

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

2015 FULL YEAR COURSES EXAMS

COURSE CODE	COURSE TITLE
1. L 2920	LAW OF CONTRACTS
2. LPR 3920	LAND LAW AND PROPERTY RELATIONS
3. LPR 3930	COMMERCIAL LAW
4. LPR 3952	CIVIL AND CRIMINAL PROCEDURE
5. LPR 4930	BUSINESS COOPERATE LAW
6. LPU 2940	CRIMINAL LAW
7. LPU 2962	ADMINSTRATIVE LAW



UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

2015 FINAL EXAMINATIONS

LAW OF CONTRACTS (L2920)

26th June 2015

DURATION: 3 HOURS

INSTRUCTIONS

- 1. Answer the compulsory question in Section A, one question in Section B, one question in Section C and a question in Section D. In total you should have answered four questions in this examination.**
 - 2. No materials other than your pen and ruler are permitted in this examination.**
-

SECTION A

Question 1: Compulsory Question

On Monday, Kalumba advertised in the local evening newspaper that her collection of Destiny's Child autographed photographs was "for sale at K50 per photo; first come, first served."

On Tuesday, Tracy saw the advertisement and called Kalumba. Kalumba was not there, since she had gone abroad on a business trip, but Tracy left a voice message stating that they had a deal at K50 per photo for the whole lot. She also sent Kalumba an e-mail to this effect, after she hung up.

On Wednesday, Namakau saw Kalumba at the airport and told Kalumba that she accepted her offer and that she would purchase the photographs provided that they were in good condition and provided that she could pay in two installments. Kalumba told her that she would think about it. While abroad, Kalumba had discovered that her photographs were valued at K2000 each.

On arriving home, Kalumba played back her voice mail and read her e-mail. After some thought, she called Tracy and told her that the collection had been sold to Namakau. She then called Namakau, told her that she was thinking of selling the photographs to Tracy, put her feet up and had a nice cup of tea.

Advise the parties.

[18 Marks]

SECTION B

Question 2

Naomi Clarke, who belongs to a cult recently lost her grandfather. Her grandfather has left her K100 million in his will as well as his business, NayNay Jen Ltd.

She decides to communicate with the spirit of her grandfather through her Cult Master, Guru Sona. Guru Sona tells Naomi that her dead grandfather wishes her to donate K50 million to her cult, so that she can purchase some land and create a retreat centre. Naomi purchases and donates the land to Guru Sona.

Meanwhile, NayNay Jen Ltd. is facing financial collapse because its main creditor, Naveed, is threatening to call in an overdue loan of K1 billion. In return for an extra six weeks to repay the loan, Naomi agrees to transfer a 50% shareholding in NayNay Jen Ltd to Naveed.

Three months later, Naomi discovers that Guru Sona is a complete fraud and did not really communicate with her dead grandfather. Moreover, she is becoming worried about the way in which Naveed is using his shareholding to redirect the policy of the business.

Advise Naomi.

[14 Marks]

Question 3

“In cases of breach of contract, the aggrieved party is only entitled to recover such part of the loss actually resulting as was at the time of the contract reasonably foreseeable as likely to result from the breach.” Per Lord Hope in *Jackson v Royal Bank of Scotland* [2005] UKHL 3

Critically discuss the rules governing what can be compensated in cases of breach of contract and in light of the efficient breach theory.

[14 Marks]

SECTION C

Question 4

In June, Maximo takes his young son, Sauzande, to the Munda Wanga Zoo for the fourth time that year. As they drive along the path heading to the entrance, there is a large sign on the left reading:

“Munda Wanga Zoo accepts no liability whatsoever for any personal injury or other damage howsoever caused to our visitors.”

Maximo has seen this sign before, but on this occasion he does not read it because Sauzande is pointing out to him a helicopter in the sky on the right. As the car enters the Zoo's car park, Maximo presses a green button which lifts a bar at the entrance and, at the same time, ejects a ticket from a slot. Maximo places the ticket in his pocket without reading it.

While touring the Zoo, Sauzande gets too close to the chimpanzees' cage and is punched in the eye. Returning to the car to go and seek medical attention, they discover that all

four car tyres have been slashed and the windshield broken by a zoo employee who is angry at the fact that he has not been promoted. When he complains to the manager of the Zoo, Maximo is referred to the back of the ticket which states:

“All cars are parked at the owner's risk. Munda Wanga Zoo is not liable for any damage to parked vehicles whether caused by Munda Wanga Zoo or its employees as a result of neglect, fundamental breach or otherwise.”

Advise Maximo.

[14 Marks]

Question 5

Do you agree with the notion that an individual can contract to do work at a low price, fall behind on that work, be promised an additional sum for completing it on time, then actually expect to be paid that additional sum just for doing the work originally promised?

[14 Marks]

SECTION D

Question 6

Miguel offers to sell Sheridan his DVD player for K800. He tells Sheridan that it is 3 years old and has been recently serviced. Miguel and Sheridan draft and sign an agreement with the following terms:

- (a) It is a condition of this agreement that the purchase price shall be paid no later than fourteen days after delivery.
- (b) The purchaser shall be free at any time to return the DVD player if it is not to his personal satisfaction, subject to the payment of K10 per day from date of receipt.
- (c) If the purchase price is not paid in accordance with clause (a) the vendor shall write to the purchaser requiring that the breach be remedied within three days.
- (d) The above terms shall constitute all the terms of the agreement.

The contract does not mention the age of the DVD player nor the fact that it has been recently serviced.

The DVD player is delivered on March 28. In spite of diligent efforts by Sheridan, the DVD player fails to work properly. By April 11, Sheridan has not paid the purchase

price. Sheridan later discovers that the DVD player is eight years old and has never been serviced.

Advise Sheridan.

[14 Marks]

Question 7

A party cannot claim to be excused from performing a contract on the basis of frustration, if it is either self induced or foreseeable.

Discuss.

[14 Marks]

END OF EXAMINATION



THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

LPR 3920: LAND LAW AND PROPERTY RELATIONS

FINAL EXAMINATION

Wednesday 8th July 2015 -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) Lands and Deeds Registry Act Chapter 185 of the Laws of Zambia
5. Candidates must **not turn this page** until the invigilator tells them to do so.

PART A: Answer the compulsory question

Question one

Tall is the leasehold owner of plot 234 Lusaka. The main house is a residential house which is semi-detached AND AT THE BACK THERE ARE TWO COTTAGES. Tall 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 law student called Silver under an oral agreement for two years at a weekly rental of K200. There is no mention regarding the right of access to the cottage.
- (b) Cottage number two has been let out to a student in the school of music called Gold under a written agreement for a period of two years at a monthly rental of K1000. The agreement has been signed by both parties but does not have a commencement date and a termination date. Permission to access the cottage is stated in the agreement.
- (c) The other semi-detached part of the main house is given to Tall's girlfriend who operates a shabeen under a lease agreement for three years which is registered at the Lands and Deeds Registry. There is no mention of the shabeen and the lease agreement refers to the property as residential house. Tall's girlfriend Shorty pays K2000 a month and allows Tall to collect 5% of her profit every month.

In order to operate the house as a shabeen Shorty had fixed shelves and a built in table in the living room. In addition Shorty had redecorated the ceiling and the walls. She has also re-roofed the garage so that she would use it as a store room for the alcohol that was sold on the premises.

The other two tenants have 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 lessons.

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 and the matter is reported to the police. Shorty decides to vacate the house at night in the absence of Tall removing all the improvements and fittings she had placed in the house. While removing the roof of the garage she damages the walls. Gold on the other hand 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 before Tall would return. All the tenants have not paid rent for the last two months and leave the plot without informing Tall.

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

- (i) Whether the three lease agreements are valid under Land Law and how he can enforce the three lease agreements with the 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 section

Question two

With the aid of decided cases discuss two of the main provisions of the Lands Act, Chapter 184 of the Laws of Zambia which have been interpreted many times by the courts of law in Zambia.

Total [14 marks]

Question three

Explain the statutory jurisdiction of the Lands Tribunal in light of the decision in the case of Attorney-General v Steven Lunguru [2001] and the new Lands Tribunal Act. The facts and decision of the case should be clearly stated in your answer.

Total [14 marks]

Part C: Answer one question from this section

Question four

“In *Bernstein v Skyviews & General Ltd* [1978] QB 479 the defendant company flew an aircraft over the claimant’s land and took a picture of his house. He alleged trespass on the basis that “he who owns the land owns everything from the depth of the earth to the highest heavens”. It was held that this maxim did not apply and that the claimant should only be able to sue for trespass into his airspace to the extent to which it was necessary for the reasonable enjoyment of his land. This was not the case here.”

Discuss the maxim ‘cuius est solum eius usque ad caelum and inferos’ Whoever owns the soil owns everything up to the heavens and down to the depth of the earth’ in relation to the decision in the above case and its applicability in Zambia in the 21st century.

Total [14 marks]

Question five

- (a) What is the essential nature of an easement? Explain the different modes of acquiring an easement and how such rights can be extinguished. (7 marks)
- (b) Highlight the fundamental similarities and differences between easements and profit a prendre. (7 marks)

Total [14 marks]

Part D: Answer one question from this section

Question six

Money Trust Limited is the legal owner of Farm 488 Lusaka. The Farm had been purchased by Money Trust Limited in 2009 using the resources obtained from a family trust account. Unfortunately Money Trust Limited did not have the financial means to operate the big farm and therefore approached Lending Bank Limited a financial institution and Company incorporated in Zambia to borrow the sum of K1 Billion. In return Money Trust Limited offered Farm 488 as security for the loan. A mortgage was created and registered between the two parties.

Money Trust Limited later discovered at the end of 2010 that Farm 488 had been subject to a wrangle between the Anti-corruption Commission and the original owner Abel. In fact the original owner had sold the Farm to Betty who in turn had sold it to Money Trust Limited.

On 4th January 2011 the Anti-Corruption Commission served a notice of possession of Farm 488 on Money Trust Limited.

The matter is before the High Court of Zambia.

Explain the position of the following:

- (a) Money Trust Limited as the bonafide Purchaser of Farm 488 (5 marks)
- (b) Lending Bank Limited as mortgagor of Farm 488 (5 marks)
- (c) The notice of possession by the Anti-corruption Commission (4 marks)

Total [14 marks]

Question seven

Analyse the cases of Winter Garden Limited v Millennium Products Limited {1948} AC 173 and the case of Hurst v Picture Theatres Limited (1915) 1 KB 1 and show why the court came to a different decision in the two cases.

Total [14 marks]

End of Examination



THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

LPR 3930- COMMERCIAL LAW FINAL EXAMINATION

13th July, 2015-06-08

Time: 14: 00 hours to 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 any 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]

Jake & Kaunda Associates (JKA), is a renowned firm in the printing business operating from the Plot 11, Njoka Road, Rhodes Park Lusaka. There are two partners of the firm, Jake and Lungu who have been running the business enterprise successfully in the recent past. Previously, Jake was running the business with Kaunda, Lungu's father. Lungu was a mere employee in the business having completed his Graphics Diploma at Evelyn Hone College some 5 years ago. Kaunda died 3 years ago naming Lungu as his replacement in the business who was wholeheartedly accepted by Jake.

In their quest to expand the business, Jake and Lungu decided to procure digital printing machines for the business which could print and photocopy at the same time. As luck would have it, Government Printers, the department of government of the Republic of Zambia responsible for printing all official documents advertised the sale of such digital printers which it had recently procured from a South African company, G& A, but which were excess to its needs.

To accommodate the lack of cash flow, Jake and Lungu negotiated with Government Printers for an arrangement where they were to take possession of two digital printers and pay for them over a 3 months period. Every month they were supposed to pay a K2,500 'charge'. After the last installment, Government Printers would have no further claim on the equipment.

Under the said agreement, Government Printers was supposed to deliver the two digital printers on the Tuesday, 1st of September, 2015 while the firm was supposed to have made the first payment not later than 12: 00 hours of the same day.

On Tuesday Morning, the Operations Manager of Government Printers, Mr. Phiri called JKA and spoke to Lungu to find out whether the payment had been prepared as he did not want to deliver the printers and be 'given stories'. Lungu confirmed that the payment would be made available soon as his colleague Jake would return since at that moment he was in South Africa, hence he could not release the cheque which required two signatures.

Unimpressed with the lukewarm assurance of payment from Lungu, Mr. Phiri did not immediately sign the dispatch form authorizing the delivery of the printers and flew to South Africa on the same Tuesday afternoon.

Coincidentally, Mr. Phiri and Jake met in South Africa on the Wednesday morning. Jake being under impression that the printers had already been delivered accepted an arrangement where a Bill of Exchange was drawn by Government Printers on JKA in favour of G&A for the sum of K2,500.00 equivalent in South African Rand in satisfaction of the outstanding debt from Government Printers. The said bill was handed to G&A who negotiated it in favour of Checkers PTY .

Mr. Phiri immediately returned to Zambia and was able to sign the dispatch forms for delivery of the printers on Thursday morning and actual delivery took place in the evening of the same day but the printers were left with the security guard at JKA's premises as everyone had gone home.

On Friday morning, Lungu and Jake discovered that one digital printer could only print but not photocopy. They decided to immediately return it back to Government Printers. They retained the other digital printer which worked superbly for the whole of Friday. On the following Saturday, the digital printer was stolen as a result of a break in at the firm's premises.

Jake and Lungu are clearly incensed by the turn of events. And to make matters worse, Jake did not even inform Lungu of the payment arrangement concluded in South Africa.

Checkers PTY eventually endorsed its Zambian sister Company Shoprite on the Bill who has not yet presented the bill to JKA for payment.

JKA don't think its even right to pay anything for the digital printers. They have since written to Government Printers that they will not pay any of the charges under the agreement nor honour the bill when presented for payment for breaches of the agreement by Government Printers which include late delivery and frustration of the contract by the theft of the digital printers before they became completely theirs.

Government Printers has written back denying that there was any breach on its part, stating that it was JKA who breached the agreement by not paying on time and insisting that it is entitled to the full payment under the agreement. Further, that the digital printer was wrongly returned because the digital printer was passed on to JKA in the same condition as it had bought from G&A.

- a) You are retained as Counsel for JKA and are requested to comprehensively advise on the rights and liabilities of JKA on the bill and the agreement with Government Printers **[8 marks]**.
- b) Assuming that JKA does not have sufficient assets, could Lungu set up a valid defence against any potential liability on the bill because he was not informed of the transaction by Jake? Explain Why? **[2 marks]**
- c) Could there be a material difference in your advice in (a) if, Jake and Lungu had visited Government Printers before the agreement and inspected the digital printers? **[2 marks]**
- d) Assume that Q&A was in fact an imaginary company, and the bill is now in the hands of the wife to Mr. Phiri, what would be the liability of JKA on the bill? **[3 marks]**

- e) Assume that the agreement had the following clause “Government Printers accepts no liability whatsoever arising from this transaction howsoever arising”? What would be the effect of such clause on the respective parties rights? [3 marks]

Total [18 marks]

Part B Answer one question from this part.

Question 2 [14 marks]

Nathan John & Tembo Adovcates is a law firm which has long been made of three partners, Mr Nathan, Mr. John and Mr. Tembo.

Mr. Nathan’s interest is Corporate Law; Mr. John’s interest is Probate Law while that of Mr. Tembo is Criminal Law. Mr. Nathan operated his own client’s account while Mr. Tembo operated his own client’s account and Mr. John being quite advanced in age rarely made any money from his probate practice and did not operate any account at all. From the firm’s letterhead however, these internal arrangements were not apparent.

Over a period of five years, Mr. Nathan received K5,000,000.00 from his client Chat Breweries to buy shares in various companies listed on the Lusaka Stock Exchange. The said money was deposited in his separate client account.

Mr. Nathan used half of the said money to buy himself a Range Rover with a view to replacing it later on. Judging from his past experience, Chat Breweries would take quite some time between the deposit of the money and the instructions to buy specific shares which Mr. Nathan opined was sufficient time to have the money replaced.

Last year, the partners accepted the retirement of Mr. John from the practice and decided to admit their long time associate, Mr. Mbewe as a partner to replace Mr. John, though they did not change the name of the firm. The three partners also signed an agreement known as a ‘novation agreement’ whereby Mr. Tembo and Mr. Nathan agreed to hold Mr. John blameless for any issues which will come after he has left.

Meanwhile, Mr. Tembo decided to expand his practice area to include Conveyancing Law and was three weeks ago engaged by Conduril, a Portuguese Parastatal, to help them with the conveyancing work for the purchase of Manda Hill Shopping Complex. Mr. Tembo’s quote for the job was \$1,000,000.00, half of the amount to be paid up front as a deposit, which terms were accepted by Conduril.

Mr. Nathan and Mr. Tembo, tired of sharing money with a partner lagging behind in their practice, decided to expel Mr. Mbewe as a partner after receipt of the instruction from Conduril. They timed the expulsion of Mr. Mbewe perfectly such that only two days after the expulsion, the firm received the deposit from Conduril which was shared between Mr. Nathan and Mr. Tembo, the only remaining partners.

Soon thereafter, Mr. Tembo and Mr. Nathan went to the Bahamas for a short holiday which took longer than anticipated. As a result, Mr. Tembo was unable to attend to the conveyancing job and since the only other lawyer Mr. Mbewe had been expelled, Mr. Tembo delegated the job to his legal clerk, Njoa, who completely messed up the conveyancing work resulting in serious losses to Conduril on the transaction.

Chat Breweries has also discovered that the moneys paid to Mr. Nathan were misused and are contemplating taking legal action.

- a) You are retained as the lawyer for both Conduril and Chat Breweries, kindly advise the two companies on the chances of successfully claiming against Mr. John and Mr. Mbewe. [6 marks]
- b) Would your answer in (a) be different if the name of the firm had changed to Nathan & Tembo upon Mr. John's retirement? [3 marks]
- c) Advise on the legality of the actions of Mr. Tembo and Mr. Nathan in expelling Mr. Mbewe if challenged in the courts of law? [5 marks]

Total [14 marks]

Question 3 [14 marks]

Jack Kawinga Limited is in the business of selling construction equipment on hire purchase. Versafile Limited recently won a government tender to construct 20 houses for teachers in Sinda District.

Versafile directors, James and Jim, decided to purchase a tipper truck from Jack Kawinga Limited to help in the implementation of the project in Sinda.

James and Jim went to the premises of Jack Kawinga Limited along Kafue Road where they were shown the Tipper Trucks available and upon picking one, they were given Hire Purchase forms to complete.

The forms contained various terms but the salient ones included payment of 24 monthly installments of K10,000.00 each before exercising the option to purchase. Another clause provided that the Buyer would pay a sum of K1,000,000.00 in the event that it elected to terminate the agreement before its full maturity,

James and Jim were okay with the terms contained in the forms and left a cheque for K10,000.00 for the first installment and got one tipper truck registration no. ABT 2222. The said tipper truck was immediately driven to Sinda to begin the government project.

The project progressed very well for a long time and Versafile paid a total of 15 installments when problems began. The government terminated the Sinda contract awarded to Versafile on account that they had failed to meet all the fundamental terms of the contract. Versafile could not take back the truck to Jack Kawinga for fear of paying the K1,000,000.00 stated in the agreement for terminating the agreement.

When the 16th payment fell due to Jack Kawinga, Versafile was unable to meet its obligations and for the first time the Directors remembered that they had in fact inadvertently omitted to sign the agreement forms at Jack Kawinga. Upon the failure by Versafile to meet its obligations under the agreement forms, Jack Kawinga wrote to Versafile informing it that it had terminated the agreement for breach and adding that *'the agreement was in any event void'* as it had not been signed.

Jack Kawinga thereafter instructed its workers to travel to Sinda and retrieve the Truck which was still parked on the construction site. The workers from Jack Kawinga have reached Sinda but James and Jim has requested them to hold on to any action until they have discussed the matter with their Company lawyers.

- a) James and Jim have now stormed your office wanting to find out the Company's rights under the agreement forms. Comprehensively advise on the respective rights of Versafile and Jack Kawinga Limited in relation to the tipper truck registration no. ABT 2222. **[6 marks]**
- b) Would your answer in (a) be materially different if the agreement had in fact been signed by the Directors? Explain Why? **[3 marks]**
- c) Assume that Government cancelled Versafile's contract two days after James and Jim got the tipper truck and the directors want to return the vehicle, what would be the extent of Versafile's liability under the agreement? **[5 marks]**

Total marks [14 marks]

Part C Answer on question from this part.

Question 4 [14 marks]

Mrs Kampamba is a small scale farmer who rears chickens in Luangwa district for sale principally to Soweto Market. Mrs Kampamba usually sent her driver, Ben, to Soweto Market to sell the chickens.

One fateful morning, as usual she sent Ben to Soweto Market to sell 150 dressed chickens worth approximately K30.00 each in her light truck registration no. ABL 3187. As Ben was leaving Luangwa, he gave a lift to Joan, a passerby, who was also going to Lusaka. After giving Joan a lift as they were approaching Rufunsa, Ben unfortunately suffered a fit of epilepsy and collapsed on the wheel of the motor vehicle.

Not knowing what to do, Joan pulled Ben from the driver's seat and rushed him to the nearest clinic, Rufunsa clinic, but the doctors could not resuscitate him and he remained in a comatose state for the whole day. Around lunch time the following day, Ben had yet to awake and the chickens behind the truck were beginning to look brown. Fearing that the chickens may get worse, Joan decided to drive the truck to Soweto Market and sell the chickens.

So as not to waste time, she sold all the chickens at K10.00 each on credit to her friend Nchito, in Soweto market and soon thereafter returned to Rufunsa Clinic to check on Ben. She used K200.00 of her own money to buy diesel to put in the truck as the fuel gauge was almost on 'red'. When she returned, she found that Ben was conscious and the two of them called Mrs. Kampamba and explained the unfortunate incident.

While Mrs Kampamba was happy that Ben was fine, she did not know what to make of what Joan had done. Joan on the other hand, wants some 'appreciation' for having gone out of the way to serve Mrs. Kampamba.

Joan gave Mrs Kampamba the phone number of Nchito to follow up the payment after one week in accordance with the credit terms given to him by Joan.

- a) Mrs Kampamba is now in your office and seeks your counsel. Write a legal brief of the rights and liabilities of Mrs Kampamba and Joan. **[6 marks]**
- b) Assuming Nchito refuses to pay the amount for the chickens, would Mrs Kampamba be able to successfully claim? Explain why? **[4 marks]**
- c) Can Mrs Kampamba enforce payment for K30.00 for each chicken from Nchito? Explain Why? **[4 marks]**

Total [14 marks]

Question 5 [14 marks]

Justin Bieber is a 15 year old Canadian musician with a worldwide audience. On the 15th of February, 2015 he was scheduled to hold a gig in South Africa at Mbombela stadium. One of his support artistes was to be Macky 2, Zambia's music sensation of the Kopala swag crew.

The promoter of the South African show requested Bieber to issue bills in advance for payment of the supporting artists. He represented that there would be two Zambian supporting artistes one named Macky 2 and another named Zally 3. In fact, Zally 3 does not exist and it was a ploy by the promoter to make some extra cash for himself from the rich super star. Bieber duly obliged and drew two cheques for \$10,000.0 each payable one payable to 'Macky 2 only' and the other payable to 'the order of Zally 3'. The bills were drawn on Trust Corporation South Africa payable on 10th February, 2015.

In readiness for the gig, Macky 2 travelled to South Africa on the 7th of February, 2015 and was met at the Airport by host of South African artistes scheduled to support Bieber's show. Some of his friends from the Big brother house such as Feza and James(JJ) were also in attendance. By mistake, the two bills were both given to Macky 2 by the South African promoter.

On the night of 7th February, 2015 Macky 2's hotel room was broken into and the two bills were stolen together with his other personal effects.

The thief forged the endorsements on the bills and eventually the bills ended up being endorsed in favour of Feza. When Feza got the bills, she presented them for payment to Trust Corporation South Africa who honoured both of them.

- a) The Canadian agent of Bieber is now in your office and now knows the true state of affairs. Kindly advise him on the liability of Trust Corporation South Africa on claim for wrongful payment from Bieber on each of the bills. [6 marks]
- b) Assume both bills had been dishonored, what would be the extent of liability of Bieber on the two bills on a claim from Feza? [4 marks]
- c) Would there be a material difference in your answer in (b), if Feza was unable to cash the two bills because Trust Corporation South Africa was a non existent entity? Explain Why? [4 marks]

Total [14 marks]

Part D Answer one question from this part.

Question 6 [14 marks]

- a) John recently opened an account with AB Bank, Kalingalinga branch and is very excited about owning a bank account.

- Prepare a legal brief detailing the legal nature of the relationship between John and AB Bank. And with the aid of decided cases, also highlight the duties they each owe each other. [7 marks]
- b) A well known legal maxim stipulates that '*Nemo dat quod non habet*'. Discuss the stringency of the said nemo dat rule in relation to sale of goods. [7 marks]

Total [14 marks]

Question 7 [14 marks]

Write brief notes on the following:

- (a) Bill of Lading [2 marks]
(b) United Nations Convention on Contracts for the International Sale of Goods [3 marks]
(c) Rights of the Carrier of Goods [3 marks]
(d) Free on Board (FOB) Contract [3 marks]
(e) Cost, Insurance, Freight (CIF) contract [3 marks]

Total [14 marks]

End of Examination



The University of Zambia

School of Law

Civil and Criminal Procedure – LPR 3952

2014/2015 Academic Year End of Year Examinations

2 July, 2015

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 books or texts into the examination room other than clean copies of the Subordinate Courts Act, Chapter 28 of the Laws of Zambia, the Criminal Procedure Code, Chapter 88 of the Laws of Zambia and the Juveniles Act, Chapter 53 of the Laws of Zambia.
 5. Candidates must not turn this page until the invigilator tells them to do so.
-

PART A

Question One

You are on 29 May, 2015 retained by Ganizani Mbuze who instructs you that on 25 January 2004, he was driving his Toyota Mark II Reg. No AAZ 2012 when he was involved in a road traffic accident. He explains that when he reached Manda Hill traffic lights, he heard a bang on his vehicle. He said that Jean Bamba, who was driving a Toyota Hilux AAX 2010, negligently hit him from behind thereby causing extensive damage to the tail lights and rear side of his vehicle. The accident occurred as a result of Jean's failure to take proper control of her vehicle when the traffic lights turned red.

- (a) Ganizani Mbuze agreed with Jean Bamba that they would solve the problem without involving the police. Jean agreed to bear the cost of replacing the tail lights and repairing Ganizani's vehicle. Jean agreed to reimburse Ganizani for the total cost of repair for the motor vehicle. Ganizani spent a total of K16,500.00 on replacing the tail lights and repairing the vehicle. Assume Jean reneges on her agreement, advise:
- (i) which court would you take Ganizani's claim to?
 - (ii) what document(s) if any will you file?
 - (iii) from the facts, state a defence available to Jean which would totally defeat Ganizani's claim.
- (b) Based on the facts in (a) above, Ganizani Mbuze suffered personal injury which together with the cost of repair of the car, he estimated to be a total of K26,000.00. Assuming there was no agreement with Jean to settle the matter *ex curia*, advise:
- (i) which court you would take Ganizani's claim to; and
 - (ii) what document(s), if any, you will file.

18 Marks

PART B

Question Two

Peter Daka has signed a building contract with Patricia Chileshe in which Peter has agreed to build Patricia's house in Hillview area, west of Lusaka within a time period of 6 months. Peter was securing the building materials from the "Builders' Paradise Limited", a hardware store located on Freedom-way Road in Lusaka.

Builders' Paradise Limited had promised to supply Patricia with all the required building materials within 3 months to enable Peter complete the construction of the house within the agreed period of 6 months. Builders' Paradise Limited, however has failed to honour its promise and has taken eleven months to deliver all the needed materials. This inordinate delay in supplying the materials to Peter has given rise to a civil suit between Peter and Patricia in which Patricia is claiming general damages for breach of contract from Peter.

Peter believes that Builders' Paradise Limited, rather than him should be liable for the damages Patricia is claiming.

As counsel who has been retained by Peter on the matter, draft a brief opinion clearly describing the procedural steps Peter needs to take in order to avoid liability and/or transfer it onto Builders' Paradise Limited.

14 Marks

Question Three

You act for Joel Mumba who has been served with a Writ of Summons issued by the Subordinate Court of the third class of the Ndola District. The writ has been issued at the instance of John Malekano, the Plaintiff, who is claiming payment of a sum of K25,000.00, being unpaid value for the car he supplied Joel in Lusaka. Joel is a resident of Choma. He says he does not owe John, because he never purchased the car from him. The car was purchased by his elder brother Joseph Mumba and that the only role Joel played was to examine the car for Joseph and witness the contract of sale.

Draft an opinion advising Joel of all the legal options available to him.

14 Marks

PART C

Question Four

You have been approached by Mike Gondwe, a second year engineering student at the University of Zambia who has been arrested by the police for causing death by dangerous driving. He is immediately caused to appear before the Subordinate Court of the first class which remands him in custody at Kamwala Remand Prison. Mike further instructs that the police officer who arrested him did not show him a warrant of arrest.

Draft a legal opinion advising Mike on the factual and legal principles he needs to satisfy for him to be granted bail pending trial. Also include in the opinion, advice on how an accused can be brought before the Subordinate Court and whether in this case Mike has been properly indicted.

14 Marks

Question Five

In the case of *Godfrey Miyanda v. The High Court (1984) Z.R 62*, the Supreme Court stated that:

“The term “jurisdiction” should first be understood. In one sense, it is the authority which a court has to decide matters that are litigated before it; in another sense, it is the authority which a court has to take cognisance of matters presented in a formal way for its decision.”

Analyse the above statement in light of the criminal jurisdiction of the Subordinate Court Class III as well as the Principal Resident Magistrate.

14 Marks

PART D

Question Six

Answer all of the following questions.

- (i) Discuss the conditions which are required to be met before a Court can pass a form of custodial sentence on a juvenile;
- (ii) Discuss what is meant by an “unequivocal plea of guilty” and why it is important for the trial courts to ensure that they convict only on a plea of guilt which has attained this standard.
- (iii) Define the following terms:
 - (a) autrefois acquit;
 - (b) autrefois convict;
 - (c) failure to plead by reason of malice; and
 - (d) failure to plead by reason of visitation of God.

14 Marks

Question Seven

Answer all of the following questions.

- (i) When is personal service required in civil proceedings?
- (ii) How is personal service effected in civil proceedings?
- (iii) In what circumstances is it possible to obtain an order for substituted service in civil proceedings?
- (iv) In what circumstances is it possible to obtain an order for service out of the jurisdiction in civil proceedings?
- (v) Describe the procedure to be followed in each of the circumstances in (iii) and (iv) above.

14 Marks

End of Examination



UNIVERSITY OF ZAMBIA
SCHOOL OF LAW

LPR4930- BUSINESS AND CORPORATE LAW
FINAL EXAMINATION
TUESDAY 14 JULY 2015
09:00- 12:00 HOURS

TIME ALLOWED: THREE HOURS (3 hours) plus 5 minutes of reading the question paper

INSTRUCTIONS:

- 1) Answer FOUR (4) questions, one from each Part.
- 2) This examination paper carries a total of 60 marks.
- 3) Credit shall be given for clear and logical answers.
- 4) Candidates are permitted to bring the following statutes into the examination room: Companies Act, Partnership Act, Registration of Business Names Act and the Cooperative Societies Act.
- 5) Candidates must not turn this page until the invigilator tells them to do so.

PART A

QUESTION 1 (COMPULSORY)

Munengo and his friends run a company called Chamba Valley Merchants Limited. They have a saw milling plant in Mufumbwe, and bring much of their timber to Lusaka where they have a flourishing market for sawn timber. Munengo has agreed to partner with a South African investor who runs Dumelo Wood industries Limited in Johannesburg. As a result of this partnership, the parties have agreed to change the name of Chamba Valley Merchants Limited to Dumelo Valley Zambia Limited.

a) Outline in full the procedure which must be followed in order to effect the desired name changes to the company.

(12 Marks)

b) Sala-Sala Enterprises Limited had sold spare parts to Chamba Valley Merchants Limited worth K10000. When the Manager of Sala-sala Limited followed up, he found that changes had occurred at Chamba Valley Merchants Limited and the new South African General Manager of Dumelo Valley Zambia Limited was refusing to honour invoices issued in the name of Chamba Valley Merchants Limited. What can Sala-Sala Enterprises Limited do to collect their money?

(6 marks)

Total (18 Marks)

PART B

QUESTION 2

a) What are the distinguishing characteristics of a private company in Zambia?

(6 marks)

b) Mbuye and Bashitata lost their jobs at Mukuba Stones Limited. Before leaving their former employer, Mbuye and Bashitata had attended workshops organized by Future Clouds, a motivational outfit offering advice to employees about to leave employment. The two friends were greatly encouraged by what was said about the potential to set up businesses. They agreed to form a fishing company to be based in Samfya. While they were preparing to form the company and before being issued with a certificate of incorporation, Mbuye bought 4 deep water nets and paid for them in the hope that he would claim from the company. Bashitata, on the other hand bought 3 boats on credit in the name of Samfya Fishing Company Limited, the name of his company with Mbuye. The company was eventually issued with a certificate of incorporation. Bashitata, who received very little terminal benefits, is now broke and Samfya Fishing Company Limited has refused to receive and pay for the 3 expensive boats ordered by Bashitata.

The suppliers of the boats have sued Mbuye and Bashitata as partners for breach of contract. What should be the outcome of this case in a court of law?

(8 marks)

Total (14 Marks)

QUESTION 3

- a) Businesses run under the Cooperative Societies Act are expected to embrace what is understood as 'cooperative principles' in the operation and administration of their businesses.

What are the 'cooperative principles'?

(6 marks)

- b) Rosemary has risen through the ranks of Civil Service which she entered as a Copy Typist 27 years ago. She was recently promoted to the rank of Registrar of Cooperatives and on her desk was a file with a recommendation to dissolve Twikatane Cooperative Society in Namwala District. Rosemary is anxious about demonstrating efficiency in her new job, but she is also concerned about doing wrong things. You are the new Legal Officer in the Department and you have been approached to provide advice on the powers of the Registrar to dissolve Cooperative Societies.

Advise Rosemary on the grounds upon which a Registrar can dissolve a Cooperative Society.

(8marks)

Total (14 Marks)

PART C

QUESTION 4

- a) What liabilities are imposed on a person who operates a business without registration under the Registration of Business Names Act?

(6 marks)

- b) Zesco Limited is a typical commanding parastatal in the Zambian economy. One issue about the management of parastatals is the lack of self interest by those charged with the management of these state owned businesses. Without the discipline of self interest, other measures have to be created in order to monitor and enforce viability and accountability of state owned enterprises.

What measures are in place in Zambia to promote the sound management and accountability of state owned enterprises?

(8marks)

Total (14 Marks)

QUESTION 5

- a) In relation to companies registered with share capital, what is meant by
- i) authorised capital (3marks)
 - ii) Par value of a share? (3marks)
- b) A prospectus was issued to the public offering for subscription for shares in Unza Ponds PLC. Having considered the prospectus, Clever Phiri submitted an application for shares, and was in due course allotted the number of shares for which he had applied. Very soon thereafter, Clever Phiri became aware that a representation in the prospectus which had influenced him in his decision to apply for shares amounted to a material misrepresentation of facts.

What options are available to Clever Phiri with a view to obtaining a remedy in the circumstances?

(8 marks)

PART D

QUESTION 6

- a) A shareholder and a debenture holder are both economic participants in the fortunes of a given business enterprise. What is the difference in their expectations from the company? (6 marks)
- b) Massud is a recent immigrant to Zambia from the Himalaya Kingdom of Bukisatan. Initially coming on the back of his father-in law, Massud has set himself as a leading grocer in Kamwala Trading area of Lusaka. He has no property of his own in Zambia and the shop from which he operates is on lease to him for a period of seven years. His shop is reasonably stocked, but he has ambitions to open another shop on Mumbwa Road. He reckons he has to borrow money for expansion from a bank.

What type of security would you recommend and with what justifications?

(8marks)

Total (14Marks)

QUESTION 7

- a) *In re City Equitable Fire Insurance Company Limited(1925)*, Justice Romer gave guidance on what may be expected of a director's attention to duties of skill and care.

What was the outline of that guidance on the nature and extent of a director's duty of skill and care?

(6 marks)

- b) Mable is the Managing Director of City Express, a new Railway Company formed by the Trade Unions of Lusaka to assist with transportation of passengers in Lusaka. Aware that City Express would need to import Railway sleepers and wagons for the new Company, Mable and her brother who had worked in the railway industry for a long time formed Atlantic Marketing Limited. Without disclosing her interest, Atlantic Marketing was allowed to bid and was awarded a contract to supply Sleepers to City Express at a huge cost. From the proceeds of this deal, Mable sent her two children to Canada for University education and bought two luxurious properties in Ndola, her home town.

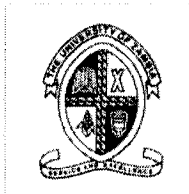
Patricia, the Secretary General of one of the participating unions in the City Express venture has gone to court on behalf of City Express to demand removal of the Managing Director and a refund of money she has made from City Express.

Discuss the ramifications that flow from Mable's action and the reaction from Patricia.

(8 marks)

Total (14 marks)

END OF EXAMINATION



THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

2014/2015 ACADEMIC YEAR FINAL EXAMINATIONS

LPU2940 CRIMINAL LAW

9TH JULY 2015

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 – compulsory

You are a prosecutor working for the National Prosecutions Authority. You have been presented with a file containing the following information: On 24th June 2015, Richard Dube (the deceased) entered the shower in October 3, a female hostel at the University of Zambia (UNZA) where Susan Bwalya, a second year student was having a shower. Upon seeing the deceased, Susan got frightened and shouted for help. Upon hearing her cry for help, Mary Mbuzi, John Chupa and other unknown persons gave chase and apprehended the deceased. They punched and kicked the deceased until he fell to the ground. Susan Bwalya kicked the deceased on the back of the head while he lay motionless on the ground saying “are you now playing dead? This is what you get for peeping on innocent women.” Richard Dube died shortly afterwards. The post mortem shows that the deceased could have died from a fracture of the skull or internal bleeding. The investigating officer at UNZA police post has made a decision to arrest Susan Bwalya, Mary Mbuzi and John Chupa. He is however not certain of the offence(s) to charge them with and seeks your advice.

Write a legal opinion explaining the offences with which you will charge the three suspects as well as the prospects of conviction for each of the three suspects.

18 marks

PART B

QUESTION TWO

With the aid authorities, explain the following principles of criminal law:

(a) Actus reus and mens rea

7 marks

(b) Strict liability

7 marks

QUESTION THREE

With the aid of authorities, discuss how Zambian courts apply the principle of common purpose and joint criminal enterprise in criminal law. **14 marks**

PART C

QUESTION FOUR

You are a magistrate presiding over a matter in which James Phiri has been charged with rape, contrary to section 132 of the Penal Code, Chapter 87 of the Laws of Zambia. The prosecution's case is based on the testimony of the prosecutrix, Jane Doe, who testified to the rape. In response to a question in cross examination, asking her why she alleges to have been raped by James Phiri, the prosecutrix states, "I reported him to the police for rape after he refused to pay me the money he had promised he would give me after we have had sexual intercourse."

You are required to write a ruling at the close of the prosecution's case to determine whether or not a prima facie case has been made against the accused. Using relevant authorities, write the ruling you will deliver. **14 marks**

QUESTION FIVE

In the case of *Woolmington v DPP [1935] AC 462*, Lord Sankey in his decision propounded the now famous statement to the effect that "Throughout the web of the English Criminal Law, one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner's guilt."

With the aid of authorities, discuss the above quotation clearly identifying exceptions to the general rule. **14 Marks**

PART D

QUESTION SIX

You are the prosecutor in the matter in which Friedrich Zenzo is being tried for the murder of Isaac Wanga. The facts of the case are that on 4th May 2015, Friedrich Zenzo confronted Isaac Wanga at a local tavern to warn him to stay away from his girlfriend Patricia, after Patricia confessed to having an affair with Isaac Wanga.

When confronted, Isaac Wanga mocked Fredrick Zenzo telling him to instead tame his woman. Upon hearing this, Friedrich Zenzo lost his temper and picked a stool that was next to him and hit Isaac Wanga on the chest. Wanga suffered a fractured rib. He was taken to a local hospital where he was treated for the fractured rib by Dr. Wang Tang. Isaac Wanga died after 36 days. At the close of the Friedrich Zenzo's defence, it is clear that he is alleging that Wanga died from sepsis suffered as a result of Dr. Wang Tang's negligence in treating the fracture and not the alleged injury. The court has requested you to file written submissions on behalf on the prosecution to support your charge of murder.

Using relevant authorities, write the submission you will file on behalf of the prosecution.

14 marks

QUESTION SEVEN

You have been instructed by Patience Chato in a matter in which she has been charged with obtaining goods by false pretences contrary to section 309 of the Penal Code, Chapter 87 of the Laws of Zambia. The facts of the case are that on 31st March 2015, Patience Chato entered into an oral contract with Isaac Zulu for the purchase of Isaac Zulu's motor vehicle, Toyota Hiace, Registration No. ABC 1234 at the purchase price of K50, 000.00. According to the terms of contract, Patience was to pay a 50 per cent deposit and take possession of the motor vehicle. The balance of the purchase price was to be paid on 30th April 2015 upon which change of ownership formalities would be completed.

Your client, Patience Chato, failed to pay the remaining balance on the agreed date and stopped picking up Isaac Zulu's calls when he threatened to get back the bus and give her the deposit. Patience says she could not return the bus as it was involved in an accident. She also did not have money to pay the balance as she was paying for repairs to the bus. She is still willing to pay for the bus and had asked Isaac Zulu to give her up to 30th June 2015. She says she is now surprised that she has been arrested and charged with obtaining property by false pretenses. She wants to know the likelihood of a criminal conviction in the case.

Using relevant authorities, write a legal opinion for Patience Chato. **14 marks**

END OF EXAMINATION



THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

**ADMINISTRATIVE LAW: LPU 2962
FINAL EXAMINATION**

Wednesday 15th July 2015, 9:00 – 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 statute into the examination room: Constitution of Zambia, Chapter 1 of the Laws of Zambia
5. Candidates must **not turn this page** until the invigilator tells them to do so.

PART A

QUESTION ONE: Compulsory

"Wednesbury Unreasonableness" standard set out in *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 KB 223, has been criticised by the courts in later decisions, which have suggested that it is time to say good bye to Wednesbury unreasonableness.

With the aid of decided cases discuss.

Total: [18 marks]

PART B: Answer one question from this section

QUESTION TWO

Mududu was employed in the University as a member of staff. The University staff regulations delegate disciplinary powers to the Council. Mududu was charged with indiscipline and was found innocent. Thereafter his supervising officer added more charges on the file, which were not brought to his attention. The supervisor then forwarded the file to the Minister of Education, who dismissed Mududu without a hearing. Mududu comes to you for a legal opinion. **Advise**

Total: [14 marks]

QUESTION THREE

Your client Zanga applied for a licence to operate a fourth mobile company. The Permanent Secretary, Works and Supply assures you that the ministry has no problem, however a month later your client gets a regret.

How would you as his advocate approach the matter?

Total: [14 marks]

PART C: Answer one question from this section

QUESTION FOUR

Discuss the distinction between Constitutional and Administrative Law

Total: [14 marks]

QUESTION FIVE

The University of Zambia, as a public university that has been restricted from borrowing funds unless that is done through the Ministry of Education and Ministry of Finance

under the Higher Education Act. However, the university has a company incorporated under the Companies Act, which is a separate legal entity which runs a lodge.

The university intends to guarantee a loan to the company to be obtained from FNB Bank to the tune of K6 Million. You are the Legal Counsel of the university, **Advise**

Total: [14 marks]

PART D: Answer one question from this section

QUESTION SIX

Discuss the concept of delegated legislation, its advantages and disadvantages

Total: [14 marks]

QUESTION SEVEN

The exercise of Discretionary power is of two types, **Discuss**

Total: [14 marks]

End of examination