

UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

FIRST SEMESTER EXAMINATIONS

2010-2011 ACADEMIC YEAR

1. L 211 - Legal process
2. L 241 - Criminal Law I
3. L 251 - Constitutional law
4. L 311 - Law of Evidence
5. L 321 - Land law and property relations
6. L 331 - Commercial law II
7. L 341 - Administrative law
8. L 411 - Jurisprudence
9. L 431 - International law
10. L 461 - Intellectual property and competition law



THE UNIVERSITY OF ZAMBIA

**SCHOOL OF LAW
EXAMINATIONS 2009/1**

L211 - LEGAL PROCESS

Instructions:

- 1. Answer 1 question from each part.**
 - 2. Other than question 1 which carries 18 marks each question is worth 14 marks. The total mark for the Examination is 60.**
 - 3. Time: Three (3) hours plus five (5) minutes in which to read the question paper.**
 - 4. NO statutes may be taken into or consulted during the examination.**
-

PART A

Question 1

The following is an extract from a judgment. Read it carefully in its entirety.

IN THE SUPREME COURT FOR ZAMBIA SCZ JUDGMENT NO. 8 OF
1999

HOLDEN AT KABWE AND LUSAKA APPEAL NO. 107 OF 1996

(CIVIL JURISDICTION)

B E T W E E N

A.M.I. ZAMBIA LIMITED

APPELLANT

AND

PEGGY CHIBUYE

RESPONDENT

CORAM: NGULUBE. CJ., CHAILA AND MUZYAMBA, JJS

ON 4th November, 1998 and 13th April, 1999

For the Appellant: Mr. N.K. Mubonda of D.H. Kemp and Co.

For the Respondent: Mr. C.M. Ngenda of Christopher Russell and Co.

J U D G M E N T

Ngulube, CJ. Delivered the judgment of the Court.

This case concerned custody of goods for customers. ... The learned trial judge heard the evidence... the learned judge said he was resolving an issue of credibility between two sets of witnesses and accepted the evidence of the respondent and her witness. One ground of appeal argued by counsel challenged this finding of fact....The Supreme Court has evolved and constantly affirmed some definite principles when it comes to reversing a trial court's findings of fact, especially those based

on credibility. Not having had the advantage of seeing and hearing the witnesses at first hand which the trial court has, we do not lightly interfere unless it unmistakably appears that the trial court fell into error and could not have taken proper advantage of seeing and hearing the witnesses at first hand. ... We have not been given any justifiable excuse for reversing the learned trial judge and this alone resolves the appeal....

.....
.....
... Indeed, the cases of SECURICOR ZAMBIA LIMITED v WILLIAM JACKS AND CO. ZAMBIA LTD SCZ Appeal No. 24 of 1990; AILSA CRAIG FISHING CO. LTD v MALVERN FISHING CO. AND ANOTHER [1983] ALL ER 101; GEORGE MITCHELL (CHESTERHALL) LTD v FINNEY LOCK SEEDS LTD [1983] ALL ER 737 and the case of PHOTO PRODUCTION LTD v SECURICOR TRANSPORT LTD [1980] ALL ER 556 which Mr. Mubonda cited are all in point so far as they support the legal proposition under discussion.

In truth, there are no grounds for interfering with the judgment below. The appeal is dismissed, with costs to be taxed if not agreed.

.....
M.M.S.W NGULUBE
CHIEF JUSTICE

.....
M.S. CHAILA
SUPREME COURT JUDGE

.....
W.M. MUZYAMBA
SUPREME COURT JUDGE

List or present in tabular form the fundamental lessons about the structure of our legal system that are evident from the format of the judgment. Each lesson must be explained briefly and justified.

PART B

Question 2

Write Short Notes on two of the following:

- a. Civil law
- b. Islamic law
- c. Roman Dutch law

Question 3

You are a magistrate in the Subordinate Court of the First Class. Before you, is a case on appeal from the Local Court: According to the record of appeal, Wellread Lawyer, the appellant is challenging the decision of the Local Court rendered in accordance with the parties' customary law. The grounds of appeal are that the lower Court misdirected itself when it applied the said customary rule.

Provide a reasoned judgment that upholds the Local Court. Your judgment should deal separately with each of the following:

- 1. Constitutional and statutory status of customary law**
- 2. The dual standard of justice**

PART C

Question 4

You come across the following statement in your legal process textbook.

“Law is made by the people for all the people”

Discuss the statement

Question 5

UNZASU is planning a class boycott to protest against a decision made by the School of Law Board of Studies to enforce the Progression Regulations in the School. The Regulations do not permit a student who has not cleared all the courses required in a particular year of study to proceed to the next year of study. The School Management writes to UNZASU advising that all law students that participate in the boycott will be expelled. UNZASU appeals to Senate claiming that: a. The progression rules should not be applied because

their application will result in injustice, as affected students will lose their GRZ sponsorship and b. Class boycott is a legitimate form of protest. Senate upholds the decision of the School stating that justice demands that a. A rule of law be applied consistently and impartially and b. All disputes are resolved through legal channels.

In a legal opinion rendered to UNZASU state which position is correct.

PART D

Question 6

In *Samuel Miyanda v Raymond Handahu* SCZ Judgment No. 5 of 1994 Ngulube CJ stated as follows:

The fundamental rule of interpretation of all enactment to which all other rules are subordinate is that they should be construed according to the intent of Parliament, which passed the law.

State:

- a. What facts in the case gave rise to the statement and**
- b. Whether this is a complete and accurate assessment of the process of interpreting statutes?**

Question 7

Outline and justify the critical elements that constitute a case summary.

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW
SEMESTER 2010/1 FINAL EXAMINATION
L211 LEGAL PROCESS

Instructions:

- a) Question one is compulsory and carries 25 marks.
 - b) Students must answer **one question from each of the other sections**. Each question carries 15 marks
 - c) You have 5 minutes to read through the paper and three hours in which to answer four questions
 - d) Use of statutes is not permitted for this examination
 - e) Examination mark is 70
-

SECTION A

QUESTION ONE COMPULSORY:

In the case of **Silver & ors vs. UK Judgment 25/1983 series A No 16**, the court stated that:

“a norm cannot be law unless it is formulated with sufficient precision to enable the citizen to regulate his conduct. He must be able if need be with appropriate advice to foresee to a degree that is reasonable in the circumstances, the consequences which a given action may entail”.

With the help of suitable case and statutory authorities, discuss the validity of the above statement in a legal system.

25 Marks

SECTION B

QUESTION TWO:

Zambia was colonized by Britain. At independence, the government decided to continue with some of the laws that had been introduced by the colonial masters because to abandon them would have created a vacuum in an emerging legal system. This is an important source of law in the country.

With the help of suitable case and statutory authorities, discuss the application of English law in Zambia.

15 Marks

QUESTION THREE:

African customary law is an important source of law in any setting. In Zambia for example, it regulates the relations of the people in all the 73 ethnic groupings respectively, and has done so for many generations. However, its application can be ousted in certain circumstances.

With the help of suitable case and statutory authorities, identify atleast four instances when the application of customary law is restricted in Zambia.

15 Marks

SECTION C

QUESTION FOUR:

Judicial precedent is the corner stone of the Zambian judicial system as it brings about certainty, uniformity and predictability of the legal system.

Critically discuss.

15 Marks

QUESTION FIVE

You are newly admitted to the bar and you have been offered a job in a very busy firm called UNZA Law Legal Practitioners. The partners are very excited that for once they will get help in research and other ancillary issues while they concentrate on court work. One of the partners has a case which the firm has just lost before the High court and now wishes to appeal to the Supreme Court on various points of fact and law. This is a civil matter; however the firm is also specialized in criminal matters. The partner therefore calls upon your expertise in researching for this case. However before getting into the substance of the case, the partner wishes to know the powers of the Supreme Court in appeal cases.

- a) Write out a brief stating clearly the powers exercisable by the Supreme Court in civil appeals. With the help of suitable authorities, you are further required to state the principles relating to civil appeals before the Supreme Court.
- b) Discuss in sufficient detail the two types of appeals in the Supreme Court with regard to criminal matters.

15 Marks

SECTION D

QUESTION SIX

In the **Malone's case Judgment 2/1984 series A No 82**, the UK court stated that

“Although it may not be possible to have absolute precision in drafting law, it should nevertheless indicate the scope and the manner of its exercise with sufficient clarity”.

The reality of the situation, however is that law is not always clear as it is not an instrument of mathematical precision. As such the courts always employ the use of certain canons to arrive at the real meaning of a particular provision.

With the help of decided cases, stating the brief facts and principle in each case, discuss the rules of statutory interpretation.

15 marks

QUESTION SEVEN:

The adversary system is one of the important pillars of the Zambian legal system regulating practice and procedure. Discuss.

15 marks

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

2010 – 2011 ACADEMIC YEAR, FIRST SEMESTER EXAMINATIONS

L241, CRIMINAL LAW I, FINAL EXAMINATION

INSTRUCTIONS: This examination paper has seven questions. Candidates are required to answer only four questions. Question one is compulsory, which means that all candidates must answer it. You are permitted to refer to clean, unannotated copies of the Penal code and the Criminal Procedure Code during the examination. Other material on Criminal law are not permitted.

TIME: THREE HOURS (including 5 minutes for reading the question paper)

PART A

QUESTION ONE (Compulsory Question) (19 marks)

Patrick Moono has altered the contents of his Grade 12 Certificate by changing his passing grades. He changed three Grade 9 marks to Grade 4, and three Grade 4 marks to Grade 2. He does not show this to anybody at all, not even to his wife. And he does not intend to use it to acquire a job. As a self employed business man, he only enjoys looking at the altered certificate in private. He intends to burn it before he dies, so that no one would see it after his death.

Moono is also suspected to be dealing in illicit drugs. While searching for dangerous drugs, the Police found Moono's altered certificate. They are now considering the appropriate charge, if any, against Patrick.

- (a) Has Patrick committed any offence under the Penal Code? Advise.
- (b) Cite any decided case to support your answer.

PART B

QUESTION TWO (17marks)

The offences of rape and careless driving are offences of 'basic intent', while murder and theft are offences of 'direct intent'. Discuss these expressions and name and explain two offences of basic intent and two offences of direct intent.

QUESTION THREE (17 marks)

Define the offence of manslaughter explaining the meaning of each of its two main ingredients. And point out one distinction between voluntary and involuntary manslaughter. Discuss a case where the accused was charged with manslaughter and what its final decision was.

QUESTION FOUR (17 marks)

Kamayoyo Sandando has been a sales manager in the Mango – Wine Company for 18 years without earning any promotion to the higher management echelons of the company. In order to rise to the position of General Manager, he had given Thirty Million Kwacha (K30,000,000.00) to the Managing Director, Bwalya Chisunka.

The Managing Director after receiving the 'gift', summarily dismissed the incumbent General Manager who was properly qualified for the job, for reporting for work five (5) minutes late and replaced him with Kamayoyo Sandando, who was not qualified to occupy the position. The Mango-Wine Company is a privately owned company and not a public corporation. Indicate the offences which Chisunka and Sandando have committed under the Anti-Corruption Act No. 42 of 1996, if any.

QUESTION FIVE (17 marks)

Bernard Lungu, a well-known petty thief in the neighbourhood, was hungry and needed something to eat. When he noticed that Christopher Musonda's kitchen door was open, he entered the kitchen through the open door, looking for food. He did not find any food in the kitchen and went out. Musonda was in the living room when Lungu entered the kitchen.

When Musonda saw Lungu exiting from the kitchen, he ran after him, caught him and handed him to the Police. Name and briefly explain the offence Lungu has committed, if any under the Penal Code. Indicate its penalty.

QUESTION SIX (17 marks)

Offences of treason and treason felony both relate to interference with the operations of government machinery. Explain each offence and point out two glaring distinctions between these two political offences. Name and briefly explain any Zambian case in which the accused were charged with treason. State one overt act of the case you have cited and what the court decision was.

QUESTION SEVEN (17 marks)

Choose any two of the following three defenses in criminal law and describe them. For each defense cite one case in which the accused person pleaded it during his or her trial.

- (a) Intoxication
- (b) Mistake of fact
- (c) Doli Incapax

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

2010 – 2011 ACADEMIC YEAR, FIRST SEMESTER EXAMINATIONS

L241, CRIMINAL LAW I, FINAL EXAMINATION

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TIME: THREE HOURS (including 5 minutes for reading the question paper)

PART A

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Moono is also suspected to be dealing in illicit drugs. While searching for dangerous drugs, the Police found Moono's altered certificate. They are now considering the appropriate charge, if any, against Patrick.

- (a) Has Patrick committed any offence under the Penal Code? Advise.
- (b) Cite any decided case to support your answer.

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When Musonda saw Lungu exiting from the kitchen, he ran after him, caught him and handed him to the Police. Name and briefly explain the offence Lungu has committed, if any under the Penal Code. Indicate its penalty.

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- (a) Intoxication
- (b) Mistake of fact
- (c) Doli Incapax

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW

DEFERRED AND SUPPLEMENTARY EXAMINATION

FIRST SEMESTER – DECEMBER 2009

L251: CONSTITUTIONAL LAW

INSTRUCTIONS:

1. Answer Four (4) Questions: ONE Question from Each Section.
2. Question One (1) is Compulsory.
3. Question ONE carries 18 Marks and 14 Marks for each one of the remaining Questions.
4. You have Five (5) Minutes to read the paper and THREE (3) Hours to answer the questions.

PART ONE

QUESTION ONE

The Republic of Tambisa has a constitution similar to that of Zambia. Charles Mabonga has just been elected President of the Republic. He has spent the first one week in office being briefed by various public officers on the functions of government. Whilst as leader of the opposition, President Mofya has always been fascinated by the powers of the President under Article 30(1), which reads:

The President may, in consultation with Cabinet, at any time declare, by proclamation published in the Gazette that a state of public emergency exists.

The President wants to know whether such a decision by him would be open to challenge in a court of law, since he can make such a decision in his subjective determination. You are the Attorney General, advise him.

PART TWO

QUESTION TWO

Charles Mwanza is an outspoken Member of the National Assembly. On 28th November 2009 he was found guilty of contempt of the House and the Speaker of the National Assembly announced the decision of the House expelling Mwanza from the House. Mwanza's lawyers promptly lodged an application before the Court and stayed the decision of the House until after its legality has been examined by the Court. The Speaker is upset by the decision of the High Court Judge and has written to the Chief Justice complaining about the High Court's interference into the internal affairs of the House. He has asked the Chief Justice to intervene by advising the Judge responsible to reverse his decision. You are the assistant to the Chief Justice of Zambia and you have been asked to draft a reply to the Speaker's letter.

QUESTION THREE

[1] In the case of *Dr. Ludwig Sondashi v The Attorney General* SCZ Judgment No. 27 of 2000, Dr. Sondashi applied to the High Court to seek a declaration that the decision by the Minister of Home Affairs rejecting his application to operate a firearms dealers business at Stand No. 942 Solwezi, North Western Province, was contrary to Sections 26(2) and 27(3) of the Firearms Act, Cap 110, of the Laws of Zambia and thus null and void. The High Court rejected the application of the appellant on the ground that Section 12(7) had ousted the Jurisdiction of the Court as it provided that the minister's decision is not challengeable in any court of law.

On appeal to the Supreme Court Chibesakunda J., said:

Secondly, as pointed out by the learned trial Judge, it is a requirement in judicial review that all available remedies must be exhausted before applying for prerogative writs. In this case, the appellant did follow that procedure. This is how he appealed to

the Minister and that is how the ouster clause came in. Section 12(7) of the Firearms Act says:-

“The decision of the Minister on an appeal in terms of this section shall be final and shall not be questioned in any proceedings.”

That section was correctly interpreted by the learned trial Judge as protecting the decision of a Minister from being challenged in any proceeding which includes any court proceedings. The clause completely ousters the jurisdiction of any court including this court. The appellant has tried to persuade us to hold that the interpretation of Sections 26(2) and 27(2) by the Minister was wrong in that it included the consideration of the security of Zambia against the background of the volatile situation in neighbouring countries.

The Court went on to say:

We, as a court, accept that where the legislature has decided that certain matters should be solely placed in the jurisdiction of the executive, the court has no role to play as such issues contain no legal issues to be resolved. Further, the question of security is entirely for the executive to decide upon. Courts are not in a position to know and adjudicate on such issues. We therefore agree with the learned trial Judge that the relief sought by the appellant could not be granted by the High Court. The appeal therefore is dismissed. We order that the costs for appeal be borne by each party.

According to the Rules of the Supreme Court every case before the Supreme Court has to be heard by a minimum of three judges and the decision of the Court will be based on the opinion of the majority of the judges. You are a judge of the Supreme Court and you have read the opinion of Chibesakunda J.

You are, however, expected to write your own opinion on the issues raised in the appeal bearing on mind the opinion of Chibesakunda J.

Write your opinion.

Advise him.

PART THREE

QUESTION FOUR

Discuss the major features of the constitutional order introduced by the North-Western Rhodesia (Barotziland) Order in Council 1899.

QUESTION FIVE

Charles Mwila has just learnt that you have covered the constitutional history of Northern Rhodesia from 1899 to 1964. He wants to know the extent to which the concept of separation of powers was embodied under the constitutional arrangement of 1924.

PART FOUR

QUESTION SIX

The UPP is a political party that is contesting this year's Presidential-bye Election. They have made a commitment to uphold the supremacy of the Constitution once elected to the office. You have been consulted by the chairman of legal affairs in another opposition party struggling to put together its manifesto. They would like to know the implications of this commitment by UPP and its possible benefits to the country.

QUESTION SEVEN

It is said that the Zambian constitution is a fusion of the attributes of the American Constitution and the British Constitution. Identify the aspects of the Zambian Constitution, which are reflective of the British Constitutional order.

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

UNIVERSITY OF ZAMBIA
SCHOOL OF LAW
L 251 CONSTITUTIONAL LAW FINAL SEMESTER EXAMINATION -
SECOND SEMESTER

- (1) TIME: FIVE (5) MINUTES TO READ THE PAPER AND THREE (3) HOURS TO ANSWER.**
 - (2) ANSWER FOUR (4) QUESTIONS OUT OF SEVEN (7).**
 - (3) YOU CAN BRING THE CONSTITUTION AND OTHER RELEVANT UNMARKED STATUTES.**
 - (4) QUESTION ONE 18 MARKS OTHERS 14 MARKS.**
-

QUESTION ONE COMPULSORY: 18 Marks

Nkumbula V Attorney General (1972) ZR 244 changed Zambia's Political, Democratic and Human Rights Landscape - Discuss.

QUESTION TWO:

Write short notes on:

- (i) Constitutionalism
- (ii) A Democratic or constitutionalistic constitution
- (iii) The saying that, 'your rights end where they start harming others'

14 Marks

QUESTION THREE:

John your client's brother is apprehended for aggravated robbery and detained at the central police station, from where he escapes. In order to quickly recapture him the police detained his sister and mother as hostages, so that he can surrender. While in police custody they are denied food and deprived sleep. John has come to you for legal advice.

14 Marks

QUESTION FOUR:

The Constitution of Zambia says no word about Doctrine of Separation of Powers. Do you agree or disagree that notwithstanding the Doctrine is applicable in Zambia.

14 Marks

QUESTION FIVE:

Discuss the three modes of adopting a constitution and how democratic is each mode?

14 Marks

QUESTION SIX:

- (a) Define the Rule of Law.
- (b) The Government of Zambia in *Shipanga V Attorney General 1977 ZR*, refused to comply with a return to a writ of habeas corpus in respect of a SWAPO dissident. When the writ was issued, they sent Mr. Shipanga to Tanzania thereby incapacitating themselves from complying with a court order. They pleaded that it was not in the interest of the liberation struggle of Namibia to do so and that they did not agree with the court order. Comment on the conduct of the Zambian Government in the context of the Rule of Law and Doctrine of Separation of Powers.

14 Marks

QUESTION SEVEN:

- (a) Discuss the Sources of Constitutional Law.
- (b) Discuss the Federal and Unitary Constitutions.

14 Marks

-----END OF EXAM-----

UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

L311 LAW OF EVIDENCE

2010 SEMESTER I EXAMINATION

DATE: 3RD NOVEMBER, 2010

TIME: 3 HOURS PLUS 5 MINUTES TO READ THE QUESTION PAPER

INSTRUCTIONS: ANSWER FOUR (4) QUESTIONS, ONE QUESTION FROM EACH OF THE PARTS

QUESTION 1 CARRIES 21 MARKS WHILE THE OTHERS CARRY 13 MARKS EACH

TOTAL MARKS: 60

PART A

QUESTION 1 COMPULSORY

Chasaya is charged with the rape of Essa. Which of the following facts is relevant and why?

- (a) Chasaya and Essa were living together until shortly before the alleged rape.

[3 marks]

- (b) Essa was working as a call-girl at the time of the alleged rape.

[3 marks]

- (c) Chasaya has a previous conviction of rape.

[3 marks]

- (d) Chasaya has a previous conviction of indecent assault.

[3 marks]

- (e) Chasaya refused to give evidence at his trial.

[3 marks]

- (f) At the time of his arrest, Chasaya was in possession of a carrier bag which contained copies of pornography magazines.

[3 marks]

- (g) Statistics published by the Ministry of Home affairs showing that rape and defilement are on the increase.

[3 marks]

Total 21 Marks

PART B

QUESTION 2

Eleven Appellants were charged with treason, one of the defendants named Kaiche, was offered immunity from prosecution by the Director of Public Prosecution, in return for turning a state witness against the Appellants who included several accomplices. Kaiche's evidence was the foundation of the prosecution's case against the Appellants, and they were convicted. They have appealed against conviction claiming that Kaiche was not a competent witness.

Discuss.

[13 marks]

QUESTION 3

(a) Consider the admissibility of Nkombo's confession in a situation where he is claustrophobic (suffers from fear of being enclosed) Nkombo's fear is not known to the police and they put him in a cell awaiting questioning as is normal. Several hours later he is taken from the cell to an interview room where, terrified of being returned to the cell, he confesses in the hope that he will be granted bail.

[8 marks]

(b) Would it make any difference if the Police were all the while aware of Nkombo's condition.

[5 marks]

Total 13 marks

PART C

QUESTION 4

In *R v Rowton* (1861 – 73) All ER Rep 549, the accused was charged with indecent assault on a boy and called several witnesses to his character. The prosecution called a witness to give evidence in rebuttal, and the witness was asked about the accused's general character for decency and morality of conduct. He replied “ **I know nothing of the neighbourhood's opinion, because I was only a boy at school when I knew him; but my own opinion, and the opinion of my brothers who were also pupils of his, is that his character is that of a man capable of the grossest indecency and the most flagrant immorality**”.

Discuss the admissibility of the witness' testimony.

[13 marks]

QUESTION 5

Discuss the privileges of a witness that ensure proper administration of justice in criminal proceedings.

[13 marks]

PART D

QUESTION 6

The Penal Code, Chapter 87 of the Laws of Zambia provides in Section 140 that

“ no person shall be convicted of any offence under this section upon the evidence of one witness only, unless such witness be corroborated in some material particular by evidence implicating the accused”

Discuss the meaning of corroboration and the reasons for this requirement in criminal proceedings.

[13 marks]

QUESTION 7

The case of *WOOLMINGTON v DPP* (1935) AC 462; (1935) All ER 1 established the law, that “if there has to be conviction, the prosecution must establish its case beyond reasonable doubt”.

Discuss this principle of law and the exceptions if any, to the general rule.

[13 marks]

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THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

2010 SEMESTER 1 EXAMINATION

5th NOVEMBER 2010

L321- LAND LAW AND PROPERTY RELATIONS

INSTRUCTIONS:

- 1. ANSWER FOUR QUESTIONS, ONE FROM EACH PART. PART ONE IS MANDATORY.**
 - 2. TIME: THREE (3) PLUS FIVE (5) MINUTES IN WHICH TO READ THE PAPER**
 - 3. NO STATUTES ALLOWED IN THE EXAMINATION HALL**
-

PART ONE

1. Paul Sakubita was the owner of a parcel of land which he mortgaged to FNB Bank on 17th November 2008. Arrears arose under the mortgage and, ultimately, on 1st November 2010 the Bank obtained a writ of possession which was subsequently executed. A dispute has arisen between Sakubita and his parents to whom he had purported to assign the contents of the house on one hand and FNB Bank on the other as to which of the items which were in the house were covered under the mortgage. The disputed items were:
- (a) Fitted carpets cut to size and kept in place by a stretching device
 - (b) Towel rails and lavatory roll holders
 - (c) Curtains and blinds including a shower curtain in the bathroom
 - (d) Mirrors and marble panels on the walls in the fitted bathroom
 - (e) Kitchen units including a fitted sink
 - (f) Fittings on baths and basins namely taps, plugs and showerheads
 - (g) Ornamental tiles on the walls of kitchen and bathrooms
 - (h) Light fittings recessed into the ceilings
 - (i) Chandeliers suspended from a ceiling rose.
 - (j) A green house with its own concrete plinth resting on its own weight on a concrete base.
 - (k) Electrical appliance plugged into an electrical supply.
- (a) You are the Legal Counsel for FNB Bank. This morning your Managing Director Mr. Pablo Mittal has requested for your learned opinion on the dispute that has arisen. Advise him.

[10 MARKS]

(b) After rendering your opinion to Mr. Mittal, the Director for Credit and Recoveries Mr. Paul Armstrong has called on you seeking for your learned opinion on how the power of sale become exercisable under a mortgage and the duties imposed on the mortgagee in relation to sale and any matter incidental thereto.

Advise Mr. Armstrong with the aid of case law.

[8 MARKS]

PART TWO

2. (a) Discussion of the protection of the mortgagor through the supervisory jurisdiction of equity is frequently prefaced by reference to the maxim "once a mortgage always a mortgage." Discuss the above statement with the aid of case law.

[9 MARKS]

(b) Explain the rationale behind the perpetuity rule and how the rule has been modified by statute in Zambia.

[5 marks]

3. (a) With the aid of case law discuss the legal and equitable quality of proprietary rights in land and the consequences of the legal and equitable distinction.

[8marks]

(b) With the aid of case law, discuss the extent of application of the doctrine in *Walsh v. Lonsdale* [1882] 21 Ch. D. 9 to the Zambian legal order.

[6marks]

PART THREE

4. A contract to sell or make any other disposition of land is made in the same way as any other contract. As soon as there is an agreement for valuable consideration between the parties on the essential terms, there is a contract between the parties; and this is so whether the agreement was reached orally or in writing. However, although a valid contract relating to land may be made orally, it will be unenforceable by the most important method of enforcing contracts, namely, by action, unless either the statutory requirements as to written evidence of the contract, or the requirements of equity as to part performance, have been satisfied. Discuss the above statement with the aid of case law.

[14 marks]

5. (a) Land law is a subject steeped in history. It has its origin in the feudal reforms imposed on England by William the Conqueror in 1066 and many of the most fundamental concepts and principles of land law spring from the economic and social changes that began then. Discuss the above statement.

[9marks]

(b) Discuss the legal nature of a *profit à prendre*. How does the same differ from an easement?

[5 marks]

PART FOUR

6. (a) At common law the concept of land was said to be extended by the maxim "*cuius est solum, eius est usque ad coelum et ad inferos*."

Discuss the extent of application of the above maxim under the Zambian legal order.

[9marks]

(b) Compare and contrast a tenancy at sufferance and a tenancy at will.

[5marks]

7. (a) The right to occupy land in return for payment is consistent with the grant of a lease or a licence. However the consequences of the two alternatives are very different.

Discuss the above statement with the aid of case law.

[8 marks]

(b).Discuss the legal nature of concurrent co-ownership clearly pointing out and explaining the common feature present in all forms of concurrent co-ownership.

[6marks]

END OF EXAMINATION

The University of Zambia

School of Law

L331 Commercial Law I – Final Examination

8 November 2010

Instructions:

1. The total mark for this examination is 60 marks.
 2. Question one (1) is a **compulsory** question and carries 21 marks. It must be answered by all candidates.
 3. Answer any other three (3) questions. Each of the other questions carries 13 marks each.
 4. You have three (3) hours in which to write the exam, and five (5) minutes in which to read the paper
 5. The following **unmarked** statutes may be consulted during the examination: The Sale of Goods Act of England 1893 and The Hire Purchase Act chapter 339 of the Laws of Zambia.
-

QUESTION 1 (Compulsory)

Autumn is a wholesale vendor of freshly squeezed orange juice. She currently has 100 liters of orange juice in her possession, and contracts to sell 90 liters of that orange juice to Winter, a supermarket retailer. Autumn keeps all her orange juice in a purpose built cold room on her business premises. Autumn gives Winter a delivery order for 80 liters of orange juice and asks him to collect his orange juice from her business premises the following day. Two days later, Winter has not collected his juice. During this time, the cold room has also developed a fault and ceases to work. Worried that the orange juice will rot, Autumn hires a technician to fix the fault. The cold room is eventually fixed, but by the time this occurs, the juice has already gone off. When Winter arrives to collect his order, Autumn informs him that the juice is rotten. Autumn asks Winter to pay the purchase price of the orange juice, and also asks him to pay the technician for the work he did on the cold room since this work was for Winter's benefit. Winter just laughs and tells Autumn that he will not pay for the rotten orange juice, neither will he pay the wages of someone he didn't hire.

Autumn is a friend of yours. She knows that you are a student of Commercial Law at UNZA school of law. She pays you a visit and asks for legal advice.

Advise her accordingly.

[21 Marks]

QUESTION 2

In the case of *Gurtner v Beaton* [1993] 2 Lloyd's Rep 369, Neill LJ stated:

“The development of the doctrine of “apparent authority” has been based in part upon the principle that where a court has to decide which of two innocent parties is to suffer for the wrongdoing of a third party the court will incline towards placing the burden upon the party who was responsible for putting the wrong doer in the position in which he could commit the wrong.”

Critically evaluate this statement.

[13 Marks]

QUESTION 3

Eve asks her friend Adam, to help her find a Toyota Corolla to purchase. Adam is not a mechanic, but he knows a fair amount about cars since he helps his Uncle run a motor vehicle spare-part hardware store in Ndola. Eve tells Adam that under no circumstances should he recommend a car that has a mileage of over 60,000. Adam finds a Corolla with a mileage of 52,000, and recommends the car to Eve. Eve purchases the car, but 2 months later, she discovers that the Corolla's meter clock was tempered with, and that the real mileage at the time of purchase was well over 100,000.

Eve sues Adam. In his defense before the court, Adam argues that he did not know that the mileage clock had been tempered with. He tells the court that he was merely doing Eve a favor, and that he was not even paid for his services.

With reference to appropriate case law, comment on how you think the court should decide.

[13 Marks]

QUESTION 4

January (the "seller") and February (the "buyer") conclude a hire-purchase agreement for the lease of a washing machine. In terms of the agreement, February will make monthly rental payments to January of ZMK 150,000 for 18 months. At the end of the 18 month term, February will have the option to buy the washing machine by paying January an additional ZMK 500,000. For the first 13 months, February faithfully makes payments in fulfillment of the agreement. But just before the 14th payment is due, February loses his job and begins to default on his payments. After not receiving payment for 2 months, January decides that he is going to terminate the agreement and recover possession of the washing machine. He visits your law offices and asks you whether there is provision at law for him to do this.

Prepare a legal opinion advising January.

[13 Marks]

QUESTION 5

“Treating the time for delivery as being of the essence has potentially prejudicial consequences.”

Discuss.

[13 Marks]

QUESTION 6 (answer all parts)

Define the following concepts:

- a. Agency by Cohabitation
- b. Disclosed Agency
- c. The Market Price Rule
- d. Symbolic Delivery

TOTAL [13 Marks]

QUESTION 7

Section 5 (1) of the Hire Purchase Act provides the following:

5. (1) Every agreement shall-

- (a) be reduced to writing and signed by or on behalf of all parties to the agreement.
- (b) Contain a statement of the cash price.

Zambezi, who is a regular client of yours, comes to you with a copy of a hire-purchase agreement which she concluded with Luangwa. The agreement is for the lease of a 40 inch plasma TV. She tells you that she has already paid Luangwa a 20% deposit in terms of the agreement, and has also taken delivery of the TV. She informs you that one week ago, Luangwa phoned her and informed her that since she had not signed the agreement, it was invalid at law and that he wanted his TV back. When Zambezi told him she would not give him back the TV, he threatened to take her to court.

Zambezi tells you that she forgot to sign the agreement, but has every intention to be bound by the agreement, and really wants to keep the TV in accordance with the agreement. She wants to know whether she stands any chance against Luangwa in court.

Advise her.

[13 Marks]

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

EXAMINATION: FIRST SEMESTER NOVEMBER 2010

L341: ADMINISTRATIVE LAW

Instructions:

1. Answer FOUR (4) QUESTIONS: One (1) Question in each Part. Question One in Part One is COMPULSORY.
 2. Time THREE (3) Hours and Five (5) Minutes to Read the Questions.
-

PART ONE

QUESTION ONE

Article 4 of the Constitution of 1973 reads:

- (1) There shall be one and only one political party or organisation in Zambia, namely, the United National Independence Party....
- (2) Nothing contained in this Constitution shall be so construed as to entitle any person lawfully to form or attempt to form any political party or organisation other than the Party, or to belong to, assemble or associate with or express opinion or to any other thing in sympathy with such political party or organisation.

In September 1990, the said Article was repealed paving way for the creation of other political parties. In 1991, a new Constitution was settled and in October the same year presidential and parliamentary elections were held, which the Movement for Multi-Party Democracy (MMD) won convincingly. Upon assuming power, the MMD embarked on the policy of liberalising the economy with the consequence that most of the businesses previously under government ownership transferred to private ownership within the first ten years of being in power.

Besa Musonda is a Zambian studying law at a British university. He wants to know how it has been possible, in the light of the said statutory provision, for Zambian courts to entertain and grant the necessary remedies in cases involving the National Assembly and the Speaker such as *Fred M'membe Bright Mwape and Another v. The Speaker of the National Assembly* [1996] 1 LCR 584; and *The People v. The Speaker of the National Assembly, Ex Parte Dr. Ludwig Sondashi* SCZJ No. 6 of 2003.

Explain to him.

PART THREE

QUESTION FOUR

Moses Kaunjika is a Manager in one of the banks in Zambia. On 1st October 2010, he was arrested by the police on allegation that one of the documents submitted in support of his academic qualifications at the time of engagement by the Bank was a forgery and that he had uttered the said document.

When he appeared before Court for plea he, through his advocate, applied for bail, and the court granted him a cash bail in the sum of K5,000,000. Kaunjika did not have this amount money. He applied for a loan from his employer, which was granted. The money was paid and Kaunjika was released.

The following day he reported for work and continued working until 21 October 2010, when he received a letter from his employer, which reads as follows:

Dear Mr. Kaunjika

We refer to the recent developments, which have resulted in you being charged with the offence of forgery and uttering a false document. In line with the provisions of Section 31(2)(b) of the Banking and Financial Services Act, Chapter 387 of the Laws of Zambia, your employment with the Bank has been terminated with immediate effect.

Please contact the accounts department who have instructions to compute and pay the money due to you.

On behalf of the Bank I wish you all the best in your future endeavours.

Yours faithfully

Ms. Astridah Chisha
Managing Director

Prior to the receipt of the said letter there was no indication whatsoever that management was going to take such a decision.

Section 31(2) of the Banking and Financial Services Act, Chapter 387 of the Laws of Zambia, reads:

Any person who is a director or an officer concerned *in the management of a bank or incorporated financial institution shall forthwith cease to hold office upon-

- (a) becoming bankrupt, suspending payments or compounding or proposing a compromise with that person's creditors generally;
- (b) being charged with a felony or any offence involving dishonesty;
- (c) being declared or otherwise adjudged in any official proceedings to be mentally incompetent to manage affairs; or
- (d) being suspended or removed from office by order of the Bank of Zambia under this Act.

Kaunjika has consulted the firm of MABONGA, LITANA & ASSOCIATES for advice. The two partners in the firm have discussed the case and they are not agreed on the merit of the case. Even if they were to agree on the merit, they are not agreed either on whether it has to be pursued as an administrative law or constitutional law case.

You are an associate in the firm and the partners have asked you to prepare an opinion on the matter, which will be binding on them. You are asked to state, with reasons:

- (a) Whether Kaunjika has a case and
- (b) If he does, state whether this would fall in the area of Constitutional Law or Administrative Law.

Prepare your opinion.

QUESTION FIVE

Charles Mwila has read what Professor A.V. Dicey has written about the concept of rule of law. He has seen that this concept is part of the Administrative Law syllabus. He wants to know the relationship between Administrative Law and the concept of Rule of Law.

Explain to him.

PART FOUR

QUESTIONS SIX

Fidelis Chamunda is an employee of the Bank of Zambia who has a working knowledge of the law. He has come across Section 124 of the Banking and Financial Services Act, which reads:

- (1) The Minister, on the recommendation of the Bank of Zambia, may make regulations for or with respect to any matter that by this Act is required or permitted to be prescribed by regulation or that is necessary or convenient to be so prescribed for carrying out or giving effect to this Act.
- (2) The regulations may provide for fines not exceeding fifty thousand penalty units, and for terms of imprisonment not exceeding two years, or both, for any contravention of the regulations.

He wants to know the rationale for such a provision and why Parliament itself cannot make such Regulations. He is convinced that the Regulations made by the Minister, on the recommendation of the Bank of Zambia, will not be fair. He has come for your opinion on this issue.

Give him your views.

QUESTION SEVEN

The Commission for Investigations has its roots in the one-party political system introduced in 1972. This institution has been retained notwithstanding the end of one-party rule in 1990 and the re-introduction of a multi-party constitution in 1991. George Chisanga wants to know the extent to which this institution is able limit government under the existing legal and constitutional arrangement.

Explain to him.

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

The University of Zambia

School of Law

2010/2011 Academic Year First Semester Examinations

Jurisprudence L- L411

Instructions

1. Maximum time allowed is three (3) hours plus five (5) minutes to read through the paper.
 2. Answer four (4) questions, at least two (2) from each part and all questions carry equal marks.
 3. Answer all questions in full unless the specific instructions for the question state otherwise.
 3. No statutes and or texts are allowed into the Examination Hall.
-

PART 1

Question One

The government of the Republic of Zambia (“GRZ”) has privatised the Zambia Telecommunications Company Limited (“Zamtel”) by selling to a private entity its 75% shareholding therein.

One of the opposition political parties has labelled the process of privatising Zamtel as not being transparent, corrupt and against public interests. This political party has threatened that when it comes to power after the 2011 presidential and parliamentary elections, it will re-nationalise Zamtel as its new regime will not be bound to respect the deeds of the current government.

You have just been given an internship by one of the corporate law firms in Lusaka one of whose clients, a multinational telecommunications company has acquired the 75% shares of Zamtel. This multinational telecommunications company is concerned with the threats by the opposition political party and has approached your new employer for an opinion on the legal viability of the threats.

Your principal has asked you to attend to the client’s instructions. Using your just acquired jurisprudential understanding of the law and the appropriate legal theory and authorities, write a short opinion to your principal advising him on whether the threat by the opposition political to reverse the privatisation of Zamtel on account that its government will be a different regime is legally tenable.

15 Marks

Question Two

Thirteen miners are alleged to have been injured after being shot by their Chinese supervisors at the Collum Coal Mine in Sinazongwe.

In reaction to the shooting two opposition political parties youth leaders decided to present a petition to the Chinese Embassy against the said shooting. Despite having an appointment with the Chinese Embassy officials to present the said petition, the youths are prevented from accessing the embassy by heavily armed police officers.

You are the freshest lawyer in the Attorney General’s Chambers. The Attorney General who has heard about the incident asks you to render an opinion on the actions of the police.

Using appropriate legal theories and at least one *Zambian* judicial decision, draft a short opinion to the Attorney General advising him on how the need for the law to be used as an instrument for maintaining peace and order can be balanced with the use of the law as an instrument of social engineering.

15 Marks

Question Three

You have just been given a vocational placement at the National Assembly of Zambia in the research department.

A bill has been brought to the house which proposes to legalise the use of Marijuana in Zambia. The proponents of the bill argue that the drug should be legalised because of its rampant use in Zambia by ladies who use it as a hair remedy, traditional healers who use it for health purposes and is consumed not only by Rastafarians who use it as a religious herb, but also by the general public including lawyers and judges.

The Director of Research of the National Assembly has asked you to advise on whether this is a bill which should be passed into law.

Using Bentham's calculus of pressures and pain expounded under his utilitarianism theory and at least one *Zambian* decision, write an opinion advising the Director the factors that should be taken into consideration when determining whether to pass the bill into law and whether this particular bill should be passed into law.

15 Marks

Question 4

Section 138 of the Penal Code Chapter 87 of the Laws of Zambia provides:

“Any person who unlawfully and carnally knows any child commits a felony and is liable, upon conviction, to a term of imprisonment of not less than fifteen years and maybe liable to imprisonment for life.”

On the other hand, in the case of **R -vs- Chinjamba 5 N.R.L.R** which was cited with approval in the case **Sibande -vs- The People (1975) Z.R 101** it was held that:

“In Zambia, it is not generally unlawful for a man to have carnal knowledge of a girl (child) under the prescribed age if he is lawfully married to her.”

Your pastor who runs an orphanage for girls has seen section 138 of the Penal Code and the Sibande case and is confused as to which of the two is the law as the Penal Code does not specifically provide marriage as an exception to defilement of a child.

The pastor who knows you as a fourth year law student at UNZA approaches you for help.

Using the realists thought of law and at least one Zambian judicial decision, write a short memorandum for the pastor to help him resolve the confusion.

15 Marks

PART 2

Question 5

Natural law philosophers argue that law is not law merely by the fact that it has gone through a formal procedure of its formation; such as legislative enactment, judicial process and executive promulgation but also when it captures certain fundamental norms of society like morality, justice, etc.

On the other hand, positive law philosophers argue that law is law as soon as it passes through the formal law making process and all other social concerns are not the concern of the law.

Discuss the applicability or otherwise of any or both theories to the Zambian legal system.

15 Marks

Question 6

Discuss how the decision of **Madzimbamuto -vs- Lardner-Burke** is at variance with Kelsen's theory of the legal regime as a hierarchy of norms.

15 Marks

Question 7

Discuss any 3 of the following:

- (i) Under the concept of possession, the rights of a Finder -vs- the rights of a Stranger;
- (ii) Under the concept of possession, the rights of Finder -vs- the rights of a True Owner;

- (iii) The incident of transmissibility under the concept of ownership;
- (iv) The incident of liability to execution under the concept of ownership;
- (v) The contrast between a right *in rem* and a right *in personam*.

15 Marks

End of Examination

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

2010 First Semester Examination

L431- INTERNATIONAL LAW I

Instructions:

- a) Answer four questions, one from each section. Question one is compulsory**
 - b) You have three hours to write the four questions with five minutes to read through**
 - c) No statutes are allowed in this examination**
 - d) The total marks for this paper is 60; question one carries 21 marks while the other three carry 13 marks each**
-

SECTION A

1. Zaiwa and Rundi are neighboring countries. Zaiwa is party to the UN Charter but has not accepted the ICJ jurisdiction with regard to Article 2(4) of the UN Charter. Rundi has been supplying funds to help rebel groups in Zaiwa fight the government. Zaiwa's government responds by bombing a town in Rundi. Rundi has filed a complaint before the ICJ against Zaiwa.

- a) Does the ICJ have jurisdiction and why? [6]
- b) What are the principles involved when it comes to the use of force ie an armed attack and force short of an armed attack? [10]
- c) How has the definition of an armed attack changed since September 11 and what are the requirements? [5]

SECTION B

2. a) What are the requirements of statehood? [7]
 - b) Discuss what is meant by 'failed state'. [6]
3. a) What is self-determination? Has the principle been applied in the usual way when it comes to states? [8]
 - b) What are the European Union guidelines when it comes to recognition of new states? [5]

SECTION C

4. Kasiah, a UN employee, was killed in Palestine by a terrorist group while working there for the United Nations.
- a) Can the UN claim for reparations and is it representing Kasai by claiming reparations? [6]
 - b) Does the UN have capacity to bring a claim against the Palestinian government? **Discuss the principles involved.**[7]
5. In *Luther v Sagor [1921] 3KBD*; the English Court of Appeal established ‘that recognition, once given, was retroactive in effect from the time that the recognized government established itself. It also confirmed that the British courts could not recognize or enforce the laws or other public acts of an unrecognized government.’ **Discuss [13]**

SECTION D

6. Kamali is a Tanzanian diplomat in Zambia. While in Zambia, he decides to open a clinic as he is sometimes bored with his diplomatic duties. Musonda a Zambian goes to his clinic for malaria treatment but he is given wrong medication and dies of a heart attack. Musonda’s family is alleging negligence and wants to sue Kamali. Do the Zambian courts have jurisdiction? **Discuss the principles involved.** [13]

7. In the case of *M/V SAIGA (No.2)*, *ITLOS, Case No. 2 of 1999*, it was held that there is need for the genuine link requirement between the ship and the flag state.

Discuss the principle of the 'genuine link requirement'. [8]

b) Discuss the general principles of international law as a source of law. [5]

END OF EXAM

The University of Zambia

School of Law

2010/2011 Academic Year First Semester Examinations

Jurisprudence L- L411

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You have just been given an internship by one of the corporate law firms in Lusaka one of whose clients, a multinational telecommunications company has acquired the 75% shares of Zamtel. This multinational telecommunications company is concerned with the threats by the opposition political party and has approached your new employer for an opinion on the legal viability of the threats.

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Question Two

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You are the freshest lawyer in the Attorney General’s Chambers. The Attorney General who has heard about the incident asks you to render an opinion on the actions of the police.

Individual
Political
Social

The authorities must be
order in society.
- less market from society, the right must
be protected.

Using appropriate legal theories and at least one Zambian judicial decision, draft a short opinion to the Attorney General advising him on how the need for the law to be used as an instrument for maintaining peace and order can be balanced with the use of the law as an instrument of social engineering.

15 Marks

Rascal found
↓
the law of impudens must be broadened to include core disciplines, morals, sociology.

Question Three

You have just been given a vocational placement at the National Assembly of Zambia in the research department.

A bill has been brought to the house which proposes to legalise the use of Marijuana in Zambia. The proponents of the bill argue that the drug should be legalised because of its rampant use in Zambia by ladies who use it as a hair remedy, traditional healers who use it for health purposes and is consumed not only by Rastafarians who use it as a religious herb, but also by the general public including lawyers and judges.

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15 Marks

- It is basis happens to a great number of people.

→ N. Chimb case

Question 4

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ex, best.

Two reasons → lack of precision & ambiguity
Justice Holmes → prediction of what the law will decide

Justice
John Chipman

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Discuss the applicability or otherwise of any or both theories to the Zambian legal system.

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*Gradnerm
Revolution*

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*exposable
testings.*

- (iii) The incident of transmissibility under the concept of ownership; ✓
- (iv) The incident of liability to execution under the concept of ownership; ✓
- (v) The contrast between a right *in rem* and a right *in personam*.

15 Marks

End of Examination

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THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

EXAMINATION: FIRST SEMESTER NOVEMBER 2010

L341: ADMINISTRATIVE LAW

Instructions:

1. Answer FOUR (4) QUESTIONS: One (1) Question in each Part. Question One in Part One is COMPULSORY.
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PART ONE

QUESTION ONE

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In September 1990, the said Article was repealed paving way for the creation of other political parties. In 1991, a new Constitution was settled and in October the same year presidential and parliamentary elections were held, which the Movement for Multi-Party Democracy (MMD) won convincingly. Upon assuming power, the MMD embarked on the policy of liberalising the economy with the consequence that most of the businesses previously under government ownership transferred to private ownership within the first ten years of being in power.

Peter Kapasula is fascinated by this development. He wants to know the impact if any of these changes of administrative law.

Explain to him.

PART TWO

QUESTION TWO

The draft Constitution recently put together by the National Constitutional Conference provides in Article 43:

- (1) Every person has the right to administrative action that is expeditious, lawful, reasonable and procedurally fair.
- (2) Administrative bodies and administrative officials shall act fairly and reasonably and comply with requirements imposed upon such bodies and officials by common law and any relevant legislation, and persons aggrieved by the exercise of such acts and decisions shall have the right to seek redress before a competent court or tribunal.

Francis Mabonga is intrigued by this provision and wants to know its possible impact on administrative law should the draft Constitution come into force.

Explain to him.

QUESTION THREE

Section 34 of the National Assembly Powers and Privileges Act, Chapter 12 of the Laws of Zambia reads:

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

Besa Musonda is a Zambian studying law at a British university. He wants to know how it has been possible, in the light of the said statutory provision, for Zambian courts to entertain and grant the necessary remedies in cases involving the National Assembly and the Speaker such as *Fred M'membe Bright Mwape and Another v. The Speaker of the National Assembly* [1996] 1 LCR 584; and *The People v. The Speaker of the National Assembly, Ex Parte Dr. Ludwig Sondashi* SCZJ No. 6 of 2003.

Explain to him.

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QUESTION FOUR

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Yours faithfully

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Managing Director

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You are an associate in the firm and the partners have asked you to prepare an opinion on the matter, which will be binding on them. You are asked to state, with reasons:

- (a) Whether Kaunjika has a case and
- (b) If he does, state whether this would fall in the area of Constitutional Law or Administrative Law.

Prepare your opinion.

QUESTION FIVE

Charles Mwila has read what Professor A.V. Dicey has written about the concept of rule of law. He has seen that this concept is part of the Administrative Law syllabus. He wants to know the relationship between Administrative Law and the concept of Rule of Law.

Explain to him.

PART FOUR

QUESTIONS SIX

Fidelis Chamunda is an employee of the Bank of Zambia who has a working knowledge of the law. He has come across Section 124 of the Banking and Financial Services Act, which reads:

- (1) The Minister, on the recommendation of the Bank of Zambia, may make regulations for or with respect to any matter that by this Act is required or permitted to be prescribed by regulation or that is necessary or convenient to be so prescribed for carrying out or giving effect to this Act.
- (2) The regulations may provide for fines not exceeding fifty thousand penalty units, and for terms of imprisonment not exceeding two years, or both, for any contravention of the regulations.

He wants to know the rationale for such a provision and why Parliament itself cannot make such Regulations. He is convinced that the Regulations made by the Minister, on the recommendation of the Bank of Zambia, will not be fair. He has come for your opinion on this issue.

Give him your views.

QUESTION SEVEN

The Commission for Investigations has its roots in the one-party political system introduced in 1972. This institution has been retained notwithstanding the end of one-party rule in 1990 and the re-introduction of a multi-party constitution in 1991. George Chisanga wants to know the extent to which this institution is able limit government under the existing legal and constitutional arrangement.

Explain to him.

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

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

SEMESTER 2010/1 FINAL EXAMINATION

L461 Intellectual Property and Competition Law

Instructions:

- a) Question 1 in Section A is **compulsory** and carries 21 marks.
 - b) Students must answer **THREE Questions from Section B**. Each question carries 13 marks
 - c) You have 5 minutes to read through the paper and three hours in which to answer four questions
 - d) Use of statutes is not permitted for this examination
 - e) Examination mark is 60
-

Section A: Questions 1 is compulsory.

1. In the case of **Diamond and United States Patent and Trade Mark Office v. Charkrabarty (US Supreme Court decision 1972)** the Court stated that the intention of Congress was to extend the scope of patentable subject matter to “anything under the sun that is made by man [woman]”.

What are the conditions for patentability and the exceptions thereof? Is the statement of the Supreme Court above therefore true? In this case, should the cloning of living organisms including human stem cells be patentable subject matter? What are the public policy issues that would inhibit the cloning of human stem cells?

21 Marks

Section B: Please answer any THREE from the following questions. Each question carries 13 Marks.

2. Discuss the similarities and main differences between a trademark on the one hand and:
- (a) Certification mark
 - (b) Geographic indication of origin, and
 - (c) Appellation of origin
 - (d) What are the main objectives of each of these intellectual property rights?

13 Marks

3. What is a well known mark? How is it different from other trademarks? How does a trademark become a well known mark? What is the obligation of Member States under the Paris Convention with regard the protection of well known marks?

13 points Marks

4. What is undisclosed information or a trade secret? Why do some right holders prefer to protect their intellectual property rights under undisclosed information or trade secret law? Should society concern itself with the protection of intellectual property rights under undisclosed information or trade secret law? What is the return to society by according such protection under undisclosed information or trade secret law?

13 Marks

6. Copyright is concerned with the protection of the “expression of the idea and not the ideas themselves”. Discuss what is meant by this statement. Is copyright protection important for the development process of Zambia? If so, why is there inadequate protection accorded to it and what do you think should be done to enhance copyright protection? In your view, is it fair to accord longer time of protection to copyright than to an invention?

13 Marks

7. Should new plant varieties be a subject of protection under intellectual property law? What criteria must be met before protection can be accorded to new plant varieties under the UPOV Convention? What does the TRIPs Agreement provide regarding the protection of new plant varieties and why is there a controversy regarding this?

13 Marks

End of Examination

PART A

Question 1

The following is an extract from a judgment. Read it carefully in its entirety.

IN THE SUPREME COURT FOR ZAMBIA SCZ JUDGMENT NO. 8 OF
1999

HOLDEN AT KABWE AND LUSAKA APPEAL NO. 107 OF 1996

(CIVIL JURISDICTION)

B E T W E E N

A.M.I. ZAMBIA LIMITED

APPELLANT

AND

PEGGY CHIBUYE

RESPONDENT

CORAM: NGULUBE. CJ., CHAILA AND MUZYAMBA, JJS

ON 4th November, 1998 and 13th April, 1999

For the Appellant: Mr. N.K. Mubonda of D.H. Kemp and Co.

For the Respondent: Mr. C.M. Ngenda of Christopher Russell and Co.

J U D G M E N T

Ngulube, CJ. Delivered the judgment of the Court.

This case concerned custody of goods for customers. ... The learned trial judge heard the evidence... the learned judge said he was resolving an issue of credibility between two sets of witnesses and accepted the evidence of the respondent and her witness. One ground of appeal argued by counsel challenged this finding of fact....The Supreme Court has evolved and constantly affirmed some definite principles when it comes to reversing a trial court's findings of fact, especially those based

on credibility. Not having had the advantage of seeing and hearing the witnesses at first hand which the trial court has, we do not lightly interfere unless it unmistakably appears that the trial court fell into error and could not have taken proper advantage of seeing and hearing the witnesses at first hand. ... We have not been given any justifiable excuse for reversing the learned trial judge and this alone resolves the appeal....

.....
.....

... Indeed, the cases of SECURICOR ZAMBIA LIMITED v WILLIAM JACKS AND CO. ZAMBIA LTD SCZ Appeal No. 24 of 1990; AILSA CRAIG FISHING CO. LTD v MALVERN FISHING CO. AND ANOTHER [1983] ALL ER 101; GEORGE MITCHELL (CHESTERHALL) LTD v FINNEY LOCK SEEDS LTD [1983] ALL ER 737 and the case of PHOTO PRODUCTION LTD v SECURICOR TRANSPORT LTD [1980] ALL ER 556 which Mr. Mubonda cited are all in point so far as they support the legal proposition under discussion.

In truth, there are no grounds for interfering with the judgment below. The appeal is dismissed, with costs to be taxed if not agreed.

.....
M.M.S.W NGULUBE
CHIEF JUSTICE

.....
M.S. CHAILA
SUPREME COURT JUDGE

.....
W.M. MUZYAMBA
SUPREME COURT JUDGE

List or present in tabular form the fundamental lessons about the structure of our legal system that are evident from the format of the judgment. Each lesson must be explained briefly and justified.

PART B

Question 2

Write Short Notes on two of the following:

- a. Civil law
- b. Islamic law
- c. Roman Dutch law

Question 3

You are a magistrate in the Subordinate Court of the First Class. Before you, is a case on appeal from the Local Court: According to the record of appeal, Wellread Lawyer, the appellant is challenging the decision of the Local Court rendered in accordance with the parties' customary law. The grounds of appeal are that the lower Court misdirected itself when it applied the said customary rule.

Provide a reasoned judgment that upholds the Local Court. Your judgment should deal separately with each of the following:

- 1. Constitutional and statutory status of customary law**
- 2. The dual standard of justice**

PART C

Question 4

You come across the following statement in your legal process textbook.

“Law is made by the people for all the people”

Discuss the statement

Question 5

UNZASU is planning a class boycott to protest against a decision made by the School of Law Board of Studies to enforce the Progression Regulations in the School. The Regulations do not permit a student who has not cleared all the courses required in a particular year of study to proceed to the next year of study. The School Management writes to UNZASU advising that all law students that participate in the boycott will be expelled. UNZASU appeals to Senate claiming that: a. The progression rules should not be applied because

their application will result in injustice, as affected students will lose their GRZ sponsorship and b. Class boycott is a legitimate form of protest. Senate upholds the decision of the School stating that justice demands that a. A rule of law be applied consistently and impartially and b. All disputes are resolved through legal channels.

In a legal opinion rendered to UNZASU state which position is correct.

PART D

Question 6

In *Samuel Miyanda v Raymond Handahu* SCZ Judgment No. 5 of 1994 Ngulube CJ stated as follows:

The fundamental rule of interpretation of all enactment to which all other rules are subordinate is that they should be construed according to the intent of Parliament, which passed the law.

State:

- a. What facts in the case gave rise to the statement and**
- b. Whether this is a complete and accurate assessment of the process of interpreting statutes?**

Question 7

Outline and justify the critical elements that constitute a case summary.

END OF EXAMINATION