

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATION

JULY 1989

SCHOOL OF LAW

607051

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CERTIFICATE IN LAW-LEGAL PROCESS

TIME: THREE (3) HOURS (Plus Ten (10) Minutes to read through the Question paper).

ANSWER: ANY FOUR (4) QUESTIONS

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1. (a) Outline the jurisdiction of the various classes of Subordinate Courts;  
(b) Discuss the composition and role of the Judicial Service Commission
  2. Upon your return to your station, your officer-in-charge requests you to address other officers on the topic:  
"The Applicability of English Law in Zambia".  
The officer-in-charge would like you to explain to your colleagues the Zambian Laws which make the application of English Law in Zambia possible and why such a situation should exist in Zambia twenty-five years after independence.
  3. Over eighty per cent (80%) of the African population in Zambia is governed, particularly in civil matters by one system or another of African Customary Law. However African Customary Law is not applied by courts other than Local Courts readily. This is due to certain limitations introduced by statutory law.  
Discuss the rules that govern the application of African Customary in courts in Zambia.
  4. Outline the composition and jurisdiction of the following courts that served in the then Northern Rhodesia in the period 1924 - 1964;  
(a) the Federal Supreme Court of the Federation of Rhodesia and Nyasaland;  
(b) Police Magistrates Courts; and  
(c) Native Courts
  5. Article 20 of the Constitution of Zambia provides that an accused (a person charged with a criminal offence) is free to testify in his own defence but that he cannot be compelled to do so against his will. This is because the Zambian legal system has adopted the "adversary" rather than the "inquisitorial" system of administering justice. In your view which of the two systems is better given Zambia's level of political, economic, social and cultural development? Give reasons for your answer.
  6. Explain the reason(s) why lawyers experience difficulties in interpreting written laws (statutes) and discuss the rules that <sup>guide</sup> them in this difficult but frequent and important function.
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THE UNIVERSITY OF ZAMBIA  
UNIVERSITY EXAMINATIONS - JUNE, 1989

L 140

CRIMINAL LAW AND PROCEDURE

TIME: THREE HOURS (Plus 15 minutes for reading question paper.)

ANSWER: Question number one compulsory and answer in addition any other three questions.

Penal law statutes are allowed in the examination hall.

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1. At a Magistrate's Court in Lusaka, Chileshe pleaded guilty to a charge of Burglary and Theft Contrary to Sections 301 and 272 of the Penal Code, Cap. 146. He now wishes to appeal against sentence of 4 years I.H.L imposed by Mr. Mumba, a Principal resident Magistrate. It was alleged that he broke into the house of Banda, and stole property valued at K15,00=00. Chileshe is aged 20 years and is a first offender. Advise Chileshe:-

- (a) as to the procedure for the appeal, and
- (b) as to the principles used by the High Court Judges in determining whether to allow the appeal or not.

Relevant sections of the statute to be cited.

2. Consider whether THEFT has occurred in the following situations:-

- (a) Dimba is given an envelope containing his wages by Aweene his employer. Later upon opening the envelope, Dimba finds that he has been given an extra K5.00 by mistake. He decides to keep the K5.00 and uses it to pay for goods worth K4.50 in a grocery. The saleslady mistakenly believing it to be a K10 note, gives Dimba K5.50 in change. Dimba does not inform the saleslady of the error and goes away. Discuss.
- (b) Motu is the Manager of a shop. He is told by Chinondo, the owner of the shop, that no one is allowed to take money from the shop till for their own purposes or personal use without the express permission of Chinondo. One evening Motu realises that he has no money with which to take his girl friend, Dupe, out for her birth day dinner and decides to borrow himself K50 from the till although he does not get the permission of Chinondo. He intends to replace the amount the next morning.

Would it make any difference if Motu was owed K70 by Chinondo?

3. What is the importance of the Case of *NASILELE v THE PEOPLE* (1968) S.J.Z P.104 as it relates to the offence of Theft by Public Servant, contrary to section 277 of the Penal Code Cap 146 as Amended by Act. No. 29 of 1974?
4. Tembo, a Police Officer on foot Patrol, sees Mwanza acting in a suspicious manner. He decides to question him, but Mwanza seeing Tembo approaching, immediately walks away in the opposite direction. Tembo calls him to stop but without success. Tembo runs up to Mwanza, points his rifle at him and says:-  
"Now perhaps you will stop and answer some questions".  
Mwanza still refuses to do so and suddenly Knocks Tembo down and runs away.  
Consider the Criminal Liability of Mwanza as to the appropriate offence.
5. Moonga required transport so that he could use for stealing from Mweemba's shop. He asked Maunga to lend him his (Maunga's) car and Maunga agreed. Maunga suspected that the car would be used to transport stolen goods but decided to ask no questions relating to the same. Moonga drove to Mweemba's shop and got his (Moonga's) 6 year old son, Banji, to enter the shop through a small window and take some goods. Whilst waiting for Banji to return from within the shop, Moonga spotted, Munsaka, a security guard, whom he recognised as the man who recently insulted Moonga's wife.  
Moonga accordingly hit Munsaka, the security guard with an iron bar causing him some head injuries of which caused Munsaka's death after a few days. Banji got the goods which he and Moonga packed in the borrowed car and, thereafter left the shop.  
The Police intend to jointly charge them with murder, and store breaking and theft, and they are seeking for your legal opinion and advice. Can you advise them as to the Criminal liability of Maunga, Moonga and Banji for their actions.
6. "A drunken man may form an intention to kill another, or to do grievous bodily harm, or may not; but if he did form that intention, although a drunken intention, he is just as much guilty of murder as if he had been sober."  
To what extent is the above statement a reflection, of the Zambian law relating to intoxication as a defence?  
Discuss, illustrating your answer by reference to relevant authorities.

7. "The 'actus reus' of attempt requires something which goes beyond mere preparation. There must be an act which is immediately and not remotely connected with the intended offence. The problem is where to draw the line between mere preparation and actual attempt."

Explain and illustrate this statement with the use of decided cases, and how do the Zambian Courts regard attempts under section 389 of the Penal Code.

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END OF EXAMINATION

**THE UNIVERSITY OF ZAMBIA**  
**UNIVERSITY EXAMINATIONS - JULY, 1989**

L 150

CONSTITUTIONAL LAW

TIME:        THREE HOURS.

INSTRUCTIONS:

1. You are advised to read carefully each question and answer the question concisely.
  2. Answer ANY FOUR QUESTIONS.
  3. Candidates may bring in, and refer to, the Constituinn of Zambia.
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1. Discuss the principle of sovereignty of parliament as it applies to Zambia.
  2. Consider the proposition that it is a conjunction of powers rather than a separation of powers that provides the Constitution of Zambia with its momentum.
  3. Discuss fully the case of Feliya Kachasu v. Attorney - General (1967). How does it compare to the decision in the Patel Currency Case (1968)?
  4. State the facts of the Hary Nkumbula and Simon Kapwepwe v. Attorney-General of Zambia (1978) bringing out clearly the arguments by both the Applicants and the Attorney-General in the High Court and Supreme Court for Zambia. What do you think is the importance of this case in the Constitutional history of Zambia since the introduction of the One-Party State?
  5. On April 26th, 1980 Comrade Bonzo was arrested. He was served with a detention order duly signed by the President on 11th May, 1980. The grounds of detention were that between January and April of 1980 Comrade Bonzo had engaged himself, together with other five persons, in committing crimes in the Copperbelt. Comrade Bonzo has never been to school and his vernacular language is Lingala. He can neither speak or read English, yet the grounds of detention were communicated in English. He approaches you as his Lawyer to bring an application of Habeas Corpus.

Advise him of his chances of being released by the Courts.

Choose three from the following and write comprehensive comments.

- (a) William Chipango v. Attorney-General (1970 High Court decision)
- (b) The Principle of 'Party Supremacy'.
- (c) The American Doctrine of 'checks and balances'.
- (d) The doctrine of Judicial Review.
- (e) The Central Committee of UNIP.

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END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY SUPPLEMENTARY/DEFERRED EXAMINATIONS - SEPTEMBER 1989

L 150

THREE HOURS

1. Outline the legal provisions relating to the Commission for Investigations in Zambia, pointing out the areas of strength and weakness.
2. Discuss the law and facts relating to Presidential and National Assembly elections since 1973, including any amendments introduced since then.
3. Choose three from the following and write comprehensive comments:
  - (a) The furnishing of grounds of detention for a Presidential detention
  - (b) The extent to which the government belongs to the Party.
  - (c) The Central Committee under the 1988 UNIP Constitution.
  - (d) The arguments and holdings in the Supreme Court of Zambia case of Rao v Attorney - general as it relates to economic crimes.
  - (e) The eligibility for Zambian citizenship, including citizenship by marriage.
4. Discuss the law relating to judicial independence and its role in practice in Zambia.
5. Discuss the principles of Parliamentary Supremacy and constitutional supremacy and their relevance to Zambia.
6. Why did the Westminster Export Model fail in Africa?

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY SUPPLEMENTARY/DEFERRED EXAMINATIONS - SEPTEMBER 1989

L 150

TIME:        THREE HOURS

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1. Outline the legal provisions relating to the Commission for Investigations in Zambia, pointing out the areas of strength and weakness.
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  6. Why did the Westminster Export Model fail in Africa?

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END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - JULY, 1989

L 210

LEGAL PROCESS

TIME: THREE (3) HOURS (Plus Ten (10) Minutes to read through the Question Paper)

ANSWER: ANY FOUR (4) QUESTIONS

1. A "Vigilante" recently visited the High Court. He was summoned by the State to appear as a witness in a theft from person case. However, on the appointed day the Magistrate who was assigned the case in which he was a witness could not sit to hear the case because he was bereaved. As the "Vigilante" now had time to spend, he decided out of curiosity, to enter the High Court building. He soon found his way into a courtroom where a civil case was being tried. At the time that he entered the courtroom all the witnesses had already been called. The lawyers were making their <sup>submissions</sup> on the facts and points of law.

To his utter amazement the "Vigilante" heard the lawyers refer to the provisions of statutes enacted by Parliament in England many years ago and also to decisions passed by the House of Lords and High Court in England and yet the parties involved in the case were "born and bred" black Zambians. The "Vigilante" does not believe that after twenty-five (25) years of political independence Zambian lawyers can legitimately refer to outside sources of law.

Advise him on the precise legal position regarding the applicability or otherwise of English law and judicial precedents in Zambia (You are expected to refer to relevant statutes and suitable illustrative judicial decisions).

2. Outline the composition and jurisdiction of the following courts that served in the then Northern Rhodesia in period 1924 - 1964:-
- (a) the Federal Supreme Court of the Federation of Rhodesia and Nyasaland;
  - (b) Police Magistrates Courts; and
  - (c) Native Courts.

3. Bwalya a resident of Kitwe's Buchi township took an unusual measure to enforce parental discipline over his twelve (12) year old daughter Kabwe. He bought a chain to which was attached a "leg iron" -- a device that could be used to clasp one of his daughter's legs. At the other end of the heavy chain was a heavy metal ball. When the "leg iron" was put in place Kabwe could not walk far away from her parents home. She could only manage to hobble to the toilet and back to the veranda. If her friends did not visit her at home she was virtually a prisoner.

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Neighbours and passersby who saw Kabwe hobbling around her home were outraged. After some considerable hesitation one neighbour plucked up courage and decided to report the matter to the police because he felt Bwalya "had gone too far" in as far as the enforcement of parental discipline was concerned. The neighbour was in fact convinced that a serious offence of cruelty had been committed.

The Officer-in-Charge of Buchi Police Station visited Bwalya to interview him on the allegations made by the neighbour. Bwalya admitted the allegations but quickly pointed out that under African Customary Law parents have authority to chastise and take any other appropriate disciplinary measures to ensure that their children are brought up properly so that they become responsible adults. Furthermore, parents whose children cause damage or injury are held responsible for torts committed by such children. He, therefore, took the measure complained of because he had received disturbing reports that his daughter never stayed at home and was always "causing trouble" wherever she went to play away from home. He was left with no option but to implement the measure complained of in order to avoid "difficulties in future". As such he had no regrets and in any case he did not think the police should be involved in/ domestic customary civil matter.

Discuss the various issues raised.

4. "In the system of trial which we have evolved in this country, the judge sits to hear and determine the issues raised by the parties, not to conduct an investigation or examination on behalf of society at large, as happens, we believe, in some foreign countries. Even in England, however, a judge is not a mere umpire.....His object, above all is to find out the truth and to do justice according to law, and in the daily pursuit of it the advocate plays an honourable and necessary role..... Let the advocatges one after the other put the weights into the scales - the "nicely calculated less or more"- but the judge at the end decides which way the balance tilts, be it so slightly. So firmly is all this established in our law that the judge is not allowed in a civil dispute to call a witness whom he thinks might throw some light on the facts. He must rest content with the witnesses called by the parties..... So also it is for the advocates, each in turn, to examine the witnesses, and not for the judge to take it on himself lest by so doing he appear to favour one side or the other .... And it is for the advocate to state his case as fairly and strongly as he ha can, without undue interruption, lest the sequence of his argument be lost ..... The judge's part in all this is to harken to

the evidence, only himself asking questions of witnesses when it is necessary to clear up any point that has been overlooked or left obscure; to see that the advocates behave themselves seemly and keep the rules laid down; to exclude irrelevancies and discourage repetition; to make sure by wise intervention that he follows the points that the advocates are making and can assess their worth; and at the end make up his mind where the truth lies. If he goes beyond this, he drops the matter of a judge and assumes the robe of an advocate: and the change does not become him well..."

Per Denning MR in the case JONES v NATIONAL COAL BOARD (1957) 2Q.B. 55.

Zambia has adopted the adversary system of administering justice. With the above quotation in mind, critically discuss whether this system is adequate or practical given Zambia's level of political, economic, social and cultural development.

5.8. A layman whose relation recently appeared in the High Court is deeply troubled and disappointed by the fact that the presiding judge adjourned the case for two months in order "to study the pertinent issues raised by learned counsel", and thereafter deliver judgment. The layman who has witnessed many trials held before Local Courts is disappointed because in proceedings before Local Courts judgment is delivered a few minutes after the court concludes hearing evidence. He is troubled because he observed that although the judge and the two advocates were referring to the provisions of the same Zambian statute the two advocates interpretation of the same law was remarkably different.

He cannot understand, how "men schooled, learned and experienced in the law" should have problems in arriving at a "proper" interpretation of the law.<sup>2</sup>

The layman who has been introduced to you wishes to know why lawyers have difficulties in finding out the intention of Parliament from Acts of Parliament and what rules are applied in finding out Parliament's intention. Advise him. In your view are these rules adequate?

- 6.
- (a) Outline the jurisdiction of the various classes of Subordinate Court;
  - (b) Discuss the composition and role of the Judicial Service Commission.

THE UNIVERSITY OF ZAMBIA

UNIVERSITY SUPPLEMENTARY/DEFERRED EXAMINATIONS - SEPTEMBER 1989

L 210

LEGAL PROCESS

TIME: THREE HOURS (PLUS TEN (10) MINUTES TO READ THROUGH THE  
ANSWER: QUESTION PAPER)  
ANSWER: ANY FOUR (4) QUESTIONS

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1. "It would certainly save the judges trouble if <sup>Acts</sup> of Parliament were drafted with divine <sup>prescience</sup> and perfect clarity. In the <sup>absence</sup> ~~appears~~ a judge cannot simply fold his hands and blame the draftsmen. He must set to work on the constructive task of finding the intention of Parliament...." Per Lord Denning  
With this quotation in mind critically discuss the rules used by the courts in the interpretation of statutes.
2. Samakayi Ndonji is a marketeer in Lusaka's Chawama township. He is married to a beautiful girl Tumba. He paid "Lobola" for Tumba in Zambezi District according to Luvala Customary Law. After a year of happy marriage Ndonji has notice that his wife's affection for him has been waning. He has received information that a wealthy businessman named Chinondo - a Bemba has been giving his wife lavish presents and taking her to hotels for entertainment. He is naturally angry and disappointed. He still loves Tumba but is determined that Chinondo should be dealt with by a court of law.  
He has approached you for legal advice on how he should proceed. Advise him the appropriate court and law which <sup>would</sup> be applicable in his case.
3. (a) Discuss the advantages and disadvantages (if any) of being legally represented in Zambia.  
(b) Should Zambia adopt the inquisitorial system of administering justice?
4. "It is a maxim among these lawyers that whatever has been done before may legally be done again; and therefore they take especial care to record all the decisions formerly made against common justice, and the general reason of mankind. These, under the name of precedents, they produce as authorities to justify the most iniquitous opinions, and

the judges never fail of directing according"

Per Jonathan Swift in the book GULLIVER'S TRAVELLS at p170.

Comment on the merits and demerits of the doctrine of Stare decisis

- b. Trace the changes which have take place in Zambia's judicial system since 1924 with particular reference to the following:-
- (a) the appointmnet, qualification and removal of judges and magistrates from office.
  - (b) the appellate structure of the courts
  - (c) jurisdiction over persons.
6. The continued application of English law in Zambia has been the source of controversy in recent times. People cannot understand why English law should apply after twenty-five (25) years of political independence. Explain the reasons why English law was extended to Zambia and why it has taken long for steps to be taken to rectify the situation.

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END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - JUNE, 1989

L 220

LAW OF CONTRACT

- TIME: THREE HOURS (PLUS TEN MINUTES FOR READING THE QUESTION PAPER)
- ANSWER: ANY FOUR (4) QUESTIONS.
- NOTE: ALL YOUR ANSWERS MUST INCLUDE REFERENCE TO RELEVANT DECIDED CASES.
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1. Mununka, who has been in the foreign service, living outside Zambia for the past six years, advertises his collection of video tapes for sale in the Daily. Mubanga calls on the advertised phone number, and arranges with Mununka to come and see the tapes. They meet at Mununka's house, and Mubanga offers K25,000 for the collection. Mununka readily agrees. Mubanga wants to pay Mununka by cheque, but Mununka refuses, and asks for cash instead.

Then Mubanga produces a Radio Mulungushi "Official DJ Identity Card" and says "surely you must know me, I'm Sara Mubanga, and you can listen to my show almost every day on 'The Rock'?"

Mununka, who finds Mubanga very attractive and does not want to admit that he only listened to Radio Mulungushi once for a few minutes, now accepts her cheque and lets her take the video tapes away. The cheque bounces. Mununka discovers that Mubanga, who has no connection with the well-known DJ, Sara Mubanga, has disappeared after immediately re-selling the video tapes to an innocent third party, Video-session.

Mununka comes to you to find out if he has a remedy against Mubanga and Video-session. Advise Mununka.

2. During the recent heavy rains and floods, Malaiti Ltd. are kept very busy, hiring out generators to those whose electricity has been cut off because of fallen lines. It is obvious that it will take ZESCO many weeks to repair all the damaged supply lines. Just when they have hired out their last generator, a distraught commercial farmer calls at Malaiti premises. His electricity has gone off, the damage is serious, and ZESCO advise him that, due to the volume of work, it will be at least three weeks before they can repair the lines. The farmer is desperate - he has a huge chicken supply contract, and must keep his deep freezers and refrigerators functioning. He needs a generator immediately.

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To help him out, Malaiti Ltd get in touch with another company in the same type of business, Lit-up Ltd. Lit-up agree to hire a generator to Malaiti. They discuss the hire charges, but not any other hire conditions.

Malaiti take the generator to the farm and set it up. Everything seems to work satisfactorily, and the commercial farmer is very relieved. However, in the middle of the night there is a tremendous explosion, the generator "blows up" and the power goes off once again.

The manager of Malaiti arrives at his office next morning to find a copy of Lit-up's conditions of hire. These contain a provision requiring the hirer to indemnify the owner for any damage or expenses incurred by the owner in connection with the use of the generator. Before he has time to deal with the forms, the farmer comes to inform him that the generator has blown up.

Malaiti Ltd refuse to agree to the terms in the conditions of hire form, although these terms are just the same as in their own form.

Lit-up Ltd want to recover the cost of retrieving the generator and repairing it. They seek your advice.

Advise Lit-up Ltd.

3. Nduna, a recent "graduate" from a trades training school carpentry course, urgently needs K6000 to buy materials so that he can fill an order placed by Cintu Ltd, a major handicrafts shop in Lusaka. Nduna is sure that if he impresses Cintu Ltd by fulfilling the order quickly, he may get more orders in future.

So Nduna goes to a friend and borrows the K6000, promising to pay it back in four months' time.

After two months have passed Nduna's friend urgently needs money to pay for his children's school uniforms and books. He goes to Nduna and tells him that if he pays K4000 immediately, he will accept it as full and final satisfaction of Nduna's debt.

Nduna raises the money and pays back K4000.

Now Nduna's friends is demanding the balance of K2000.

Advise Nduna.

/3....

**A** Matipa Enterprises, Lusaka Motel owners, contract with Zambezi Builders to add an extension wing to their Matero Motel. They plan to open the 20-room extension to coincide with the Pope's visit to Zambia, when they anticipate great demand for accommodation in the capital city.

Zambezi Builders try very hard to complete the extension, but there are many obstacles. Zambezi are also contracted by other companies to build two other facilities in time for the papal visit. They find it difficult to meet all their commitments.

As well, there are unforeseen delays which are not the fault of Zambezi Builders, in importing some fittings for the rooms. The extension work is still not finished when the Pope arrives in Zambia. The rooms are habitable, but there are no wardrobes, dressers or bedside units in the bedrooms, and only cold water is available in the bathrooms.

Matipa Enterprises refuse to use the extension wing during the papal visit. They say that they aim for out-of-town visitors as regular patrons, and that it would damage their good reputation, and cut out the possibility of repeat visits, if they offered guests below-standard facilities. Matipa claim that they have <sup>lost</sup> thousands of kwacha in revenue from bookings for the Pope's visit, as well as future business.

They want to sue Zambezi Builders for breach of contract.  
Advise them.

5. Fimbo, a graduate of UNZA's School of Mines, gets a job with the Italiano Amethyst Mines Company after his graduation. His contract of employment provides that if he leaves their employment he will never work for any enterprise engaged in amethyst mining or any Associated industry. Nor will he solicit any of Italiano's customers, or reveal any of their trade secrets, or set up in competition with them. Fimbo is now thinking about leaving Italiano's employment. He wants to begin his own amethyst mining company, in a different province. He comes to you for advice on the extent to which, if he does leave, he will be bound by his contract of employment with Italiano.

6. Kafue, who is director of a fish farm development project, expects a visit from a top official of an international aid agency, a potential major donor to the project. The official plans to spend only two days in Zambia, and it is vital that she should be taken to see the project, many miles from Lusaka, in this time. On the morning when her plane is expected, Kafue cannot get the project vehicle to start. He rushes by taxi from the hotel where he has stayed overnight to the offices of Tuff Stuff Transport Hire, where he hires a 4-wheel drive Toyota Landcruiser for the journey. He signs a form which says "see back." Another clause says: "the company will not accept any liability whatsoever for damage to its vehicles caused by the negligent driving of hirers." Kafue is in a great hurry, so he just glances quickly through the form, and does not read the back.

On the way back to Lusaka from the visit to the project the vehicle overturns on a bend in the road. Kafue was certainly travelling fast, trying to get his guest to the airport in time to catch her flight to a neighbouring country for her next round of appointments.

However, one rear tyre is found to have burst; on examination, it is seen to have been very worn in several spots, something Kafue had failed to notice in his rush at Tuff Stuff's office. Kafue cracks two ribs in the accident, and has to take some weeks off work to recover. The vehicle is extensively damaged. When he finally reads the hires form, he finds that one of the conditions in small print on the back is: "The company is not responsible for any injury to customers in the course of hire, whether caused by its employees' negligence or otherwise."

On his return to the project office, Kafue finds a letter from Tuff Stuff claiming K43,750, the amount they have paid to have the vehicle repaired. Angered, Kafue vows to sue them for his injury.

Advise Kafue as to his legal situation.

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END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY SUPPLEMENTARY/DEFERRED EXAMINATIONS - SEPTEMBER 1989

L 220

LAW OF CONTRACT

- TIME: THREE (3) HOURS (PLUS 10 MINUTES FOR READING THE QUESTION PAPER).
- ANSWER: ANY FOUR (4) QUESTIONS
- NOTE: ALL YOUR ANSWERS SHOULD INCLUDE REFERENCE TO RELEVANT DECIDED CASE AUTHORITIES.
- 

1. Moses and Simon, who went to UNZA Law School together some years ago, met by chance at a well-known Lusaka "watering hole". They are delighted to see one another, and begin toasting one another's health in their favourite "Mosi". It turns out that Moses has been working as a Law Lecturer in a nearby country and has recently returned. During the evening of talking and drinking Simon signs a piece<sup>of</sup>/paper saying that he will buy a car stereo system from Moses for K17,000.

The next morning, Simon cannot remember anything about this arrangement. He does not even have a car, so he does not need a car stereo. He thinks K17,000 is a very high price.

He does not want to go through with the "contract" and comes to you for legal advice.

Advise Simon.

2. Milile, a well known Lusaka "playboy", negotiates to buy Medson's bright red Thunderbird car, which Medson bought while in the United States studying for his Ph.D in mechanical engineering. Now Medson has decided to settle down, marry and build a house, and he no longer wants his flashy car, which costs a lot of money to run.

According to the records Medson has, the car is a 1980 model, had had two previous owners when he bought it, and had done 30,000 kilometres. The kilometre recorder not shows, 50,000 kilometres. Medson tells Milile that the engine is the original 1980 one, a piece of engineering famed for its reliability and advanced technology.

Impressed, Milile buys the car. However, it turns out to be unsatisfactory. Some months later Milile discovers that it is really a 1979 model, and that the engine is therefore not the revolutionary 1980 design. A mechanic friend tells him that the car has probably been driven much more than 50,000 kilometres, and that the kilometre recorder "seems to have been tampered with."

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Milile wants to return the car, and get his money back.

Advise him.

3. Brenda, a dressmaker, urgently needs money, K2,500, to buy materials so that she can fill an order placed by Mrs Mwingilwa, wife of a Lusaka "bigshot". Brenda is sure that if she impresses Mwangilwa by fulfilling the order quickly, she may get more business in future.

So Brenda goes to a friend and borrows the K2,500, promising to pay it back in three months' time.

After only one month, the friend runs very short of money. She goes to Brenda and tells her that if she pays K1,500 now she will accept it as full and final satisfaction of Brenda's debt

Brenda manages to raise the money, and pays back K1,500. Now her friend is demanding the balance of K1000.

Advise Brenda.

4. Mapenzi writes to Mvula offering to buy a set of irrigation pipes which Mvula has advertised for sale

Mvula accepts the offer, and posts his letter of acceptance to Mapenzi on March 10.

On March 12, before Mapenzi receives the letter of acceptance, Mvula changes his mind. He sends Mapenzi a telegram withdrawing his acceptance of the offer.

Mapenzi is very anxious to obtain the irrigation pipes, as he has made plans to go into commercial wheat production.

He comes to you for advice.

Advise him.

5. Nsomba, an UNZA Biology graduate, goes to work for Mapenzi Crocodile Farms after his graduation. His contract of employment provides that if he leaves their employment he will never again work for any enterprise in crocodile farming or associated industries in Zambia or elsewhere, nor will he solicit any of Mapenzi's customers, nor will he set up in competition with Mapenzi Crocodile Farms Limited.

Nsomba is not considering leaving Mapenzi's employment. He comes to you for advice on the extent to which, if he does leave, he will be bound by his contract of employment.

Advise him.

6. Bonzo, an expatriate leaving the country at the end of his contract, advertises his Sony Video system for sale in the Times. Maduma comes to see it, and offers K20,000, which Bonzo readily agrees to. Maduma wants to pay Bonzo by cheque, but Bonzo refuses.

Maduma then says "But I am Maduma, who reads the news on TV, don't you know me?" and produces a pass surporting to be entry to Mass Media Complex. Bonzo, who used to turn off the <sup>news</sup> whenever it began, saying it was not worth watching compared to TV news in his country, is impressed. He now accepts the cheque, and lets Maduma take the video.

The cheque bounces and Bonzo learns that Maduma, who has no connection with the real Maduma who does appear on TV, has disappeared after reselling the video to an innocent third party, Mulenga.

Does Bonzo have any remedy against Maduma and/or Mulenga?

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END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - JUNE, 1989

L 230

THE LAW OF TORT

TIME: THREE HOURS (plus 10 minutes to read the paper).

ANSWER: ANY FOUR QUESTIONS

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1. (a) Discuss the scope of privilege attaching to communications between an advocate and his client.

(b) Mr. Mulla is a credit-controller with Zambia Co-operative Union. He applied for a job as loans officer in the Zambia Peasant Credit Corporation a wholly government owned statutory corporation but was turned down. Six months later the Peasant Credit Corporation was declared bankrupt. In his address introducing the Peasant Farmer's Credit Corporation (Dissolution) Bill, the Minister of Finance explained that poor repayment by peasant farmers had led to the down-fall of the Corporation.

Mr. Mulla sent a letter to the "Daily Grind" a popular newspaper which published the same. The letter read as follows:

"The dissolution of the Peasant Credit Corporation demonstrates the difficulty of financing peasant farmers. The Minister's explanation is insufficient. Is it not the case that the huge losses emanate from the ignorance on the part of management as to the role of credit in the development process? The people responsible for disbursing loans have been incompetent to the extreme so much so that even records of borrowers are hard to come by. What is mind-boggling, however, is that a number of employees of the Peasant Credit Corporation have been deployed to serve in the new Agricultural Credit Bank which the government has established in its place. These people have demonstrated their betrayal of the public trust. They should be punished, not employed. We should not be surprised if the new Bank also goes down".

All the time the letter appeared in the letter's column, of the newspaper these were five former employees of the Peasant

Credit Corporation; two had been orderlies and the other three officers had been mortgage managers. The five were employed by the Bank in similar capacities.

All the five wish to sue Mr. Mulla and the Newspaper. What defences are open to Mr. Mulla and the Newspaper owners? Advise the five aggrieved persons.

2. Mr. Smith invested a substantial sum of money in Shady Deals Ltd, one of many deposit-taking companies registered under the Deposit-taking Companies Act. The Act requires all deposit-taking companies to be registered, and gives the Commissioner of deposit-taking companies supervisory powers over the affairs of deposit-taking companies. Within six months, Shady Deals Ltd went into liquidation and Mr. Smith lost all the money he had deposited.

Mr. Smith wishes to bring an action for damages against the Commissioner alleging negligence in the discharge of his functions under the Deposit-taking Companies Act.

Advise Mr. Smith with reference to:

Donogue v. Stevenson (1932) A. C. 562

Anns v. Merton London Borough (1978) A. C. 728

Home Office v. Dorset Yacht Co. (1987) A. C. 1004

Hedley Byrne v. Heller and Partners (1964) A. C. 465.

3. "A man who carries on an exceptionally delicate trade cannot complain because it is injured by his neighbour doing something lawful on his property which would not injure anything but an exceptionally delicate trade". Per Lopes, L. J. in Robinson v. Kilvert (1899) 14 Ch. D. 88

With the use of suitable illustrations discuss the above observations.

4. (a) Comment on the relevance, if any, of fault on the modern rule of strict liability.  
(b) "This principle of strict liability was taken up and applied by the later Victorian judges with a considerable degree of

vigour but increasingly in the present century it has undergone dilution and the rule has attracted a larger number exceptions or defences to liability which have limited its general scope and force". Clerk and Lindsell on Torts, 15th Edition p.1200

- (i) What is this principle of strict liability?
- (ii) With suitable illustrations discuss the exceptions or defences to liability which have circumscribed the scope of application of the principle in modern times.

5. Mr. A, a motorist driving an open vanette was involved in a collision with another vehicle driven by Mr. B. The collision took place in a large residential area late in the evening. The damage to the vanette rendered it incapable of being driven. Mr. A suffered some head injuries and was rushed to the nearest hospital where he was detained for treatment. Despite the treatment he suffered severe depression which induced him to commit suicide. The vanette remained on the scene of the collision all night. The following morning Mr A's relations arrived on the scene with a view to towing the vehicle to a garage. They discovered that some intruders had stolen the tires and other accessories.

Infuriated by the death of Mr A and the loss of the tires and accessories the widow comes to you for advice regarding compensation in respect of the death of Mr. A and the stolen property. Mr B whose vehicle collided with Mr A's vanette has admitted that he drove his car negligently.

Advise the widow.

6. In 1980 Mr X acquired a farm and constructed a twenty-roomed mansion. In 1985, farming having proved difficult owing to the perpetual scarcity of fertilizer, Mr X converted his house into a guest-house. Recently an adjoining farm was acquired by the Zambia Limeworks Company which established a plant to produce lime. The noise from the plant arising from the crushing of limestone has been interfering with the repose of Mr X and his guests in the guest-house. The fine lime powders frequently blown by the wind into Mr X's farm has caused such discomfort to Mr X's guests that many have left the guest-house. Mr X wishes to commence proceedings against the Zambia Limeworks Company for:

- (a) Loss of custom ~~by~~
- (b) Personal injuries arising from the limepowder and the incessant noise.

Advise Mr X

7. "The policy underlying vicarious liability would have been jeopardised by a literal adherence to the control test, and courts have not hesitated to hold the employer answerable even though the work which the servant is employed to do is <sup>of</sup> a skilful or technical character as to the method of performing of which the employer himself is ignorant".  
John G. Fleming, The Law of Torts 4th Ed., P. 316.

- (a) What is the policy underlying vicarious liability?
- (b) What are the tools or mechanisms which the courts have developed to by-pass or modify the control test?

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END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS -JULY, 1989

L 240

CRIMINAL LAW AND PROCEDURE

TIME: THREE HOURS (Plus minutes for reading the question paper.)

ANSWER: Question number one Compulsory and answer in addition any other three questions

Penal Law Statutes are allowed in the examination.

1. (a) Bwalya, a Principal resident Magistrate stationed at Solwazi is hearing a Preliminary Inquiry under sections 222, 223 and 224 of the Criminal Procedure Code Cap. 160 in which Chooonga is charged with murder, contrary to section 200 of the Penal Code Cap. 146, the particulars of offence being that at Solwazi in North-Western Province, on 30th April, 1989 he murdered one Joy Bupe (his wife). There are eight witnesses to be called to give evidence during the Preliminary Inquiry, and six of those witnesses have given their depositions.

Before a seventh witness is called to give evidence, sub/ Inspector Moonde, the Public Prosecutor produces and presents to the Magistrate, a Certificate of Summary Committal signed by the Director of Public Prosecutions, for the matter to be heard before the High Court as a proper case for trial before the High Court for Zambia.

Bwalya, then adjourns the proceedings and he seeks for a legal advice from you on the matter and asks what he should do. He further states that there were only two witnesses remaining for the prosecution and as so far as the evidence is considered on the matter is not sufficient enough to warrant the accused to be committed to the High Court for trial, and it would be unfair to stop hearing the matter at this stage and follow the directives of the Director of Public Prosecutions.

Can you advise Bwalya the course of action he should take, with the help of decided authorities and provisions of the statute.

- (b) What principles do the High Court have to take into account when determining an appeal against sentence, whether to allow it or not?

2. Excluding Provocation, examine, with the use of decided cases, the extent to which the law permits a person to kill another human being in order to save his own life or that of another.
3. Mumba, Tembo and Mwale agree together to inflict a sound beating upon Bwalya, because Bwalya is suspected of having secret love meetings with Joy, Mumba's girlfriend. At a Christmas eve - party Mumba and Tembo severely attacked Bwalya; Mwale stands by and shouts "Fix the son of a bitch." Mumba hears this remarks, spots an iron bar nearby, Picks it up and hits Bwalya by the side of the body and fractures eight ribs. As a result of that Bwalya dies.
- Mumba, Tembo and Mwale escape from the party. They hide in Banda's house for a week; who learns of the incident on the third day. During the hiding period Mary, Banda's wife, gives them food and water, as required by Banda.
- On the seventh day Mumba, Tembo, Mwale, Banda and Mary are apprehended by the Police, acting on a tip from a member of the public.

Discuss the Criminal liabilities of each of them and any possible defence that could raised.

4. Taking a shortcut to work, Mweemba found a bicycle lying concealed under a big bush. For a consecutive five days he took the same path to work, and kept watch on the bicycle, but none came to collect it. Mweemba concluded that the bicycle must be abandoned, so he took it to a bicycle repairer and dealer in Chipata Compound, near his home to sell it. Thinking that there might be some problems with the sale, Mweemba told the dealer that he had received the bicycle in Payment of a debt. The dealer was suspicious of this story, and told the Police, who carried out the investigations. It turned out that the bicycle had been reported stolen to the Police by Mwaanga about two weeks ago.
- Consider the Criminal liability of Mweemba, with an appropriate offences.

In Lungu v The people (court of Appeal of Zambia, 1972) Baron J.P. said in relation to section 201(c) of the Penal Code:

"In the result, the draftsmen probably succeeded in importing into Zambia the old English doctrine of constructive murder ..... and if this was not the result at that time, there is certainly a danger that it is the result now....."

Critically examine the law relating to "Constructive Murder" in the light of the above statement.

6. Consider criminal liability in the given facts:
- (a) Tembo on his way home meets Grace Bupe coming from the opposite direction, where she had gone to attend to swimming lesson at Lusaka Swimming Club. Tembo proposes love to Grace who turns down the proposal. Tembo, therefore, grabbed Grace by the neck, twists her arms and pushes her to the ground. He unbuttons his trousers and pulls off Grace's dress up. He fails to remove the swimming costume which was under the dress. He then let Grace go and says "Thank your stars, I would have cut your costume if I wanted and fuck you".
  - (b) Mwiinde attacks Noyo where he strikes Noyo with a hammer intending to cause grievous harm to him and he in fact causes him to sustain several ribs broken. Can this be a proper case of attempted murder? Discuss with a help of decided cases.
7. "The defence of 'bona fide claim of right' only applies to cases of theft".
- Do you agree with the above statement? Give reasons for your answer with authorities.

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END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY SUPPLEMENTARY/DEFERRED EXAMINATIONS - SEPTEMBER 1989

L 240

CRIMINAL LAW AND PROCEDURE

TIME: THREE HOURS (PLUS 10 MINUTES FOR READING QUESTION PAPER).

ANSWER: QUESTION NUMBER ONE COMPULSORY AND ANSWER IN ADDITION ANY OTHER THREE QUESTIONS.

PENAL LAW STATUTES ARE ALLOWED IN THE EXAMINATION HALL.

1. (a) Banda is charged with bigamy, contrary to Section 166 of the Code, Cap. 146, and is brought before Mr. T. Bwalya, the Principal resident Magistrate at the Lusaka Subordinate Courts. Banda pleads not guilty, and Inspector Mbewe, the Public Prosecutor informs Mr. T. Bwalya before the High Court for Zambia. But Mr. T. Bwalya does not want the case to be committed to the High Court through a Preliminary Inquiry. Mr. T. Bwalya adjourns the Proceedings and then Inspector Mbewe seeks your legal advice on how he could handle the case to facilitate it be committed to the High Court for trial. Kindly give him the necessary legal advice.  
(b) What Principles do the High Court or Supreme Court have to take into account when determining an appeal against Sentence, under Section 353 of the C.P.C., Cap 160, whether to allow the appeal or not?
2. For a defence of Provocation, a wrongful act or insult cannot relieve an accused person from murder only on its Provocative nature. Do you agree with this statement? Discuss with decided cases the truth of the statement.
3. Muleya required transport so that he could use for transporting the goods to be stolen from Mwiinga's shop. Muleya goes to Mwami and asks Mwami to lend him his (Mwami's) car and Mwami agreed. Mwami suspects that the car would be used in criminal activities but decides to ask no questions relating to the same. Muleya drives to Mwiinga's shop and take with him (Muleya's) 6 year old son, Banji, whom he requests to enter the shop through a small window and take some goods from therein. Whilst waiting for Banji to do what he was requested

of him, Muleya spotted, Moonde, a security guard, whom he recognised as the man who had recently insulted Muleya's wife.

Muleya hurriedly hit Moonde, the Security guard with an iron bar causing him some head injuries of which caused Moonde's death after a few days. Banji got the goods which he and Muleya packed in the borrowed car, and thereafter left the shop.

The police intend to jointly charge them all with murder, and store breaking and theft. They, then seek for your legal opinion and advice. Can you advise the Police as to the criminal liability of Muleya, Mwami and Banji for their actions.

4. Consider what offence has occurred in the following situation:-

(a) Mweetwa is given an envelope containing his by Mbulu his employer. Later upon opening the envelope, Mweetwa finds that he has been given in extra K10.00 by mistake. He decides to keep the K10.00 and uses it to pay for good worth K8.00 in a grocery. The saleslady mistakenly believing it to be a K20.00 note. gives Mweetwa K12.00 in change. Mweetwa does not inform the saleslady of the error and goes away. Discuss.

(b) Chileshe is a Manager of a shop. He is told by Chinondo, the owner of the shop, that no one is allowed to take money from the shop till for their own purposes or personal use without the express permission of Chinondo. One evening Chileshe realises that he had no money with which to take, Bupe, his girlfriend, out for her birthday dinner and decides to get K300.00 from the till although he does not get the permission of Chinondo, and he intends to replace the amount the next morning.

Would it make any difference if Chileshe was owed K400.00 by Chinondo? Discuss.

5. In *Lungu v The People* (Court of Appeal of Zambia, 1972) Baron J.P said in relation to Section 204 (c) of the Penal Code:

"In the result, the draftmen probably succeeded in importing into Zambia the old English doctrine of constructive murder... and if this was not the result at that time, there is certainly a danger that it is the result now....."

Critically examine the law relating to "Constructive Murder" in the light of the above statement.

6. Phiri, a police officer on foot patrol, sees Banda acting in a suspicious manner. He decides to question him, but Banda seeing Phiri approaching, immediately walks away in the opposite direction. Phiri calls him to stop but without success. Phiri runs to Banda, points his rifle at him and says:-

"Now perhaps you will stop and answer questions".

Banda still refuses to do so and suddenly knocks Phiri down and runs away.

Consider the criminal liability of Banda as to the appropriate offence.

7. "The 'actus reus' of attempt required something which goes beyond mere preparation. There must be an act which is immediately and not remotely connected with the intended offence. The problem is where to draw the line between mere preparation and actual attempt."

Explain and illustrate this statement with the use of decided cases, and how do the Zambian Courts regard attempts under section 389 of the Penal Code.

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END OF EXAMINATION

CONSTITUTIONAL LAW

TIME: THREE HOURS

ATTEMPT FOUR QUESTIONS

NOTE: The following may be consulted:

- (a) the Constitution of Zambia and any amendments thereto;
- (b) the Constitution of the United National Independence Party and any amendments thereto.

1. "By the strict letter of the presidential constitutions of Commonwealth Africa -----, the President is the Government."  
Prof. B.O. Nwabueze, Presidentialism in Commonwealth Africa (1973, St. Martins, N.Y.) 176  
Discuss in relation to the Presidency in Zambia.
2. Explain and comment on the ability of the Commission for Investigations to effectively check the abuse of office or authority.
3. Trace and comment on the development of the law and practice relating to the independence of the judiciary in Zambia since 1964.
4. Comment on the view that even after the establishment of the One-Party state in Zambia conditions still exist preventing the total subordination of the National Assembly to other authorities and organisations.
5. MUTAFE was detained under a Presidential order on 17th November, 1988. She says she does not know why she was detained nor whether or not any of her friends know of her whereabouts. She claims that all that she knows is that a year before her detention she was acquitted on charges connected with her having been allegedly found in possession of two large suitcases full of methaqualone hydrochloride (mandrax) pills and two truck loads of emeralds. MUTAFE says that there is no reason for her detention, though she says WINANGU, the policeman who apprehended her falsely accused her of illegal dealings in large quantities of elephant tusks. She also says that the police should have charged her instead of detaining her. She seeks her release and redress.  
Prepare a legal opinion for the senior partner in your firm, Mr. WACHABE, who will argue the case in court.

L 250

6. ASSESS and comment on the role which has been played by elections in Zambia as a check on the behaviour of the governors towards the governed.

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END OF EXAMINATION

UNIVERSITY EXAMINATIONS - JULY, 1989

L 310

EVIDENCE

TIME: THREE HOURS (plus 15 minutes for reading question paper)

ANSWER: Question number one is compulsory and answer in addition any other three questions.

Criminal Procedure Code Cap 160 and Evidence Act Cap. 170 are permitted in Examination hall.

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1. (a) The accused's spouse is never Competent nor Compellable for the prosecution. Discuss.
- (b) What is the 'Shield' that an accused person has under Section 157 of Cap. 160?
- (c) The accused person in Criminal Proceedings never bears the burden of proof. Discuss.

2. One night Hoomba, a University security officer, received a report about a theft of K8,000 from the Bursar's department. Nyambe a fourth year student was seen around the offices of the Bursar an hour before the break in. Most students suspected Nyambe. This was largely because for a month after the break-in, Nyambe was usually with plenty of money and was spending it carelessly.

One night Hoomba accompanied by Ruth, his girlfriend, decided to go and interview Nyambe in connection with the theft. They found Nyambe in a drunken state. Ruth in presence of Hoomba said to Nyambe, "It is better you say something for your sake. They may allow you to sit for your final examination in a month's time". Ndine ninamba naba Joe meaning "I am the one who stole together with Joe". Hoomba records the statement in English in his notebook "Nyambe admits the theft".

Thereafter, Hoomba reported the matter to the Police and a notorious Police detention order was issued against Nyambe. After 21 days in detention Nyambe was visited by the campus chaplain. They said some prayers together and afterwards the priest said to Nyambe, "Tell me the truth. Did you do it, I may be able to help you spiritually".

Nyambe told the Priest that he stole the money and has got some of it hidden in his room. The Priest informs the Police and is quite willing to testify against Nyambe.

Constable Banda, got Nyambe from prison and took him to Chelston Police Station where he started interrogating Nyambe without administering a caution in friendly manner, and Nyambe gave an incriminating statement as he told the Priest. His room was searched without his permission nor search warrant, and some of the money was in fact discovered inside Nyambe's mattress. Nyambe is charged of burglary and theft.

Discuss the admissibility of various items of evidence raised.

3. How has the decision of Boardman v D. P. P. (1974) 3 ALL E. R. 887, affected the rules as to the admissibility of similar fact evidence?
4. (a) What are the rules as to the admissibility of public document?  
(b) Mwamba has for quite sometime been troubled by what he considers to be heavy tax bills. He decides to consult a law firm on how to evade tax without getting in trouble with the authorities. Mwamba has heard that you are a law student at the University. He wishes to know whether his communications to the firm or lawyers are privileged. Using decided cases as illustration, advise him
5. Alice, a Kitwe resident hears that you are studying law, at the University. She comes to you to seek legal advice. She tells you that she last saw her husband in 1976, whom she is married to under the Marriage Act. At the that time a very healthy looking young man of 25 years old. He left matrimonial home by saying "I cannot cope with your behaviour any longer, I need peace". This was after they had terrible problems at their home.  
  
Later the following year she had heard that he had been arrested on two charges of theft of motor vehicle in Lusaka and imprisoned for eight (8) years. Peter escaped from prison in 1979. After he ran away from prison and while being pursued by the Police and Prison officers, he jumped into Ngwarere river and has not been seen since. There are two assumptions: One is that he drowned, and the other is that he swam under water and emerged in Chunga Compound and is hiding there.

Alice tells you that she has recently found a lover and she would like to marry him. She argues that Peter is dead and states further that her belief is strengthened by the fact that any reasonable court would take the view that if a person stays under water for a while he dies this is as obvious as the fact that water is wet and needs no proof. This she argues, is in addition to the fact that he has been missing for a long time.

Discuss and give her a legal opinion.

6. Comrade Bambo was charged with and convicted of raping Maria Phiri in Lusaka Magistrate Court. The facts of the case were as follows: Comrade Bambo was alleged to have raped Maria Phiri behind Lusaka theatre. After the incident she met two of her friends, Joyce Banda, aged 11, and Ruth Mbewe aged, 13 near the Pamodzi Hotel. Seeing the dishevelled appearance of Maria Phiri, her friends asked Maria what had happened. To this question Maria Phiri replied "Iwana, I have just been raped by that old bastard Comrade Bambo behind Lusaka theatre, exactly at the same place where he had raped Dorothy two weeks ago".

At the <sup>trial</sup> ~~trial~~, Maria gave evidence on oath and testified in detail to the court about the incident, but in her testimony she made no reference to the statement she made to Joyce and Ruth. The prosecution, however, called both Joyce Banda and Ruth Mbewe as witnesses. Joyce Banda gave an unsworn statement, but Ruth Mbewe gave a sworn evidence. Both of them tendered in evidence the statement Maria Phiri had made to them.

The defence counsel Hojo objected to the admissibility of the statement of Maria by the two girls and in the cross-examination and the defence indicated that Maria Phiri was a woman of easy virtues who is usually found along Addis Ababa road and Pamodzi Hotel Soliciting, and that in fact it was Maria Phiri who made overtures to comrade Bambo. He also informed the court that Joyce and Ruth were usually found at Pamodzi Hotel in the company of Maria and both were known to be notorious liars.

Being annoyed by the nature of the cross-examinations and the defence presented, Sub/Inspector Godwe, the public prosecutor, called Jane, comrade Bambo's wife to testify that comrade Bambo was unfaithful.

Sub/Inspector Godwe, also got the permission of the court to find out from comrade Bambo through cross-examination, if he, comrade Bambo, had not been convicted of rape sometime in the past.

In his judgement the trail magistrate held inter alia:

- (a) That the statement tendered in evidence by Joyce Banda and Ruth Mbawe was properly admitted and that it was admissible to prove the facts thereof.
- (b) That the testimony of Jane, comrade Bambo's wife was admissible.
- (c) That the evidence of the fact that Comrade Bambo had been convicted of rape sometime in the past was admissible evidence.

Mojo has appealed to the High Court. In his tentative grounds of appeal he has appealed against all the above three holdings of the trail Magistrate. Comrade Bambo has come to you for advice on the relevant law of evidence relating to the issues raised in order to ascertain his chances of success. He also wants to know from you if there are any other possible grounds of appeal he can include in his appeal.

Discuss.

- 7. "Acts, declarations and incidents which constitute or accompany and explain the fact or transaction in issue are admissible for or against either party as forming part of res gestae".

Using decided cases, discuss this quotation.

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END OF EXAMINATION

L320

PROPERTY LAW AND SUCCESSION

TIME: THREE HOURS (plus 10 minutes to read the Examination Paper).  
EACH

ANSWER: FOUR QUESTIONS - AT LEAST ONE FROM SECTION

SECTION ONE:

1. (a) In his address to the U.N.I.P. National Council in 1970, the President said:
- "The danger, therefore, does not lie only with land which is freehold, which has been a bone of contention in recent years. It also lies in the rights of usage over vast acres of land by individuals under customary law".
- What measures, if any, have been taken to eliminate the deficiencies in the "customary right of usage"?
- (b) Evaluate the system of grants of non-customary titles in Reserves and Trustland. To what extent does non-customary tenure in Reserves and Trustland encourage agricultural development in these areas?
2. (a) "Now examining the history of why it was deemed necessary to pass this piece of legislation, one finds that it was not meant to cover every kind of land tenure other than the former freeholds----- My own view is that it is not possible for some classes of people in this country to comply with the Act in question. This is because their systems of land tenure are and have been typically traditional and have not known the kind of procedure covering the British type of land ownership where we derive our/under the Lands and Deeds Registry Act, cap 287 and other related pieces of legislation". Per Commissioner Musumali in Datson Siulapwa V. Faless Namusika.

Discuss the history of the Land (Conveyance of Titles) Act in the context of its applicability to land in Reserves and Trustland. Are the observations of the Commissioner in the case cited with regard to the application of the Act to Reserves and Trustland justified?

- (b) In the Nigerian case of Cole v Cole, a judge made the following observations:

"In most British possessions there are natives who have reached a high standard of education. It is obvious that primitive native customs cannot be applied to men who have attained this advanced standard. An advanced and educated native may bequeath property by will and, in the absence of a will, it will descend in the accordance with the English law of succession."

In what circumstances may an African's property devolve under <sup>the</sup> received English law of intestate succession in Zambia?

SECTION TWO:

3. (a) Discuss the judicial interpretation of the term "development" as used in the Town and Country Planning Act, cap 475.
- (b) Evaluate the provisions relating to public participation in the preparation of a development plan under the Town and Country Planning Act, cap 475. What improvements, would you recommend in the law and practice relating to public participation?
4. (a) What are the material considerations to which the Minister or the planning authority should have regarded before granting planning permission under the Town and Country Planning Act, cap 475?

- (b) Allan who has a keen interest in small children converted a disused church building into a nursery school. In order to do this some internal structural changes to the church building had to be carried out. Allan's first intake was only twelve children under the age of seven. No application was ever made to the Lusaka Urban District Council for a building permit and planning permission under the impression that the establishment of a new nursery school was in the public interest as other nursery schools in the area were exorbitant in their charges. There was, therefore a need for such a school in the area.

The Council took no action and the school operated for five months at the end of which it received complaints from owners of surrounding dwelling houses that there was excessive noise from Allan's nursery school. Owners of other nursery schools complained that the low fees charged by Allan would in the future undercut their profits.

In response the Council served Allan with a demolition order under the Public Health Building Regulations requiring him to demolish all the structures he had erected within seven days. On the eighth day, the Council, having noticed that their demolition order had been ignored served Allan with an enforcement notice under Section 29(1) of the Town and Country Planning Act. The enforcement notice required him to demolish all the structures he had erected and to cease to use the premises as a nursery school. He was given three weeks in which to comply with the enforcement notice. Allan comes to you for advice. Advise him.

SECTION THREE:

- (a) Compare and contrast the protection of the tenant against actions for possession of the premises under the Rent Act cap 438 with that under the Landlord and Tenant (Business Premises) Act, cap 440.

(b) X owned a building consisting of two floors. The upper floor he used as his residence and the ground floor as a warehouse for his shop situated in another part of town. Having run into financial difficulties he let the building <sup>to</sup> Mrs Y. Mrs Y took a two year lease of the building and it was stipulated in the lease that the tenant had an option to convert the lease into a yearly tenancy after the expiration of the two years, subject however to the tenant giving the landlord three months notice of the intention to exercise the option.

Mrs. Y moved her family into the upper <sup>floor</sup> and began using the ground floor as a cafeteria.

At the expiration of a year and six months Mrs Y served a written notice on the landlord expressing her intention to exercise her option for a year's tenancy on the same terms. In the meantime the landlord had already executed a lease in favour of Mr. A, the lease to take effect upon the expiry of the leasehold term of two years granted to Mrs Y. The landlord informed Mrs Y that she would have to vacate the premises at the end of the two year term because the premises had already been let to somebody else. The landlord then served Mrs Y with the notice to terminate the lease.

Advise Mrs Y.

6. Evaluate the validity of the following dispositions both at common law and under the Trust Restrictions Act, cap 76.
- (a) A testatrix left gifts by will in favour of such of the grandchildren of Mr. Numba "as shall be living at my death or born within five years therefrom who shall attain the age of 21 years or being female marry under that age in equal shares." At the date of the death of the testatrix, there were two grandchildren of Mr. Numba alive.
- (b) By his will Max devised and bequeathed his residuary real and personal estate on trust for his widow for life and then for their children and, if none (as was the case), on trust for the children of his Brothers and sisters. By a codicil he declared that his widow's life interest should be terminable on her remarriage unless such remarriage should be with an indigenous Zambian; and that on her death the trustees should

hold the residuary estate on trust for the children of his brothers and sisters who should be living at the death of his wife or born at any time afterwards before any one of them attained a vested interest and who being a son attained 21 or being a daughter attained that age or married. The widow married a Senegalese. At the date of the testator's death (without issue) his parents were both aged 72. All his brothers and sisters were over 30 years old and all had infant children, one of whom was born after the remarriage of the widow.

7. (a) Discuss the various ways in which a mortgage may be created in Zambia and how a mortgagee may enforce his security.
- (b) In 1970 Mobil Oil Ltd granted a 50 year lease of a filling station to X at a rent of K12,000 per year. In 1982 X received a loan from Mobil Oil Ltd of K50,000 on the security of his lease. The mortgage contained a clause precluding X from redeeming the mortgage during the remainder of his term less ten weeks and from purchasing petrol from any company other than Mobil Oil Ltd during the continuance of the mortgage.

X would now like to redeem the mortgage so as to enable him to purchase oil elsewhere.

Advise the parties as to their rights.

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - JULY, 1989

L 330

COMMERCIAL LAW

TIME: THREE HOURS (PLUS 15 MINUTES TO READ THE PAPER)  
ANSWER: ONE QUESTION FROM SECTION A AND ANY THREE FROM SECTION B.

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SECTION A

1. Lukonde, Namboard Managing Director, Mrs Sumaili, Company Secretary and Kamwendo, the Sales Manager rushed to India to procure Compound 'D' fertilizer which was completely out of stock in Zambia. Since the Foreign Exchange Management Committee (FEMAC) released the foreign exchange late in December, the three officials had to rush so that the fertilizer was procured in time for the farming community.

In India, Coovadia, the Production Manager of the Nitrogen Chemicals Ltd took Kamwendo on a conducted tour of their warehouse and showed him ten jtons of Compound 'D' in stock. Kamwendo examined the fertilizer and expressed satisfaction.

Namboard ordered 30 tons and asked that it be delivered two months from date of contract C.I.F. Dar-es-salaam. The contract provided that the thirty (30) tons would be delivered at once and that the buyers would pay the contract price of US \$1.5 million in accordance with law governing C.I.F. contracts.

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Unfortunately, Nitrogen Chemicals in India did not deliver until three months later due to serious shortage of raw materials to produce the remaining 20 tons. When it was finally delivered, the fertilizer was in two consignments and not one as provided.

The bills of lading arrived two weeks before the consignments and Namboard instructed their bankers to pay by bankdrafts. This was done. When the fertilizer was examined, it was discovered that while the first consignment contained Compound 'D' the second contained a mixture of 'D' 'C' and ungraded quality.

NAMBOARD wishes to reject. Advise

Shangobeka has had three break-ins at his house in Chongwe, Lusaka East. On each of those occasions he had lost considerable property. Chongwe Police, who had no transport on the station recovered none of the lost items.

On a Sunday, his friend Chitupila, an insurance agent with Chitupila Insurers visited him and asked him to 'buy' a policy against burglary and theft of his house hold effects. Shangobeka agreed and Chitupila took out the proposal forms which he completed for Shangobeka. Shangobeka had complained, after filling in his name, that insurance forms were difficult to understand. In the course of completing the forms, Chitupila did not ask Shangobeka any questions except to ask him sign.

Two months after the proposal was submitted to Zambia State Insurance Company (ZSIC) but before a policy number was issued, Shangobeka's house was broken into and musical instruments, pots, plates and other

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household effects were stolen. Shangobeka reported to Police and ZSIC. Like in the past the Police did 'nothing' because they had no transport.

A month after this incident, Shangobeka received his policy. He had by then already paid premium for three (3) months since r preparation of the proposal with Chitupila.

After the theft, Shangobeka bought a number of new household effects including musical instruments but before he informed ZSIC about them, the house was again broken into and the entire 'house' was swept. All were stolen. The thieves had used the kitchen door whose lock was loose.

ZSIC wish to repudiate liability on account of the fact that in the first theft, the policy had not yet been 'approved' whereas in the first and second, Shangobeka did not disclose that he had three previous burglaries at the same house, Police had no transport and the kitchen door was loose.

Discuss.

SECTION B

3. Explain the position of conditions and Warranties in Insurance Contracts.
4. Illustrate with examples when an undisclosed principal can and cannot intervene or be made a party to the contract of his agent.

5. (a) Write short notes on the following:-
- (i) Indorsements in blank and special indorsements
  - (ii) The Nature and legal effect of instalment contracts
  - (iii) subrogation
- (b) Discuss the nature and scope of Agency by Necessity.

'..... Banks have effected new measures to stem the ever increasing incidence of forgeries, Bank Association of Zambia (BAZ) Chairman Friday Ndhlovu said in a press statement released in Ndola yesterday. With immediate effect, all banks will issue cheques with printed crossings only..... Branch Managers will be willing to work out measures conducive to customers if they insist on having a third party cash their cheques.....'

Times of Zambia, Thursday, February 16, 1989.

Using decided authorities, discuss the legal effect of crossings on cheques with or without words; 'and company', 'not - negotiable', 'account payee'.

- (a) Compare and contrast:-
- (i) usual Authority and Customary authority
  - (ii) Implied Authority and Apparent authority
- (b) Liswaniso has been looking for a good second hand car for his use at home and office. As it happened, his professional colleague, Mkandawire, was selling her second hand car. She advertised it in the Times of Zambia and stated that she was selling it, 'with all faults.' Liswaniso gave the car a test drive and agreed to buy it for K90,000. He used the car for one month in the course of which he drove to every friend he could imagine to show them his latest achievement.

In the second month, the gear box became defective and the car could not go into reverse. Also, the back axle broke.

Liswaniso intends to bring proceedings against Mkandawire.

Using decided cases, outline the rights and liabilities of parties.

THE UNIVERSITY OF ZAMBIA

UNIVERSITY SUPPLEMENTARY/DEFERRED EXAMINATIONS - SEPTEMBER 1989

L 330

COMMERCIAL LAW

TIME: THREE HOURS (PLUS TEN MINUTES FOR READING THE PAPER).

ANSWER: ANY THREE QUESTIONS

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(a) Compare and contrast the following:

- (i) Sellers right of lien
- (ii) Right of stoppage intransitu

(b) In a contract for purchase of fifty 'new UNO cars' by ZIMCO from Beenzu Motors, there was a term which provided that, 'all Conditions and Warranties implied otherwise be excluded. However, the parties had provided specifically that the sell should be for 'new UNO cars'. One of the fifty cars delivered had been used for four months although it was as good as new.

Using decided authorities, advise ZIMCO whether they can reject and if they are entitled to reject, whether they can reject the entire consignment or only the used car?

2. Trace the historical development of the law governing negotiable instruments and critically examine the notable consequences of transferability of the <sup>various</sup> instruments both before and after the enactment of the Judicature Act 1873.

3. Compare and contrast:-

- (a) Apparent Authority
- (b) Implied Authority

4. (a) Write short notes on the following+

- (i) Subrogation
- (ii) Del credere Agent
- (iii) F. O. R. contract.

(b) Does the principle that the contract by the agent is that of the Principal apply to an Undisclosed Principal?

Chisha Trading Company agreed to sell Burundi Builders Limited of Burundi 5,000 bags grade (A) cement ex works. The cement was part of a cargo of cement which had been discharged at Chisha Trading Company warehouse in the industrial area of Lusaka. The total cargo of cement at the warehouse was 40,000 bags of grade (A), (B) and (C). The quantity for grade (A) alone was 17,000 bags. Out of this quantity, 3,000 bags had already been bought by Shangobeka of Tanzania while Chintu contractors of Kitwe had already paid for 6,000 bags of grade (A) and (B). But 13,000 bags of grade (A) and (B) and the entire quantity of grade (C) were yet to be bought.

Burundi Builders Limited paid K60,000 to Chisha Trading Company in settlement of the contract price for the entire 5,000 bags bought. Out of this quantity, 1,200 bags were collected. The remainder was damaged by rain and Burundi Builders refused to accept it.

Before the damage, Chisha had set apart 5,000 bags of cement grade (A) from the rest in an effort to satisfy his contract with Burundi Builders although these bags remained in the same room as those for other grades and for grade (A) but which for other buyers or awaiting to be bought.

- (a) Advise both parties when property and risk passes in ex works contract involving sale by description of unascertained goods.
- (b) Who bore the risk of the uncollected cement damaged by rain in this matter?

ADMINISTRATIVE LAW

TIME: THREE HOURS (plus 10 minutes for reading the question paper)

ANSWER: ANY FOUR QUESTIONS

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1. Discuss why it is necessary to have controls over delegated legislation. Critically assess the effectiveness of the main controls of delegated legislation in Zambia.
2. Outline the mechanisms for the settlement of disputes within the framework of the administrative machinery itself in Zambia. Discuss the factors which have led to their development, and the problems which these modes of dispute settlement pose.

(Note: The Commission for investigations is not regarded, for the purpose of this question, as a dispute settlement mechanism within the administrative machinery itself).

3. CAP 181, reads:

"The President may issue a commission appointing one or more commissioners to inquire into any matter in which an inquiry would, in the opinion of the President, be for the public welfare".

In Nkumbula v Attorney-General

The Court made the following observations on the power of the President under the above provision:

"The power in the present case is to set up a commission if an inquiry would, in the opinion of the President, be for the public welfare; the words "in the opinion of the President" clearly make the matter one for the subjective decision of the President, and it has never been doubted that a decision made under a power expressed in such terms cannot be challenged unless it can be shown that the person vested with the power acted in bad faith/<sup>or from</sup> improper motives or on extraneous considerations or under a view of the facts or the law which could not be reasonably entertained."

Comment on the above statement and bring out clearly, in your discussion, the present scope of judicial review of administrative power in Zambia. Cite decided cases and give relevant illustrations to make your points clear.

4. Discuss the principal judicial remedies controlling administrative acts or omissions? Critically assess the adequacy of the available remedies.
5. Explain the powers and jurisdiction of the office of the Investigator-General, and assess the contribution of the office to the protection of human rights in Zambia.
6. Critically evaluate the modes of control which government exercises over parastatals in Zambia. Discuss to what extent parastatals are autonomous or not.

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END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - JUNE/JULY, 1989

L 350

FAMILY LAW

TIME: THREE HOURS

ANSWER FOUR QUESTIONS

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1. "Marriage confers a status"

Discuss the significance of this statement with regard to the rights and obligations between husband and wife either

- (a) Under a statutory marriage or
- (b) Under a customary marriage

2. Advise H and W<sup>2</sup> on the validity or otherwise of their marriages in situations a, b, and c. Also indicate any criminal offences that might have been committed by any of the persons involved in each case.

- (a) H and W<sup>1</sup> were married by the priest of the Church of Satan in Cathedral of Satan in Lusaka. Neither the Priest nor the Church were licenced for the purposes of ceremonizing marriages under the Marriage Act. A Certificate of Marriage was issued. Before the dissolution of this marriage H contracted a marriage in accordance with Namwanga Customary law with W<sup>2</sup>
- (b) H and W<sup>2</sup> married under the Marriage Act. Unknown to H, W<sup>1</sup> was at the time six (6) months pregnant Kapelwa Musonda. Before dissolution of this Marriage H went through a Ceremony of Marriage under the Act with W<sup>2</sup>.
- (c) H and W<sup>1</sup> went through a ceremony of Marriage under the Act. H summoned W<sup>1</sup> to the Local Court to divorce. The marriage was accordingly dissolved. H married W<sup>2</sup> according to Lozi Customary Law.

3. (a) Write short notes on the meaning and importance of

- (i) Lex domicili
- (ii) Lex loci celebrationis

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(b) John, an Englishman living in England was offered a job by ZCCM on contract for four (4) years. He accepted the offer on condition that he should not be required to renew his contract at the end of four (4) years. A few days after his arrival in Zambia, John was attracted to Rhoda and the two fell in love. Rhoda introduced John to her father.

John proposed marriage to Rhoda. Rhoda's father insisted that the marriage had to be a Customary one. John paid K500.00 Lobola and John and Rhoda were married according to Ngoni customary law. Rhoda moved out of the Matrimonial home. John met Tano, an attractive 25 year old woman and married her under the act. Two children were born to the Marriage. Tano has discovered John's earlier marriage to Rhoda. She is anxious to know the legal status of her marriage to John and that of their children.

Advise Tano

4. "To constitute the offence of bigamy under section 166 of the Penal Code, the second marriage must be capable of producing a valid marriage known and recognized by the law but for the subsequent first marriage. S 166 of the penal code contemplates that both first and second unions of marriage should be christian or western type of marriages. A customary union is not capable of being a valid marriage in the sense of a (monogamous) marriage" as per Care J. in THE PEOPLE vs KATONGO

Discuss this statement in relation to decided cases on bigamy and section 38 of the Marriage Act.

5. Mwale ordered his wife to leave the matrimonial home. They married under customary law. For five years, Mwale has been complaining about his wife's failure to conceive. On several occasions, he advised his wife to seek treatment to cure the barrenness, but she refused arguing that her husband was to blame for her failure to conceive.

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Mrs. Mwale has returned to her husband's village with her uncle to have their crops in the field shared. She is now claiming that her husband's conduct amounted to divorce. However, Mwale insists that they are merely on separation. Assume that you are an assessor in a Local Court hearing this dispute. What would be your advice and why?

6. "The capacity to marry is of little significance under customary law". Discuss the validity of this statement in relation to:
  - (a) The decision of Justice Woodman in the case of R. V. Chininjamba (1949) 5 NRLR
  - (b) The requirements of a valid customary law marriage
7. The decision in the case of Muyamwa V Muyamwa (1976) Z. L. R. 146 has been criticised as wrong interpretation of the relevant Sections of the Marriage Act, Cap 211 regarding capacity to marry. Concisely explain the issues involved in the Muyumba case. In your opinion, what do you think should have been the correct decision and why?

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END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - JUNE/JULY, 1989

L 410

JURISPRUDENCE

INSTRUCTIONS:

1. Question No 1 is compulsory and carries more marks.
  2. Answer Question 1 and any other three questions (four questions in all).
  3. Time allowed: 3 (Three) Hours.
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(This Question is compulsory).

1. "Customary Law in Africa represents the People's spirit (the volksgeist). It commands both social and historical legitimacy. The same cannot be said of the received common law. This partially accounts for blindness or hegemony of legal ideology in many African countries".  
Do you agree? Assess the validity of this proposition in the light of the jurisprudential theories put forward by the Historical School of jurisprudence and as applied within the Zambian context.
2. "It appears proper and desirable to divide the legal sources into two major categories, to be designated as formal and nonformal sources. By formal sources, we mean sources which are available in an articulate textual formulation embodied in an authoritative legal document. By nonformal sources we mean legally significant materials and considerations which have not received an authoritative or at least articulated formulation and embodiment in a formalized legal document".  
  
In the light of this statement examine in detail how a 'Realist' and a 'Positivist' jurist will react as to the true sources of law.
3. Which school of jurisprudence or theory of law appeals to you as offering an adequate explanation as to the true relationship between law and society, and of the role of <sup>law in</sup> Zambia? Discuss.

4. "A legal system must exhibit some specific conformity with morality and/or justice, or must rest on a widely diffused conviction that there is a moral obligation to obey it".

Do you agree? Examine the nature of the relationship that exists between law, morality, and justice.

5. Discuss the Marxist understanding of the role of law and state in the economic, political, and social processes of society.

6. "While the will to power has its roots in the desire to dominate other men and subject them to one's influence and control, the will to law stems from a human inclination opposing this impulse, namely, the desire to be free from the arbitrary domination of other men.

The institution of law, in one of its most significant aspects, may be viewed as an instrument to check and curb man's appetite for power". Discuss.

7. From the following subjects choose two and comment comprehensively:

- (a) The significance of 'sanctions' in constructing a theory of law.
- (b) Law and social order
- (c) Edward Sallah v. Attorney-General (1970).
- (d) Roscoc Pound and the theory of 'jurisprudence of Interest'.

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END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY SUPPLEMENTARY/DEFERRED EXAMINATIONS - SEPTEMBER, 1989

L 410

JURISPRUDENCE

TIME: THREE HOURS

ANSWER: QUESTION ONE AND ANY OTHER THREE QUESTIONS (FOUR QUESTIONS IN ALL).

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(This Question is Compulsory).

"The law of contract or tort, consists of a set of rules and principles, to be derived from authoritative sources and applied to factual situations in order to solve practical problems. Jurisprudence, by contrast, does not constitute a set of rules and is not derived from authority. It is a subject which differs in kind from other subjects on the legal syllabus."

In the light of the above, discuss the nature and value of jurisprudence.

Give a critical evaluation of Austin's theory of the Law as a Command, laid down by a political sovereign and enforceable by a sanction.

"A major proposition in Hans Kelsen's pure theory of law, is that; in every legal order, no matter with what proposition of law one begins, a hierarchy of "oughts", is traceable back to some initial, fundamental "ought", on which the validity of all others ultimately rests".

With the above proposition in mind, discuss the juristic implications of a revolution, giving one or two relevant authorities.

What impact did the Natural law theories have on the rise of Liberal Democracy in Western Europe?

"Like the positivist, the realist looks on Law as the command of the sovereign,... but for the realist the sovereign is not Parliament, it is the court."

Consider the above statement in evaluating the theories of legal realism.

Taking into account the nature of our present modern and complex society, how do you think the law has helped or helps regulate various activities to the benefit of the citizens?

Write concisely on any two of the following;

- (a) Karl Marx's doctrine of the economic determination of law.
- (b) Law and Power.
- (c) Law as 'it is', as distinguished from what it 'ought to be'.
- (d) Why people obey laws, or seem to.

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END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - JUNE/JULY, 1989

L 420

BUSINESS ASSOCIATIONS

TIME: THREE HOURS (plus 10 minutes in which to read the question paper)

ANSWER: FOUR Questions (i.e two from each section)

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SECTION A

ANSWER ANY two QUESTIONS FROM THIS SECTION

(a) Discuss the following cases:-

- (i) Baker v Raine Engineering Company Limited  
(1971) SJZ 260.
- (ii) Mwanza (F K) v National Transport Corporation of Zambia Limited and Another (1979) ZR 129.
- (iii) The Commissioner of Taxes v Nchanga Consolidated Copper Mines Limited (1964) A.C. 948. (15 marks)

(b) Chongololo club, a Lusaka based charitable association, which aims at providing students redirected from the University with some skills has resolved that it be turned into a company limited by guarantee in terms of the Companies Act. Cap 686. Identify the basic documents that have to be drawn and filed with the Registrar of Companies in order to form the proposed company.

(10 marks)

(a) Critically examine the legal heritage of the doctrine of ultra vires as it applies to Zambia today.

(10 marks)

(b) Tazi Import and Export Company Limited has been operating in Zambia for the past twenty years. Its main line of business, as the name suggests, is import and export trading in finished products. Recently the Government imposed restrictions on the issue of import and export licences so as to provide stimulus for the locally-based industries. Inevitably this has affected the viability of Tazi Import and Export Company Limited.

In order to save the company from imminent liquidation the directors have altered the objects clause so as to enable the company to own and sell land, and to manufacture semi-precious stones which are in abundance in Zambia.

Pursuant to the new objective, the company has sold one thousand acres of farming land to Up-North farms and one ton of finished products from semi-precious stones to Unza Fashions Limited.

Both Up-North farms and Unza Fashions Limited have declared disputes with Tazi Import and Export Company Limited, claiming among other things that Tazi Import and Export Company Limited had overcharged them.

Write a legal opinion on the rights of Up-North farms and Unza Fashions Limited against Tazi Import and Export Company Limited

(15 marks)

- (a) It is generally believed and sometimes accepted without question that directors manage the company and the law has provided for the manner in which the directors must manage the company. Outline the legal theory of management by the directors and contrast it with management in practice.

(10 marks)

- (b) UNZACO Limited, a wholly-owned subsidiary of the University of Zambia, which has been undercapitalised for sometime now, wishes to restructure its share capital with a view to raising more working capital. At a meeting held by the directors on 1st July, 1989, it was resolved to recommend the following measures to the shareholders:-

- (i) That the company's share capital be raised from K100,000.00 to K200,000.00; and
- (ii) That the share capital of the company be divided into 100,000 ordinary shares with voting rights and 100,000 deferred shares without franchise at the par value of K1 each

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There was no general meeting called but all the shareholders except one endorsed the recommendations of their directors.

The chairman of UNZACO Limited has written to the Board of Directors giving them green light to implement the new measures.

On the strength of the letter from the chairman the Board of Directors has invited Josse, a renounced Katondo Street dealer to invest the company. Josse has bought 80,000 ordinary shares and proposes to alter the objects clause of the company to enable him to deal in drugs of all descriptions including those which are proscribed by law.

The University of Zambia is worried about this turn of events and wishes to know how it can reassert its control over the subsidiary company.

Advise the University of Zambia and Josse as to their rights in UNZACO Limited.

(15 marks)

SECTION B

ANSWER ANY TWO QUESTIONS FROM THIS SECTION

(a) What role does ZIMCO Limited play in Zambia's parastatal sector? Explain this in terms of economic entity theory and legal separation theory. (10 marks)

(b) MONDECO Limited is a parastatal company formed under the provisions of the Companies Act. It is also a wholly-owned subsidiary of MONDEX Limited which is a government owned holding company. The government, in its understandable desire to control the affairs of all the parastatal companies and the national economy as a whole, has created a Ministry of Parastatals and National Economy. Amongst other things, the Minister of Parastatals and National Economy is empowered to appoint directors and to make regulations for the parastatal companies.

The articles of association of MONDECO Limited, on the other hand, provide that the shareholders in a general meeting shall appoint directors and shall make regulations for the company.

L 420

How would you reconcile the two conflicting co-operant factors in the control of the parastatal companies? (15 marks)

(a) How are co-operative societies different from other forms of business associations in Zambia? (10 marks)

(b) Critically evaluate the role of the Government in the promotion and development of the co-operative societies in Zambia. (15 marks)

(a) Discuss the statutory duties of partners. (10 marks)

(b) Kalingalinga and Co is a partnership comprised of White Zulu aged 60 years and Malbury Kamanga aged 14 years. The partnership arose out of an oral agreement between Zulu and Kamanga whereby Zulu buys blocks of cigarretes which he gives to Kamanga to sell and at the end of the day they share the profits in the ratio of one to four.

It was agreed that although Kamanga was not to contribute any money to the partnership, his labour would count as twenty percent towards the partnership capital.

Kamanga has given notice to Zulu that he <sup>wants</sup> to terminate the partnership and to be paid his dues so that he can set set up the same business as a sole trader.

Zulu has refused to give Kamanga any fraction of the share capital which now stands at K2,400.00 and has in fact threatened to sue kamanga for breach of the contract of employment.

Advise kamanga of his rights. (15 marks)

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END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY SUPPLEMENTARY/DEFERRED EXAMINATIONS - SEPTEMBER 1989

L 420

BUSINESS ASSOCIATION

TIME: THREE HOURS (PLUS 15 MINUTES TO READ THE QUESTION PAPER).

ANSWER: FOUR QUESTIONS:-QUESTIONS ONE AND TWO ARE COMPULSORY.

1. Sosi is a Managing Director of TIKA Ltd., a company registered under the provisions of the Companies Act. Article 20 of the articles of association of TIKA Ltd provides that the Managing Director should serve the company for as long as he wished. This same provision was incorporated in letter of appointment written to Sosi by the Chairman of TIKA Ltd. Now the company feels it does not require the services of Sosi and wishes to terminate his employment. Advise both the company and Sosi on their respective rights/obligations.

Write critically on the following:-

- (a) requirement for <sup>co-operative</sup> ~~parastatal~~ membership.
- (b) directorship in a <sup>parastatal</sup> company.
- (c) the memorandum of association of a company.

Compare and contrast the methods of corporate control under common law and under the Companies Act.

MONDECO Ltd is a parastatal company formed under the provisions of the Companies Act. It is also a wholly-owned subsidiary of MONDEX, which is a government-owned holding company. The government, in its quest to control the affairs of all the parastatal companies has appointed a Minister for Parastatals. Among other things, the Minister is empowered to appoint directors and to make regulations for the companies. The articles of association of MONDECO Ltd., on the other hand, provide that the shareholders shall appoint directors and shall make regulations for the company. How would you reconcile these two co-operant factors in the control of the parastatal companies?

How is statutory corporation distinguished from a parastatal company?

Which of these two forms of organisation do you consider is best suited for running government business?

With respect to the pre-registration requirements of a co-operative society under the Zambia Co-operative Societies Act, explain the respective roles given to the Registrar and the Minister. In your opinion, is this a realistic way of distributing roles?

- (a) Discuss either the terms found in a typical partnership agreement or the duties of the partners
- (b) Dixie Mabonzo, a prominent Lusaka businessman, for two years supplied large quantities of stationery to Bungwe Partners who are the publishers of a notorious Campus paper called "Monkology." When Dixie rendered his bill for settlement, he was informed by one of the partners that the partnership had been dissolved and firm assets had been distributed. The partners involved were - Ric Majoza, Mic Moja, Rose Kaku and Rommie Modesti. Upon hearing of the dissolution of the partnership, Dixie approached his lawyer who advised him to single out Ric and Mic for suing on a partnership debt on the ground that those two were in good employment. The Court of UNZA gave judgement to Dixie but the judgement remained unsatisfied for six months. Dixie was then advised to sue Rose Kaku and Rommie Modesti on the debt. But the two defendants applied to the Court to have the other two co-partners joined in as defendants. Advise the four partners on their respective rights and obligations.

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END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - JULY, 1989.

L 430

INTERNATIONAL LAW

TIME: THREE (3) HOURS

ANSWER: FOUR (4) QUESTIONS INCLUDING AT LEAST ONE QUESTION FROM PART ONE

PART ONE

- (a) Recently there have been reports in the Zambian press of poachers being / <sup>shot</sup> dead in Zimbabwe. Discuss which of the two states would have jurisdiction to prosecute the poacher.

On similar facts, one of the Zambian poachers manages to crawl across the boarder between Zambia and Zimbabwe after being fatally wounded by Zimbabwean game guards, and is helped to safety by Zambian security guards at the boarder. The Zambian government refuses to prosecute or extradite the offender. The Zimbabwean government is threatening to go to the International Court of Justice over the matter. Write a legal opinion for the Zambian government on all legal issues the situation gives rise to.

- (b) Discuss the <sup>significance of the</sup> doctrines of continental shelf and Exclusive Economic Zone. to Zambia as a landlocked country.

A group calling itself the "Democratic movement for the People" has been fighting against the legitimate government of Tukongote state for many years now. This group targets the Tukongote government to negotiate with it for power. It blows bridges, hospitals and plunders civilian villages, resulting in thousands of deaths of civilians, many of them women and children.

This group has recently given a press statement in which it explains that its destroys these vulnerable targets in an effort to get international recognition.

What are the group's chances of getting recognition? In your answer also discuss issues in relation to the 'Law of War'.

PART TWO

The relationship between International Law and Municipal Law is both competitive and complimentary.

Discuss this statement with reference to relevant theories.

Discuss the role of the United Nations Organization.

The United Nations Organization is the closest the international community has come to forming a world government so far.

Discuss how the Security Council and the General Assembly fulfill functions similar to those of the executive and legislative branches of government.

Customary International Law is formed over a long period of years during which a practice passes through various stages of acceptance by the international community.

Outline these stages discuss what effect, if any, the United Nations General Assembly has had on the formation of customary international law principles.

Analyse the efficacy of the Charter of the Organization of African Unity in achieving its objectives.

- (a) Briefly discuss the law relating to reservations under general treaty law and practice, outlining their purpose.
- (b) Write a memorandum for your parastated client company briefly explaining to it whether or not it would be entitled to diplomatic immunity overseas.
- (c) Briefly discuss international law of the Air relating to safety of civil aviation.

PART TWO

3. **The relationship between International Law and Municipal Law is both competitive and complimentary.  
Discuss this statement with reference to relevant theories.**
4. **The United Nations Organization is the closest the international community has come to forming a world government so far.  
Discuss how the Security Council and the General Assembly fulfill functions similar to those of the executive and legislative branches of government.**
5. **Customary International Law is formed over a long period of years during which a practice passes through various stages of acceptance by the international community.  
Outline these stages discuss what effect, if any, the United Nations General Assembly has had on the formation of customary international law principles.**
6. **Analyse the efficacy of the Charter of the Organization of African Unity in achieving its objectives.**
7.
  - (a) **Briefly discuss the law relating to reservations under general treaty law and practice, outlining their purpose.**
  - (b) **Write a memorandum for your parastated client company briefly explaining to it whether or not it would be entitled to diplomatic immunity overseas.**
  - (c) **Briefly discuss international law of the Air relating to safety of civil aviation.**

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END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY SUPPLEMENTARY/DEFERRED EXAMINATIONS - SEPTEMBER 1989

L 430

INTERNATIONAL LAW

TIME: THREE HOURS

ANSWER: ANY FOUR (4) QUESTIONS

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1. Discuss sources of International Law reflecting the impact of twentieth century developments, if any.
  2. Discuss the various theories of Jurisdiction, showing how they are reconciled in practice.
  3. The African Charter on Human and People's Rights establishes a Commission on Human Rights. Discuss the various modes of moving the Commission.
  4. Distinguish between the constitutive and declaratory theories of recognition giving examples of their demonstration in practice.
  5. It is often said by laymen that International Law is not law indeed due to lack of enforcement measures. In response to this view discuss enforcement measures available at international law.
  6. Discuss the concepts of the territorial sea and contiguous zone. Why are states so concerned to have international law precise on <sup>these</sup> concepts?
  7. Identify and discuss subjects of international law.
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END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - JULY, 1989

L 450

INTERNATIONAL TRADE AND INVESTMENT LAW

TIME: THREE HOURS (PLUS 15 MINUTES TO READ THE QUESTION PAPER)

INSTRUCTIONS:

CANDIDATES MAY BRING INTO THE EXAMINATIONS ROOM THE GENERAL AGREEMENT ON TARIFFS AND TRADE AND THE INVESTMENT ACT OF 1986. ANSWER QUESTION ONE AND ANY OTHER THREE QUESTIONS.

The government of TANGO has for the past twenty years maintained highly protectionist tariffs. Early this year the government of TANGO requested a group of experts to conduct a study on world trade conditions. This group of experts in its report, concluded that tariff barriers were undesirably high worldwide including in ZARIA and SWAZA.

Up to early this year, TANGO had given another state only such tariff cuts/<sup>for</sup> its exports to TANGO as were "paid for" by some corresponding cut in that state's duty on similar products originating in TANGO. This requirement of "compensation" applied even where the other state had/<sup>been</sup> promised "most favoured nation" treatment in a treaty with TANGO, and TANGO had given a cut to a third state which in turn had conceded a trade benefit to TANGO.

TANGO has now decided to launch a worldwide effort to lower tariff barriers, and has announced that it is changing its concept of "most favoured nation" to an unconditional form.

Discuss the advantages and/or disadvantages, if any to TANGO as a result of this change, and in relation to its two neighbours, ZARIA and SWAZA.

2. In September 1989 the Council of Minister of the ACP-EEC meeting in one of the Caribbean countries to review, among other things, the provisions of the ACP-ECC Convention (Lome III) in respect of two problems, namely:

- (a) the scheme for stabilization of export earnings (STABEX), and
- (b) the project and programme aid for minerals (SYSMII).

You are on the Zambian delegation to this meeting. Suggest proposals which could be incorporated in Lome IV in order to improve the working of the two schemes.

3. "Good faith and my professional conscience compel me to conclude that many of the primary commodities traded internationally are exchanged in commodity markets that are characterized by institutional and human actors with diverse interests that inevitably affect the market performance in the pricing of such commodities. This market imperfection in turn finds expression in the persistent instability in commodity prices and the ensuing swings of export earnings in resource-producing countries, especially developing countries".

Discuss the above view in relation to the London Metal Exchange.

4. State A complains of preferences given by state B on bolts and nuts produced in state C. Both states B and C are members of the Greater Zambezia Preferential Trade Area. A and B are party to a treaty that provides for unconditional most favoured nation treatment as between the parties to the treaty. Does state B have a defence to state A's complaint? Discuss.

5. One of the major issues in Zambian development in the past one decade has <sup>been</sup> the need to diversify the economy from one dominated by export of copper to one dependant on agriculture and manufacturing.

Examine how the Zambian Investment Act (Act No. 5 of 1986) has sought to attain this goal.

6. Discuss the problems which are created by various administrative barriers to trade and how the GATT has attempted to deal with such problems.

7. Discuss the legal constraints inherent in the lending rules and procedures employed by the World Bank (IBRD) and the International Finance Corporation; and their effect on the development processes of the developing countries.

THE UNIVERSITY OF ZAMBIA

UNIVERSITY SUPPLEMENTARY/DEFERRED EXAMINATIONS - SEPTEMBER 1989

L 450

INTERNATIONAL TRADE AND INVESTMENT LAW

TIME: THREE HOURS (PLUS 15 MINUTES TO READ THE QUESTION PAPER).

INSTRUCTIONS:

1. CANDIDATES MAY BRING INTO THE EXAMINATION ROOM  
THE GENERAL AGREEMENT OF TARIFFS AND TRADE (GATT)
  2. ANSWER ANY FOUR (4) QUESTIONS
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1. Discuss fully the measures that have been taken at the international level towards the stabilization of commodity prices to improve the export earnings of commodity producers.
2. "Quantitative Restrictions make all international commerce a matter of political negotiation - goods move, not on the basis of quality, service and trade, but on the basis of deals completed country by country, product by product, and day by day by public officials". Discuss this problem of quantitative restrictions on trade and examine how the GATT has sought to deal with it.
3. Many developing countries have enacted statutes intended to attract foreign investors. The major concessions provided in such statutes pertain to taxes. With the aid of suitable examples, discuss how successful such investment codes have been and what changes, if any, could be made to them.
4. All states have the right to associate in organisations of primary commodity producers in order to develop their national economies...". (United Nations General Assembly resolution 3281 xxix of December 12, 1974).  
  
Consider how successful the Intergovernmental Council of Copper Exporting Countries (CIPEC) has been in forstering the development of the economies of copper exporting developing countries.
5. In September 1989 the Council of Ministers of the ACP-EEC countries will resume their negotiating meeting in Brussels. The meeting is intended to review, among other things, the provisions of the ACP-EEC Convention (LOME III) in respect of two problems, namely:
  - (a) the system of stabilization of export earnings (STABEX), and
  - (b) the project and programme aid for mineral products.

Zambia has just concluded a trade agreement with Zimbabwe whereby the two nations would accord each other duty free imports. Zambia is a member of GATT, Zimbabwe is not. Kenya, a member of the GATT, asks Zambia to extend similar terms on Kenyan exports to Zambia as those accorded to Zimbabwean exports to Zambia. Zambia refuses pointing out that Zimbabwe is a newly independent state and needs to be assisted in <sup>a</sup> practical manner and further that Zimbabwe is not a member of the GATT.

Kenya take the matter to the contracting parties, saying that as a result of the Zambia-Zimbabwe trade agreement Kenyan exports to Zambia have suffered a reduction.

- (a) Discuss the issues involved and the likely result.
- (b) Would your result be different if Zimbabwe were a member of the GATT

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END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - JUNE/JULY 1989

L 480

LABOUR LAW

TIME: THREE HOURS (PLUS 15 MINUTES TO READ THE PAPER)

ANSWER: QUESTION ONE AND ANY OTHER THREE QUESTIONS.

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1. Negotiations for new conditions of service had been going on at the Zambia Sugar Company in Lusaka. Zambia Sugar Company had been giving the National Union of Commercial and Industrial Workers (NUCIW) which represented workers in the company a tough time during negotiations.

Therefore, the Union included two officials from the Zambia Congress of Trade Unions ZCTU as members of the Union delegation to the talks. management delegation was led by the General Manager. The Lusaka Urban District Governor directed that the Party Committee at Zambia Sugar Company equally participate in the bargaining to ensure that the Party policy was taken into account. Therefore, the Joint Industrial Council which was hurriedly formed and only for the purpose of bargaining a new agreement comprised representatives from Management, NUCIW, ZCTU and Party Committee.

The parties settled most of the issues except the percentage increase for new salaries for unionised employees. The Union demanded 80% increase across the board while Management offered 30%.

When parties could not reconcile their differences over the percentage increment, they resolved to refer the matter to the Prices and Incomes Commission for advice. The PIC advised that the maximum salary increase they would agree for members should not exceed 80% because doing so would be offending national economic plans. The PIC advised parties to return to the negotiating table.

When parties could not agree in the continuing negotiations, they rang the Principal Labour Officer for mediation and a meeting was arranged two weeks later. During the meeting presided by the Principal Labour Officer, tempers rose when management

stuck to their 30% offer and argued that was the highest they were mandated to offer by their board of directors. At that stage, the Union, (NUCIW) asked for adjournment to consult their members. At the heated and emotional meeting, NUCIW members, shouting from all directions, called for an immediate strike. They appeared unanimous on this. The strike started immediately and went on for two weeks. After workers defied management appeal to return to work, the latter (management) locked them out. It was announced that all workers had dismissed themselves by their action and had to reply for fresh engagements.

In the meantime, teachers in the public service went on a national wide go-slow to protest against government decision not to pay new salaries concluded in their new agreement. The government statement to this effect was categorical.

The government spokesman explained that it would not implement the salaries contained in the newly concluded agreement to which it was a part because they were beyond its budgetary ability.

Identify and explain the issues of Law involved in the matters and indicate irregularities if any.

2. Junior doctors, who number a good 500 in the country, formed an Association called Junior Doctors Association of Zambia through which to pursue the objectives of their profession. The association was registered under the Societies Act Cap 105 of the Laws of Zambia. In order to run the affairs of the Association a fifteen (15) member executives was elected into office headed by Dr Ndima as its Chairman and Dr Fatima as General Secretary. Over a course of time, however, Junior Doctors in the country have begun to feel that they are the profession working under very poor conditions of service. Their salaries, they argued, are too low and have no relation to their long periods of study and the importance of their work to the nation. The majority of them do not have houses and other benefits such as car loans, furniture loans are not easily available.

L 480

Recent salary increases in government, which were condemned by all trade unions in the public service as inadequate, did not cheer the doctors who felt that their effect on their take home pay was negligible.

In reaction to members' widespread discontent, Dr Ndima summoned his executive to an emergency meeting at Long Acres hostels in Lusaka to discuss an appropriate strategy to redress the poor conditions of service'. At the stormy meeting on 3rd February 1989 it was unanimously agreed that all members of the Association, a strong 500, would, with immediate effect, work according to rule'. This meant that they would work only according to their normal working hours which apply to all public officers i.e. eight hour per day or night and would not respond to emergency calls when they are off work, would not handle Aids patients because they do not enjoy 'risk allowance etc.

Members immediately complied with their executive's directives and adopted a 'work to rule' approach in all hospitals, health centres and clinics all over the country. The situation became chaotic. Death rates at hospitals shot up as the Senior Doctors, nurses and clinical officers could not cope with increased volume of work.

The Prime Minister issued a statement on the fourth day of the strike in which he said government could not be intimidated by a group of people however important they may be to the community. He said junior doctors were breaking the law because as essential workers, they had no legal power to go on strike. He appealed to them to return to work while their demands were being looked into. The following day, Dr Ndima and general secretary Fatima issued a joint statement in which they denied they were on strike. They alleged they were simply working according to rules and refused to do extra-work which was not an obligation.

On the seventh day, the University Teaching Hospital recorded 70% deaths above the usual rate. The Inspector General of Police issued instructions to the Lusaka Commanding Officer to arrest

fifteen (15) executive members of the Association. This was done and Dr Ndima and his colleagues were charged with contravening subsections 2, 4 and 5 of section 117 of the Industrial Relations Act No. 36 of 1971. All the accused agree to have met and resolved to adopt a work-to-approach and communicating the same to members of the Association.

You have been retained Legal Counsel for the fifteen (15) accused. Explain the issues of Law involved and prepare a submission to court on behalf of your clients.

3. The Works Council at Namboard comprised a total of eight (8) members; two from management and six from employees. The six from employees included John White the Chief Accountant who, though on management conditions, was elected into council by employees because they considered him sympathetic to their interests.

Due to reorganisation of marketing agencies by government in an attempt to streamline and revamp collection of agricultural produce, it was decided by cabinet that maize rural depots previously run by Namboard be transferred to newly formed District Co-operative Unions. This entailed redundancy of 1,000 Namboard employees.

The works Council voted to oppose the redundancy and stated categorically that they would not discuss it all.

When management asked for another meeting with Council to reconsider the matter, only the two members of management in the Council turned up for the meeting and so it was abortive.

Meanwhile, management summoned the Union and proposed that they negotiate with it instead. The Union agreed but before negotiations could begin, employee members of the Works Council applied for an injunction to the High Court to restrain Management from declaring 1,000 employees redundant.

Write an opinion on the Legal issues involved and show whether the procedure followed by parties was regular or not.

4. Benzu, an officer in the Police Force, graduated in law at the University of Zambia, some of his supervisors felt he would be a threat to their positions. When he resumed his duties, many officers distanced themselves from him. He was not allocated an office nor assigned any duties by his supervisors. His friend Mubanga, who had also graduated together with Benzu but from another section of the Police also related the same kind of treatment. One day, Welensky, Benzu's immediate supervisor asked the latter to take accused people to the Boma Court on foot from the Remand Prison in Kamwala area. When Benzu tried to explain the risk that this would entail, Welensky told him to use, his 'bloody so-called graduated brains'

Benzu organised his own transport and took the accused to court as directed. The following day he found a letter signed for the Inspector General of Police demoting him from Assistant Superintendent to constable for quarrelling with his supervisor on duty.

Benzu would like to show to the Industrial Relations Court that he had not been disciplined for the reason alleged but for his recent qualifications. Advise him.

5. (a) Mulungushi travellers Ltd and the United Bus Company of Zambia (UBZ) are engaged in the same business i.e. operating passenger transport. Mulungushi travellers is employing 24 employees on unionised conditions and 26 temporary drivers and mechanics. Although they have been with the company for nine months having originally been engaged on 6 months contracts, they have continued to work under temporary engagements. The UBZ has a strong 600 unionised employees.

The two companies, their trade union officials and workers representatives have come to you, the newly appointed Labour Commissioner with the following issues:

- (i) The two companies wish to combine their efforts and form an Employer's . . . Association so that they can negotiate with the union as one employer.
- (ii) There is a rift in the union with graduates on union conditions demanding to form their own union because the present union leadership, which draws heavily from non graduate employees, does not present the particular problems of graduates to management. The unionised graduates have presented you with their constitution for their union.

Explain what action(s) you would take and advise both parties on their legal rights and liabilities. Does recognition of a trade union in this country entail any legal effect on the Union?

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- (b) Explain the jurisdiction of the Industrial Relations Court in relation to the High Court. Is the lack of appeal of parties from decisions, awards and settlements of the Industrial Relations Court legally and constitutionally justifiable.

6. Sophie completed her Secretarial Course at Chingola in 1987. She had a problem acquiring employment. At Zambia Lima Bank, the Personnel Manager indicated to her he would recommend her for employment if he went out with her. Sophie refused. She was finally employed at Bambino Building Society as Secretary to the Chief Accountant. Sophie married Bbambazonka, the Chief A Accountant while at Bambino Building Society. Management terminated her employment on account of the marriage because, they argued, it was company policy that no two spouses can work at the same branch of the society and that since there was only

one branch of the society in Lusaka where Sophie and Bbambazonke worked, one of them had to leave. Sophie was chosen because she joined later than her husband and in any case, her husband will look after her family. Unfortunately, Bbambazonke divorced Sophie two months after she was dismissed. They had quarrelled on whether their two month old baby was really his.

He had heard rumours that he was not the father.

Sophie has retained you to sue Bambino Building Society and challenge their action to dismiss her from employment.

Advise her on her legal rights and liabilities and which court she could get appropriate remedy. Is Zambia Lima Bank liable to Sophie for the action of their Personnel Manager?

7. Common Law denies wrongfully dismissed workers the right to demand reinstatement even when the court recognises the wrongfulness of the dismissal and grants compensation for the dismissal :

Discuss in the context of current judicial practice in Zambia. Is reinstatement still not available where an employee has been dismissed against written procedures in his contract or collective Agreement?

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END OF EXAMINATION