

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

2015/16 EXAMINATION PAPER

TABLE OF CONTENTS

1. LPR 2920 LAW OF CONTRACT.
2. LPR 2930 LAW OF TORTS.
3. LPR 3115 EMPLOYMENT LAW.
4. LPR 3920 LAND LAW AND PROPERTY RELATIONS.
5. LPR 3930 COMMERCIAL LAW.
6. LPR 3952 CIVIL AND CRIMINAL PROCEDURE.
7. LPR 4930 BUSINESS AND CORPORATE LAW.
8. LPR 4155 ALTERNATIVE DISPUTE RESOLUTION.
9. LPR 4165 INTELLECTUAL PROPERTY LAW.
10. LPU 2962 ADMINISTRATIVE LAW.
11. LPU 3940 FAMILY LAW SUCCESSION.
12. LPU 4920 JURISPRUDENCE.
13. LPU 4072 INVESTMENT LAW.



THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

FINAL EXAMINATION

LAW OF CONTRACT- LPR 2920

SEPTEMBER 2016

INSTRUCTIONS:

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

PART A

- 1(a). On 1st June, 2016 Manda Hill Fashions entered into a contract with Serio's International Limited, a Luanshya based Clothing Company, for purchase of 1, 000 suits at a total cost of K1 million. The contract provided that the suits were to be delivered on or by 20th July 2016. The contract also provided that Serio's International Limited would pay Manda Hill Fashions the sum of K10, 000 for every week the suits were delivered late. Manda Hill Fashions made it very clear to Serio's International that the suits had to be delivered by the said date to meet the high demand from a number of companies that were buying suits for their employees who were earmarked to take part in the National Agricultural Show which was scheduled to take place during the first week of August 2016. Due to delays by Serio's International, the suits were delivered two months late.

This morning Mrs. Itu Galeadou the General Manager for Manda Hill Fashions has called on you for legal advice. Mrs. Galeadou has informed you that her company is aggrieved and would like to institute legal action against Serio's International Limited for loss of business arising from breach of Contract. Mrs. Galeadou wishes to be advised on the issue of extent of damages for loss of business, how to quantify loss and the rules relating to penalties and liquidated damages.

Advise Mrs. Galeadou.

[9 MARKS]

- 1(b). During the course of negotiations leading to the conclusion of a valid and binding contract, a number of statements may be made, some of which may and while others may not be intended to have contractual force. The question whether any particular statement is a mere representation or a term of the contract is frequently a difficult one for the Court. In reaching a conclusion, the Court will take into account a number of considerations or factors.

With the aid of case law, discuss the above statement pointing out clearly the considerations or factors the Court has to take into account in determining whether a statement is a mere representation or a term of the contract.

[9 MARKS]

PART B

2. Sakubita Imataa is a 1st year Law Student at the University of Barotseland. You happen to meet Sakubita at the Student Centre. Sakubita is fascinated with your mastery of legal concepts especially in Contract Law. Sakubita informs you that he has heard that contracts may be classified in a variety of ways, namely: according to their form, whether express or implied, whether bilateral or unilateral, whether executed or executory, whether valid or void, voidable or unenforceable.

Explain to Sakubita the meaning of the above classifications.

[14 MARKS]

3. In English law, a promise is not as a general rule binding as a contract unless it is either made in a deed or supported by some consideration. The purpose of the doctrine of consideration is to put some legal limits on the enforceability of agreements even when they are intended to be legally binding and are not vitiated by some factors such as mistake, misrepresentation, duress or illegality.

With the aid of case law, discuss the technical rules that the Courts have developed in order to put some limits of the enforceability of agreements.

[14 MARKS]

PART C

- 4(a). Ndala Sakapanga enters a jewellery shop at Manda Hill Shopping Centre intending to buy the latest Samsung mobile phone. He agrees to purchase the mobile phone and the shop owner (Mr. Razak Malik) asks that Ndala pays in cash. Ndala then produces a "Footballer Union" Card displaying his picture and says that he is the famous Zambian International footballer Christoff Kitongo. Mr. Malik agrees to accept the cheque provided that Ndala signs a document providing details of his address and bank details. Several days later, the cheque bounces. Mr. Razak Malik traces the mobile phone by using its serial numbers and brings an action against Dembele who bought the mobile phone from Ndala in good faith.

This morning Dembele has called on you for advice on what has transpired. Advise Dembele.

[9 MARKS]

- 4(b). Discuss the House of Lords decision in *Suisse Atlantique Societe d'Armement SA v NV Rotterdamsche Kolen Centrale* [1967] 1A.C 361 clearly bringing out the principle established in the case.

[5 MARKS]

- 5(a). Fwelu Mbindo is employed as Operations Manager for Nando's a fast food chain in Lusaka, Zambia. Fwelu's contract of employment contains the following clause;

Following the termination of employment, the employee shall not work in any fast food industry in Zambia for a period of ten (10) years nor shall he divulge any secret recipes learnt during employment.

Fwelu has been offered a job by Kentucky Fried Chicken as Marketing Manager. This morning Mr. Ibrahim Mousa the General Manager of Nando's has approached you for legal advice seeking to enforce the above clause.

Advise Mr. Ibrahim Mousa.

[8 MARKS]

- 5(b). With the aid of case law, explain the circumstances in which a claimant may successfully rely on the plea of *non est factum*.

[6 MARKS]

PART D

- 6(a). Paul Siwo is a 1st year law student at the University of Copperstone. You happen to meet him at the student centre. Paul is fascinated with your mastery of legal concepts especially in Contract Law. Paul tells you that he heard that all contracts entered into by minors are unenforceable against them.

With the aid of case law, advise Paul on the validity of the above statement and whether it represents a fully correct statement of the law regarding the contractual capacity of minors.

[9 MARKS]

- 6(b). Explain and illustrate from decided cases the circumstances under which a claim on a *quantum meruit* may arise.

[6 MARKS]

- 7(a). On 30th March 2016 the Liseli Sisters a prominent band made a contract with Land Rover Zambia for the promotion of Land Rover's new motor scooters. Under the terms of the contract the Liseli Sisters were required to undertake a country wide promotion tour. The country wide tours were scheduled to commence on 1st June 2016. On 30th May 2016 the President declared a state of emergency due to the deteriorating security situation in the country and all functions of entertainment nature were banned under the decree signed by the President.

In terms of the contract Land Rover Zambia had made a pre-payment of US\$10, 000 to the Liseli Sisters on the signing of the contract. On their part, the Liseli Sisters had incurred US\$2, 000 in expenses relating to the organization of the tour.

This morning Mr. Erick Armstrong, the Managing Director of Land Rover Zambia has called on you seeking legal advice on the parties' relative rights following on what transpired.

Advise him.

[8 MARKS]

- 7(b). With the aid of case law, explain the equitable remedy of specific performance in relation to the law of contract and the principles regulating the grant of the remedy.

[6 MARKS]

END OF EXAMINATION



THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

LPR 2930 LAW OF TORTS EXAMINATION

7th September 2016, 09:00 – 12:00 hours

INSTRUCTIONS:

1. Answer **FOUR (4)** questions, one from each Part, Part A 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 **permitted to bring clean and unmarked statutes** into the examination room.
5. Candidates must **not turn this page** until the invigilator tells them to do so.

PART A

Question One (COMPULSORY)

a) Florence and her friend Kamuzhyu are married to Mzondi and Bwalya respectively. They each have two children. Florence and Kamuzhyu decide to take their four children out on a road trip to meet up with their spouses who are working together out of town. They are involved in a car accident and each one of them loses one child in the accident. At the time of the accident, their husbands were a few kilometers from the accident scene. About an hour later the accident was reported to Mzondi and Bwalya, by their neighbour, Towela. Towela exaggerated the report and stated that there were no survivors in the accident. As a result, both Mzondi and Bwalya suffered nervous shock and were admitted in hospital for 3 months before they were discharged. They now come to you for legal advice on the wrong they have suffered.

Write a well reasoned opinion for Mzondi and Bwalya.

(10 MARKS)

b) Discuss the assertion that "a communication is defamatory if a substantial and respectable minority of the plaintiff's community or associates would so regard it; it is not necessary that all or a majority would." *Edward J. Kionka. Torts. 368*

(8MARKS)

PART B

Question Two

Daniel is visiting his friend Kalonga for 8 weeks. Kalonga gives Daniel a car and the keys for the remote control of the gate for him to come and go as he pleases. One day, Hinji and Paul are taking a walk down the road where Kalonga's house is located. Daniel drives past Hinji and Paul and uses his remote control to open the gate. Two of Kalonga's dogs rush out of the yard and chase Hinji and Paul. The two run across Nasilele's maize field. Most of Nasilele's maize is destroyed as a result.

Discuss the tortious liabilities of Daniel, Kalonga, Hinji and Paul.

(14 MARKS)

Question Three

Karen and Nsofwa are truck drivers employed by different companies. On the fateful day, they were both making deliveries on behalf of their employers. Karen raced her vehicle and obstructed Nsofwa, causing an accident. The company policy at the company where Karen works prohibits all drivers from racing their vehicles. Nsofwa and her employers are aggrieved by Karen's actions and come to you for advice.

With the aid of decided cases, write a well reasoned opinion for Nsofwa and her employer.

(14 MARKS)

PART C

Question Four

a) With the aid of decided cases, discuss how the law determines an occupier for purposes of imposing liability under the tort of occupiers' liability. **(7 MARKS)**

b) Discuss the duty of care expected of an occupier at common law.

(7 MARKS)

Question Five

a) Discuss the assertion that "a man is not liable in negligence to every person who is damaged as a result of his carelessness." **(10 MARKS)**

b) Write short notes on elements of false imprisonment.

(4 MARKS)

PART D

Question Six

Collins owns a butchery. Charles, One of his disgruntled ex-employees, leaks information to Kachepa Newspaper that Collin's butchery is selling meat that is preserved by a chemical used for embalming deceased people. Collins, unhappy about this, seeks to take legal action against Charles.

Write a well reasoned legal opinion, for Collins, of a possible action in tort.

(14 MARKS)

Question Seven

Lord Lloyd in *Hunter v Canary Wharf* [1997] 2 All ER 426 stated that the tort of private nuisance takes three forms:

- a. encroachment on a neighbour's land;
- b. direct physical injury to the land;
- c. Interference with the enjoyment of land.

Explain these three forms that the tort of private nuisance takes

(14 MARKS)

END OF EXAMINATION



THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

LPU 2940 CRIMINAL LAW

FINAL EXAMINATION

20th September, 2016
09:00 – 12:00

INSTRUCTIONS:

1. Answer **FOUR (4) questions**, one from each Part.
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 permitted to bring clean copies of the Penal Code** into the examination room.
5. Candidates must not turn this page until the invigilator tells them to do so.

PART A

QUESTION ONE IS COMPULSORY

Jojo and Beauty have been living together as husband and wife for ten years even though they are not legally married. One day, Jojo who had been recently retired from his job was drinking beer at his local pub with his rowdy mates when he was informed by one of them that his wife Beauty, a secretary, had been extending sexual favours to her boss Zoonna. Upon hearing this, Jojo rushed off to Beauty's working place and found Beauty and her boss ostensibly working late in the latter's office. Upon seeing Jojo, Beauty panicked and quickly headed for the door. Jojo chased her into a nearby street. Beauty fell down whereupon Jojo kicked her arm. Jojo immediately rushed back to Zoonna's office to 'sort him out'. On his way to Zoonna's office, Jojo picked up a metal bar which, on reaching the office he savagely threw at Zoonna hitting his head and fracturing his skull in the process. The metal bar also broke the screen of a Personal Computer that was on Zoonna's executive desk.

Zoonna was rushed to the hospital by a Good Samaritan Sam, on the way to the hospital, Sam's car was hit into with great force by a truck which was being driven by a drunk soldier who had failed to apply brakes as he approached the traffic lights. Zoonna sustained serious internal injuries in the process.

In the meantime, Jojo had rushed his wife, Beauty to the hospital in a hired taxi. Both Zoonna and Beauty died on the same day. Medical evidence showed that Beauty had a persistent thymus gland and that such persons could die from a combination of a fight and strong emotions. Zoonna's post mortem was inconclusive as to the precise cause of death but nevertheless revealed that either of the two injuries was sufficiently fatal to cause death.

Jojo is charged for the death of both Beauty and Zoonna and the offence of wilful and unlawful damage to personal property. Jojo, who is in a very distressed state comes to you for legal advice on the likelihood of a criminal conviction in this case particular;

- (i) Whether Jojo is criminally liable for the deaths of both Beauty and Zoonna.

(13 Marks)
- (ii) Explain with authorities, if there are any defences available to Jojo for the above offences.

(5 Marks)

Total 18 marks

PART B

QUESTION TWO

Chanda and Banda agree to break into a Bank at the nearby Mall provided that no violence was going to be used. On the way to the Bank, Banda notices that Chanda is carrying a knife

but does not say anything. When they reach the Bank, Chanda stabs the guard who dies five hours later. They proceed to take some money from the safe. Later in the day, Chanda and Banda are arrested and charged with aggravated robbery.

- (i) Advise Chanda and Banda and the criminal liability for aggravated robbery. (8 Marks)
- (ii) Explain whether there are any defences that Banda or Chanda can rely upon to escape criminal liability. (6 Marks)

14 Marks

QUESTION THREE

Dexter aged 88 years has left his village and lives it rough, in a valley, 25 KM from the nearest village. It is not clear as yet whether Dexter is a mental patient. Didi, the former neighbour's daughter aged 13 occasionally visits him and brings him food from the village. Each time she visits they engage in sexual intercourse, with her freely consenting to the act.

On one occasion, when Didi visited him, he asked her to stay with him for a week so that he could pick some wild fruits for her to take to the village. He shifted the location of his residence 5KM away. The school authority that Didi attends worried about her poor school attendance decided to report the matter to the police. Who then based on a tip from Didi's friends mounted a search. Dexter and Didi are found in the act, consequently, Dexter is charged with defilement contrary to section 138, 139 of the Penal Code.

Discuss the possibility of securing a conviction for the offence of defilement against the accused

14 Marks

PART C

QUESTION FOUR

With the aid of authorities compare and contrast the defences of self-defence and insanity.

14 Marks

QUESTION FIVE

Ronaldo, a popular blind musician and his wife Sue organised a drink up on the former's birthday. Both Ronaldo and Sue were drinking whisky "on the rocks". The couple were to be joined by a few friends later than evening. As Ronaldo had been drinking at a rather faster rate, he found himself crawling into bed, even before the friends had arrived to join in the fun.



The University of Zambia

School of Law

Employment Law – LPR 3115

2015/2016 Academic Final Examinations

7 September, 2016

Instructions

1. Answer four (4) questions, one from each part.
 2. Time allowed is three (3) hours plus five (5) minutes to read through the examination paper.
 3. The examination paper carries a total of 60 marks.
 4. Candidates are not permitted to bring any texts into the examination room other than clean copies of the Employment Act Chapter 268, the Industrial and Labour Relations Act, Chapter 269 and the Minimum Wages and Condition of Employment Statutory Instruments No. 1, 2 and 3 of 2011 as appropriately amended.
 5. Candidates must not turn this page until the invigilator tells them to do so.
-

PART A

Question One

Grant Fresh Foods (Zambia) Limited operates a chain of butcheries in Zambia. In January, 2016, the Patel family acquired 75% of shares and therefore control of the company.

The Patels inform all the workers that going forward, they would be running their butcheries following their Islamic belief and sell meat which is processed in accordance with the said faith.

In order to ensure that the company fully follows its new Islamic compliance meat processing procedures, it (the company) informs Respect Hamududu, the Head of Human Resources, that he will need to convert to Islam to be able to continue in his job. Respect is a staunch Seventh Day Adventist. Respect asks that he be given a week to reflect on the proposal.

At the end of the week, Respect requests for a meeting with Mr. Youssuf Patel, the new Managing Director of Grant Fresh Foods (Zambia) Limited. At the meeting, Respect informs Mr. Patel that he was not able to abandon his faith for the sake of a job. He tendered in his one month notice of resignation as required by his contract of employment.

Two weeks into his notice, Respect was called by Mr. Patel to be advised that the company was restructuring and the Department of Human Resources was being disbanded. He was told that his position was affected by the restructuring and was immediately being terminated by way of redundancy. His benefits, which included a payment in lieu of notice, were paid immediately.

The functionalities of the Human Resources Department together with the three other staff are transferred to the Finance and Administration Department. Another person is employed as supervisor of the human resources section of the Finance and Administration Department.

You have been approached by Respect for your advice on his predicament. Using all the appropriate statutory and case law authorities, advise Respect with respect to the following:

- (i) the legality or otherwise of the actions taken by Grant Fresh Foods (Zambia) Limited against him;

5 Marks

- (ii) what cause of action he has against Grant Fresh Foods (Zambia) Limited, if any;

5 Marks

- (iii) what remedies he would be entitled to, if any; and

4 Marks

- (iv) what the appropriate forum is, if he decides to issue process.

4 Marks

[Total Marks 18]

PART B

Question Two

Jane Bwalya is employed as a cashier by Blu Lights Night Club Limited on an oral contract. One day while on her way to the bank to deposit the previous night's sales, she was attacked by armed and masked thieves. The thieves did not harm her but got away with all the money.

Jane's employer does not believe her story and reports her to the police for having worked with the purported thieves to steal the company's money.

Jane is arrested by the police and charged for theft by servant. Pending the court appearance, Jane is immediately released on police bond. In the meantime, Blu Lights Night Club Limited dismisses Jane instantly for the alleged theft.

After attending the Subordinate Court for over 8 months, Jane is acquitted because Blu Lights Night Club Limited failed to produce any evidence to show that Jane colluded with the thieves to steal the money.

After the acquittal, Jane approaches Blu Lights Night Club Limited to claim her job on the basis that she has been acquitted by a court of competent jurisdiction but she is told "*to go to hell*".

Fully advise Jane as regards the following:

(i) the legality or otherwise of the actions taken by her employer;

4 Marks

(ii) what cause of action she has against her employer, if any;

4 Marks

(iii) what remedies she would be entitled to, if any; and

3 Marks

(iv) what the appropriate forum is, if she decides to issue process.

3 Marks

[Total Marks 14]

Question Three

Chisomo Phiri was employed until 31 December, 2012 by a multinational bank called Grant Bank Limited on an oral contract. On 30 December, 2012 the bank's Human Resources Manager served written notices on all the employees of the bank's intention to terminate their contracts of service the next day, on 31 December, 2012 because the bank intended to merge its business with a large Insurance Company. The bank was going to pay in lieu of notice and therefore the effective date of termination of the contracts of employment by reason of redundancy was 31 December, 2012. Jane Phiri's one year fixed term contract expired on 31 December, 2012 and had no provision for notice to terminate or provision for automatic re-newal.

Chisomo resumed work on 15 December, 2012 after serving a 3 months suspension for alleged negligence of duty and desertion, on account of participating in a 5 day seminar of the Bankers Union of Zambia in which she served as the Lusaka branch secretary. This is despite the fact that she had given 21 days advance notice of the seminar.

The bank scheduled payment of the employees' redundancy benefits from 15 to 16 February, 2013 and stated that it would not pay at any other time.

Chisomo received her normal pay during the first month of her suspension but none during the remainder of her separation. Further, at termination, the bank does not pay Chisomo anything arguing that she was not entitled to redundancy benefits because she had prior to the termination not been in the continuous service of the bank for least one year.

On 27 May, 2013, Chisomo decides to sue the bank for all her dues but has been disturbed to hear that the Industrial Relations Division of the High Court has the sole jurisdiction in industrial relations matters and that she has no liberty of choice to sue in the General Civil List of the High Court for what lawfully belongs to her.

Draft a legal opinion fully advising Chisomo of her rights and any cause of action she may have against the bank.

14 Marks

PART C

Question Four

The Supreme Court in the cases of *Rainward Mubanga v. Zambia Tanzania Road Services Limited* and *Jameson Mundomwe Hapeeza v. Zambia Oxygen Limited* dealt with facts where employers dismissed employees in contravention of the Employment (Special Provisions) Regulations of 1975. The Employment (Special Provisions) Regulations were in force in Zambia during the permanent state of emergency which ended with the 1991 return of the country to multi-party democracy. Regulation 4(1) provided:

“4.(1) No person shall dismiss or otherwise terminate the employment of any employee, irrespective of whether previous notice of such dismissal or termination has been given to the employee or not, unless

(a) approval of the proper officer in writing has been given to such dismissal or termination...”

In the *Mubanga* case, the Supreme Court held that the dismissal was null and void, while in the *Hapeeza* case the Supreme Court held that the dismissal was valid

- (i) critically analyse the basis of the apparent ‘contradiction’ of the two decisions.

7 Marks

- (ii) Using appropriate legal authorities, briefly discuss the effect of an employer’s failure to comply with a statutory provision couched as Regulation 4(1) above in terminating the services of an employee.

7 Marks

[Total Marks 14]

Question Five

Part XIV of the Constitution of Zambia (Amendment) Act No. 2 of 2016 (the **Constitution**) has guaranteed and protected pension entitlement for all employees.

Article 189 of the Constitution provides that:

*“(1) A pension benefit shall be paid promptly and regularly.
(2) Where a pension benefit is not paid on a person’s last working day, that person shall stop work but the person’s name shall be retained on the payroll, until payment of the pension benefit based on the last salary received by that person while on the payroll.”*

- (i) Identify and briefly describe 3 forms of pension schemes that are available under Zambian law.

7 Marks

- (ii) Discuss the extent to which Article 189 of the Constitution would be problematic to apply to most of the pension schemes under Zambian law.

7 Marks

[Total Marks14]

PART D

Question Six

Article 4 of the ILO Convention 158 which Zambia ratified on 9th February, 1990 provides:

“The employment of a worker shall not be terminated unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service.”

The Employment (Amendment) Act No. 15 of 2015 has now domesticated Article 4 of the ILO Convention 158 into Zambian domestic law.

Discuss:

- (i) the relevance of domesticating Article 4 of the ILO Convention 158 into Zambian domestic law, which provision was in any case already ratified by Zambia;

7 Marks

- (ii) how has Article 4 of the ILO Convention 158 and the domestic equivalent in the Employment (Amendment) Act No. 15 of 2015 impacted on the decision in the case of *Kamayoyo v. Contract Haulage (1982) ZR 13* and the common law right of freedom of contract.

7 Marks

[Total Marks 14]

Question Seven

In the case of *Anthony Khetani Phiri v. Workers Compensation Control Board*, the Supreme decided that by refusing to move to the newly created Workers Compensation Control Board, Mr. Anthony Khetani Phiri was taken to have resigned. Critique the Supreme Court’s application of the law in this decision.

14 Marks

End of Examination



THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

LPR 3920: LAND LAW AND PROPERTY RELATIONS

FINAL EXAMINATION

Monday 26th September 2016 -Time: 14:00 – 17:00 hours

INSTRUCTIONS:

1. Answer **FOUR (4) questions**, one from each Part.
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 permitted to bring the following statutes** into the examination room:
 - (i) Lands Act Chapter 184 of the Laws of Zambia
 - (ii) The Urban and Regional Planning Act No. 3 of 2015
5. Candidates must **not turn this page** until the invigilator tells them to do so.

PART A: Answer the compulsory question

Question one

Mr Long is the leasehold owner of Plot No.234 situated in Lusaka. The property comprises a main residential house which is semi-detached. In addition there are two cottages on the same plot. Mr Long the owner occupies one of the semi-detached portions of the main house. There is only one gate to access the plot. The current position regarding possession of the plot is as follows:

- (a) Cottage number one has been let out to a Mr Silver under an oral agreement for two years at a monthly rental of K3000.
- (b) Cottage number two has been let out to Mr Gold under a written agreement for a period of two years at a monthly rental of K3000 payable three months in advance. The lease agreement has been signed by the landlord and tenant but does not have a commencement date and a termination date.
- (c) The other semi-detached part of the main house is given to Mr Long's girlfriend, Miss Beauty who operates a beauty salon in one of the rooms in the house under a lease agreement for three years which is not registered at the Lands and Deeds Registry. There is no mention of the salon and the lease agreement refers to the property as residential house. Miss Beauty pays K3000 a month as rentals to Mr Long and in addition allows him to collect 5% of her net profits every month from her salon business.

In order to operate the house as a salon, Beauty had fixed shelves and a built in table in the living room so that her clients could wait from there. In addition Beauty had redecorated the ceiling and the walls. She has also fixed several sinks and placed four large chairs in the room to operate her salon business.

The other two tenants occupying the cottages had improved the cottages by mountings on both the walls in the living room inbuilt bookshelves for their books. In addition Gold has carved a beautiful corner and has bolted a frame in the passage to place his musical instruments. In addition Gold had fitted Persian carpets in his bedroom where he practises his music with his band.

All the three tenants have been occupying the property for a period of two years commencing 1st January 2011.

In February 2013 the three tenants on the plot quarrel mainly because of the noise from the salon and the practising of the music by the band and the matter is reported to the police. On the night of the date of quarrel Beauty decides to remove her personal property and vacate the house at night in the absence of Mr Long removing all the improvements and fittings she had placed in the house. While removing some of the fittings she damages the walls.

Gold on the other hand on the same night of the quarrel removes the inbuilt bookshelves and tries to remove the frame for the storage of his musical instruments. His carpet is strongly glued to the floor and he is unable to remove it given the time period to vacate the property which was the night of the quarrel. All the tenants have not paid rent for the last two months and leave the plot without informing Mr Long.

Mr Long is very upset and comes to you for legal advice on:

- (i) **Whether the three lease agreements he had entered into are valid under Land Law in Zambia and how Mr Long can also enforce the three lease agreements against the three tenants?** (9 marks)
- (ii) **What would be the position regarding the fixtures and fittings that have been removed by the three tenants and the damage that has been left behind with regards his property?** (9 marks)

Total [18 marks]

Part B: Answer one question from this Part

Question two

With the aid of case law discuss the four unities of common law of land and property as they apply in modern day Zambia.

Total [14 marks]

Question three

If a person acquiring land is to qualify as a 'bonafide purchaser 'or ' equity's darling' and thus take free of any equitable interest affecting the land, it is for that person to establish that he satisfies each of the constituent elements of the doctrine.

Explain the doctrine and the exceptions (if any) with the aid of decided cases.

Total [14 marks]

Part C: Answer one question from this Part

Question Four

In 2015 three University of Zambia graduates, Paul, Ken and Betty graduated from the school of Business Studies. After drafting a successful business proposal and presenting it to the Bank Nationalale in Lusaka they convinced the Bank to support the community based project with an overdraft facility of K500 Million.

The project implementation plan was followed and the communities around Lusaka benefitted and as the project proceeded into 2016 the trio were given a parcel of land by a well-wisher. The certificate of title was registered in the names of Paul, Ken and Betty. Subsequently, they entered into a mortgage deed with the Bank offering the building as security for a further loan of K500 Million. The said mortgage was registered against the title.

Since March 2016 the trio have been faced by a number of challenges and financial constraints which have resulted in several defaults on the repayment of the loan on their part. The Bank has decided to obtain an order for possession of the building to recover the overdraft and the outstanding loan.

You have been approached by Paul, Ken and Betty, Advise them indicating cases that will assist them preventing their building from being repossessed. Total [14 marks]

Question Five

The European Convention's property guarantee highlights an important point of convergence between land law, environmental law and human rights law and, for these reasons, promises to acquire an unprecedented significance for English land lawyers in days to come.

The Convention's provision which guarantees the entitlement of 'every natural or legal person ... to the peaceful enjoyment of his possessions includes real property.

Similar provisions in other jurisdiction including Zambia have been embedded in the protection of property rights in constitutional or statutory form.

Critically analyse the discourse between human rights and land law in view of the forgoing

[Total [14 marks]

Part D: Answer one question from this Part

Question Six

The Urban and Regional Planning Act No. 3 of 2015 provides for a national planning framework and under the framework it also provides for Regional development plans, integrated development plans, local plans and sectoral plans.

Discuss the differences between the four different plans provided under the Act

Total [14 marks]

Question Seven

In *Phipps v Pears* [1965] 1 QB 76, at p.82 Lord Denning said: "There are two kinds of easements known to the law: Positive easements.....and negative easements."

State the facts and decision in the above case and explain the two different types of easements provided under the Zambian laws.

Total [14 marks]

End of Examination



THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

LPR 3930-COMMERCIAL LAW FINAL EXAMINATION

Date: Friday, 9th September, 2016
(Venue: Upper Dining Hall)

Time: 09:00 hours to 12:00 hours

INSTRUCTIONS:

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

Part A (compulsory)

Question 1 [18 marks]

(i) Amazon Company Limited (“**Amazon**”) is an insurance company, licensed to conduct insurance business in Zambia, pursuant to the provisions of the Insurance Act, Number 27 of 1997. Moses Banda is a commercial farmer, principally involved in the cultivation of cotton in the Mkushi District of the Republic of Zambia. Following the 2015 bumper harvest, Moses stocked the cotton in his warehouse. He then decided to take up insurance with Amazon, to curb against the risk of fire. Before concluding a contract, Amazon asked Moses, via a proposal form, whether he kept any inflammable material in or around his warehouse. Knowing fully well that he in fact stocked numerous containers of highly inflammable petrol in his warehouse, Moses responded that he did not keep any inflammable material, and that he was not likely to do so anytime soon. On that basis, Amazon and Moses concluded an insurance contract, dated 13th March 2016, further to which Moses was to pay a monthly premium of ZMW 2,000.00 for the next twelve (12) months. The value of the cotton insured was capped at ZMW 50,000.00. On 3rd June 2016, there was a spillage from one of the petrol containers in the warehouse, with the result that the entire cotton stock was lost in the inferno that ensued.

Following the loss of the cotton, Moses approaches you, seeking advice on a number of legal perspectives.

- (a) With the aid of relevant authorities, advise Moses on the prospects (if any), of filing a successful claim against Amazon for the loss of his cotton. **(3 marks)**.
- (b) Assuming Moses had transferred his cotton to a limited company in which he is a majority shareholder, would he, legally speaking, have a claim against Amazon? Justify your answer. **(3 marks)**.
- (c) Assuming, also, that Moses had disclosed the existence of the inflammable substance in his warehouse prior to concluding the contract, would he be able to claim, against Amazon, a sum more than ZMW 50,000.00. Give reasons for your answer. **(3 marks)**.
- (d) Would your answer in (c) above change if, for example, the cotton in the warehouse was instead stolen? Give reasons for your answer. **(3 marks)**.

(ii) Gupta Patel is a Zambian-based businesswoman, originally from Mumbai, India. On 27th May 2016, Gupta and one Idah Mtonga entered into a written contract for the purchase, by Gupta, of ten brand new “Apple” laptops. Four of the laptops were stored in Idah’s warehouse, while the rest were yet to be acquired from Melbourne, Australia. The price of the said laptops was ZMW 10,000 apiece, payable the day following delivery. It was agreed, also, that Idah would make available the entire laptop consignment to Gupta, at her residence in Kabulonga, on 1st June 2016. As of 2nd June 2016, the laptops were not delivered as per the contract; however, Gupta kept requesting and pushing for Idah to deliver. On 4th June 2016, Gupta intimated to Idah that she had up to 10th June to deliver the laptops, to which Idah agreed. On the morning of 10th June 2016, Idah delivered twelve “Apple” laptops to Gupta, before angrily driving off almost immediately- seeing how much she had been harassed by Gupta after she had initially failed to deliver the laptops.

To allay her apprehensions, however, Gupta (who is expected to pay for the laptops the following day), comes to your office at KM Legal Practitioners, where you are currently an intern.

Citing relevant authorities, advise Gupta on the various legal issues (if any) arising, and, more particularly, how she can possibly treat the “Apple” laptop consignment. (6 marks).

Total [18 marks]

Part B- Answer one question from this part.

Question 2 [14 marks]

Francis Mabonga, aged 36, is a renowned Lusaka-based businessman, with a series of successes in the importation and resale of BMW and Mercedes Benz cars from Germany. On 20th October 2013, Mabonga successfully registered a ‘one-man company’ called “Chimutengo Trading,” pursuant to the provisions of the Registration of Business Names Act, Number 16 of 2011, for

purposes of diversifying into fruit and vegetable cultivation on a 10-acre farm in Chisamba area, in the periphery of Lusaka (the “Farm”).

On 17th August 2015, Mabonga decided to fly to Stuttgart, Germany, to further his car-related business. On the eve of his departure, he had sent a handwritten letter to Jonas Phiri, aged 27, to ensure a steady cultivation of fruit and vegetables on his Farm. Almost immediately, he telephoned Simon Chansa and William Njobvu, aged 24 and 15, respectively, requesting them that on a monthly basis, they should transport, by road, the Farm produce to Melissa Supermarket, situate in Mansa District in the Luapula Province of the Republic of Zambia, some 758.3 km to the North of Lusaka. Accordingly, all proceeds of the sale of fruit and vegetables were to be deposited into Mabonga’s bank account, duly maintained by Ndalama Bank Limited.

On one of their numerous business trips to Mansa, a track driven by Simon, with William as his co-driver, encountered a break-down about half-way into the journey, which made their journey by road impossible. The duo then decided to sell the produce to traders at a nearby market at half the price they would otherwise have, had they made it to Mansa. After selling the produce, they both attempted to call Mabonga, to notify him of the developments unfolding. However, Mabonga’s mobile phone went unanswered, before eventually going off. Unlike with Simon and William, it was previously agreed between Mabonga and Jonas, that the latter would not receive any commission or remuneration with respect to his undertakings at the Farm. Arising from that, and while Mabonga was away, Jonas decided to cut down production of the produce by concentrating only on 5 acres, as opposed to the initial 10 acres, arguing that unlike his friends Simon and William, he was not, after all, entitled to any commission, and that he felt enslaved.

On 3rd December 2015, Mabonga returned from Stuttgart, Germany, a trip he called successful. However, he was immensely aggrieved with the trio: Jonas, Simon and William in the manner they had administered his affairs while he was away in Stuttgart, Germany.

You are an intern at AMZ Legal Practitioners, and your principal presents to you a file outlining the above facts.

- (a) Describe the legal basis of the relationship (if any), of Simon and William, in relation to Mabonga [5 marks].

- (b) Would it have made any difference if, for instance, Simon and William had undertaken to call Mabonga before selling the produce? Give reasons for your answer. [3 marks].
- (c) What duties (if any), did Jonas have to discharge against Mabonga? [3 marks].
- (d) Assuming there was a legal relationship between Simon and William on the one hand, and Mabonga on the other, what legal rights (if any), could the duo assert against Mabonga? [3 marks].

Total [14 marks]

Question 3 [14 marks]

Compare and contrast between each one of the following:

- (a) Existing warranty and promissory warranty; [3.5 marks].
- (b) Hire purchase and equipment leasing; [3.5 marks].
- (c) Principles of indemnity and contribution; [3.5 marks].
- (d) Actual authority and apparent authority; [3.5 marks].

Total [14 marks]

Part C-Answer one question from this part.

Question 4 [14 marks]

Ndalama Bank Limited (the “**Bank**”) is a financial institution, licensed under the provisions of the Banking and Financial Services Act, Chapter 387 of the Laws of Zambia (the “**BFSA**”). On 13th June 2016, one Peter Mumba approached the Bank, seeking a loan facility in the sum of ZMW 35,000.00, repayable on 13th July 2016. Margaret Zulu, Peter’s friend, made an undertaking to the Bank, to the effect that in the event that Peter defaulted on his obligation to the Bank, she would fully settle the debt. Happily, the trio signed a contract stipulating, *inter alia*, the terms of the transaction. As of 13th July 2016, Peter only manages to raise ZMW 20,000.00 towards the settlement of the loan. To this effect, Margaret alleges that she has forthwith been discharged of all her obligations under the transaction.

Render a well-reasoned opinion to Margaret, outlining the salient legal issues (if any), arising.

Total [14 marks]

Question 5 [14 marks]

In the case of *Lakeman v Mountstephen (1874) LR 7 HL*, at page 24, Lord Selborne stated, thus:

“There can be no suretyship unless there be a principal debtor, who of course may be constituted in the course of the transaction by matters *ex post facto* and need not be so at the time, but until there is a principal debtor there can be no suretyship. Nor can a man guarantee anybody else’s debt unless there is a debt of some other person to be guaranteed.”

Discuss the above assertion in relation to the law on guarantees.

Total [14 marks]

Part D- Answer one question from this part.

Question 6 [14 marks]

- (i) Martha Ndhlovu is a third- year law student at one of the emerging universities in Zambia, called Brookes University. She is excited about the *ratio decidendi* in the landmark cases of *Kelner v. Baxter (1866) L.R. 2 CP 174* and *Newborne v. Sensolid (Great Britain) Limited (1953) 1 All E.R. 708*. Rather confidently, Martha mentions to her childhood friend and classmate, Martin Phiri, that: “from the ‘law of agency’ perspective, the two aforementioned cases are reconcilable.”

From the law of agency perspective, briefly discuss the two cases, and clearly establish whether or not Martha’s assertion is legally correct.

[6 marks]

- (ii) Sarah Kapur, originally from Chennai, India, is one of the most successful businesswomen in Zambia. She owns a huge farm in Chisamba (the “**Farm**”), where she cultivates oranges and an assortment of vegetables- which she regularly supplies to large supermarkets across the country. On 9th September 2015, Sarah decided to fly to Chennai, India, on what she

called a summer holiday. On 8th September 2015, prior to her departure, Sarah called Samson Mwale, saying, “you shall have power and authority to only ensure that all the Farm workers are paid their wages on the last day of each month.” Almost immediately, she also called Falesi Lutangu, saying, “you shall have the full power and authority to undertake and manage all Farm-related activities, and do all such things as are necessary to ensure continuity of my business, until I return from India.” It was agreed, also, that Sarah would pay Samson and Falesi a commission each, upon her return from India.

- (a) Briefly describe the distinct nature of the legal relationship (if any), between: (i) Samson and Sarah; and (ii) Falesi and Sarah **(2 marks)**.
- (b) What possessory right (if any), could Samson and Falesi possibly assert against Sarah, in the event that she declined to pay the duo a commission upon her return, and they had some Farm produce in possession? **(2 marks)**.
- (c) In what ways (if any), could the legal relationship of Samson and Falesi on the one hand, and Sarah on the other, be brought to an end? **(4 marks)**.

Total [14 marks]

Question 7 [14 marks]

Write brief notes on any four (4) of the following:

- (a) Contract *uberrimae fidei*; **[3.5 marks]**.
- (b) Unconditional appropriation; **[3.5 marks]**.
- (c) Agency by cohabitation; **[3.5 marks]**.
- (d) Bill of Exchange (BoE); **[3.5 marks]**.
- (e) Subrogation; **[3.5 marks]**.
- (f) Disclosed agency; **[3.5 marks]**.

Total [14 marks]

End of Examination



The University of Zambia

School of Law

Civil and Criminal Procedure LPR- 3952

Final Examination

15th September, 2016, 14:00-17:00 Hours

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 18marks
 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) Subordinate Court Act, Cap 28
 - b) Penal Code, Cap 87
 - c) Criminal Procedure Code, Cap 88
 - d) High Court Act, Cap 27
-

Part A

Question 1 (Compulsory)

You are a prominent lawyer who has been approached by a businessman Mr. Tikabenji Bulawayo. Mr Bulawayo was sued for the sum of K32,689.00 in the Subordinate Court being the outstanding amount on a second hand motor vehicle he purchased from Kambayabaya Motors Limited on 6th March 2015. Kambayabaya Motors is managed by Ms Mutinta Moonga. Mr Bulawayo informs you that he was never served with the documents commencing court process but has now been served with a judgement in default of appearance and defence. You accept to take instructions from Mr Bulawayo and fear that Kambayabamya Motors and Ms Moonga will execute against your client.

1. Advise your client on the steps you will need to take to protect his interests. **(6 Marks)**
2. Name and draft:
 - a) the court documents, including the supporting document for the appropriate interlocutory application you will make to protect your client's interests; **(8 Marks)**
 - b) the order you will prepare and file in court together with the interlocutory application. **(4 Marks)**

Part B

Question 2 (14 Marks)

You are a Senior State Advocate in the Attorney General's Chambers. You have been served with a judgement in Default of Appearance and Defence dated 16th July 2016 in favour of Sharp Stationeries for the sum of K18,450.98 being the judgement debt due to Sharp Stationeries for the supply of stationary to the Ministry of Defence on 19th November 2015. After reading the judgement and conducting a search on the court file you discover that the Attorney General's Chambers is actually not a party to the proceedings.

- a) Draft the search form you filed to enable you conduct a search on the court file; **4 Marks** and
- b) Using relevant authorities, draft a legal opinion to your clients explaining the action you will take to protect your client's interests. **10 Marks**

Question 3 (14 Marks)

Write brief explanatory notes on the following:

- a) Security for costs;
- b) Taxation;
- c) Garnishee proceedings; and
- d) Interpleader Summons.

Part C

Question 4 (14 Marks)

With the aid of authorities:

- a) briefly discuss the legal principles that guide courts when granting an order for an injunction; and **(6 Marks)**
- b) Write a legal opinion describing the procedure and the documents required when filling for an injunction. **(8 Marks)**

Question 5

You are a Prosecutor in the office of the National Prosecutions Authority. You have been presented with a case record. It is stated in the case record that Jane Lungu, Patricia Patel and Dotty Mwale commonly known as the three musketeers while acting with other unknown personson or about 15th May 2016 around 03:45am broke into the Repair Unit of the business premises of Pilatus Zambia Limited a subsidiary of Pilatus South Africa Plc and stole two motor vehicles. One motor vehicle is a BMW X5 M belonging to Clever Kajimanga a client of Pilatus Zambia Limited who brought in the motor vehicle for servicing on 14th May 2016. The other motor vehicle stolen was a BMW M5 Coupé, belonging to Pilatus Zambia and was on display on the Pilatus premises. The security guard on duty Mr Mwansa was badly beaten and was left for dead but managed to call the police for help.

- a) Explain the procedure followed when an accused is summoned to appear before the Subordinate Court for Plea and Mention; 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)**

Part D

Question 6 (14 Marks)

The Managing Director (MD) of Shylock Bank Zambia Limited the Plaintiff company in a matter under cause no. SSP/200/2015 between Shylock Bank and ABSA Bank Limited as the defendant Bank approaches your firm seeking legal advice. The MD informs you that the matter was cause listed for hearing on Friday 20th July, 2016 at 14.30 hours before the Honourable Magistrate Mr Wiseman Kayope for trial. However, when the matter came up for trial on 20th July the case was adjourned to a later date to be issued by the court as the Magistrate had travelled out of the country on official duty. You are further informed that when the court issued a new date for 30th August, 2016 through a notice of hearing dated 12th August 2016, your clients were not served with the notice of hearing and thus were not aware that the matter was coming up for trial on 30th August, 2016. Your clients were informed that all the copies of the notice of hearing for 30th August 2016 were handed over to counsel representing the defendant company Mr Moore Crookes of Messrs Crookes Chambers who assured the court clerk that the notice of hearing will be immediately served on the Plaintiff company. However, the Plaintiff company was never served the notice of hearing. Yet when the matter came up for hearing, counsel for the defendant applied for an order to dismiss the matter for want of prosecution by the Plaintiff. The court granted the order with costs. Your clients have now been served with the order dismissing the action for want of prosecution with costs. Clearly your clients are terribly distressed and seek your legal advice and intervention.

- a) Advise your clients on the action you need to take to ensure their interests are protected and the order to dismiss the Plaintiffs action is invalidated; **(6 Marks)** and
- b) Draft the interlocutory application and supporting affidavit that you will file before court to effect the action you will recommend under paragraph (a) above **(8 Marks)**

Question 7 (14 Marks)

Write brief explanatory notes on the following:

- a) *nolle prosequi*;
- b) Preliminary Inquiry;
- c) Search warrants; and
- d) Institution of criminal proceedings in the Subordinate Court.

END OF EXAMINATION



The University of Zambia

School of Law

Business and Corporate Law – LPR 4930

2015/2016 Academic Year Final Examinations

24 August, 2016

Instructions

1. Answer four (4) questions, one from each part.
 2. Time allowed is three (3) hours plus five (5) minutes to read through the examination paper.
 3. The examination paper carries a total of 60 marks.
 4. Candidates are not permitted to bring any texts into the examination room other than clean copies of the Companies Act Chapter 388 of the Laws of Zambia and the Partnership Act of 1890.
 5. Candidates must not turn this page until the invigilator tells them to do so.
-

PART A

Question One

Taonga and Mwanida are Dzithandizeni Zambia Limited's only shareholders and directors. Each one of them owns 100,000 of K1 each shares. Dzithandizeni Zambia Limited operates a huge grocery supermarket in Chawama.

For the past 18 months, the company has been experiencing financial difficulties. In September 2014, the company's overdraft with Zanaco Bank Plc reached its limit of K250,000.00. In return for increasing the overdraft limit to K300,000.00, Zanaco Bank plc demands security and takes a floating charge over the company's assets. The business continues to struggle and, in January 2015, Taonga and Mwanida are informed by the company's auditor that insolvent liquidation is inevitable. Taonga and Mwanida disagree with and refuse to accept the auditor's advice. Taonga and Mwanida decide to try and trade their way out of their financial difficulties by having a sale. Unfortunately, the sale fails to increase business and in March 2015, Dzithandizeni Zambia Limited is wound up. By this time, the company's overdraft with the bank amounts to K290,000.00.

Kateka has been appointed liquidator and has discovered the following:

- (i) In August 2014, Taonga and Mwanida caused the company to repay an unsecured loan of K250,000.00, which Kateka had made to the company some months before;
- (ii) In addition to the money owed to Zanaco, the company owes ZMK100,000.00 to the Zambia Revenue Authority, K150,000.00 to employees in wages, and K100,000.00 to unsecured creditors;
- (iii) Kateka estimates that the total assets of Dzithandizeni Zambia Limited amount to K500,000.00. Kateka's expenses in acting as liquidator amount to K100,000.00.

Using appropriate legal authorities, advise Kateka on how he is to attend to the liquidation process and all the other legal issues the question raises.

18 Marks

PART B

Question Two

Chilufya is the chief executive officer and director of Kumwesu Zambia Limited. The company has one other director; Tom who is Chilufya's personal fitness trainer. Tom has no interest or corporate background but was included on the board of Kumwesu on the basis of his relationship with Chilufya and in order to satisfy the legal requirement of two directors.

The company owns a piece of land in Lusaka as its only substantial asset. Victoria approaches Chilufya and she tells Chilufya that she is interested in buying the land in order to build a house on it. Victoria also tells Chilufya that she would be delighted if Fastbuild Ltd, a company in which Chilufya owns 25% of the shares, submitted a bid to carry out the work to build the house.

Chilufya calls a board meeting of Kumwesu, and persuades the board to sell the land to Victoria for K350,000.00. She mentions to the board that Victoria is buying the land to build a house, and that Fastbuild Ltd is going to bid to carry out the building work. She, however, fails to mention her shareholding interest in Fastbuild Ltd. After a two-minute discussion, the board of directors approve the sale of the land, and Fastbuild Ltd subsequently won the contract to build the house.

John, a shareholder in Kumwesu, has now been told that the land was probably worth at least twice what Victoria paid for it, and Fastbuild Ltd made a profit of K750,000.00 on the contract with Victoria to build the house.

Advise John on what course of legal actions are available to him against the Chilufya, Tom and or Kumwesu Zambia Limited.

14 Marks

Question Three

In *John Shaw & Sons (Salford) Ltd v. Shaw* 1935] 2 KB 113, Greer LJ stated that “[a] company is an entity distinct alike from its shareholders and its directors. Some of its powers may, according to the articles, be exercised by directors, certain other powers may be

reserved for the shareholders in general meeting. If powers of management are vested in directors, they and they alone can exercise these powers.”

On the other hand, the Zambian Supreme Court in the case of *Kasengele v. Zambian National Commercial Bank* (2000) ZR 72, stated that the shareholders have over-riding authority over the directors.

Using appropriate authorities, discuss at least 5 instances which demonstrate the extent to which the Kasengele decision is problematic to modern corporate law.

14 Marks

PART C

Question Four

“The case of *Salomon v. Salomon* [1897] AC 22 should have been decided differently. It established that a correctly registered company possesses a legal identity separate from its shareholders. The result is a situation where unscrupulous traders may exploit a position of trust, and it has left creditors in a precarious position.”

With the above statement in mind and using appropriate case law, discuss 3 legal principles that may be employed to challenge the principle of separate legal personality that was enunciated in the Salomon case.

14 Marks

Question Five

Answer both parts.

(a) Using appropriate statutory and case law, critically analyse the concepts of power and authority of a company under Zambian corporate law and the extent to which the 2 concepts are similar and or different.

8 Marks

(b) A partnership is not different from an unlimited company. Discuss.

6 Marks

PART D

Question Six

Answer both parts.

- (a) A floating charge at liquidation of a company acquires the same status and confers the same rights as a fixed charge. Discuss.

8 Marks

- (b) Statutory corporations are the same as parastatals. Discuss

6 Marks

14 Marks

Question Seven

Sara, Maria and Peter, who are teachers at Chizongwe Technical Secondary School, entered into a partnership to run a private tuition centre in their free and private time.

The partnership appointed Peter as the person responsible for marketing and purchasing. Peter was therefore responsible for all the purchases on behalf of the partnership. These purchases included stationary and teaching aids. Unknown to the rest of the other partners, Peter was carrying on side private tuitions for children of rich Chipata residents and did not disclose his private tuition activities or income from the said activities to Sara and Maria.

The suppliers to the partnership were also not aware of the fact that Peter was carrying on private tuitions separate from the partnership, because he used to purchase for his private tuitions at the time he was making purchases for the partnership. However, he started getting stocks on credit and he subsequently defaulted in making payments to the value of K50,000.00 (Fifty Thousand Kwacha) for the materials used for his private tuition business.

Advise Sara and Maria on their liability to the partnership's suppliers and any recourse they have against Peter.

14 Marks

End of Examination



**THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW**

**LPR 4155 ALTERNATIVE DISPUTE RESOLUTION
END OF THE YEAR EXAMINATION
26TH AUGUST 2016, 09:00 – 12:00 HOURS**

INSTRUCTIONS:

1. Answer **FOUR (4)** questions, one from each part
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 permitted to bring the following statutes** into the Examination Room: The Arbitration Act No. 19 of 2000 and the English Arbitration Act, 1996.
5. Candidates must **not turn this page** until the Invigilator tells them to do so.

PART A

QUESTION ONE: COMPULSORY

- (a) Parties entered into a contract to supply computer equipment. One party was a Zambian Company; the other party was an English Company. They inserted an arbitration clause in the contract, which chose England as the seat of arbitration and English arbitration law as the applicable law. A dispute arose as the quality of the computer equipment. The matter was referred to arbitration. As per clause in the Arbitration Agreement, each party had to choose one arbitrator and the two were to choose the Chairman.

The arbitrator chosen by the Claimant Zicon Electronics, had taken shares in Zicon Electronics, for which he had applied for before his appointment, and which was approved after his appointment, but he did not step aside. Zicon Electronics was awarded Ten (10) million Euros. Later Blue Chip, the Respondents discovered this relationship. They now seek your legal opinion. Advise (12 marks)

- (b) What does choosing "*the forum that fits the fuss*" mean?

(6 marks)

(Total 18 marks)

PART B

QUESTION TWO:

During the war between the Republics of Zima and Colo, Zima Breweries Company based in Zima entered into an agreement with Lualaba Enterprises a company based in the Colo Republic, for the supply of whisky. There was an arbitration agreement, which choose New York, as the seat of arbitration, the English Arbitration Act, was chosen as the applicable law. Both countries had

legislation forbidding trading with the enemy. A dispute arose due to failure by Lualaba Enterprises based in the Colo Republic to take delivery of whisky. As per agreement, an English Arbitrator was chosen, but Lualaba Enterprises challenged the Arbitrator's Jurisdiction as the entire contract was illegal and therefore the Arbitrator had no jurisdiction. **Discuss**

(14 marks)

QUESTION THREE

DISCUSS:

- (a) The advantages and disadvantage of Arbitration **(7 marks)**
- (b) Non-curial Intervention in Arbitral proceedings **(7 marks)**

(Total 14 marks)

PART C

QUESTION FOUR

You have been appointed as an Arbitrator by Zimca Corporation and Pitian Corporation based in Zambia and England respectively. They have chosen English law as the law governing the arbitration and London as the seat set up an agenda for a preliminary meeting. List the items to be discussed at the 'Preliminary Meeting'. **(14 marks)**

QUESTION FIVE

Critically analyse in what circumstances each of the following may be used:

- (a) What is facilitative mediation **(7 marks)**
- (b) What is directive mediation **(7 marks)**

(Total 14 marks)

PART FOUR

QUESTION SIX

Your client, a multinational company, has had its assets expropriated either by direct or creeping expropriation. The domestic environment in the “Host Country” cannot guarantee a fair trial. The President and his cabinet are hostile to foreign investments.

- (a) What would be the ‘Alternative Forum’? (7 marks)
- (b) Why would you choose that forum? (7 marks)

(Total 14 marks)

QUESTION SEVEN

- (a) Discuss the principles laid down in the case of *M & C Contractors vs. Lesotho Housing and Land Corporation* C of A (civ) No. 09/2015, by the Lesotho Court of Appeal. (7 marks)
- (b) Critically discuss in what circumstances you as Counsel, can advise your clients who have a dispute against a multinational company to use Med-Arb?. (7 marks)

(Total 14 marks)

END OF EXAMINATION

TOTAL MARKS (60)

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

SUPPLEMENTARY/DEFERRED EXAMINATIONS

2015 - 2016 ACADEMIC YEAR

LPR 4165: INTELLECTUAL PROPERTY LAW

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

INSTRUCTIONS: NO STATUTES ALLOWED

ANSWER FOUR QUESTIONS. ONE QUESTION FROM EACH PART. PART ONE IS MANDATORY

PART A

1. The most recent and perhaps most significant multilateral treaty concerning Intellectual Property Rights is the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS). Though criticized as representing the triumph of developed nations over developing countries, it undoubtedly stands as the single most development in International Intellectual Property since the establishment of the Paris and Berne Conventions in the 1880s.

Discuss the salient features of the TRIPS Agreement.

[18 marks]

PART B

2. Intellectual Property plays an increasingly vital role in global trade and economic development.

Discuss the role of Intellectual Property Rights in encouraging Foreign Direct Investment and Technology Transfer.

[14 marks]

3. Discuss the overall objectives of the African Regional Intellectual Property Organization (ARIPO) pointing out the major treaties/protocols administered under it.

[14 marks]

PART C

4. Discuss the subject matter of most copyright laws.

[14 marks]

5. Intellectual property is hardly a static conception but is in a state of constant evolution. Essentially, when it comes to extending intellectual property to new types of creations, the options available are to fit such products into existing intellectual property categories or to create new intellectual property rights.

Discuss the above statement.

[14 marks]

PART D

6. One means of accomplishing economic development through transfer of technology is the commercial transfer and acquisition of technology.

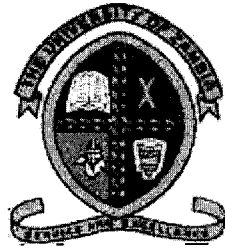
Discuss the mechanisms in which technology transfer across national border is achieved.

[14 marks]

7. Write short notes on the following:

- a. Industrial designing
- b. Unity Models
- c. The idea – Expression principle under copyright Law
- d. The Paris Convention for Protection of Industrial Property.

[14 marks]



THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

**INVESTMENT LAW (LPU 4072)
FINAL EXAMINATION**

22nd JULY 2016

INSTRUCTIONS

1. Answer **FOUR (4) questions**, one from each part.
2. Time Allowed: **Three (3) hours** plus **five (5) minutes** to read through the examination paper.
3. The examination carries a total of **60 marks**.
4. Candidates **are permitted to bring the following statutes** into the examination room: The **Zambian Development Agency Act**, The **Arbitration Act**, The **Convention Establishing the Multilateral Investment Guarantee Agency**, the **ICSID Convention**.
5. Candidates must **not turn this page** until the invigilator tells them to do so.

SECTION A

Question 1

Xavier Investments Ltd, an American company, was awarded a licence by the government of Genosha in 2010, to explore and exploit its vast oil reserves. At the time Genosha was governed by President Ororo Munroe (fondly known as “Storm”) of the Storm Party (SP) who were keen to attract foreign direct investment and as such put in place various measures to attract it to their country. Article 34 of the investment agreement between the Government of Genosha and Xavier Ltd stated as follows:

“The Republic of Genosha 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 Xavier Ltd”.

In 2015 President Storm’s party narrowly lost to the Adamantium Party (AP) led by Max Eisenhardt (fondly known as “Magneto”) who promised in their manifesto to gradually indigenise corporations operating within Genosha. This would as such entail slowly nationalising corporations belonging to foreign nationals.

- (a) Advise President “Magneto” as to the legality of the nationalisation in this instance. [15 Marks]
- (b) **Briefly** describe other means through which Xavier Ltd may recover their money in the event that President Magneto’s government does not pay them compensation. [3 Marks]

[Total 18 Marks]

SECTION B

Question 2

“What would be the purpose of having a state renounce the exercise of certain of its prerogatives of sovereignty if, at the first difficulty, that state could free itself from this promise by invoking precisely these same prerogatives.” Prosper Weil “Les clauses de stabilisation ou d'intangibilité insérées dans les accords de développement économique” in *Melanges Offerts a Charles Rousseau* (A. Pedone 1974) at page 326.

Discuss this quote in relation to the efficacy of stabilization clauses in concession agreements.

[14 Marks]

Question 3

“‘Resource nationalism’ is a cyclical phenomenon. The cycle is driven by exogenous and endogenous drivers.” 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

Discuss.

[14 Marks]

SECTION C

Question 4

(a) The Michael Corleone Ltd has a 65% stake in International Immobiliare, which is a real estate company operating in Zimbabwe. During the recent unrest perpetrated in the country, a concatenation of circumstances led to the burning down of their US\$1 billion real estate complex in Harare. Advise the Michael Corleone Ltd as to whether they qualify for investment insurance under Multilateral Investment Guarantee Agency (MIGA). [8 Marks]

(b) Would your answer be any different if the Michael Corleone Ltd had made the investment in Germany? [4 Marks]

(c) Briefly explain the underlying purpose behind MIGA. [2 Marks]

[14 Marks]

Question 5

(a) Prompt, adequate and effective is the universal standard of Compensation accepted under International Investment Law. [9 Marks]

(b) Briefly explain how, if at all, *pacta sunt servanda* can be reconciled with the right to nationalise. [5 Marks]

Discuss.

[14 Marks]

SECTION D

Question 6

Olivia Pope, an American Hotel developer and the Government of Melistan enter into a joint-venture agreement to build a textiles factory in the city of Hucklefitz in Melistan. The joint-venture agreement contains within it a clause which 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 Bemba and be Brazilian nationals.

The Government of Melistan unilaterally cancels the agreement. An infuriated Olivia Pope initiates arbitral proceedings. During the proceedings the Government of Melistan makes the following contentions:

- i) The contract between Olivia and the Government of Melistan was cancelled and as such there is no valid agreement to arbitrate.
- ii) Since there is no valid agreement to arbitrate, the arbitral tribunal has no jurisdiction.

a) Advise Ms. Olivia Pope. **[9 Marks]**

b) Would your answer be any different if the arbitral tribunal consisted of six Nigerian citizens who only spoke Xhosa? **[5 Marks]**

[14 Marks]

Question 7

The Zambian Development Agency Act, Act No. 11 of 2006, does not go far enough in attracting foreign direct investment.

Discuss citing various provisions in the said Act.

[14 Marks]

END OF EXAMINATION



**THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW**

**LPU 2962 ADMINISTRATIVE LAW
END OF THE YEAR EXAMINATION
23RD SEPTEMBER, 2016, 09:00 – 12:00 HOURS**

INSTRUCTIONS:

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

PART A

QUESTION ONE: COMPULSTORY

Your client is employed by the University of Zambia as an executive officer. Allegations are made against him of using his position to further the activities of a political party. The University of Zambia Staff Disciplinary Committee finds him innocent. However, the Registrar puts allegations on his file which is transmitted to the Vice Chancellor, which allegations he was not given an opportunity to exculpate himself. Relying on the Fresh allegations the Vice Chancellor sets aside the decision of the Staff Disciplinary Committee he intends to dismiss your client. He has approached you to legally represent him, prepare a legal brief advising him.

- (a) The initial application to be made. (9 marks)
- (b) The legal issues the facts raise (9 marks)
- (Total 18 marks)

PART B

QUESTION TWO

Critically discuss the tenor of the Court of Appeal in Roma Taxi Association –vs- Officer Commanding and Others GIV/APN/331/2013, clearly outlining the principles set therein, making use of the decided cases you have learnt. (14 marks)

QUESTION THREE:

Critically discuss with the aid of decided cases, why in 'Judicial Review' affidavits is the mode of the reception of evidence as opposed to viva voce evidence. Explain in what circumstance or circumstances the court may order Viva Voce evidence to be tendered. (14 marks)

PART C

PART C

QUESTION FOUR

The Republic of Zim was at war with its neighbours. There was a flood of refugees into the Republic of Zim, totalling about one million. There was no prospect that the war could end in the near future. The then Prime Minister, decided to offer skilled refugees work permits. He further made a public pronouncement that, that was going to be the Republic of Zim's policy in order to alleviate the suffering of refugees. A group of refugees who happen to be your clients came after the President had appointed a new Prime Minister, who refused to give work permits to your clients.

Critically discuss with the aid of decided cases what legal action you would take and why? **(14 marks)**

QUESTION FIVE:

Write short notes on:

- (a) The remedy of Mandamus and Certiorari **(7 marks)**
- (b) declaration and prohibition

(7 marks)

(Total 14 marks)

PART D

QUESTION SIX:

In the Republic of Zambia, one of the tabloids had a correspondent who used to write satire. The author immigrated to the Republic of Zim before its independence from Britain. The author or correspondent was a British citizen despite having lived in the Republic of Zim for thirty five (35) years, married with



THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

FAMILY LAW AND SUCCESSION – LPU 3940 END OF YEAR EXAMINATION

21ST SEPTEMBER 2016

14:00 – 17:00 HOURS

UPPER D/HALL

INSTRUCTIONS:

1. Answer **FOUR (4) questions**, one from each Part.
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 any statutes** into the examination room.
5. Candidates must **not turn this page** until the invigilator tells them to do so.

PART A

Question 1 (Compulsory)

Brenda is 20 years old and she lives in Nyimba village with her siblings. Brenda has three siblings: Tom (19 years old); Precious (15 years old) and Linda (10 years old). Brenda's parents died two years ago. Ever since then, Brenda has been the head of their household.

Brenda and her siblings are subsistence farmers. They grow cabbages, sweet potatoes and groundnuts. When the harvest is ready, Tom hires a lorry and goes with Linda to sell the produce at the main market in Nyimba. Neither one of the four siblings has completed his or her primary school education. In fact, the three older siblings no longer go to school. Precious is in grade five, and often feels discouraged because most of the pupils in her class are much younger and yet smarter than her. For this reason, Precious often misses classes.

One day, Mr Tembo (Precious' teacher) asks Precious to remain behind after knocking off from school as he wants to know why she misses so many classes. Precious confides in him and Mr Tembo promises to assist Precious with free extra lessons. After three months of receiving extra lessons, Precious' academic performance improves tremendously. 'Now that my efforts have paid off, it is your turn to return the favour,' Mr Tembo says. Initially, Precious does not understand what he means. He moves close to her and gently pushes her onto the bed and has sexual intercourse with her. Precious does not resist Mr Tembo's advances. Six months later, it becomes apparent that Precious is pregnant.

Precious' siblings are livid that the only family member who had an opportunity to acquire a Grade 12 certificate has now dropped out of school as she is pregnant. They kick Precious out of their home and take her and her belongings to Mr Tembo's home. Mr Tembo really likes Precious, but he already has a wife and five children. After one month, Mrs Tembo returns Precious and her unborn child to her siblings. Mr Tembo continues to have relations with Precious and pays damages for the pregnancy.

Precious gives birth to a bouncy baby girl, Mwazona. Precious' siblings are very protective over Mwazona and do not allow Mr Tembo to see her. They also ban him from seeing Precious as they are scared that Precious might conceive again. Mwazona is now six years old. As he is in a better position financially than Precious,

Mr Tembo asks the four siblings if he can have custody of Mwazona because he intends to educate her. They refuse to give him custody of Mwazona, saying his wife and five children will ill-treat her.

- (i) Define the concept of family; and state how many families you can identify in the above set of facts. Substantiate your answer. **(5 marks)**
- (ii) Write a legal comment on Mr Tembo's relations with Precious. **(3 marks)**
- (iii) Define the concept of custody; and comment on Mr Tembo's right to custody of Mwazona under customary law. **(4 marks)**
- (iv) Define the principle of the best interests of a child; and apply it to the situation that every child in the above set of facts finds himself or herself in. **(6 marks)**

(Total – 18 marks)

PART B

Question 2

With reference to the cases of *Somanje v Somanje* (1972) ZR 301 (HC) 70, *Mahande v Mahande* (1976) ZR 287, *Mulundika v Mulundika* (1991) SJ 207 and *David Mwendalubi v Catherine Moonde* [2014/HL/77], critically analyse the meaning of the term 'irretrievable break down of marriage'; and the different ways in which it has been established in the named cases. **(14 marks)**

Question 3

With reference to the African Commission on Human and Peoples' Rights' (ACHPR) decision in *Modise v Botswana*, the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the Universal Declaration on Human Rights (UDHR), write an essay on the strengths and weaknesses of the international law protecting the family. **(14 marks)**

PART C

Question 4

Mr & Mrs Richard Likezo belong to the Lozi ethnic group. They have three daughters aged 10, 13 and 15 years; and a 9 year old nephew whom they look after. Prior to getting married, Mr Likezo had a son, who is now 32 years old. The two are not in touch with each other and hardly have a relationship.

Mr Likezo runs a fleet of taxis. He uses the proceeds to pay the school fees of the four children who are at the Nkwazi Trust School; and to maintain and refurbish the three storey mansion in which they live in Sunningdale. Mr Likezo also has 30 acres of customary land in the village which he co-owns with his twin brother, Paul. The two inherited this piece of land from their father upon his death. There are about 25 extended family members who live on this land, and survive by cultivating it.

One day, Mr Likezo is involved in a tragic accident and he dies on the spot. Mr Likezo died without leaving a will. Immediately after his burial, talks on how to distribute his estate begin. Paul claims that he is entitled to inherit Mr Likezo's share in the 30 acre land. He also lays claim to the fleet of taxis and suggests that he should go with the three young girls to the village so he can continue to look after them on behalf of his deceased twin brother.

Meanwhile, Mr Likezo's mother and the 32 year old son whom Mrs Likezo had never met until the day of the burial, want the three storey mansion, claiming that they are entitled to it as the ascendant and descendant of the deceased. They further argue that Mrs Likezo is not a blood relative of the deceased and therefore, according to Lozi custom, she is not entitled to inherit from his estate.

Advise the family on how Mr Likezo's estate should be administered and apportioned, as provided for by law. **(14 marks)**

Question 5

The following is an extract from an online article published on 14th May 2016 and entitled '*Doctors raise concerns after elderly Indian woman gives birth*'. It reads:

New Delhi (AFP) - Doctors in India on Wednesday raised ethical and health concerns after a woman gave birth to her first child in her 70s, following two

years of IVF treatment. Daljinder Kaur gave birth last month to a healthy boy after falling pregnant by her 79-year-old husband, following fertility treatment at a northern Indian clinic. Kaur said the couple, married for 46 years, were overjoyed at finally having their first child after enduring years of taunts in a country where infertility is sometimes seen as a curse from God.

“I feel blessed to be able to hold my own baby. I had lost hope of becoming a mother ever,” Kaur told AFP from her home in Amritsar city. “I used to feel empty. There was so much loneliness.” ... But fertility expert Sunil Jindal raised questions about the future of a child born to elderly parents, as well as health issues for the mother. “There are ethical issues. In my opinion it is unfair to do such a procedure on a woman who is over 60,” Jindal told AFP. “The sheer fact that a woman in her 70s has to carry the weight of a child in her womb for nine months is stressful. Then the question comes how are the parents going to look after the baby? That is also quite a task.”

Gynaecologist Anshu Jindal, based in Meerut not far from the capital, said she tried to discourage women over the age of 60 from undergoing fertility treatment – for the sake of both mother and child. “According to me it is not an age to have a baby. It will take a toll,” she told AFP. The clinic’s doctor told AFP on Tuesday that tests showed Kaur was medically fine to carry the baby through pregnancy.

With reference to the above article, answer the following questions:

- (i) What is meant by the ‘seamlessness’ of Family Law? **(4 marks)**
- (ii) What are the challenges posed by the seamlessness of Family Law in the above story? **(4 marks)**
- (iii) Assume you are a Judge in the Family Court, and you are asked to pronounce whose interests should be protected between those of mother and those of the child. What will you decide and why? **(6 marks)**

(Total – 14 marks)

PART D

Question 6

- (i) Compare and contrast a void marriage with a voidable marriage. **(7 marks)**
- (ii) Write short notes on gender in Family Law. **(7 marks)**

(Total – 14 marks)

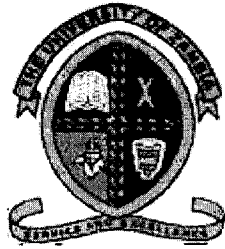
Question 7

- (i) Compare and contrast the grounds for divorce in a statutory marriage to the grounds for divorce in a customary marriage. **(7 marks)**
- (ii) Write short notes on domestic violence and the available civil remedies. **(7 marks)**

(Total – 14 marks)

TOTAL: 60 MARKS

END OF EXAMINATION



THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

**INVESTMENT LAW (LPU 4072)
FINAL EXAMINATION**

22nd JULY 2016

INSTRUCTIONS

1. Answer **FOUR (4) questions**, one from each part.
2. Time Allowed: **Three (3) hours plus five (5) minutes** to read through the examination paper.
3. The examination carries a total of **60 marks**.
4. Candidates **are permitted to bring the following statutes** into the examination room: The Zambian Development Agency Act, The Arbitration Act, The Convention Establishing the Multilateral Investment Guarantee Agency, the ICSID Convention.
5. Candidates must **not turn this page** until the invigilator tells them to do so.

SECTION A

Question 1

Xavier Investments Ltd, an American company, was awarded a licence by the government of Genosha in 2010, to explore and exploit its vast oil reserves. At the time Genosha was governed by President Ororo Munroe (fondly known as “Storm”) of the Storm Party (SP) who were keen to attract foreign direct investment and as such put in place various measures to attract it to their country. Article 34 of the investment agreement between the Government of Genosha and Xavier Ltd stated as follows:

“The Republic of Genosha 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 Xavier Ltd”.

In 2015 President Storm’s party narrowly lost to the Adamantium Party (AP) led by Max Eisenhardt (fondly known as “Magneto”) who promised in their manifesto to gradually indigenise corporations operating within Genosha. This would as such entail slowly nationalising corporations belonging to foreign nationals.

- (a) Advise President “Magneto” as to the legality of the nationalisation in this instance. [15 Marks]
- (b) **Briefly** describe other means through which Xavier Ltd may recover their money in the event that President Magneto’s government does not pay them compensation. [3 Marks]

[Total 18 Marks]

SECTION B

Question 2

“What would be the purpose of having a state renounce the exercise of certain of its prerogatives of sovereignty if, at the first difficulty, that state could free itself from this promise by invoking precisely these same prerogatives.” Prosper Weil “Les clauses de stabilisation ou d’intangibilité insérées dans les accords de développement économique” in *Melanges Offerts a Charles Rousseau* (A. Pedone 1974) at page 326.

Discuss this quote in relation to the efficacy of stabilization clauses in concession agreements.

[14 Marks]

Question 3

“Resource nationalism’ is a cyclical phenomenon. The cycle is driven by exogenous and endogenous drivers.” 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

Discuss.

[14 Marks]

SECTION C

Question 4

(a) The Michael Corleone Ltd has a 65% stake in International Immobiliare, which is a real estate company operating in Zimbabwe. During the recent unrest perpetrated in the country, a concatenation of circumstances led to the burning down of their US\$1 billion real estate complex in Harare. Advise the Michael Corleone Ltd as to whether they qualify for investment insurance under Multilateral Investment Guarantee Agency (MIGA). [8 Marks]

(b) Would your answer be any different if the Michael Corleone Ltd had made the investment in Germany? [4 Marks]

(c) Briefly explain the underlying purpose behind MIGA. [2 Marks]

[14 Marks]

Question 5

(a) Prompt, adequate and effective is the universal standard of Compensation accepted under International Investment Law. [9 Marks]

(b) Briefly explain how, if at all, *pacta sunt servanda* can be reconciled with the right to nationalise. [5 Marks]

Discuss.

[14 Marks]

SECTION D

Question 6

Olivia Pope, an American Hotel developer and the Government of Melistan enter into a joint-venture agreement to build a textiles factory in the city of Hucklefritz in Melistan. The joint-venture agreement contains within it a clause which 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 Bemba and be Brazilian nationals.

The Government of Melistan unilaterally cancels the agreement. An infuriated Olivia Pope initiates arbitral proceedings. During the proceedings the Government of Melistan makes the following contentions:

- i) The contract between Olivia and the Government of Melistan was cancelled and as such there is no valid agreement to arbitrate.
- ii) Since there is no valid agreement to arbitrate, the arbitral tribunal has no jurisdiction.

a) Advise Ms. Olivia Pope. **[9 Marks]**

b) Would your answer be any different if the arbitral tribunal consisted of six Nigerian citizens who only spoke Xhosa? **[5 Marks]**

[14 Marks]

Question 7

The Zambian Development Agency Act, Act No. 11 of 2006, does not go far enough in attracting foreign direct investment.

Discuss citing various provisions in the said Act.

[14 Marks]

END OF EXAMINATION



The University of Zambia

School of Law

Jurisprudence LPU- 4920

Final Examination

30th August, 2016

INSTRUCTIONS

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

SECTION A

Question One (Compulsory)

Zamunda is Sovereign Republic that has just held its first ever democratic elections. The elections were as a result of intense international and local pressure on its former government's official who acquired a lot of wealth and lived extravagant lives whilst the general population lived in abject poverty. The newly elected President of Zamunda, Dr. Kasim Amuli, an ardent socialist has embarked on a programme to shift the economy from capitalist to socialist. In this light he has instructed the Minister of Justice to vigorously reform the law to pave way for the new socialist economic order. Dr. Kasim has also instructed the Prosecutor General to arrest and prosecute the former President and all Ministers who he called "*capitalist long hands*". The President has accused the former government of making laws that made it legal for them to acquire massive wealth and live extravagant lives while people lived in poverty. In an address to the nation, President Kasim has said that "*the former government will not be allowed to go free because 'the Executive Offices Emoluments and Benefits Act' which my government has now repealed was an immoral, capitalist and treasonous Act which allowed the long hands to plunder national resources.*"

You are the Attorney- General of the Republic of Zamunda. The President has now requested you for a legal opinion on the legality or otherwise of the proposed arrests and prosecution of the former government officials. He wants you to present the opinion in Cabinet as objectively as possible.

Prepare your clear and well-reasoned opinion for the President.

[18 Marks]

SECTION B

Question Two

"You cannot know what happens in a factory by reading the Factories' Act. To know what happens and inform the law, you have to go to see what happens in a factory."

Discuss the above famous postulation by sociological school jurists with specific reference to the “Living Law” theory of EHRlich.

[14 Marks]

Question Three

In 2016, the government of the Republic of Burundi initiated the policy of wage harmonisation. In the light of this, wages of all degree holders who worked for parastals were frozen for five (5) years. This was to enable civil servants with degrees in line Ministries catch up with the high parastal salaries. The government through the Minister of Labour and Industrial Harmony stated in a press briefing that *“the policy was in line with government’s desire to achieve distributive justice in Burundi”*. Enraged with the decision, the Parastal Workers Union (PWU) intend to call a strike and file an action in the High Court against this decision. They come to you as an expert in Theories of Justice. They would like you to advise them on the prospects of their action succeeding. Advise them.

[14 Marks]

SECTION C

Question Four

The American School of Realism holds the view that statutes or legislation are not law but only a source of law. This School of Thought further postulates that statutes only have meaning and effect when interpreted by the Courts of Law.

Provide a critique of this view in the light of regulatory legislation such as the Electoral Act No. 12 of 2006 and the High Court Act, chapter 27 of the laws of Zambia.

[14 Marks]

Question Five

James Brown, a famous footballer from the English Premier League in the early 2000s came to Siavonga with a group of friends for a summer holiday. While in Siavonga, James and his friends hired a private yacht from Zambia Boating Company Limited for their leisure on Lake Kariba. They also privately engaged Request Hamanjani, a well trained and experienced captain to operate the Yacht.

One afternoon, while James and his friends were on the waters, one of James' friends fell overboard and drowned. The yacht was tolled out of the water and parked at Lake Safari Lodge. While the Yacht was still parked at Lake Safari Lodge, the police in their continued investigation of the accident visited Lake Safari Lodge to search it. During the search, the police discovered 3 elephant tusks behind the captain's seat. James was immediately arrested and charged with possession of a prescribed trophy under section 133 of the now repealed National Parks and Wildlife Act Chapter 201 of the Laws of Zambia (the "Act"). Section 133 of the Act provides that:

"Any person who has in his possession any prescribed trophy, without a certificate of ownership issued in respect of under section one hundred and thirty-two, shall be guilty of an offence."

Despite having been arrested and charged on 21 January, 2002, the prosecution of James is still pending before the Subordinate Court. This is mainly because James has been allowed to continue with his professional football career and only attend court during his off session.

James has approached a law firm for which you are a legal researcher. He wonders whether in the circumstances of this case, he was the appropriate person to be charged for the offence of being in possession of a prescribed trophy. He also wonders whether his continued prosecution pursuant to the Act is legally competent in the light of the fact that the Act was wholly repealed and replaced by the Zambia Wildlife Act No. 12 of 2010.

Draft a legal opinion for the attention of your principal fully advising James.

[14 Marks]

SECTION D

Question Six

Critically discuss prisoners' rights to vote in the context of Zambia as a democratic state.

[14 Marks]

Question Seven

Zambia has retained the "*Declaration of the Republic as a Christian Nation*" in the Constitution of Zambia (Amendment) Act No. 2 of 2016. The "Friends of Marx", a group of Political Economists who believe in Marxism were not pleased with the retention of the declaration stating that it reinforces capitalism and religion as "*opium of the people*". They want to challenge the declaration in the Constitutional Court.

You are a brilliant lawyer in the Ministry of Justice, well known for your good understanding of Marxist legal theory. The Attorney General has requested you to write a legal opinion on the prospects of this action. Prepare the opinion.

[14 Marks]

END OF EXAMINATION