofi to desist from insulting his father, as such insults would impact negatively on his position in the community. Kofi responded that he would not stop as everybody knew that Lungu was a thief, a lazy man and a coward. Banda told Sampa his close friend about his story with Kofi, and asked him to assist him in beating up Kofi. Sampa agreed: remarking "We should teach him a bitter lesson".

Banda and Sampa went to a bar. There they heard Kofi boasting to other men that he would continue insulting Lungu. Banda upon hearing the words of Kofi attacked him with a wooden post: which was near to the entrance of the bar. Sampa stood aside while calling on Banda to hammer Kofi. As the fighting intensifies, another man called Cupa entered the bar. Upon being told that Banda was exchanging blows with a Congolese, Cupa attacked Kofi with a knife, intending serious injury, and stabbed Kofi in the left eye and on the right-lower chest. Kofi fell to the floor unconscious. He was taken to hospital where he died on arrival. Medical report revealed that the deceased suffered severe brain damage and acute internal bleeding as a result of blows and stabbing resulting in death.

Discuss the criminal Liability of Banda, Sampa and Cupa.

[15 MARKS]

QUESTION FIVE

Intoxication and provocation are absolutely irrelevant as defences (under the Penal Code of Zambia) to criminal Liability. "Yes"! Kabwe, a Para-Legal Trainee exclaims. Carefully justify Kabwe's unexplained enthusiasm.

[15 MARKS]

QUESTION SIX

Section 3(1) of the Criminal Code 1800 of Golds-Land Republic provides:

Where in any information any act or omission is charged against any person as an offence, and it is given in evidence on the trial of such person for that offence that he was insane, so as not to be responsible, according to Law, for his actions at the time when the act was done or omission made, then, the court shall return a special verdict that the accused is not guilty by reason of insanity.

Critically contrast the rules of insanity under Goldsland Criminal Code with the rules of insanity under the Penal Code of Zambia [Be sure to support your argument].

[15 MARKS]

QUESTION SEVEN

Actus non facit reum nisi mens sit rea [Coke: Institute (Ch 1, fo 10)]

Assess critically the relevance of the Maxim to Modern Criminal Law [cite relevant cases].

[15 MARKS]

END OF EXAMINATION!

THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW

UNIVERSITY FIRST SEMESTER DEFERRED EXAMINATIONS,
JULY 2004

L251: CONSTITUTIONAL LAW I

INSTRUCTIONS:

1. **TIME:** THREE (3) HOURS [PLUS 5 MINUTES TO READ THE QUESTION PAPER]
 2. **ANSWER:** **FOUR** (4) QUESTIONS ONLY.
-

QUESTION ONE

The proponents of one party rule described the Second Republic as a “one party participatory democracy.” With appropriate illustrations, discuss to what extent presidential and parliamentary elections met the requirements of democracy in the Second Republic.

[15 Marks]

QUESTION TWO

- (a) What is Judicial Review and in what circumstances is it applicable?

[15 Marks]

- (b) In what way, if at all, can the doctrine of Judicial Review be reconciled with the doctrine of Parliamentary sovereignty?

[10 Marks]

QUESTION THREE

- (a) Why were the Africans in Northern Rhodesia and Nyasaland opposed to the creation of the Federation of Rhodesia and Nyasaland?

[5 Marks]

- (b) What institutional and legal mechanisms were devised to protect African interests under the Federal Constitution? How effective were these mechanisms

[20 Marks]

QUESTION FOUR

What is the meaning and import of the doctrine of collective responsibility of the Cabinet under the British system of government?

[25 Marks]

QUESTION FIVE

"The Independence Constitution 1964 was crafted in such a way as to protect the interests of the minority from encroachment by the Black majority government."

Discuss critically.

[25 Marks]

QUESTION SIX

What were the objectives of the constitutional changes of 1959, and what mechanisms were embodied within the constitutional arrangement to achieve these objectives?

[25 Marks]

QUESTION SEVEN

The United National Independence Party (UNIP) was considered supreme in the Second Republic. How did this supremacy manifest itself both in law and practice?

[25 Marks]

END OF EXAMINATION

**The University of Zambia
School of Law**

Law of Evidence L 311 – June 2004 Examination

Instructions

Answer Q1 and any three (3) others

Time: Three (3) hours

Start each answer on a fresh page

Question 1 carries 18 marks; All others carry 14 marks each

Question 1

Ruling on the conviction of an accused person for murder on the basis of circumstantial evidence, the judge warned as follows:

It is ... incumbent on a trial judge that he should guard against drawing wrong inferences from the circumstantial evidence at his disposal before he can feel safe to convict. The judge ... must in order to feel safe to convict, be satisfied that the circumstantial evidence has taken the case out of the realm of conjecture so that it attains such a degree of cogency which can permit only an inference of guilt.

Discuss the reception of circumstantial evidence in a trial and comment on the significance of the above statement by the Judge.

[18 marks]

Question 2

Distinguish the burden of adducing evidence from the burden of proof.

[14 marks]

Question 3

Ginesi Panta made a claim under succession laws in Re Estate of Panta (1998). Ginesi the Plaintiff produced a Certificate of her marriage to Panta Panta on 23rd June 1996. She described herself as the widow but was unable to produce a death certificate of her first husband saying that he was killed on 16th April in 1992 during a hunting expedition by a landmine left behind during Zimbabwe's freedom war. She said she learnt of his death after the blast in the area where he was hunting, was made headline for a week. His sister who had gone to identify the body found the bodies unidentifiable.

Comment on the validity of Ginesi's marriage to Panta Panta and chances of her claim to his estate.

[14 marks]

Question 4

The police raided Chileshe's home, during the course of which they carried out a search without having any warrant. Subsequently Chileshe was arrested and charged with unlawful possession of cannabis, a controlled drug. The police also seized, during the search, a notebook in which Chileshe kept a record of his transactions in the drug market.

After his arrest, Chileshe was taken to a police station. He asked to be allowed to call his lawyer, but the request was refused. He repeated similar requests over the next three days, but all these requests were refused.

After three days of sustained questioning during which Chileshe was allowed very little sleep, he made a confession which led the police to a concealed lock-up garage where they discovered further quantities of drugs.

At his trial, Chileshe's Counsel argues that the confession and everything found as a consequence of the confession, should be excluded from evidence. On the voir dire Chileshe was asked in cross examination whether or not the confession he had made to the police was in fact true. Chileshe's Counsel objects to the question.

Discuss the issues raised.

[14 marks]

Question 5

Discuss the proposition that all witnesses are competent and compellable for either side in either criminal or civil proceedings.

[14 marks]

Question 6

A person's tendency to act, think or feel in a particular way may be proved by conduct on other occasions (similar fact evidence), by evidence of the person's character, and by previous convictions (if any). Whatever the form the evidence takes, it is affected by exclusionary rules.

Discuss

[14 marks]

Question 7

- a. Privilege relates to a certain person's or class of people's right to refuse to answer a question or supply information which would otherwise be relevant in determining an issue." Discuss.
- b. What is the Court's attitude to privilege, and why?

[14 marks]

END

THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW

UNIVERSITY FIRST SEMESTER EXAMINATIONS

JULY 2004

LAND LAW L321

INSTRUCTIONS: ANSWER ANY FOUR QUESTIONS

DURATION: THREE HOURS

1. On 1st July 2004, Emmanuel Kabwe offered ~~Samson Banda~~ to purchase a property known as Stand 200 Kabulonga, Lusaka. Charles Bwalya was at the material time a sitting tenant of Stand 200 Kabulonga, Lusaka. On 4th July 2004, Charles Bwalya and ~~Samson Banda~~ reduced their agreement in writing into a Law Association of Zambia Contract of Sale. Charles Bwalya failed to raise the purchase price for the property. In view of the failure of Charles Bwalya to raise the purchase price and prior to rescission of the contract of sale, ~~Samson Banda~~ offered the same property to Emmanuel Kabwe. On 10th July 2004, Samson Banda signed with Emmanuel ~~Bwalya~~ another written contract relating to the same property. In both transactions ~~Samson Banda~~ was represented by Messrs Quicksand and Advocates. Emmanuel ~~Bwalya~~ settled the purchase price and proceeded to obtain a certificate of title in respect of Stand Number 200 Kabulonga, Lusaka. However, when Emmanuel ~~Sought~~ to obtain possession of the property in question, he found Charles Bwalya in the property, who resisted to vacate the property claiming that he had entered into a valid and binding contract with ~~Samson Banda~~. Infuriated by this turn of event, Emmanuel ~~Bwalya~~ approaches you for advice. Advise.

2. Distinguish Easements from

- (a) Profits; and
- (b) Licences

THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW
FIRST SEMESTER EXAMINATION: JUNE 2004

L 341: ADMINISTRATIVE LAW

INSTRUCTIONS: Answer Question ONE and Any other THREE Questions

Time: THREE HOURS

1. According to Professor A.V. Dicey one of the meanings of the concept of rule of law is that of equality before the law or the equal subjection of all classes of people to the ordinary law of the land administered by the ordinary courts. This means no man is above the law. Officials like all other citizens are subject to and under duty to obey the same law. Astridah Chisha is a student of constitutional law and she has noted that Section 4 of the National Assembly (Powers and Privileges) Act provides:

No civil or criminal proceedings may be instituted against any member for words spoken before, or written in a report to, the Assembly or to a committee thereof or by reason of any matter or thing brought by him therein by petition, Bill, resolution, motion or otherwise.

Section 5 of the same Act provides:

For the duration of a meeting members shall enjoy freedom from arrest for any civil debt except a debt the contraction of which constitutes a criminal offence.

She is surprised by these provides and wonders how these provisions can be reconciled with the concept of rule of law. Explain to her.

2. You are student of administrative law and you have met John Smith who is a student at Cambridge University in the UK. He is surprised to know that Zambia has a written constitution. He wants to know the impact of the Constitution on administrative law in Zambia.
3. The Constitution Commission appointed by the President to review the Constitution has established a Committee to look into the possibility of making recommendations in administrative law. They believe that the constitutional order cannot be changed without corresponding change in administrative law. One of the Commissioners has suggested

that Zambian administrative law should be procedural law: “the law governing the process by which agencies make decisions or take other action and the process by which the wisdom and legality of the latter are reviewed by the bodies (including courts) authorised to perform that function.”

The Commissioners also suggested that the Administrative Procedure Act of the USA (1946) (as amended) should be adopted. Section 2(a) of the Act was to be amended to read:

“Agency” means each organ or authority (whether or not within or subject to review by another agency) of the Republic of Zambia.

You are one of the assistants to the Constitution Commission and the Chairman has asked you to prepare a brief for his attention on the possible impact of this proposal on administrative law in Zambia.

4. Article 62 of the Constitution provides:

The legislative power of the Republic of Zambia shall vest in Parliament which shall consist of the President and the National Assembly.

Article 78(1) of the Constitution on the other hand provides:

Subject to the provisions of this Constitution, the legislative power of Parliament shall be exercised by Bills passed by the National Assembly and assented to by the President.

And Article 80(1) provides:

Nothing in Article 62 shall prevent Parliament from conferring on any person or authority power to make statutory instruments.

Charles Mwila wants to know the likely consequence of the repeal of Article 80(1) of the Constitution on the operations of public institutions and administrative law in Zambia.

5. The Anti-Corruption Act, Chapter 91 of the Laws of Zambia is described as:

An Act to provide for the establishment of the Anti-Corruption Commission as an autonomous body, its powers and functions; provide for the composition of the Commission; the powers and functions of the Director-General; repeal and replacement of the Corrupt Practices Act, 1980, and to provide for matters connected with or incidental to the foregoing.

Section 24(1) of the Act provides:

The Director-General may, by written notice to a person who is the subject of an investigation in respect of an offence alleged or suspected to have been committed under this Act, or against whom a prosecution for such offence has been instituted, direct that such person shall not dispose of or otherwise deal with any property specified in such notice.

Peter Kapasula is under investigation by the Anti-Corruption and he is surprised by the said provision of the law and wonders why such powers should be vested in a public officer. He wants to know the justification, if any, for the conferment of such powers in public officers.

6. Davy Hamilenga imported a car from South Africa. He has been given an assessment of the value of the vehicle, which far exceeds what he paid for it. Duty and VAT has been calculated on the assessed value of the car. He is unhappy with this development and wants to go to court and challenge the decision of the Zambia Revenue Authority (ZRA). He is, however, advised by one of the officers at ZRA to take the case to the Revenue Appeals Tribunal. He wants to know why such institutions (Revenue Appeals Tribunal) exist and their advantages, if any. He needs the information so that he can decide on the way forward. Please advise him.
7. Students in the Law School have been invited to make representations to the Constitutional Review Commission. Those in third year and studying administrative law have been asked to make representations to the Commission on how best to strengthen the Commission for Investigations so that it can help in the proper operation of the public institutions and officers. You have been chosen by your colleagues to prepare the submissions to the Commission. Please prepare the said submissions.

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

L.351 – HUMAN RIGHTS LAW EXAMINATION

1 July 2004

Attempt Any 4 Questions. Each question carries 15 marks.

1. Compare and contrast the admissibility requirements under the European and the Inter-American systems of human rights protection.
2. Show how the jurisprudence of the European human rights system has imposed limitations on the limitations on rights guaranteed under the European Convention on the Protection of Fundamental Human Rights.
3. Critically consider the characteristics of human rights.
4. Briefly discuss the instruments comprised in the International Bill of Rights.
5. In relation to human rights law, what is meant by cultural relativism?
6. Explain the following concepts: derogations, charter-based procedures, domestication.
7. What conditions should a person fulfill to be elected: (i) a commissioner of the African Commission on Human and Peoples' Rights, (ii) a judge of the African Court on Human and Peoples' Rights.

End of Examination

THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW

FIRST SEMESTER EXAMINATION PAPER, JULY, 2004 ON

L411: JURISPRUDENCE – I
(CLASSIC AND TRADITIONAL THEORIES OF JURISPRUDENCE)

TIME : THREE HOURS (Plus 5 Minutes to read through the paper)

INSTRUCTIONS:

1. Statutes are allowed in the Examination Room
2. There are four Parts to this paper. Answer **ONE** Question from each of the following Parts.

PART A

1. ***"It is the thesis of this essay that the English decisions preclude us from laying down any conditions, such as physical control or certain kind of intention, as absolutely essential for a judicial ruling that a man possess something. A theory which postulates physical control and intention of one kind or another as the basic ingredients of possession must include artificial glosses or fictions to cover the actual English decisions".***

(D. R. Harris, "The Concept of Possession in English Law" in OXFORD ESSAYS IN JURISPRUDENCE at p. 69.

Discuss the Concept of Possession under both English and Zambian Law

2. Amongst the pastoral people cattle can graze on any land after the harvest season. During one such season, two herd boys discover a ten kilogram bag containing high grade emeralds in a shallow trench on land under customary law.

There is a dispute as to who should possess and own the emeralds between the herd boys, the owner of the land and the State. An official from the Ministry of Mines and Minerals has said the nature of the package of emeralds would suggest that it was mined under licence. As between the herd boys each one asserts that he was the first to see the object.

Who is the Owner and Possessor of the emeralds .

Discuss.

PART B

3. A. M. Honore has said this of Ownership:

“OWNERSHIP is one of the characteristic institutions of human society. A people to whom ownership was unknown, or who accorded it a minor place in their arrangements, who meant by meum and tuum no more than ‘what I (or you) presently hold’ would live in a world that is not our world. Yet to see why their world would be different, and to assess the plausibility of vaguely conceived schemes to replace ‘ownership’ by ‘public administration’ or of vaguely stated claims that the importance of ownership has declined or its character changed in the twentieth century, we need first to have a clear idea of what ownership is”.

What is the liberal Concept of Ownership?

Discuss.

4. The right to everything in, on or over the land is expressed in the maxim:

“cujus est solum, ejus est usque ad coelum et ad inferos”

Discuss the maxim in the context of the Concept of Ownership.

PART C

5. Gower L. C. B. in ***Modern Company Law (2nd Ed.)*** quotes Cardozo J, as having said in 1926:

“The whole problem of the relation between

parent and subsidiary corporations is one that is still involved in the mists of metaphor. Metaphors in law are to be carefully watched, for starting as devices to liberate thought, they often end by enslaving it".

(At p. 377)

R. S. Welsh, 62 L.Q.R (1946) p. 345 has undertaken an authoritative survey of developments on criminal liability of Corporations

Discuss criminal liability of corporations in the light of case law.

6. Discuss Jural relations in the following instances:

- (a) a Bank and customer
- (b) lawyer and client
- (c) a diplomatic envoy in a country with the rest of the people
- (d) a testator, beneficiaries and third parties
- (e) motorist and other road users
- (f) Benefactor and beneficiary
- (g) Riparians along the river bank
- (h) Licensor and Licensee.

PART D

7. Of Customary law Lord Atkin had this to say in ***Eleko V. Officer Administering the Government of Nigeria*** (1931) A. C. 662 at p. 673:

"..... Their Lordships entertain no doubt that the more barbarous customs of earlier days may under the influences of civilization become milder without losing their

essential character of custom. It would however, appear to be necessary to show that in their milder form they are still recognised in the native community as custom, so as in that form to regulate the relations of the native community inter se. In other words, the Court cannot itself transform barbarous custom into a milder one. If it still stands in its barbarous character it must be rejected as repugnant to "natural justice, equity and good conscience". It is the assent of the native community that gives a custom its validity, and therefore, barbarous or mild, it must be shown to be recognised by the native community whose conduct it is supposed to regulate".

Discuss custom as a source of law in the Zambian Legal System.

8. The Supreme Court in the ***Match Corporation Limited*** case (SCZ Judgement No. 3 of 1999) upheld the principle of ***stare decisis*** which the Court could only vary for good cause or reasons.

In the ***Presidential Petition*** of 1996 – SJZ No. 14 of 1998, the Supreme Court held connection to the British Protectorate of Northern Rhodesia as the criteria for becoming a Zambian citizen at independence on the 24th October, 1964.

In a later High Court case of 1997/HN/357 in which the first President's citizenship was in issue, the High Court at Ndola after referring to the Supreme Court decision held that the first President was not Zambian but stateless.

Discuss in the light of these decisions the Doctrine of Precedents, based on stare decisis.

UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

L421

FIRST SEMESTER EXAMINATION

INSTRUCTIONS

1. TIME: **THREE (3) HOURS**
 2. **ANSWER QUESTION ONE (1) AND THREE (3) OTHERS.**
 3. STUDENTS ARE ALLOWED TO BRING TO THE EXAMINATION ROOM AND CONSULT CLEAN AND UNMARKED COPIES OF THE REGISTRATION OF BUSINESS NAMES ACT CAP 389, THE PARTNERSHIP ACT, 1890 AND THE COOPERATIVE SOCIETIES ACT NO.20 OF 1998
-

QUESTION 1 (22 MARKS)

Ingenious Kafupi, Wiseman Shikashiwa and Spectator Kalaki are Accountants and run an accounting firm by the name and style of KSK & Associates. Among other things, their Partnership Deed contains the following clause: -

“If any partner shall commit or be guilty of a serious breach of his duties the other partners may by written notice expel him from the partnership subject to an appeal to an arbitrator.”

An anonymous letter was received by Spectator Kalaki that Wiseman Shikashiwa was using the firm's name to acquire business for which he was not accounting to the other partners. Relying on this rumour, Spectator Kalaki served a notice of expulsion (with a copy to Ingenious Kafupi) on Wiseman Shikashiwa who has now come to you for legal advice, and in particular that you should commence legal action against Spectator Kalaki, having heard that you are a legal luminary in the law of partnerships.

- (a) Advise whether or not Wiseman Shikashiwa can succeed to challenge his expulsion and why.
- (b) Which would be the appropriate forum for putting up the challenge?

QUESTION 2 (16 MARKS)

The Republic of Gunduzani, a former British colony is a newly independent State having recently attained its independence through armed struggle two years ago. The country is impoverished and so are its inhabitants. There is a some hope, however, in the Eastern Province of the country under the Kingdom of Nkwabilo which was spared from the devastation of the armed struggle. Apart from this, the land is quite fertile and King Nkwabilo's subjects in the village of Kwanga numbering in excess of fifty have been able to grow

more than enough food and are now desirous of selling the surplus to the provincial capital which is 50km away. Unfortunately, they have no means of taking their produce to town. They are aware that if they pooled their resources and associated together they would be able to find a solution to their transport problems. Village Headman Kwanga has approached you for legal advice.

Advise Village Headman Kwanga on the best business activity his subjects should undertake in order to address their problem and why you consider it the most appropriate.

QUESTION 3 (16 MARKS)

Outline the procedures for the formation and registration of: -

- (a) a Business Name
- (b) a Partnership
- (c) a Cooperative Society

QUESTION 4 (16 MARKS)

The historical origin of Cooperative Societies can be traced to the Rochdale Equitable Pioneers Society which was established on 21st December, 1884 near Manchester in Lancashire during the Industrial Revolution. Discuss what has come to be known as the “***Rochdale Cooperative Principles.***”

QUESTION 5 (16 MARKS)

Discuss the circumstances and procedures for: -

- (a) the termination of a Sole Proprietorship*
- (b) the winding up of Partnerships
- (c) the winding up of Cooperative Societies

QUESTION 6 (16 MARKS)

Cooperative Societies and Partnerships are both business associations of more than one individual but their ***raison detre*** is different. Discuss.

QUESTION 7 (16 MARKS)

With the aid of decided cases, discuss the duties of partners in a partnership.

UNIVERSITY OF ZAMBIA
UNIVERSITY EXAMINATIONS – JUNE 2004
L 431 – INTERNATIONAL LAW

TIME : THREE HOURS (plus 5 minutes to read the question paper)

INSTRUCTIONS : 1) Students can bring into the Examination Room
Unmarked copies of the Vienna Convention on the Law of Treaties and the
Vienna Convention on Diplomatic and Consular relations.
2) Answer question **ONE** and any other **THREE** questions.

1. A **Sudanese** national working as a driver for the **Japanese** Ambassador accredited to Zambia is brought before your court charged with causing death by dangerous driving, an incident that resulted in the death of one **Japanese** national, two **Zambian** nationals and one **South African** national. The vehicle involved in the mishap belonged to the wife of the Japanese Ambassador who in fact was the only surviving passenger in the vehicle. The driver pleads diplomatic immunity. What would be your verdict ?
(40 marks)

2. Two adventurous young men from the republic of **MZUZU** have been arrested in Lusaka after an operation by a combined team of Zambia police and Interpol which had lasted for over six months. This investigation followed the crash of a passenger plane belonging to **MZUZU** Airline which disappeared off the radar screens as it was making its final landing approach to **Kisangani airport** in the **Democratic Republic of Congo**. All 265 passengers on board that aircraft were killed. The 265 passengers were from different nations but at least 60 of the dead were Australian nationals who were on route to Angola where they were employed as Engineers on an oil rig off the coast of that country. The two arrested young men are apparently responsible for bring down the **MZUZU** Airline's plane. Zambia would like to have the two men tried in Lusaka but Australia is demanding that they be tried in that country while **MZUZU** would like them to be extradited to that country for trial.
Under international law which country do you think has the right to try the two young men? Give reasons for your answer.
(20 marks)

3. "As a source of international law, custom presents a number of theoretical difficulties. In particular, it remains problematic that behaviour which is inconsistent with a recognised rule of law may be characterised as either unlawful, or potentially, relevant state practice in the formation of a new rule of law. In addition, the supposedly consensual character of international law is put in doubt by doctrines such as acquiescence."
Discuss. (20 marks)

4. On what basis can a state claim jurisdiction over foreign nationals ? Discuss the scope of this jurisdiction in :

- a) the contiguous zone
- b) port over a crime committed aboard a foreign merchant vessel

(20 marks)

5. *The Vienna Convention on the Law of treaties stipulates five grounds on which the validity of an agreement may be challenged. Discuss these grounds in sufficient detail.*

(20 marks)

6. Comment on any two of the following:

- a) De jure recognition
- b) The Exclusive Economic Zone
- c) Jus Cogens
- d) Pacta sunt servanda

(20 marks)

7. Is international law true law ? Discuss making reference to commentaries from international law publicists , customary international law as well as treaty law.

(20 marks)

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

**THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW**

FIRST SEMESTER UNIVERSITY EXAMINATIONS, JUNE 2004

L.451 – INTERNATIONAL TRADE LAW

INSTRUCTIONS

1. **TIME:** THREE HOURS (Plus 5 minutes to read through the Paper)
 2. **ANSWER QUESTION ONE** and any other **Three (3) QUESTIONS**
 3. You are not permitted to bring statutes or treatises into the Examination Room
-

- (1) (a) The world is increasingly regrouping itself into economic entities more than ever before

Discuss

- (i) The Legal basis of Regional Trading blocs under International trade regime
- (ii) The conditions that need to be satisfied under the relevant GATT/WTO Article
- (iii) The forms under which the Regional Trading Arrangements may take

(20 MARKS)

- (b) The United Nations Conference on Trade and Development an organization founded 40 years ago, was a noble attempt by the under developed world to create in the United Nations, through fair and rational International trade, an instrument to serve its aspirations of progress and development.

Discuss

(20 MARKS)

- (2) (a) Discuss the escape clause mechanisms under GATT/WTO

(10 MARKS)

- (b) Discuss the concept of subsidies under GATT/WTO regime

(10 MARKS)

(3) Write short notes on the following:-

- a. Sources of International Trade Law
- b. The Theory of absolute Advantage
- c. Regulation of quantitative Restrictions under GATT/WTO
- d. The Trade Policy Review Body

(4) (a) Since 1975 the Lomé Conventions have served as the principal framework for trade and development cooperation between the European Union and the 71 African, Caribbean and Pacific Nations which form the ACP Group.

Discuss

(14 MARKS)

(b) Discuss the WTO Appellate body report in JAPAN – TAXES ON ALCOHOLIC BEVERAGES putting emphasis on the appellate Body's conclusions or findings in respect the concept of like product and status of previous adopted panel reports

(8 MARKS)

(5) (a) The Uruguay Round Agreements and subsequent decisions of the WTO recognize that the low-income developing countries are not able to participate effectively in the WTO process because of acute limitations arising from inadequate human and institutional capacity

Discuss

(10 MARKS)

(b) What are producer cartels. Discuss the ways in which they operate to achieve their goals

(10 MARKS)

(6) / What are commodity Agreements. What is Legal basis for their existence under the legal regime Governing International Trade? Discuss the variety of forms that they may take

(20 MARKS)

(7) At the time that GATT was drafted in 1947, four techniques were considered to be the primary government methods of import restraint: the tariff, the quota, subsidies and state trading enterprises

Discuss

(20 MARKS)

**THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW**

FIRST SEMESTER EXAMINATIONS, JUNE 2004

**L461 INTRODUCTION TO INTELLECTUAL
PROPERTY LAW**

INSTRUCTIONS:

1. **TIME: THREE (3) HOURS (PLUS FIVE MINUTES TO READ THE PAPER**
 2. **NO STATUTES ARE ALLOWED**
 3. **ANSWER QUESTION ONE AND THREE OTHERS**
-

QUESTION ONE

- (a) You are a legal expert in the field of Intellectual Property by Zambia Chamber of Small and Medium Business Association to present a paper on “How Intellectual Property can contribute to the success of the small and medium Enterprises”. Please do so.

[15 Marks]

- (b) Zona Limited, a company incorporated in Zambia specializes in food industry. Five years ago it developed a soft drink called Chongololo which has proved to be very popular among a lot of Zambians especially the young people. Besides that, Zona Limited has developed considerable reputation and goodwill for its Chongololo drink. Chongololo has not been registered for protection under trademark law. Please advise in each of the following distinct and separate situations:

- (i) Zona Limited seeks your advice as to how can a trademark be protected.
Please advise.

[4 marks]

- (ii) Zona Limited seeks your advice as to what conditions should a trademark have for it to be protected. Please advise.

[4 marks]

- (ii) Zona Limited realizing the importance of having its Chongololo trademark registered approaches you for advice on the procedure to file for a trademark registration.
Please advise.

[7 marks]

- (iv) Tulye Limited a stylish Zambian Limited Company appealing to thousands of young adolescents across Zambia, decides to use the name Chongololo on its clothes.
Advise Zona Limited as to its rights.

[5 marks]

- (v) Zona Limited wants to know under what conditions can a trademark be cancelled.
Please advise.

[5 marks]

QUESTION TWO

- (a) Discuss the neighboring or related rights under the Law of Copyright. To whom are these rights granted and state why the grant of these rights is important?

[14 Marks]

(

- (b) List and explain six defences to copyright infringement.

[6 Marks]

QUESTION THREE

Tyre Motors Limited, a company incorporated in Zambia specializes in designing cars. Tyre Motors Limited has just designed a nice saloon car called “spoto” which is appealing to thousands of young Zambians Tyre Motors Limited which does not know how to go about protecting their new design under industrial design approaches you as an expert in Intellectual Property for advice. Please advise in each of the following distinct and separate situations.

- (i) Tyre Motors Limited seeks your advice as to what conditions the new design “spoto” must meet before it is registered. Please advise.

[5 Marks]

- (ii) Tyre Motors Limited wants to file for registration of their design “spoto” and seeks your advice on the procedures of registering the said design under the Zambia Law. Please advise.

[7 Marks]

- (iii) Tyre Motors Limited seeks your advice as to what rights it acquires by registering the design. Please advise.

[4 Marks]

- (iv) Minde Motors Limited, without the permission of Tyre Motors Limited, decides to manufacture a car called “Mingo” bearing the same design as “spoto”. Advise Tyre Motors Limited as to its rights.

[4 Marks]

QUESTION FOUR

Discuss any four of the following:

- | | | |
|-----|--------------------------------|-------------|
| (a) | Counterfeiting | [5 Marks] |
| (b) | Character Merchandizing | [5 Marks] |
| (c) | Franchising | [5 Marks] |
| (d) | Exhaustion of Trademark rights | [5 marks] |
| (e) | Trade Names | [5 marks] |

QUESTION FIVE

- (a) Discuss the neighboring or related rights under the law of copyright. To whom are these rights granted and why the grant of these rights important?

[14 marks]

- (b) List and explain six defences to copyright infringement.

[6 marks]

QUESTION SIX

- (a) What is compulsory licensing and under what circumstances can it be granted?

[6 marks]

- (b) Discuss the remedies available for patent infringement.

[8 marks]

- (c) List the grounds upon which the application for a patent can be refused for registration by the Registrar of Patents.

[6 marks]

QUESTION SEVEN

- (a) What is geographical indication? Why is this branch of intellectual property law has recently become very important?

[10 marks]

- (b) Discuss with the aid of examples acts that constitute unfair competition.

[10 marks]