

**UNIVERSITY OF ZAMBIA**  
**SCHOOL OF LAW**  
**FIRST SEMESTER**  
**2011-2012 EXAMINATIONS**

1. L 232 –Law of Tort (s)
2. L 262 –Family Law
3. L 362 – Civil and Criminal procedure
4. L 382 –Employment Law and Labor
5. L 411 – Jurisprudence
6. L 412 –Jurisprudence II
7. L 432 –International law II Law of international Institutions  
and Organizations
8. L 452 –International investment Law
9. L 472 –Refugee Law
- 10.LPU 972 - Refugee Law

**THE UNIVERSITY OF ZAMBIA  
SCHOOL OF LAW**

**FIRST SEMESTER EXAM PAPER, ON 31<sup>ST</sup> MAY, 2012**

**L232: LAW OF TORT(S)**

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

**INSTRUCTIONS**

1. Statutes are not allowed in the examination room.
  2. Answer question **ONE** which is compulsory and one question from each of the following sections.
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**SECTION A**

**QUESTION ONE**

Wright postulates the philosophy of the law of tort(s) in the words:

While no definition of a "tort" has yet been made that affords any satisfactory assistance in the solution of the problems we shall encounter, the purpose, or function, of the law of torts can be stated fairly simply. Arising out of the various and ever increasing clashes of the activities of persons living in a common society, carrying on business in competition with fellow members of that society, owning property which may in any of a thousand ways affect the person or property of others – in short doing all the things that constitute modern living – there must of necessity be losses, or injuries of many kinds sustained as a result of the activities of others. The purpose of the law of torts is to adjust these losses and to afford compensation for injuries sustained by one person as the result of the conduct of another. Such a statement of the problem indicates that the law of torts must constantly be in a state of flux, since it must be

ever ready to recognise and consider new losses arising in novel ways. The introduction of printing, by facilitating the manner in which a man's reputation might be injured by the dissemination of the printed word, had a tremendous effect on the law of defamation; the radio of today presents even more serious problems, as do also the aeroplane and the modern motor car.

Cecil A. Wright, **Cases on the Law of Torts**, Third Edition, London Butterworths. p1

**Evaluate the concepts of losses and fault  
as the basis of tortious liability  
(22 marks)**

## **SECTION B**

### **QUESTION TWO**

The UNZA Post in its editorial of the 5<sup>th</sup> issue dated 20<sup>th</sup> April, 2012 published the following:

***A good number of leaders are hanger - on and lack depth and dedication to honesty. And of course others have got away with the TRACTOR scandal.***

The Government of UNZA had entered into a Contract with a foreign company for the purchase of 1000 tractors in a bid to boost agricultural production in UNZA. **Bonzo** was the Chief Legal Advisor to the UNZA Government and **Trustworth** was the Senior Purchasing Officer involved in the purchase of the tractors. The purchase Agreement bungled and the Government lost millions of Kwacha in the Arbitration that followed. Incensed by these developments there was a heated debate in the UNZA Parliament. Members of Parliament questioned the role of **Trustworth** in waiving certain breaches of Contract by the foreign company resulting in the Government failing to give sufficient Notice of rescission of the Contract. Parliament regarded these events as scandalous and criticized both **Bonzo** and **Trustworth**.

**Bonzo** and **Trustworth** feel offended by the UNZA Post editorial.

***Advise Bonzo and Trustworth as to their rights of reputation.***

**(16 marks)**

### QUESTION THREE

Discuss tortious liability in the following situations:

- a) Just before closing time, A, a shopkeeper, sends B into a cold storage room to take inventory of the articles therein. Forgetting that he has done so, he locks the door of the room on leaving the premises. In a few moments thereafter, he remembers that B is in the room and immediately goes back and releases B.
- b) A, does not remember that B is in the cold storage room until he reaches home and, therefore, although he acts immediately, he cannot release B until B has been confined in the cold storage room for so long a time as to bring on a heavy cold which develops into pneumonia.

(16 marks)

### SECTION C

### QUESTION FOUR

In *Palsgraf v Long Island Railroad Co*, Court of Appeals of New York, 1928 248NY 339 the following are *inter alia*, postulations of law from  
Andrews, J(dissenting)

But we are told that "there is no negligence unless there is in the particular case a legal duty to take care, and this duty must be one which is owed to the Plaintiff himself and not merely to others (Salmond, Torts (6<sup>th</sup> Ed) 24). This I think too narrow a conception. ***Where there is the unreasonable act, and some right that may be affected there is negligence whether damage does or does not result.*** That is immaterial.

Should we drive down Broadway at a reckless speed, we are negligent whether we strike an approaching car or miss it by an inch. The act itself is wrongful. It is a wrong not only to those who happen to be within the radius of danger but to all who might have been there – a wrong to the public at large. Such is the language of the street.

The proposition is this. Every one owes to the world at large the duty refraining from those acts that may unreasonably threaten the safety of others..... Not only is

he wronged to whom harm might reasonably be expected to result, but he also who is in fact injured, even if he be outside what would generally be thought the danger zone.

Harm to some one being the natural result of the act, not only that one alone, but all those in fact injured may complain. We have never, I think held otherwise.  
(emphasis supplied)

***Evaluate the validity or otherwise of this dissenting opinion.***

(16 marks)

#### **QUESTION FIVE**

Two boys, one 5 years and the other 7 years of age went to a garbage dumping ground well fenced and owned by the UNZA Municipal Council. What attracted the two boys was the odd smell from the dumping ground. The Council employed a guard to control the entry and exit of garbage carrying trucks. Unknown to the Guard the boys cut a portion of the fence to gain entrance into the dumping ground. While playing in the ground the two boys contracted cholera as it was during the rain season.

One of the boys died while the other survived, parents having rushed him to a nearby clinic. The deceased boy did not get any medical attention.

***Advise the parents as to the liability of the Council, if any.***

(16 marks)

#### **SECTION D**

#### **QUESTION SIX**

MUKUBA Magazine has become a very popular publication in the Copperbelt Province of UNZA. Attracted by the name Mukuba the UNZA Television Corporation Limited has started television series called the Mukuba Evening Programme. This Programme has also become very popular and has generated substantial revenue from commercial advertisements.

On discovering this, the proprietors of the Mukuba Magazine are disturbed and want a share in the income of the Mukuba Evening Programme. Mukuba is the local name for copper in the Copperbelt Province.

***Evaluate the legal rights of both the Television Evening Programme and Mukuba Magazine.***

(16 marks)

## **QUESTION SEVEN**

Write brief notes on the following economic torts:

- a) Deceit
- b) Passing off; and
- c) Malicious falsehood.

(16 marks)

**END OF EXAM**

# THE UNIVERSITY OF ZAMBIA

## SCHOOL OF LAW

### SECOND SEMESTER FINAL EXAMINATION

#### L262 Family Law – 2011/2

Wednesday 23<sup>rd</sup> May, 2012 at 09:00 hours in the Sports Hall

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#### INSTRUCTIONS:

- a) Section A is compulsory and carries 25 Marks
- b) Answer one question from each of the other sections. Each question is 15 marks.
- c) You are allowed to refer to clean and unmarked copies of the Matrimonial Causes Act 2007, Marriage Act, Intestate Succession Act, the Will and Administration of Testate Estates Act, Constitution and Adoption Act during the examination.
- d) Statutes shall not be exchanged during the examination. **Please use your own copies.**
- e) No other statutes or reference materials are allowed for this examination.
- f) You have five minutes to read through the paper and a total of three (3) hours within which to answer all the four questions.
- g) Clearly indicate the question numbers for all questions attempted.
- h) Clearly indicate your computer number on all answer scripts.

## **SECTION A: QUESTION ONE COMPULSORY**

Marjory and Bernard were married at the Lusaka Civic Center before the Registrar of Marriages in 1994 and had 2 children. In 2000, they decided to separate because of irreconcilable differences between them. One of the major things that caused quarrels between them was that in 1999, Bernard supported a marriage of his adopted young sister to a man from her previous family. In April, 2002, Bernard was involved in a case of aggravated robbery. He eluded the police for some time but was finally arrested in July, 2002 and remanded at Kamwala Remand Prison. Marjory never visited her husband. After a lengthy trial, Bernard and his co-accused were convicted and sentenced to 10 years imprisonment with hard labour. This was in February of 2005. They were housed at the Lusaka Central Prison. Marjory has not visited Bernard while in prison. She wants to divorce her husband because as she says “she can’t take it anymore and she doesn’t know what is going on with him, she has not heard anything about him in so many years”. She comes to you for help since she has been told you are an expert in family law matters. Advise her on all the legal issues affecting her case. In order for your client to understand, it is advisable that you use decided cases and statutory provisions to explain issues to her.

**25 Marks**

### **Section B**

- 2 In the case of the **People v Katonga (1974) ZR 290**, on a charge of bigamy, the judge held as follows: “a customary union is not capable of being a valid marriage in the sense of a monogamous Marriage Act marriage.....I consider that section 166 of the Penal Code contemplates that both the first and the second ceremonies of marriage shall be Christian or Western type.”

With the help of suitable authorities to support your arguments, analyse this decision in today’s family law dispensation in Zambia.

**15 Marks**

- 3 With the help of both case and statutory authorities in each case, discuss the factors which determine the validity of a customary law marriage.

**15 Marks**

### Section C

- 4 With the help of suitable case and statutory authorities to illustrate the fact, discuss the functions of family law showing clearly their practical relevance in Zambia today.

**15 Marks**

- 5 Bicycle Banda married Ndiyo Zulu in 2006 and had two children now living aged 6 years and 4 years respectively. At the dissolution of their marriage in December 2011, the issue of who to take care of the children of the family arose. Bicycle is in gainful employment and a business man trading in reconditioned vehicles. He travels out of town a lot. He is now living with his 72 year old mother and a maid. Ndiyo on the other hand has been a full time house wife and has no stable income to support herself and the children. She has started a kantemba business where she is selling sweets, milk, bread and air time. Bicycle argues that he is capable of looking after the children because he has the means to do so and besides his mother is on hand to help. He also says she can look after the children better than his former wife would. Because the parties have failed to agree, they think the matter should go to court on an application for custody.

Ndiyo has approached you for help with this case. Prepare well reasoned submissions on her behalf for presentation to the High Court. **15 Marks**

### Section D

- 6 The Intestate Succession Act chapter 59 of the Laws of Zambia lists beneficiaries under intestacy as children, spouse, parents and dependants. With the help of suitable authorities, evaluate the meaning of each of these categories in the Zambian dispensation.

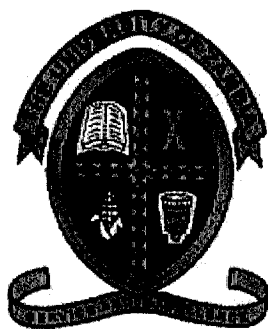
**15 Marks**

- 7 In the case of **De Reneville Vs De Reneville 1948 Probate, 100 at page 110**, the court stated that “a void marriage is one that will be regarded by every court in any case in which the existence of the marriage is in issue as never having taken place and can be so treated by both parties to it. A voidable marriage is one that will be regarded by every court as valid until a decree annulling it has been pronounced by a court of competent jurisdiction”. One of the factors leading to void marriages is the absence of voluntary consent on the part of either party to it.

With the help of relevant case and statutory authorities, discuss how absence of voluntary consent can make a marriage void.

**15 Marks**

End of Exam



**SCHOOL OF LAW**

**L362: CIVIL AND CRIMINAL PROCEDURE**

**2011/2 EXAMINATIONS**

**INSTRUCTIONS**

- The paper has 4 parts, A, B, C and D
- Answer 4 questions in total. Answer question one and one question from each section
- Question one carries 25 marks while the other questions carry 15 marks each. The total marks of the paper are 70
- substantiate your answers with relevant authorities
- write clearly and legibly
- you are allowed to bring unmarked copies of the following statutes:
  1. The Constitution, Cap 1 of the Laws of Zambia
  2. The Subordinate Courts Act, Cap 28 of the Laws of Zambia
  3. The High Court Act, Cap 27 of the Laws of Zambia
  4. The Criminal Procedure Code, Cap 88 of the Laws of Zambia
  5. The Penal Code, Cap 87 of the Laws of Zambia

## Part A

### Question one (Compulsory)

25 Marks

Joe Musenge has been convicted of assault occasioning actual bodily harm. He explains that when the matter commenced, Joe was represented by Chimayo Chambers but before the close of the prosecution's case, the advocates withdrew from acting for him as he could not afford to pay legal fees. On 3<sup>rd</sup> February 2012, after the lawyer withdrew from acting for him, Joe applied for an adjournment to enable him find another lawyer. The Magistrate adjourned the matter to 15<sup>th</sup> February 2012. When the matter came up for hearing on 15<sup>th</sup> February 2012, he requested for another adjournment to enable him seek legal representation. He explained that he had not been able to raise the money demanded by counsel but given the time, he would be able to get monetary assistance from family members to enable him get legal representation. The Magistrate thereupon refused the application and proceeded to hear the matter. At the submission of no case to answer, on the same day (i.e. 15<sup>th</sup> February 2012), the Magistrate found Joe with a case to answer and put him on his defence. Joe did not give evidence in his defence nor did he call any witnesses. He was convicted and sentenced to four (4) years imprisonment with hard labour.

Joe is dissatisfied with the conviction and sentence. He comes to you for an opinion on possible ground(s) of appeal against the conviction and sentence. Advise Joe.

## **Part B – Answer Question Two or Three**

### **Question two**

**15 Marks**

You act for Joel Mumba, who has been served with a default writ of summons issued by the Subordinate court of the first 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 K15, 000,000.00, being unpaid remuneration for a contract to provide teaching services at Joel Mwamba's training school in Lusaka. Your client is a resident of Lusaka and would like you to defend the case on his behalf. He says he does not owe Malekano because he had abandoned the teaching midway thereby causing him to incur additional expense by finding another lecturer who charged him twice the amount as he only got the new lecturer on short notice.

(a) Discuss the steps you will take to protect your client's interests.

(b) Based on your advice in (a) above, draft the necessary document(s) you will file into court.

### **Question three**

**15 Marks**

With the aid of authorities, briefly discuss the legal principles that guide courts when granting an order of interlocutory injunction.

**PART C – Based on the below facts, answer question Four or Five**

You are a prosecutor in the office of the National Prosecutions Authority. You have been presented with a case record of the following facts. Bob Mambala and Charles Kafwaka while in the company of other unknown persons, on 20<sup>th</sup> March 2012, stole a motor vehicle, Toyota Hilux, Reg. No. ALB 2012, belonging to Max Mbewe. On the said date at around 02:00Hours in the morning, the duo, in the company of other unknown persons broke Max Mbewe's gate lock, at House No. 178 PHI Lusaka, to gain access to the vehicle which was parked in the backyard. While at the premises, the duo with the help of other persons opened the vehicle using a piece of wire which was crafted for that purpose. Max Mbewe awoke to the sound of the speeding vehicle and quickly phoned the police to report the theft.

The record further shows that the duo were arrested near Kasumbalesa border post, later that day, as they were about to cross the border to go into the Democratic Republic of Congo . The case record also shows that Bob Mambala had been previously tried for the offence of theft of motor vehicle by the Luanshya Magistrate Court, but was acquitted.

**Question four**

**15 Marks**

Draw the relevant charge or information you will present to court against the accused persons.

**Question five**

**15 Marks**

On the first day of trial, Bob Mambala's lawyer applies for bail before the Subordinate Court. Write your submissions in opposition to application for bail.

## **PART D**

### **Question six**

**15 marks**

Joyce Tembo comes to you for legal advice. She explains that she was charged with forgery before the subordinate court of the first class for the Lusaka District was found not guilty of forgery but guilty of attempting to obtain goods by false pretences. She further that when passing judgment, the magistrate explained that he relied on the provisions of section 181 (2) of the Criminal Procedure Code and made the finding that an accused charged with forgery could be found guilty of obtaining goods by false pretences as a minor offence, where the facts proved amounted to such an offence. Joyce Tembo requires your assistance to appeal against the judgement of the Subordinate court.

Discuss the possible ground(s) of appeal you would advance in the High Court.

### **Question seven**

**15 Marks**

You have been retained by Elias Tombo to act for him. The facts of the matter are that, on 10<sup>th</sup> February 2012, Elias Tombo and Matthew Chipepo signed a contract for purchase of a motor vehicle belonging to Matthew Chipepo. The agreed purchase price was K55, 000,000.00, payable in two instalments; K30, 000,000.00 on signing the contract, and the balance to be paid at the month end of March 2012. Elias paid the first instalment at the signing of contracts as agreed but asked for at least 7 days after the month end within which to source some funds, to which Matthew agreed.

On 3<sup>rd</sup> March 2012, Matthew wrote to John demanding that John pays the balance with before close of business on 5<sup>th</sup> March, failure of which he would rescind the contract and sale the motor vehicle to another interested buyer. On 4<sup>th</sup> March 2012, your client deposited the sum of K25, 000,000.00 in Mathew's account and upon taking the deposit slip to Matthew, on the

same day, he was advised that the motor vehicle has already been sold to another buyer and was merely awaiting change of ownership formalities.

Elias is devastated about the development. He requires your assistance to enforce his rights against Matthew.

(a) Advise Elias on the course of action he should take to enforce his rights against Matthew Chipepo?

(b) If your advice, in (a) above, involves commencing court action, what originating process will you file into court and why?

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*End of examination*

# THE UNIVERSITY OF ZAMBIA

School of Law

2<sup>st</sup> Semester 2011/2012

## Final Examination Paper - L382: EMPLOYMENT LAW AND LABOUR RELATIONS

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Instructions to the candidates

Time Allowed: 3 (Three) hours

This paper is divided into four sections

Section A: Answer Question One (1) which is compulsory

Section B: Answer any one (1) question

Section C: Answer any one (1) question

Section D: Answer any one (1) question

Total number of questions to be attempted is four (4)

Total marks for each question are indicated at the bottom of each question.

### Concessions

The students will be allowed to carry a clean copy of the following statutes:

- (i) Employment Act, Chapter 268 of the Laws of Zambia
- (ii) Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia & amendments
- (iii) Minimum Wages & Conditions of Employment Act, Chapter 276 of the Laws of Zambia
- (iv) Factories Act, Chapter 441 of the Laws of Zambia
- (v) Workers' Compensation Act No 10 of 1999
- (vi) Statutory Instruments Number 1, 2 and 3 of 2011

Each answer must be supported by relevant authorities

The answer must be written in the answer booklet provided indicating the student's computer number only

**DO NOT OPEN THE PAPER UNTIL INSTRUCTED TO DO SO**

## SECTION A: Answer the compulsory question

### Question one

Lilly and Daisy have been good friends since school days. The ladies are graduates from UNZA. They had both obtained a degree in psychology. They commenced work with the Disability Agency providing private care for people with intellectual disabilities from the 1<sup>st</sup> of January 2000. Their job was on part time basis and they worked for 20 to 30 hours per week depending on the demand for their services. Towards the end of July 2000 the Disability Agency went through a restructuring programme and decided to set up an Acquired Brain Injury (ABI) Unit within the Agency. An advertisement was placed in the two main newspapers for a coordinator and a deputy coordinator for the unit. Once more Lilly and Daisy both applied for the post of the coordinator. After the selection committee had met it was decided that Lilly should be appointed as the coordinator while Daisy would take up the position of the deputy coordinator. Daisy was not pleased with the idea but decided to accept the position and work well with her friend Lilly.

The ladies had taken up their new positions in the Unit from August 2000. Over the next five year period they worked hard and the ABI Unit expanded due their efforts. In December 2005 at the end of the five year period a further reorganisation took place and the position of the unit coordinator changed to that of Manager (ABI) Unit. This time there was no advertisement and Daisy was pleasantly surprised to receive a letter that she was being appointed manager of the unit with immediate effect. At the same time Lilly had also received a letter from the Chief Executive Officer (CEO) that she would have to revert back to her original position as a part time care provider. In addition they both came to learn that Marigold had been appointed the Assistant Manager. No explanation had been given in any of the letters given to the three ladies. Lilly is very upset and feels that she has been treated unfairly by her employers. She discovers that Marigold is the CEO's girlfriend and that they have been going to the same church for a long time. In addition Lilly discovers from a close friend to Daisy that she has been studying for a Master's degree which the employers had sponsored and that she had graduated in November 2005.

Lilly continued to work as a part time care giver but two months later the CEO hands her a letter terminating her employment without giving any reasons.

Lilly feels vindicated by her best friend as well as her employer and is confident that there are several claims she can lodge against the employer. Advise Lilly on the following:

- (a) A claim for being demoted (10 marks)
- (b) A claim for unfair dismissal (10 marks)
- (c) A claim for discrimination and unfair treatment by the employer (10 marks)
- (d) The remedy of reinstatement and the special circumstance that are needed for the court to grant such a remedy (4 marks)

[Total: 34 marks]

**SECTION B: Answer any one question from this section**

**Question two**

Over time the interpretation of employment contracts by courts of law has evolved to reflect the changing perceptions of the ideal balance of power between employee and employer. There are broad ranges of employer's conduct that can cause employees physical or psychological harm. Such conduct by the employer according to the British model relies on the notion of an implied duty of trust and confidence into the contract of employment. Common law covers the elements of the implied duty of trust and confidence as part of the duty of mutual co-operation raised under the British Model. Under both the duties there is an overlap of the elements except the element of economic well being of the employee. The Court of Appeal in the case of *Crossley v Faithful & Gould Holdings Ltd* [2004] IRLR 377 has rejected the possibility that there is a term implied into every contract of employment that employers must take reasonable care of their employees' economic well-being. It is difficult to see how acting contrary to such well-being could be consistent with an obligation to maintain mutual trust and confidence between the employer and employee.

- (a) With reference to the above quotation explain the mutual duty of trust and confidence from the employers implied duties as well as

the employees implied duties into the contract of service.

(8 marks)

(b) State how far the courts will go in implying these duties into the contract of employment (8 marks)

(c) Explain the limitations of this implied duty (6 marks)

[Total: 22 marks]

### Question three

In the case of *Hall v Lorimer* (1993) 66 TC 349, Nolan LJ agreed with the views expressed by Mummery J. in the High Court when he said:

" In order to decide whether a person carries on business on his own account it is necessary to consider many different aspects of that person's work activity. This is not a mechanical exercise of running through items on a check list to see whether they are present in, or absent from, a given situation. The object of the exercise is to paint a picture from the accumulation of detail. The overall effect can only be appreciated by standing back from the detailed picture which has been painted by viewing it from a distance and by making an informed, considered, qualitative appreciation of the whole. It is a matter of evaluation of the overall effect, which is not necessarily the same as the sum total of the individual details. Not all details are of equal importance in any given situation. The details may also vary in importance from one situation to another. The process involves painting a picture in each individual case."

(a) Explain the items of the checklist stated by the judge in the above case.

(10 marks)

(b) Discuss two different cases where in similar facts the court held one to be a contract of service while in the other it was a contract for services.

(10 marks)

(c) Consider the reasons why the distinction is important

(2 marks)

[Total: 22 marks]

**SECTION C: Answer any one question from this section**

**Question four**

The ILO Convention provides that all forms of discrimination at places of work should be prohibited. In Zambia employees working in the public service are distinguished from employees in the private sector. This distinction is provided for under Article 28 of the Constitution, Chapter one of the Laws of Zambia. Issues relating to dismissal or termination on the grounds of discrimination are covered under a specific legislation being Section 108 of the Industrial and Labour Relations Act. Therefore discrimination is covered both under international as well as national legislative provision.

Analyse with decided cases the impact of the ILO Convention, the domestication of the convention, the Constitutional provisions and the specific legislation in cases of direct and indirect discrimination in employment contracts.

**[Total 22 marks]**

**Question five**

To have legal force a collective agreement has to be registered by the labour commissioner. This was decided by the Supreme Court for Zambia in 2003.

Explain the bargaining procedure under the Industrial and Labour Relations Act and discuss the role of the Labour Commissioner in rejecting the registration of such collective agreements.

**[Total 22 marks]**

**SECTION D: Answer any one question from this section**

**Question six**

Mainstreaming disabilities in places of work is on the drawing board or the agenda of ILO with a view to develop a national policy in each country that has ratified the convention.

Outline the core principles and main provisions contained in Convention No. 159 and Recommendation No. 168 on mainstreaming disabilities at places of work and explore their possible application in Zambia.

You are also required to review the contents of Conventions 159 in light of its implementation, within the national legal system in Zambia.

[Total 22 marks]

**Question seven**

Health and safety at places of work was originally regulated under the common law as a threefold duty on the employer. It has now been legislated upon under two main pieces of legislation being the Factories Act, Chapter 441 of the laws of Zambia and The Worker' Compensation Act No. 10 of 1999.

Identify the main defects in the regulation of health and safety at places of work. You should also consider International ILO Conventions and recommendations which can be adopted or domesticated into the Zambian legislations.

[Total 22 marks]

**END OF THE PAPER**

**GOOD-LUCK**

**The University of Zambia**

**School of Law**

**2011/2012 Examinations**

**Jurisprudence I- L411**

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**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 inclusive question one (1).
  3. All questions carry equal marks.
  4. Answer all questions in full unless specifically instructed otherwise.
  5. No statutes and or texts are allowed into the Examination Hall.
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## **PART 1**

### **Question 1**

Mr. James Duma is a foreign affairs minister in the government of His Majesty King David of Utopialand, the last remaining absolute monarch on the African continent. In 2008 the intelligence wing of His Majesty's government uncovered an illicit affair between Mr. Duma and one of the King's 13 beauty supermodel wives. Mr. Duma and the King's wife were in fact caught *flagrante delicto*.

Under the penal code of Utopialand, Mr. Duma committed the offence of "*trespassing in another man's home*", which offence carried a sentence of expulsion from the Kingdom.

Mr. Duma is a popular figure in the Kingdom and his imminent arrest and prosecution for the offence led to civil uprising through which King David was overthrown. With the help of the international community, democratic reforms are introduced in Utopialand. Mr. Duma was appointed by parliament as the interim president for a period of one (1) year to facilitate the holding of democratic elections.

In the meantime, King David reorganised himself and formed a political party which participated in the democratic elections. Because of his wealth, King David managed to organise a strong political party which won the elections of 2009. Upon winning the elections, president David with his majority in parliament reinstated most of the laws which existed during the monarch, including the penal code.

The police in 2011 have decided to charge Mr. Duma with the offence of trespassing in another man's home for his indiscretions with the King's wife in 2008.

The police have handed over the docket to the Director of Public Prosecutions ("**DPP**") in whose office you have just been given an internship. The DPP passes on the docket to you for an opinion.

Using Kelsen's theory of law and appropriate legal authorities, draft a short opinion advising the DPP of the legal viability of the prosecution of Mr. Duma

**15 Marks**

### **Question 2**

Section 133 of the now repealed National Parks and Wildlife Act Chapter 201 of the Laws of Zambia (the "**Act**") provided:

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

In 1997, Peter Banda owned 3 trucks. While on the way to Kasama and driven by his driver, one of Peter's trucks was involved in an accident. The truck collided head-on with a public

service mini bus while trying to overtake on a bend. 15 people on the mini bus were killed instantly. The driver of the truck fled the scene and has to date not been arrested.

The truck which had minor damages was taken to a garage owned by a third party for attention. While the truck was still being fixed at the garage, the police in their continued investigations relating to the accident visited the garage to search the truck. While searching the truck, the police discovered 3 rhino horns behind the driver's seat.

Peter is immediately arrested and charged with possession of a prescribed trophy under section 133 of the Act. Despite having being arrested and charged in 1997, the prosecution of Peter is still pending before the Subordinate Court.

Peter has approached a law firm for which you are an intern. He wonders whether in the circumstances of this case, he was the appropriate person to charge for the offence of possession of a prescribed trophy. He also wonders whether his continued prosecution pursuant to the Act is legally competent in light of the fact that the Act was wholly repealed and replaced by Act No. 12 of 1998.

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

### **15 Marks**

#### **Question 3**

In 2010, thirteen miners were injured after being shot by their Chinese supervisors at 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 were prevented from accessing the embassy by heavily armed police officers. The youths were also briefly detained and assaulted by the police.

The youths have now issued court proceedings against the state for unlawful and false imprisonment, assault occasioning actual bodily harm and breach of their constitutional right of assembly and expression.

You are the freshest lawyer in the Attorney General's Chambers. The Attorney General 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 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 Chinjamba and Sibande cases and is confused as what is the correct position of 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 school of 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

Jeremy Bentham and Eugen Ehrlich as legal philosophers lived at different times and propounded different legal philosophies. However, because of their views of the social relevance of the law to society, they can as well be mistaken as having lived at the same time and shared the same school of thought. Eugen Ehrlich famously stated:

***“To attempt to imprison the law of a time or of a people within the sections of a code is about as unreasonable as to attempt to confine a stream within a pond. The water that is put in the pond is no longer a living stream but a stagnant pool, and but little water can be put in the pond.”***

Discuss how this proposition is a shared understanding of the function of the law by both Jeremy Bentham and Eugen Ehrlich.

**15 Marks**

#### Question 6

Positivism is a reactionary legal philosophy. Fully discuss.

**15 Marks**

**Question 7**

Discuss all 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;  
and
- (iii) The incident of liability to execution under the concept of possession.

**15 Marks**

**End of Examination**

**The University of Zambia**

**School of Law**

**2011/2012 Academic Year Final Examinations**

**Jurisprudence II- L412**

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**Instructions**

1. Maximum time allowed is three (3) hours plus five (5) minutes to read through the paper.
  2. The paper is divided into four parts.
  3. Answer one (1) question from each part.
  4. The question from part A carries Twenty one (21) marks while the questions from the other parts carry Thirteen (13) marks each.
  5. No statutes and or texts are allowed into the Examination Hall other than those supplied by the School together with this examination paper.
-

## **PART A**

### **Question One**

John Phiri was employed as a wildlife police officer in 1995. The Zambia Wildlife Act of 1993 pursuant to which John was appointed provided that a wildlife police officer could not be discharged from the employment of the Zambia Wildlife Authority on medical grounds unless on recommendation of a medical board constituting of three medical practitioners appointed by the Permanent Secretary of the Ministry of Health.

In 2011, John was discharged on medical grounds from his job by the Commissioner of the Zambia Wildlife Authority pursuant to the Zambia Wildlife Act of 2010 which repealed and replaced the Zambia Wildlife Act of 1993. Under the Zambia Wildlife Act of 2010, the requirement of a recommendation of the medical board before a wildlife police officer could be discharged on medical grounds was done away with. Under the Zambia Wildlife Act of 2010, the Commissioner of the Zambia Wildlife Authority has the power to discharge a wildlife police officer on medical grounds based on the records of absence from work due to illness

John is aggrieved with the discharge arguing that the Commissioner had no powers to discharge him on medical grounds and that in any case whereas the Commissioner had powers under both the 1993 and 2010 Zambia Wildlife Acts to appoint wildlife police officers, he had no powers to terminate their contracts.

You have just been given an internship by one of the law firms in Lusaka which John has approached for a legal opinion.

Your principal has asked you to attend to the John's instructions. Using your just acquired knowledge on the techniques of statutory interpretation and using appropriate jurisprudence, draft a short opinion to your principal fully advising him on John's claim against the Zambia Wildlife Authority.

**21 Marks**

## **PART B**

### **Question Two**

Power Number One Zambia Limited ("Power") which produced strong alcoholic sachets popularly known as "tujiligili" closed on 15 April, 2012 following the decision by the government to ban the production, distribution, sell, consumption and possession of the said sachets.

Peter Chibwe was one of employees who were declared redundant as a result of the closure of Power. He, like all the other affected employees, was paid his full redundancy benefits.

Peter sues Power in the High Court on the basis that he was not given one (1) month actual notice before being terminated for reasons of redundancy. He argues that the payment in lieu of notice contravenes not only the provisions of his contract but also the Supreme Court decision in the case of *Kasote Singogo v. Chilanga Cement Plc* in which the Supreme Court ruled that where an employee is terminated for reasons of redundancy, he must be given actual notice and not payment in lieu thereof so that he is mentally prepared for the loss of employment and to start preparing for his future.

Power has instructed a Ndola based law firm, for which you are the newest team member, to defend it by asking the High Court to dismiss John's claim on the basis that the closure of Power was not contemplated and it was not possible to give advance notices to employees and that the Kasote Singogo Supreme Court decision is bad law and should not be followed by the High Court as payment in *lieu* of notice is permissible both under the Employment Act and common law.

Using appropriate techniques of judicial process and jurisprudence, draft a short opinion advising Power on its instructions.

### 13 Marks

#### Question Three

Mary Zimba was employed as an accountant in the Ministry of Finance. In abuse of her position, she on 1 December, 2010, stole K120,000,000.00 meant for housing allowances for the Ministry's employees.

Her indiscretion was not discovered until 10 December, 2010 when she was arrested for abuse of office under the Anti Corruption Commission Act. On 15 December, 2010, the provision in the Anti Corruption Commission Act which provided for the offence of abuse of office was repealed. Mary was charged with abuse of office on 20 December, 2010, convicted on 26 December, 2010 and sentenced to 2 years imprisonment with hard labour on 3 January, 2011.

In not more than two sentences, state using statutory authorities only (where necessary and applicable), whether or not the prosecution of Mary is legally competent:

- (a) if the facts are as set out above;
- (b) if the repeal of the provision on abuse of office in the Anti Corruption Commission Act took place on 30 November, 2010;
- (c) if the repeal of the provision on abuse of office in the Anti Corruption Commission Act took

place on 21 December, 2010;

(d) if the repeal of the provision on abuse of office in the Anti Corruption Commission Act took place on 27 December, 2010;

(e) if the repeal of the provision on abuse of office in the Anti Corruption Commission Act took place 4 January, 2011.

**13 Marks**

## **PART C**

### **Question 4**

One of the most important principles that the law has recognised for over thousands of years is freedom of contract or enterprise. This freedom is now not limitless and appears to be only a fallacy. Employment law has prescribed minimum terms on which an employee may be engaged, competition law has proscribed anticompetitive trade practices and building laws have prescribed the requirement for building permission.

Fully discuss the reasons for and the importance of the law's intervention in an individual freedom of contract or enterprise.

**13 Marks**

### **Question 5**

Discuss how the decision in the case of *Leonard Mungabangaba v. the Attorney General* can be reconciled with the principle of supremacy of the Zambian constitution.

**13 Marks**

## **PART D**

### **Question 6**

Describe the concept of social contract and how it has involved in a modern democratic state.

**13 Marks**

### **Question 7**

Answer both questions below:

- (i) List and discuss two reasons why the power of the courts to punish for contempt has contributed to the negative perception of the legal profession as a whole.
- (ii) Contrast *res judicata* with *stare decisis*.
- (iii) Briefly explain the *ejusdem generis* rule of interpretation.

**13 Marks**

**End of Examination**



**International Law II Law of International Institutions and Organizations**

**L432**

**Final Exam**

You are permitted to bring the **UN Charter; the Rome Statute of the International Criminal Court (ICC); The Constitutive Act of the African Union; The Convention on Privileges and Immunities of the UN; The European Convention on Human Rights; and the ICJ Statute into the exam.**

Please answer **four (4)** out of **seven (7)** questions. **Answer Question 1; and select one question from each of the three (3) sections.**

Please read the questions carefully. All case scenarios are fictional and designed for examination purposes only.

Kindly indicate clearly on your answer sheet the numbers of the questions that you have selected.

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**Question 1 (Compulsory) – 20 marks**

Mr. Kunda, then a retired politician, was nominated by the MMD government and thereafter appointed to a Commission established under the UN Council of Human Rights as a special rapporteur from January 2011 to December 2011. Mr Kunda was required to write and present a report on the status of civil and political rights in Zambia for the UN Council on Human Rights. Due to scheduling problems, the session at which Mr Kunda was to report his findings was delayed until January 2012.

The new Zambian government alleges that Mr. Kunda, appointed by the previous regime and now an active part of the opposition, has changed the original report to one that was biased, replete with inaccuracies and untruths, and defames the current President - a crime in Zambia. Mr. Kunda alleges that the government is preventing him from releasing his report by withholding his pension and filing criminal charges against him. He maintains that he and the report are protected by the Convention of Privilege and Immunities of the UN, to which Zambia is a state party.

The UN Economic and Social Council has requested for an Advisory Opinion from the International Court of Justice (ICJ) as to the applicability of the Convention of Privileges and Immunities of the UN in this case.

The Zambian government's proposed arguments are that the criminal charges mean that Mr. Kunda is not able to travel or to otherwise submit the report. Zambia should have the opportunity to prove

the case in a domestic court and maintains that local remedies have not been exhausted. Further, the Zambian government has a reservation to Article 30 of the Convention of Privileges and Immunities of the UN and, therefore, Zambia's explicit consent is required for Mr. Kunda to be able to claim immunity under the Convention.

Write a comprehensive memo referencing applicable international laws and cases for the Ministry of Foreign Affairs on what the ICJ's opinion is likely to be regarding the following:

1. The ICJ's competence to give an Advisory Opinion in view of the reservation to Article 30 of the Convention of Privileges and Immunities of the UN?
  2. The government's proposed arguments as articulated above?
  3. Can Zambia make a cogent argument on the basis of Article 15 of the Convention?
  4. If the ICJ Advisory Opinion provides that he indeed is immune, can his immunity be waived?
  5. If you were a judge on the ICJ and a Zambian citizen, could you remain part of the court's composition for this Advisory Opinion?
  6. What might be the consequences of Zambia ignoring this Advisory Opinion?
- 

**Section One (Answer One Question) – 15 marks**

1. The African Union needs to respond to the situation in Mali where Tuareg rebels have taken over half of the country and declared it an independent nation Azawad. As the newly appointed Zambian representative to the A.U. prepare a position paper advising the A.U. of its options. Identify the organs of the AU and how each may contribute to resolving the situation in Mali. Is recognising the state of Azawad likely in view of the recent secession of South Sudan from Sudan and its recognition as an independent state?
  2. Discuss the membership and voting procedure in the Security Council. Suggest improvements to make the Security Council more democratic? Why hasn't the Security Council been reformed?
- 

**Section Two (Answer One Question) – 15 points**

1. If the UN Charter does not provide specifically for peacekeeping, what is the legal basis for peacekeeping operations? What are the basic principles that must exist before a UN peacekeeping operation can be undertaken? Should Peacekeepers be sent to Syria to resolve the current crisis?
  2. You are the international legal advisor to the United Kingdom. The United Kingdom has apprehended two suspected terrorists in Helmand, a province of Afghanistan, where both United Kingdom (UK) and US military troops are supporting local Afghani troops to maintain the peace. The UK is also the largest contributor of aid to Helmand province supporting projects focused on governance and institution building. The US troops have requested that the UK military hand them over to the Americans so that they can be sent to Guantanamo Bay for questioning. Applying the European Convention on Human Rights and case law, advise the UK on whether they will violate the law by handing over the suspects.
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**Section Three (Answer One Question) – 10 marks**

1. The International Criminal Court has requested Libya to hand over Sial al-Islam Gaddafi to face trial. You have been hired by the Libyan government to advise only on *complementarity*. Explain why Libya should or should not hand him over to the ICC.
2. “The selection of the American nominee Jim Yong Kim as president of the World Bank, over Nigeria’s finance minister, Ngozi Okonjo-Iweala, who was overwhelmingly regarded as a vastly superior candidate, is impossible to condone but can be explained”. Briefly explain.

**End of Examination**

**The University of Zambia  
School of Law**

**Second Semester Exam, 2011/2  
L452-International Investment Law**

**Duration: 3 hours + 5 minutes to read the question.**

**Instructions**

Students are at liberty to bring into the Exam room unmarked Statutes.

You are required to answer four questions, question 1(compulsory) and any other three questions.

Make prudent use of time.

**Question 1 (18 marks).**

Halmark International is a Norwegian insurance company with a presence in a number of countries across the globe. Halmark is desirous of setting shop in the Democratic Republic of Congo, though it is wary of Congo's volatile political atmosphere which may negatively impact on the viability of its investment in that country. Halmark CEO, Trevor Ljumberg was recently in the country in the company of the Norwegian commerce ministry officials and other high profile businesspeople to assess the desirability of investing in the DRC. Ljumberg has formed the opinion that it will be very profitable to invest in the Congo DR, though the risks still give him a big headache.

Mr. Ljumberg now seeks your opinion on the various options and strategies available to Halmark to hedge risks of investing in the Congo DR. Comprehensively advise him on the same.[18 marks]

**Question 2 (14 marks).**

Discuss how the IMF's activities contribute to investment flows in developing countries like Zambia.[14 marks]

**Question 3(14 marks).**

Highlight the relevance of the following institutions to the field of investment within their respective jurisdictions.

- (a) PTA Bank
- (b) Africa Development Bank
- (c) Zambia Development Agency

**[14 marks]**

**Question 4 (14 marks).**

- a) Outline the various ways of transferring technology from the developed countries to the developing countries.
- b) Outline the various ways of limiting the effects of double taxation.

**[14 marks]**

**Question 5(14 marks).**

Discuss how the activities of MIGA and ICSID help in fostering a good investment climate in Zambia.

**[14 marks]**

**Question 6(14 marks).**

Write short notes on the following:

- (a) HIPC
- (b) MDRI
- (c) New York Convention on the Recognition and Enforcement of Arbitral awards, 1958
- (d) Calvo Doctrine

**[14 marks]**

**Question 7(14 marks)**

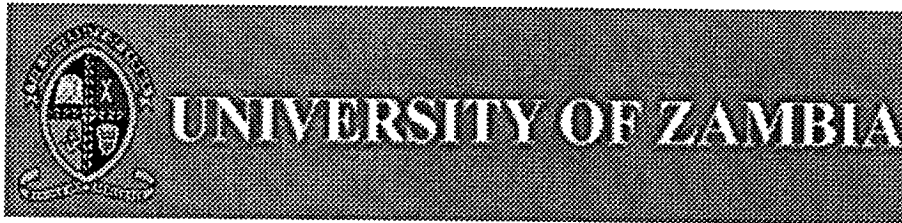
Discuss the following ways of resolving investment disputes, outlining the merits and demerits of each:

- a)arbitration
- b) suing in the domestic courts
- c) diplomatic intervention
- d)state responsibility

**[14 marks]**

-----End of Exam-----

Good luck!!!!!!!!!!!!!!!!!!!!!!



**SCHOOL OF LAW**

**REFUGEE LAW L472**

**END OF THE SECOND SEMESTER EXAMINATIONS**

**INSTRUCTIONS**

- (i) The paper has seven questions . You must answer QUESTION ONE AND ANY OTHER THREE QUESTIONS**
  - (ii) Duration three (3) hours and five (5) minutes reading through the paper.**
  - (iii) Candidates must use the answer sheets provided .**
  - (iv) Candidates are allowed to bring into the examinations room clean and unmarked copies of 1951(Geneva) Convention, 1969 OAU Convention, the Statute of UNHCR and the Refugees (Controls) Act. These Materials may not be shared.**
  - (v) Do not turn this page or start writing until you are told to do so.**
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## QUESTION ONE

Since independence in the 1960s, Xanadu has been governed by the majority ethnic group, the Xanians. Since the late 1980s, however, the minority ethnic group, the Arcadians, has been campaigning for greater political power and respect for their human rights. Although attempts were made to provide a degree of autonomy to the southern province of Arcadia, where the Arcadians predominantly live, these were short-lived. Matters were exacerbated by the discovery of valuable oil reserves in 1994 in Arcadia. The Arcadians argued that they should receive a significant proportion of the revenue from these reserves because the reserves were found on what has traditionally been their land. However, the government was unsympathetic and very little of the profits made from selling the oil was invested in Arcadia.

In an attempt to crack down on increasing Arcadian political agitation spurred on by the oil issue, the government suspended the Arcadian provincial Administration in 2003 and imposed control of the province from the capital. Among the measures introduced was a change in the language of instruction used in Arcadian schools, from the Arcadian tongue to that spoken by Xanians. In addition, all political parties pushing for the greater autonomy or secession for Arcadia were banned. Hundreds of young Arcadians were arrested on suspicion of having separatist tendencies; they were held without trial. Demonstrations against the government became a daily occurrence in the autumn of 2003. At one such march in November, the army was called in and a violent confrontation between them and unarmed protestors ensued. Following this, even more Arcadians were arbitrarily detained and tortured. Hundreds of others, especially young men, fled to the neighbouring State of Elysium. At the same time, an organization called the Arcadian Liberation Front (ALF) made itself known by bombing government targets in the province, including police stations and military barracks. In response, the government ordered its forces to crush what it denounced as a terrorist movement. Large numbers of troops were sent in to Arcadia at the end of 2003. The ALF became engaged in guerrilla-style confrontation with the armed forces, provoking the army into a furious attack on innocent Arcadians. The first two weeks of January 2004 saw the murder, rape and torture of hundreds of Arcadian men and women. Whole villages in Arcadia were set on fire by troops, with the apparent aim of forcing their residents to leave the country. As a result of this campaign of terror against the Arcadians, thousands fled to the neighbouring State of Elysium. It is

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estimated that in the month of January alone 200,000 refugees crossed the border. The unexpected nature of this crisis meant that very few humanitarian organizations were present on the ground and that the Elysium government was equally unprepared. Indeed, Elysium is a developing country with barely functioning public services (particularly in the judicial, health and education fields) and underpaid, and often corrupt, government officials. Consequently, refugee camps were established in a chaotic manner along the border. Even though UNHCR and other humanitarian organizations are now present, accommodation materials and food supplies are inadequate, and the distribution process is not efficient. There is also very little access to clean water. As a result, many of the refugees are living in the open air, and disease from contaminated water seems to be on the rise. This is particularly worrying as there are few medical facilities in the camp. In addition, many children appear to have become separated from their parents during flight and are either living on their own (as unaccompanied children) or with families that have taken them in (as separated children). In recent weeks, due to an increase in hostilities in Arcadia, thousands more have been making their way towards Elysium. There have also, however, been reports that the Elysium military have been patrolling the border and preventing the entry of hundreds of people seeking asylum. It is estimated that there are now about 250,000 refugees from Xanadu in Elysium, a country which normally receives about 20,000 asylum-seekers a year. The Elysium authorities are overwhelmed and complaining that they do not have the resources to look after this massive refugee population. Senior officials have concluded that their refugee status determination procedures simply will not be able to handle the large numbers of Arcadians who have sought asylum. The government refuses to formally acknowledge the Arcadians as refugees despite the ethnic and political violence in their country of origin. Elysium is, however, willing to tolerate a short-term presence of the refugees, as long as assistance is provided by the international community, including through UNHCR. You are a Protection Officer who has recently arrived in Elysium, which is Party to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol. For the purposes of this exercise, you can assume that the organization has concluded internally that those fleeing Arcadia would qualify as refugees under the definition in the 1951 Convention.

**(i) What advice would you give to the government about determining refugee status in this situation?( 20 Marks)**

**(ii) Do you have any worries about *refoulement* of refugees in this context?(10 Marks)**

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**(iii) Looking at the current situation, identifies two protection concerns, other than the risk of *refoulement*, in relation to the refugees from Xanadu/Arcadia.(10 Marks)**

### **QUESTION TWO**

Discuss the difference between the 1951 UN (Geneva) Convention on status of refugees and the 1969 OAU Convention Governing the Specific Aspect of Refuge problems in Africa and how these differences were designed to fulfill the wishes of the drafters of the OAU Convention.(20 Marks)

### **QUESTION THREE**

Moma is a citizen of Leshi, where he used to be a member of an opposition party banned by the government. Increasingly, opposition groups in Leshi were finding it difficult to speak out without suffering reprisals. On three occasions in the last month, Moma was arrested and Interrogated by the local police in connection with his opposition activities. During the interrogations, Moma was severely beaten and, when he was arrested for the third time, threatened with being killed. He therefore decided to leave Leshi and did so immediately after his last release from detention. He made his way by plane to Afia, which is not Party to the 1951 Convention/1967 Protocol and has not established a mechanism to examine applications for refugee status. Upon his arrival in the capital, Moma went to the UNHCR office and told the Protection Officer that he needed protection because his life was at risk in Leshi. Please answer the following questions:

- (i) .Is it necessary to conduct refugee status determination in Moma’s case?(5 Marks)**
- (ii). If yes, which is responsible for determining whether Moma is a refugee?(5 Marks)**
- (iii) .What are the criteria that need to be satisfied for Moma to qualify for refugee status?(5 Marks)**
- (iv) .What are Moma’s rights and obligations in Afia should he be granted refugee status?(5 Marks)**

### **QUESTION FOUR**

**(a) To what extent is there a difference between the definition of “Refuge” as contained in the 1969 OAU Convention Governing the Specific Aspect of Refuge problems in Africa and the definition in the 1951 Convention relating to the status of Refugees? (10 Marks)**

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**(b) What developments prompted the need for a uniquely African definition of “refugee” (10 Marks)**

**QUESTION FIVE**

Bashir (19) is a citizen of Oberon. He belongs to a minority ethnic group. Fifteen years ago, the Government of Oberon stripped the members of his ethnic group of their citizenship and took their land. The authorities stopped issuing identity documents to members of this minority. Instead, they are designated as “foreigners” or “unregistered” and on this basis their stay in Oberon is tolerated. Oberon is not a prosperous country, and members of Basher’s ethnic minority have only limited access to the labor market. They are not entitled to public education nor are they allowed to form political parties or other organizations. Some members of the ethnic group who have spoken out and demanded respect for the human rights of the members of the group have been imprisoned and mistreated. For all these reasons, Bashir feels that he has no future in Oberon. He crosses the border and applies for refugee status in neighboring Titania. The asylum authorities in Titania reject Bashir’s application on the basis that “the circumstances on which he based his claim – i.e., that he ‘has no future in Oberon’ – are not foreseen by the 1951 Convention and do not give rise to refugee status.”

**(i). Do you agree with the reasoning of Titania’s asylum authorities? Please elaborate.(10 Marks)**

**(ii). Does Bashir meet the inclusion criteria of the refugee definition contained in the 1951 Convention? (10 Marks)**

**QUESTION SIX**

Pounder General is a national of Meridia. Eight years ago, armed conflict broke out between different ethnic groups in that country. About eighteen months later, Pounder General fled to Arcadia, where she was granted refugee status under the 1951 Convention on the grounds that she had a well-founded fear of persecution for reasons of nationality and imputed political opinion. Since arriving there she has been granted a temporary residence permit which is renewable every year. Recently, when Pounder General went to the office where she normally renewed her permit, she was told that she would have to attend an interview with an officer of the Arcadian Asylum Authority for the purpose of determining whether her refugee status should

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be considered ceased. Three years ago, the conflict in Meridia ended with a peace agreement, following which elections were held. In recent months, the authorities of Arcadia have been encouraging refugees from Meridia to return home and have been offering a generous “repatriation package” to assist such persons to return and re-establish their lives there. A number of refugees have returned, but there have been reports of violent incidents during which some of the returnees were attacked by former members of armed groups involved in the conflict. During the war in Meridia, Pounder General was repeatedly raped by soldiers. She became pregnant and had an abortion. Last year she was issued a passport by the authorities of Meridia which had requested her to return there for a few days to testify as a witness during judicial proceedings against a former general accused of war crimes committed during the conflict in Meridia. She does not want to return to Meridia.

**(i) In your view, would the circumstances justify the cessation of Pounder General’s refugee status?(5 Marks)**

**(ii) If Pounder General were to travel to Meridia to testify in court, could this give rise to cessation of her refugee status?(5 Marks)**

**(iii) What exactly is involved in local integration of refugees what measures should be put in place to achieve this?( 5 Marks)**

**(iv) What is the meaning of residual caseload, repatriation and resettlement in refugee matters( 5 Marks)**

**END OF EXAMINATION**

**UNZA LAW SCHOOL**  
**REFUGEE LAW--LPU 972 FINAL EXMAINATION**  
**24 MAY 2012**  
**UPPER DINING HALL**

**INSTRUCTIONS**

**YOU HAVE 3 HOURS IN WHICH TO ANSWER THIS  
EXAMINATION**

**THIS EXAMINATION HAS FOUR SECTIONS: THE FIRST SECTION  
IS COMPULSORY. ANSWER ONE QUESTION FROM EACH OF  
THE REMAINING THREE SECTIONS**

**NO REFERENCE MATERIALS ARE PERMITTED IN THE  
EXAMINATION ROOM**

## SECTION A

### Question 1

Samiran Hassan is a 32 year old journalist who worked for the Weekly Guardian in Damascus, Syria. In 2007 her editor--Wali Abdul Waleed was convicted for fermenting terrorism on account of writing an article in which he accused the government's foreign policy as rendering them (Syria) vulnerable to attack from Israel. He was sentenced to 6 and half years in prison. The newspaper was shut down by the National Security Ministry which confiscated all the newspaper's computers. Samiran became concerned because she was working on an article in which she interviewed members of the anti-government rebel forces asking them to explain the grounds for their movements. Representatives of the rebel forces were put on trial and subsequently executed for terrorism. Samiran fears that the National Security Ministry will read her article on the hard drive of one of the confiscated computers and that she will be charged under Syrian Terrorism law.

Syrian Law defines terrorism as "the commission of acts or the threat to commit acts involving explosions or arson, or other acts which threaten to cause loss of life of human beings, or damage their health, inflict significant damage to property, or other socially dangerous consequences, if these acts are implemented with the aim of undermining public security, spreading panic among the population or forcing state authorities or international organizations to take decisions that comply with the demands of terrorists." A "terrorist" is defined as a person who takes part in terrorist activity in any form, and the definition of "terrorist activities" includes deliberate financing or provision of assistance to terrorist groups.

Samiran crosses the border into neighbouring Jordan and goes to the United Nations High Commissioner for Refugees (UNHCR) where she requests the provision of a refugee identification card and a UNHCR recommendation for resettlement to a third country.

**You are a legal staff officer at UNHCR in Amman Jordan and have been asked to write a memo determining whether or not UNHCR should recognize Samira as a refugee and seek resettlement for her. During your interview with her, she reveals that she worked very hard to finish her article and visited the rebel camp 5 times and that she paid for the rebels to travel to a safe location where she could conduct the interviews. She claims that she wishes to continue writing articles about the rebel group and present their side of the story to the world. [25 Marks]**

## SECTION B

### Question 2

“Understanding the predicament of being persecuted as the sustained or systemic violation of basic human rights demonstrative of a failure of state protections means that the refugee definition is to be approached not from the perspective of what the refugee claimant can do to avoid being persecuted, but from the perspective of the fundamental human right in jeopardy and the resulting harm.”

**Discuss this statement in light of your understanding of “persecution” in the context of International Refugee Protection discourse. [15 Marks]**

### Question 3

Juan is a 21 year old man from Ciudad Juarez, Mexico. The city was at the center of battles between two drug cartels-the Juarez cartel and the Sinaloa cartel and 4,600 people were killed in two years.

Five years ago, Juan’s younger sister, Marian, was kidnapped, raped, and killed. Although Juan’s parents went to the police, the killers were never apprehended. Juan was furious and decided to establish his own security company to serve middle class companies in Ciudad Juarez. One night, Juan was contracted to escort Sofia, a daughter of a prominent politician, to a social event at the town hall. As Sofia stepped out of the bullet proof vehicle, three hooded men grabbed her and threw her into another car. Juan fired his weapon at the assailants but they escaped. Sofia’s family was furious and threatened Juan with death. Juan went to the police to seek protection but the police just laughed at him and called him a “pathetic cop wannabe.” Juan subsequently received a tip that Sofia had been kidnapped by a paramilitary gang with links to the police.

Two days later, Sofia’s father received a phone call instructing him to pay a \$250,000 ransom for the safe return of his daughter. After the money was turned over in accordance with the gang’s instructions, Sofia was released and returned to her family with 3 fingers chopped off. Juan received a private and reliable tip that Sofia’s s family believed that Juan worked for the paramilitary gang and that they (Sofia’s family) were planning to kill him, and that they had vowed that he would suffer a “slow and painful death.”

Juan decides to seek sanctuary in the United States (US) and since he still has 1 month left on his visitor’s visa to that country, he boards the first flight out of Mexico to the US. After living illegally in the US for 11 months, Juan is picked up by a police officer who suspects he is an

illegal immigrant. Juan is taken to the police station and when he cannot produce any genuine papers, he is informed that he will be deported in the next 48 hours. Juan asks for a lawyer and the police give him the number to a legal aid office.

**You are the attorney who answers Juan's call. Advise Juan on whether he is eligible for asylum and international protection. [15 Marks]**

### **SECTION C**

#### **Question 4**

“The escalating problem of Internally Displaced Person's is hopeless with no feasible solution in sight.”

**Do you agree? Please provide a motivation for your answer? [15 Marks]**

#### **Question 5**

You are the legal advisor to UNHCR Uganda's office. The government of Uganda has sent notice that due to concern for security interests and damage to the environment as a result of the continuous influx of asylum seekers from Mali, it has determined that there are grounds of closure of the borders under a state of emergency. You have been asked to draft a memorandum identifying whether or not UNHCR finds such action to be appropriate under international law.

**Please draft your memorandum [15 Marks]**

### **SECTION D**

#### **Question 6**

An asylum seeker named Rania is 25 years old and is a Libyan national. She left Libya as she felt she was in grave danger. Her father Mahmoud was a lawyer in Tripoli. He wrote several articles and a book criticizing the government, corruption and human rights abuses in Libya. In 2002, internal security forces arrested him at their home. He was detained for 12 months, and shortly thereafter sentenced to 17 years imprisonment in a trial in which he was unrepresented.

While at university, Rania established a student organization that researched and discussed human rights violations in Libya. She used this forum to discuss her father's work and unlawful arrest and trial. In January 2011, Rania set up a facebook page as part of her human rights activism.

On February 18, 2011, Rania joined protestors near the Fadil Bu Omar Katibam, a security force base in the centre of Benghazi. She was present when security forces opened fire on protestors killing a large number of people. Later that evening she posted a facebook status update on the shootings. The next day she was summoned by Internal Security because of her postings on facebook and at 6pm that evening, plain clothes policemen went to her family home and forcibly removed Rania to an undisclosed location.

Rania claims that she was interrogated and tortured for three days. She was accused of being a ring leader of the protests and following in her father's dissident footsteps. She was released on the fourth day following her arrest.

Convinced she would be murdered if she stayed in Libya, her mother put her in touch with a Libyan family living in Zambia who wanted to hire a Libyan domestic servant. Rania obtained a counterfeit passport and her mother purchased an air ticket for her. Upon arrival in Zambia, Rania began working for the Libyan family as a maid, and lived in the servants quarters at her place of employment. Six months later, Rania was arrested by immigration officials for being in possession of a counterfeit passport and being in Zambia illegally. Rania insisted that she is a refugee and her case was transferred to the Office of the Commissioner for Refugees.

**Assess Rania's claim, advising the Commissioner for Refugees whether Rania should be granted refugee status. [15 Marks]**

#### **Question 7**

“The international protection regime has dramatically evolved. It is no longer exclusively informed by the demands of post-world war II Europe, and the cold war era.”

**Critically evaluate this statement [15 Marks]**

[CAP. 2

REPUBLIC OF ZAMBIA

**THE INTERPRETATION AND GENERAL PROVISIONS ACT**

**CHAPTER 2 OF THE LAWS OF ZAMBIA**

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**CHAPTER 2**

**THE INTERPRETATION AND GENERAL PROVISIONS ACT**

**ARRANGEMENT OF SECTIONS**

**PART I**

**PRELIMINARY**

*Section*

1. Short title
2. Application

**PART II**

**GENERAL PROVISIONS OF INTERPRETATION**

3. Interpretation
4. Grammatical variations, gender and number
5. Service by post
- 5A. Names of Provinces, Districts, etc.

**PART III**

**GENERAL PROVISIONS REGARDING WRITTEN LAWS**

6. Acts, Applied Acts and Ordinances to be public Acts or Ordinances
7. Citation
8. Citation of Acts of the Parliament of the United Kingdom
9. Schedules and tables to be part of written laws
10. Subdivision of written laws
11. Repealed written law not revived
12. Repeal of amended law to include amendments
13. Repeal and substitution
14. Provisions with respect to amended written law and effect of repealing written law
15. Effect of repeal of written law on statutory instrument made under it
16. Construction of amending written law with amended written law
17. Effect of expiry of written law

PART IV

STATUTORY INSTRUMENTS

*Section*

18. Publication of statutory instruments
19. Commencement of statutory instruments
20. General provisions relating to statutory instruments
21. Reference to written law to include statutory instruments
22. Rules to be laid before the National Assembly

PART V

POWERS AND DUTIES

23. Exercise of power between publication and commencement of Act
24. Time for exercise of power
25. Implied power
26. Power to appoint includes power to remove
27. Power to appoint alternate or temporary members
28. Power to appoint chairman, etc.
29. Appointment by name or office
30. Reference to holder of office includes a person discharging functions of office
31. Power of majority
32. Law officers
33. Powers of board, etc., not affected by vacancy, etc.
34. Affixing of common seal

PART VI

GENERAL PROVISIONS REGARDING TIME AND DISTANCE

35. Computation of time
  36. Provision where no time prescribed
  37. Construction of power to extend time
  38. Measurement of distance
-

PART VII

GENERAL PROVISIONS REGARDING LEGAL PROCEEDINGS

*Section*

39. *Ex-officio* proceedings not to abate on death, etc.
40. Imposition of a penalty no bar to civil action
41. Provisions as to offences under two or more laws
42. Amendment of penalty
43. Penalties prescribed may be maximum penalties, but may be cumulative
44. Disposal of forfeits
45. Disposal of fines and penalties
46. Evidence of signature of Attorney-General or Director of Public Prosecutions

PART VIII

GENERAL MISCELLANEOUS PROVISIONS

47. Deviation from forms
  48. *Gazette*, etc., to be *prima facie* evidence
  49. Evidence of Applied Acts
  50. Provision in statutory instruments relating to fees
  51. Savings of rights of the Republic
  52. This Act to bind the Republic
-

CHAPTER 2

INTERPRETATION AND GENERAL PROVISIONS

An Act to amend and consolidate the law relating to the construction, application and interpretation of written law; to provide for the exercise of statutory powers and duties; and to provide for matters incidental to or connected with the foregoing.

[24th October, 1964]

60 of 1964  
13 of 1965  
27 of 1965  
29 of 1965  
39 of 1965  
58 of 1965  
69 of 1965  
40 of 1967  
9 of 1968  
4 of 1970  
43 of 1970  
47 of 1970  
51 of 1970  
20 of 1971  
4 of 1989  
13 of 1994

PART I

PRELIMINARY

1. This Act may be cited as the Interpretation and General Provisions Act.

Short title

2. (1) The provisions of this Act shall apply to every written law passed or made before or after the commencement, unless a contrary intention appears in this Act or in the written law concerned.

Application

(2) The provisions of this Act shall apply to this Act as they apply to an Act passed after the commencement.

PART II

GENERAL PROVISIONS OF INTERPRETATION

3. The following words and expressions shall have the meanings hereinafter assigned to them respectively, that is to say:

Interpretation

“Act” and “Act of Parliament” mean an enactment of Parliament;

“act”, used with reference to an offence or civil wrong, includes a series of acts, and words which refer to acts done extend to illegal omissions;

“this Act” includes any statutory instrument made and in force under the Act in which the expression appears;

“Administrative Officer” means, a District Secretary and an Assistant District Secretary;

“Appeal Judge” means a Judge of the supreme court or a High Court judge when exercising appellate jurisdiction.

“Applied Act” means an enactment of the Legislature of the former Federation of Rhodesia and Nyasaland in force in the Republic by virtue of the provisions of the Federation of Rhodesia and Nyasaland (Dissolution) Order in Council

App. 2

“area”—

Cap. 281 (a) in relation to a City Council, Municipal Council, Town Council or District Council, has the meaning assigned thereto by section *two* of the Local Government Act;

“Assistant District Secretary” means a public officer appointed as such and, in relation to any District, means an Assistant District Secretary for the time being exercising and performing his functions in that District;

Cap. 1 “Attorney-General” means the Attorney-General of Zambia;

Cap. 1 “Auditor-General” means the Auditor-General for Zambia;

“British Act” means an Act of the Parliament of the United Kingdom extended or applied to the Republic;

“Cabinet” means the Cabinet established by the Constitution;

“Chief Justice” means the Chief Justice of Zambia;

“Christian name” means any name prefixed to the surname whether received in Christian baptism or not;

“coin” means any coin legally current in Zambia;

“commencement”, used in or with reference to any written law, means the date on which the same came or comes into operation;

Cap. 34 “commissioner for oaths” means a person appointed as a commissioner for oaths by or under the Commissioners for Oaths Act;

“Common Law” means the Common Law of England;

“Constitution” means the Constitution of Zambia as by law established;

“contravene”, in relation to any requirement or condition prescribed in any written law or in any grant, permit, lease, licence or authority granted under any written law, includes a failure to comply with that requirement or condition;

Cap. 37 “coroner” means a person empowered or appointed to hold inquests under the Inquests Act;

“council” means a City council, Municipal council, Town council or District council;

“court” means a court of competent jurisdiction for Zambia;

Cap. 322 “customs officer” means an officer as defined in section *two* of the Customs and Excise Act;

“definition” means the interpretation given by any written law to any word or expression;

“Deputy Speaker” means the Deputy Speaker of the National Assembly;

“District” means any one of the administrative districts into which Zambia is divided by the President in exercise of powers conferred on him in that behalf under any written law;

“District Executive Secretary” in relation to a District Council means the chief Executive of a Council, and includes any person for the time being discharging the functions of the Chief Executive

“document” includes any publication and any matter written, expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, which is intended to be used or may be used for the purpose of recording that matter;

“export” means to take or cause to be taken out of Zambia;

“financial year” means the period of twelve months ending on the 31st December in any year;

“functions” includes powers and duties;

“*Gazette*” means the official *Gazette* of the Government and includes any supplement to the *Gazette* and any matter referred in the *Gazette* as being published with the *Gazette*;

“Government” means the Government of Zambia;

“Government Printer” means the Government Printer of Zambia and any other printer authorised by or on behalf of the Government to print any written law or any other document of the Government;

“High Court” means the High Court for Zambia;

“immigration officer” means an immigration officer as defined in section *two* of the Immigration and Deportation Act; Cap. 123

“import” means to bring or cause to be brought into Zambia;

“Judge” means a Judge of the High Court;

“Junior Minister” means a Deputy Minister;

“land” includes anything attached to the earth or permanently fastened to anything which is attached to the earth, but shall not include any mineral right in or under or in respect of any land;

“legal practitioner” means a person who has been admitted to practice as a barrister and solicitor under the Legal Practitioners Act and whose name is duly entered on the Roll kept in pursuance of the provisions of the said Act; Cap. 30

“magistrate” means any person empowered to preside over a subordinate court established under the Subordinate Courts Act; Cap. 28

“Minister”, in relation to the functions conferred or imposed by

any written law or any provision in a written law, means the member of the Cabinet or other person for the time being vested with such functions;

“month” means a calendar month;

Cap. 281 “municipal council” has the meaning assigned thereto by section *two* of the Local Government Act;

Cap. 281 “municipality” has the meaning assigned thereto by section *two* of the Local Government Act;

“National Assembly” means the National Assembly of Zambia;

“oath”, “swear” or “affidavit” includes and applies to the affirmation or declaration of any person by law allowed to make an affirmation or declaration in lieu of oath;

“occupy” includes use, inhabit, to be in possession of or enjoy the premises in respect whereof the word is used, otherwise than as a mere servant or for the mere purpose of the care, custody or charge thereof;

“offence” means any crime, felony, misdemeanour, contravention or other breach of, or failure to comply with, any written law, for which a penalty is provided;

Cap. 281 “Officer” in relation to a council, has the meaning assigned thereto by section *two* of the Local Government Act;

“Ordinance” means a statute enacted by the Legislature of Northern Rhodesia before the 24th October, 1964;

“Parliament” means the Parliament of Zambia;

“Part”, “regulation”, “rule”, “Schedule” and “section” denote respectively a Part, regulation, rule and section of, and a Schedule to, the written law in which the word occurs; and a “paragraph” and “subsection” denote respectively a paragraph of the regulation, rule, section or subsection, and a subsection of the section, in which the word occurs;

“Permanent Secretary” means a public officer appointed as such and, in relation to any Ministry or Province means the Permanent Secretary for the time being exercising and performing his functions in that Ministry or Province;

“person” includes any company or association or body or persons, corporate or unincorporate;

“personal property”, “personalty” or “goods” includes money, bonds, bills, notes, deeds, chattels real, mining rights in or under or in respect of any land and corporeal property of every description other than real property;

“police officer” means a member of the Zambia Police Force;

“prescribed” means prescribed by or under the written law in which the word occurs;

“President” means the President of Zambia;

“Province” means any one of the Provinces into which Zambia is divided by the President in exercise of powers conferred on him in that behalf under any written law;

“publication” includes all written and printed matter and any record, tape, wire, perforated roll, cinematograph film or other contrivance by means of which any words or ideas may be mechanically or electrically produced, reproduced, represented or conveyed, and everything whether of a nature similar to the foregoing or not, containing any visible representation, or by its form, shape or in any manner capable of producing, reproducing, representing or conveying words or ideas, and every copy and reproduction of any publication;

“public holiday” means any day which is a public holiday by virtue of the provisions of the Public Holidays Act;

Cap. 272

“public office”, “public officer” and “the public service” have the same meaning as in the Constitution;

“Public Seal” means the Public Seal of the Republic;

“public place” or “public premises” includes any public way and any building, place or conveyance to which, for the time being, the public are entitled or permitted to have access, either without any condition or upon condition of making any payment, and any building or place which is for the time being used for any public or religious meetings, or assembly or as an open court;

“registered”, used with reference to a document or the title to any real property or personal property, means registered under the provisions of any written law for the time being applicable to the registration of such document or title;

“the Republic” means the sovereign Republic of Zambia;

“repeal” includes revoke, rescind or cancel;

“sell” includes barter, exchange and offer to sell or expose for sale;

“Speaker” means the Speaker of the National Assembly;

“statutory corporation” means any body directly incorporated by an Act, Applied Act or Ordinance;

“statutory declaration”, if made—

(a) in Zambia, means a declaration made under the British Act known as the Statutory Declarations Act, 1835, or under any Act providing for statutory declarations;

(b) in the Commonwealth, elsewhere than in Zambia, means a declaration made before a notary public,

commissioner for oaths or other person having authority therein under any law for the time being in force to take or receive a declaration;

- (c) in any other place, means a declaration made before a British consul or vice-consul, or before any person having authority under any Act of Parliament of the United Kingdom for the time being in force to take or receive a declaration;

“statutory instrument” means any proclamation, regulation, order, rule, notice or other instrument (not being an Act of Parliament) of a legislative, as distinct from an executive, character;

“statutory notice” means a notice made by statutory instrument;

“statutory order” means an order made by statutory instrument;

“statutory proclamation” means a proclamation made by statutory instrument;

“street” or “road” includes any highway, street, road, bridge, square, court, alley, lane, footway, parade, thoroughfare, passage or open space to which the public are entitled or permitted to have access, whether on payment or otherwise;

“vessel” includes any ship or boat or other floating craft used for transport by water;

“veterinary surgeon” means a person registered as a veterinary surgeon under the Veterinary Surgeons Act;

“Vice-President” means the Vice-President of Zambia;

“will” includes a codicil and every writing making a voluntary posthumous disposition of property;

“writing” and expressions referring to writing include printing, photography, lithography, typewriting and any other modes of representing or reproducing words in visible form;

“written law” means an Act, an Applied Act, an Ordinance and a statutory instrument.

*(As amended by Nos. 29, 39, 58 and 69 of 1965, No. 40 of 1967, No. 9 of 1968, Nos. 43 and 51 of 1970 and No. 20 of 1971)*

Cap. 243

Grammatical variations, gender and number

4. (1) Where any word or expression is defined in a written law, the definition shall extend to the grammatical variations of the word or expression so defined.

(2) Words and expressions in a written law importing the masculine gender include females.

(3) Words and expressions in a written law in the singular include the plural and words and expressions in the plural include the singular.

(4) Where the words "or", "other" and "otherwise" are used in any written law they shall be construed disjunctively and not as implying similarity, unless the word "similar" or some other word of like meaning is added.

5. Where any written law authorises or requires any document to be served by post, the service shall be deemed to be effected by properly addressing, prepaying and posting by registered post a letter containing the document and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of the post.

Service by post

5A. Whenever in any written law any Province, District or other area is referred to by name, the provision in question shall be read and construed as a reference to such Province, District or other area by the name currently assigned thereto by any written law.

Names of Provinces, Districts, etc.

(No. 47 of 1970)

PART III

GENERAL PROVISIONS REGARDING WRITTEN LAWS

6. (1) Every Act, Applied Act or British Act shall be a public Act and shall be judicially noticed as such.

Acts, Applied Acts and Ordinances to be public Acts or Ordinances

(2) Every Ordinance shall be a public Ordinance and shall be judicially noticed as such.

7. (1) Where any written law is referred to, it shall be sufficient for all purposes to cite such written law either by the short title or citation, if any, by which it is made citable.

Citation

(2) An Ordinance or an Act contained in any revised edition or Ordinances and Acts issued under any written law providing for the revised edition of such Ordinances and Acts may be cited by its short title or its chapter number in the revised edition.

(3) An Applied Act contained in any revised edition of Applied Acts issued under any written law providing for the revised edition of such Applied Acts may be cited by its short title or its chapter number in the revised edition.

(4) Any citation as aforesaid of a written law shall be construed as a reference to such written law as amended from time to time by any other written law or other instrument.

8. A British Act may be cited by its short title or citation, if any, Citation of

- Acts of the Parliament of the United Kingdom  
Schedules and tables to be part of written laws
- or by reference to the regnal or calendar year in which it was passed and by its chapter or number.
9. Every Schedule to or table in any written law, together with notes thereto, shall be construed and have effect as part of such written law.
- Subdivision of written laws
10. When a written law is divided into Parts, titles or other subdivisions, the fact and particulars of such divisions and subdivisions shall, with or without express mention thereof in such written law, be taken notice of in all courts and for all purposes whatsoever.
- Repealed written law not revived
11. Where any written law repealing in whole or in part any former written law is itself repealed, such last repeal shall not revive the written law or provisions before repealed unless words be added reviving such written law or provisions.
- Repeal of amended law to include amendments
12. Where any written law which has been amended by any other written law is itself repealed, such repeal shall include the repeal of all those provisions of other written laws by which such first-mentioned written law has been amended.
- Repeal and substitution
13. Where a written law repeals wholly or partially any former written law and substitutes provisions for the written law repealed, the repealed written law shall remain in force until the substituted provisions come into operation.
- Provisions with respect to amended written law and effect of repealing written law
14. (1) Where in any written law a reference is made to another written law or the Constitution, such reference shall be deemed to include a reference to such last-mentioned written law or the Constitution as the same may from time to time be amended.
- (2) Where a written law repeals and re-enacts, with or without modification, any provision of a former written law or the Constitution, references in any other written law to the provisions so repealed shall be construed as references to the provisions so re-enacted.
- (3) Where a written law repeals in whole or in part any other written law, the repeal shall not—
- (a) revive anything not in force or existing at the time at which the repeal takes effect; or
  - (b) affect the previous operation of any written law so repealed or anything duly done or suffered under any written law so repealed; or
  - (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any written law so repealed; or

- (d) affect any penalty, forfeiture, or punishment incurred in respect of any offence committed against any written law so repealed; or
- (e) affect any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceedings, or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing written law had not been made.

(As amended by No. 43 of 1970)

15. Where any Act, Applied Act or Ordinance or part thereof is repealed, any statutory instrument issued under or made in virtue thereof shall remain in force, so far as it is not inconsistent with the repealing written law, until it has been repealed by a statutory instrument issued or made under the provisions of such repealing written law, and shall be deemed for all purposes to have been made thereunder.

Effect of repeal of written law on statutory instrument made under it

16. Where one written law amends another written law, the amending written law shall, so far as it is consistent with the tenor thereof, be construed as one with the amended written law.

Construction of amending written law with amended written law

17. Upon the expiry of any written law, the provisions of subsection (3) of section *fourteen* shall apply as if such written law had been repealed.

Effect of expiry of written law

#### PART IV

##### STATUTORY INSTRUMENTS

18. Every statutory instrument shall be published in the *Gazette* and shall be judicially noticed.

Publication of statutory instruments

19. (1) Subject to the provisions of this section—

- (a) the date of commencement of a statutory instrument shall be the date of its publication in the *Gazette* or, where a later date is specified therein, such later date; and
- (b) every statutory instrument shall be deemed to come into force immediately on the expiration of the day next preceding the date of its commencement.

Commencement of statutory instruments

(2) A statutory instrument made and published on the date of commencement of the written law under which the instrument is made shall be deemed to come into force simultaneously with that written law.

(3) References in this section to the date of commencement of the written law under which a statutory instrument is made shall, where different provisions of that written law come into force on different dates, be construed as references to the date of commencement of the particular provision under which the instrument is made.

(4) The provisions of this section shall be without prejudice to the operation of section *twenty-three*.

General provisions relating to statutory instruments

20. (1) Any reference in a statutory instrument to “the Act” or “the Ordinance” shall be construed as a reference to the Act or Ordinance, as the case may be, under which the instrument was made.

(2) Terms and expressions used in a statutory instrument shall have the same meaning as in the written law under which the instrument was made.

(3) A statutory instrument may at any time be amended or repealed by the authority by which it was made or, if that authority has been lawfully replaced by another authority, by that other authority.

(4) Any provision of a statutory instrument which is inconsistent with any provision of an Act, Applied Act or Ordinance shall be void to the extent of the inconsistency.

(5) A statutory instrument may provide in respect of any contravention of any provision of that statutory instrument:

(a) that the offender shall be liable—

(i) to any fine not exceeding two thousand five hundred penalty units or any term of imprisonment not exceeding two years or both;

(ii) in the case of a continuing offence, to an additional penalty not exceeding a fine of twenty five penalty units in respect of each day on which the offence continues;

(iii) in respect of a second or subsequent contravention, to a higher penalty not exceeding either of the limits prescribed in sub-paragraph (i);

(b) that the court convicting the offender may or shall as the case may be, order the forfeiture to the State of anything with which the contravention was done or which was used in, or for the purpose of, or in relation to or in connection with, the commission of the contravention;

(c) for the punishment of any director or other principal officer of a body of persons or other person purporting to act in any such capacity, where a contravention committed by, or

in connection with, the affairs of a body of persons, was done with the consent or connivance of, or was attributable to the neglect of, any such director, principal officer or other person.

(6) Any act done under or by virtue of or in pursuance of a statutory instrument shall be deemed to be done under or by virtue of or in pursuance of the written law conferring power to make the instrument.

(7) Every statutory instrument shall be deemed to be made under all powers thereunto enabling, whether or not it purports to be made in exercise of a particular power or particular powers.

(8) Where a written law confers power on any authority to make a statutory instrument for any general purpose, and also for any special purposes, the enumeration of the special purposes shall not be deemed to derogate from the generality of the powers conferred with reference to the general purpose.

*(As amended by Act No. 4 of 1989 and Act No. 13 of 1994)*

21. Any reference to a written law in any other written law shall include a reference to any statutory instrument made under the written law to which reference is made.

Reference to written law to include statutory instruments

22. (1) All rules, regulations and by-laws shall be laid before the National Assembly as soon as may be after they are made, and, if a resolution is passed within the next subsequent twenty-one days on which the National Assembly has sat after any such rule, regulation or by-law is laid before it that the rule, regulation or by-law be annulled, it shall thenceforth be void but without prejudice to the validity of anything previously done thereunder, or to the making of any new rule, regulation or by-law.

Rules to be laid before the National Assembly

(2) The reference to rules in subsection (1) shall not include a reference to rules of court.

## PART V

### POWERS AND DUTIES

23. Where by an Act which is not to come into force immediately on the publication thereof there is conferred—

Exercise of power between publication and commencement of Act

- (a) a power to make or a power exercisable by making statutory instruments; or
- (b) a power to make appointments; or
- (c) a power to do any other thing for the purposes of the Act;

that power may be exercised at any time on or after the date of publication of the Act in the *Gazette*:

Provided that no instrument, appointment or thing made or done under that power shall, unless it is necessary to bring the Act into force, have any effect until the commencement of the Act.

Time for  
exercise of  
power

24. Where any written law confers any power or imposes any duty, the power may be exercised and the duty shall be performed from time to time as occasion requires.

Implied power

25. Where any written law confers a power on any person to do or enforce the doing of an act or thing, all such powers shall be understood to be also given as are reasonably necessary to enable the person to do or enforce the doing of the act or thing.

Power to  
appoint  
includes  
power to  
remove

26. Where by any written law a power to make any appointment is conferred, the authority having power to make the appointment shall also have power (subject to any limitations or qualifications which affect the power of appointment) to remove, suspend, reappoint or reinstate any person appointed in the exercise of the power.

Power to  
appoint  
alternate or  
temporary  
members

27. Where by or under any written law any board, commission, committee, council or similar body, whether corporate or unincorporate, is established, any person who is by such written law empowered to appoint any or all of the members thereof may—

- (a) appoint one or more duly qualified persons to be alternate members of the same, and any one such alternate member may attend any meeting of the same when a substantive member is temporarily unable to attend;
- (b) appoint a duly qualified person to be a temporary member of the same in the place of any substantive member who is precluded by illness, absence from Zambia or other cause from exercising his functions as such;

and when attending any meeting of such board, commission, committee, council or similar body, whether corporate or unincorporate, such alternate or temporary member shall be deemed for all purposes to be a member of the same.

Power to  
appoint  
chairman, etc.

28. Where by any written law a power is conferred on any authority to appoint the members of any board, commission, committee, council or similar body, that authority may appoint a chairman, a vice-chairman and a secretary of the same.

Appointment  
by name or  
office

29. Where by any written law any authority is empowered to appoint a person—

- (a) to exercise any power or perform any duty; or

(b) to be a member of any board, commission, committee, council or similar body, whether corporate or unincorporate; or

(c) to be or do any other thing;

that authority may make the appointment either by appointing a person by name or by appointing the holder of an office by the terms designating his office; and any such appointment of the holder of an office shall be construed as the appointment of the person for the time being lawfully holding, acting in or performing the functions of the office.

30. Any reference in a written law to the holder of an office by the term designating his office shall be construed as a reference to the person for the time being lawfully holding, acting in or performing the functions of the office.

Reference to holder of office includes a person discharging functions of office

(As amended by No. 13 of 1965)

31. Where by any written law any act or thing may or is required to be done by more than two persons, a majority of them may do it.

Power of majority

32. Any power conferred or duty imposed on the Attorney-General by any written law may be exercised or performed by the Solicitor-General—

Law officers

(a) in the case where the Attorney-General is unable to act owing to illness or absence; and

(b) in any case or class of cases where the Attorney-General has authorised the Solicitor-General to do so.

33. Where by or under any written law any board, commission, committee, council or similar body, whether corporate or unincorporate, is established, the powers of such board, commission, committee, council or similar body shall not be affected by—

Powers of board, etc., not affected by vacancy, etc.

(a) any vacancy in the membership thereof; or

(b) any defect afterwards discovered in the appointment or qualification of a person purporting to be a member thereof.

34. Where by or under any written law any board, commission, committee, council or similar body is constituted to be a body corporate having perpetual succession and a common seal, and any document is required to be sealed with such common seal, then, in the absence of express provision to the contrary, such common seal shall be affixed by the chairman of such board, commission, committee, council or similar body and shall be authenticated by his signature and by the signature of one other member of such board, commission, committee, council or similar body.

Affixing of common seal

## PART VI

## GENERAL PROVISIONS REGARDING TIME AND DISTANCE

Computation  
of time

35. In computing time for the purposes of any written law—
- (a) a period of days from the happening of an event or the doing of any act or thing shall be deemed to be exclusive of the day on which the event happens or the act or thing is done;
  - (b) if the last day of the period is Sunday or a public holiday (which days are in this section referred to as “excluded days”) the period shall include the next following day, not being an excluded day;
  - (c) where any act or proceeding is directed or allowed to be done or taken on a certain day, then, if that day happens to be an excluded day, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, not being an excluded day;
  - (d) where an act or proceeding is directed or allowed to be done or taken within any time not exceeding six days, excluded days shall not be reckoned in the computation of the time.

Provisions  
where no time  
prescribed

36. Where no time is prescribed, or allowed within which anything shall be done, such thing shall be done without unreasonable delay, and as often as due occasion arises.

Construction  
of power to  
extend time

37. Where in any written law a time is prescribed for doing any act or taking any proceeding and power is given to a court or other authority to extend such time, then, unless a contrary intention appears, such power may be exercised by the court or other authority although the application for the same is not made until after the expiration of the time prescribed.

Measurement  
of distance

38. In the determination of any distance for the purpose of any written law, the measured distance shall be reduced to that distance which would be recorded if the distance were measured in a straight line on a horizontal plane.

## PART VII

## GENERAL PROVISIONS REGARDING LEGAL PROCEEDINGS

Ex-officio  
proceedings  
not to abate on  
death, etc.

39. Any civil or criminal proceedings taken by or against any person in virtue of his office shall not be discontinued or abated by his death, resignation, or absence or removal from office, but may be carried on by or against, as the case may be, the person for the time being holding that office.

40. The imposition of a penalty or fine by or under the authority of any written law shall not, in the absence of express provision to the contrary, relieve any person from liability to answer for damages to any person injured.

Imposition of a penalty no bar to civil action

41. (1) Where an act or omission constitutes an offence against any two or more statutory enactments or both under a statutory enactment and the Common Law or any customary law, the offender shall be liable to be prosecuted and punished under either or any of such statutory enactments or at Common Law or under customary law, but shall not be liable to be punished twice for the same offence.

Provisions as to offences under two or more laws

(2) For the purpose of this section, "statutory enactment" means any order in Council, British Act or written law.

42. Where an act or omission constitutes an offence and the penalty for such offence is amended between the time of the commission of such offence and the conviction therefor, the offender shall, in the absence of express provision to the contrary, be liable to the penalty prescribed at the time of the commission of such offence.

Amendment of penalty

43. (1) Where in any written law a penalty is prescribed for an offence against that written law, such provision shall mean that the offence shall be punishable by a penalty not exceeding the penalty prescribed.

Penalties prescribed may be maximum penalties, but may be cumulative

(2) Where in any written law more than one penalty is prescribed for an offence, the use of the word "and" shall mean that the penalties may be inflicted alternatively or cumulatively.

44. (1) Where under the provisions of any written law any animal or any thing is adjudged by any court or other authority to be forfeited, it shall, in the absence of express provision to the contrary, be forfeited to the Republic and the net proceeds thereof, if it is ordered by a competent authority to be sold, shall be paid into the general revenues of the Republic, unless other provision is made.

Disposal of forfeits

(2) Nothing in this section shall affect any provision in any written law whereby any portion of any fine or forfeit or of the proceeds of any forfeit is expressed to be recoverable by any person or may be granted by any authority to any person.

45. Any fine or penalty imposed by or under the authority of any written law shall, in the absence of express provision to the contrary, be paid into the general revenues of the Republic

Disposal of fines and penalties

46. (1) Where under any written law the consent or authority of the Attorney-General or the Director of Public Prosecutions is necessary before any action or prosecution is commenced, any document purporting to be the consent or authority of the Attorney-General or the Director of Public Prosecutions shall be received as

Evidence of signature of Attorney-General or Director of Public Prosecutions

*prima facie* evidence in any proceedings without proof being given that the signature to such consent or authority is that of the Attorney-General or the Director of Public Prosecutions, as the case may be.

(2) Where under section *thirty-two* the Solicitor-General is exercising the powers of the Attorney-General, the provisions of this section shall apply to the Solicitor-General as they apply to the Attorney-General.

## PART VIII

### GENERAL MISCELLANEOUS PROVISIONS

Deviation  
from forms

47. Save as is otherwise expressly provided, whenever any form is prescribed by any written law, an instrument or document, which purports to be in such form, shall not be void by reason of any deviation therefrom which does not affect the substance of such instrument or document, or which is not calculated to mislead.

Gazette, etc.,  
to be *prima*  
*facie* evidence

48. The production of a copy of the *Gazette* containing any written law, Order in Council, or any notice, or of any copy of any written law, Order in Council, or any notice, purporting to be printed by the Government Printer, shall be *prima facie* evidence in all courts and for all other purposes whatsoever of the due making and tenor of such written law, Order in Council or notice.

Evidence of  
Applied Acts

49. (1) For the purpose of ascertaining the content of any Applied Act or any statutory instrument made thereunder, published in or with the *Federal Gazette*, a reference may be made to the *Federal Gazette*, containing such Applied Act or statutory instrument, or to a copy thereof, purporting to be printed by or on the authority of the Government Printer, and either such copy shall be *prima facie* evidence for all purposes whatsoever of the Applied Act or statutory instrument so printed.

(2) Where in any Applied Act it is stated that such Act has been "Reprinted in terms of section 3 of the Amendments Incorporation Act, 1955" such Applied Act shall, for all purposes, be *prima facie* evidence of the Applied Act so reprinted.

(3) In this section—

"*Federal Gazette*" means the *Government Gazette* of the former Federation of Rhodesia and Nyasaland;

"Government Printer" means the Government Printer of the former Federation of Rhodesia and Nyasaland.

Provision in  
statutory

50. (1) Where any written law confers power on any person to make any statutory instrument in respect of fees or other charges,

such statutory instrument may provide for all or any of the following matters: instruments relating to fees

- (a) specific fees or charges;
- (b) maximum or minimum fees or charges;
- (c) maximum and minimum fees or charges;
- (d) *ad valorem* fees or charges;
- (e) the payment of fees or charges either generally or under specified conditions or in specified circumstances; and
- (f) the reduction, waiver or refund, in whole or in part, of any such fees or charges, either upon the happening of a certain event or in the discretion of a specified person.

(2) Where any reduction, waiver or refund, in whole or in part, of any fee or charge is provided for, such reduction, waiver or refund may be expressed to apply or to be applicable either generally or specifically—

- (a) in respect of certain matters or transactions or classes of matters or transactions;
- (b) in respect of certain documents or classes of documents;
- (c) when any event happens or ceases to happen;
- (d) in respect of certain persons or classes of persons; or
- (e) in respect of any combination of such matters, transactions, documents, events or persons;

and may be expressed to apply or to be applicable subject to such conditions as may be specified in the statutory instrument or in the discretion of any person specified therein.

51. (1) No written law shall in any manner whatsoever affect the rights of the Republic unless it is therein expressly provided or unless it appears by necessary implication that the Republic is bound thereby.

Savings of rights of the Republic

(2) Where any British Act binds the Crown, then that Act *mutatis mutandis* shall, to the like extent and subject to the same limitations, bind the Republic.

(As amended by No. 27 of 1965)

52. This Act shall bind the Republic.

This Act to bind the Republic