

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

FIRST SEMESTER FINAL EXAMINATION – JULY, 2006

L211 – LEGAL PROCESS

INSTRUCTIONS:

- 1 ANSWER ANY FOUR QUESTIONS. CLEARLY MARK THE QUESTIONS ANSWERED.
 - 2 YOU MAY REFER TO RELEVANT UNMARKED STATUTES DURING THE EXAMINATION
 - 3 CLASS NOTES ARE STRICTLY NOT PERMITTED IN THE EXAMINATION HALL
 - 4 PLEASE ENSURE THAT YOU INDICATE YOUR COMPUTER NUMBER ON ALL YOUR ANSWER SCRIPTS
 - 5 YOU HAVE THREE HOURS TO WRITE AND FIVE MINUTES TO GO THROUGH THE PAPER.
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QUESTION ONE:

You are a second year University of Zambia student in the school of law. It is your first encounter with the learning of the law and you are very excited about the career path you have chosen. And being an 'A' class student, you are able to grasp the material with ease. As a result of this academic excellence, your lecturer invites you to present a paper at an International Conference on Legal Systems being held in London, UK. You are specifically required to make a presentation on the sources of law in Zambia.

Write a paper on the topic at hand identifying the sources you have studied in Legal Process clearly stating where such sources as identified draw their legal significance. You may wish to make reference to some authorities to make your paper understood by your audience. *25 Marks*

QUESTION TWO:

It is the end of the first semester of the 2006 academic year at UNZA. Being a student in the law school, you have studied a whole lot of courses including Legal Process. As a result of this, you now know that in the Zambian Legal System, there are three legal paradigms at work all the time and that they operate concurrently. These paradigms are customary law, local statutory law and the borrowed English Law. You have no problems understanding the operation of these paradigms but a good number of students in your class are having serious problems grasping the concepts involved. Just before the examination is taken and in order to ensure that all the students are on the same level of understanding, your lecturer decides to give assignments to each one in the class to explain the application of the various components of English Law.

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

FIRST SEMESTER DEFERRED EXAMINATION – JULY, 2006

L211 – LEGAL PROCESS

INSTRUCTIONS:

1. ANSWER ANY FOUR QUESTIONS CLEARLY INDICATING THE QUESTION NUMBERS
 2. YOU ARE FREE TO REFER TO CLEAN UNMARKED STATUTES. NOTE THAT CLASS NOTES AND ANY OTHER STUDY MATERIAL IS STRICTLY NOT ALLOWED IN THE EXAMINATION HALL
 3. INDICATE YOUR COMPUTER NUMBER ON ALL THE ANSWER SCRIPTS SUBMITTED
 4. YOU HAVE THREE HOURS TO WRITE AND FIVE MINUTES TO READ THROUGH THE PAPER.
-

QUESTION ONE:

Common law and doctrines of equity are administered concurrently in the *Zambian* Legal system. Where a conflict occurs, equity prevails. This position is in furtherance of the notion that equity came to compliment the law rather than challenge it. In *Zambia* the application of equity is guided by important principles derived from equitable rules and practice. These are popularly known as maxims of equity.

Using suitable examples in the *Zambian* legal system today, discuss the practical application of the maxims of equity. *25 marks*

QUESTION TWO:

In *Zambia*, there are about four primary sources of law. These are local statutory law, English law, African customary law and Judicial Precedents. You have been invited to present a paper on one of the sources to a second year law class at UNZA. After liaising with the students, you discover that the students are having problems understanding how judicial precedents are a source of law in *Zambia*. And you make up your mind to present a paper on this topic.

Write your paper sufficiently supported by case authorities discussing in detail Judicial Precedent as a source of law in *Zambia*.

QUESTION THREE:

The constitution of *Zambia* recognizes the validity of customary law in the legal system for as long as it is not repugnant to natural justice and good conscience and

further does not conflict the written law. However, before any custom can be relied upon in court, it must be proved by the parties to the case.

With the help of decided cases, discuss the ascertainment of customary law in the Zambian Legal system. Further discuss the rules for proof of any custom in Zambia. **25 marks**

QUESTION FOUR:

Using relevant case and statutory law, discuss the jurisdiction of the High court for Zambia. **25 Marks**

QUESTION FIVE:

With the help of atleast one decided Zambian case in each instance, discuss five rules of statutory interpretation used by the courts in Zambia. **25 Marks**

QUESTION SIX:

Discuss the adversary system as applied in the Zambian legal system. **25 Marks**

QUESTION SEVEN:

With the help of decided cases, discuss the appellate jurisdiction of the Supreme Court of Zambia. **25 Marks**

End of Examination

THE UNIVERSITY OF ZAMBIA
FIRST SEMESTER EXAMINATIONS – JULY, 2006
2006 ACADEMIC YEAR
L. 231 – LAW OF TORTS

INSTRUCTIONS: THERE ARE SEVEN QUESTIONS IN THIS PAPER
ANSWER QUESTION ONE AND ANY OTHER THREE
QUESTIONS MAKING A TOTAL OF FOUR QUESTIONS

TIME: THREE HOURS [Plus 5 Minutes to read through the Question Paper]

QUESTION ONE: [This is a Compulsory Question]

Samuel Banda was on duty at his work place at the Maamba Coal Mine in the Southern Province of Zambia when he was informed that his wife Jane had been involved in a near-fatal traffic accident with her car which she was driving on her way to Lusaka. She had collided with a truck driver who admitted being negligent. The report to Samuel Banda also stated that Jane was in a comma and receiving medical and light surgical treatment in the intensive care unit at the University Teaching Hospital [UTH] in Lusaka. Banda traveled to Lusaka to see his wife in hospital.

At the University Teaching Hospital in Lusaka, Banda was allowed by the Hospital Authorities to look at his unconscious wife in the Intensive Care Unit. After staring at the heavily bruised and disfigured face of his beloved wife for one full minute, he suddenly went into a trance, fell down to the hospital floor and passed out. He was also hospitalized for one month, but was discharged three months earlier than his wife. Banda, however, subsequently suffered from organic depression and permanent personality disorder. He has retained a lawyer who has filed a legal action against the truck driver who had collided with his wife ,for damages for the mental harm he has suffered.

- (a) Name the branch of the tort of negligence in which Banda has sued.
- (b) Briefly discuss Banda's chance of success in his action, and cite two relevant precedents. Do not forget the fact that Banda did not witness the traffic accident in which his wife was involved.

QUESTION TWO:

In the case of **Danby V. Beardsley** (1880) A.C the defendant's goods had been stolen by unknown people, but the defendant reported to the police that he reasonably believed the plaintiff was the one who stole them. The suspect (plaintiff) was prosecuted for the offence but acquitted of it. He then brought an action against the complainant in some tort.

- (a) Name and briefly discuss the tort, giving its four-(4) elements.
- (b) Indicate who was the prosecutor in this case and explain why you say so.

QUESTION SEVEN:

In the case of Mahon V. Osborne a doctor who forgot a swab in the patients body after an operation in the theatre was found liable in the tort of negligence. His employer was also held liable.

- (a) Under what principle was his employer held liable? Explain this principle
- (b) Cite one decided case in this principle of tort.

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS, 2005 ACADEMY YEAR

(VACATION COURSE)

L.241, CRIMINAL LAW 1.

INSTRUCTIONS: Answer questions one (1) and three (3) others out of the seven (7) questions. Question one is compulsory. You are therefore required to answer question one (1) and any other three questions. You may make use of the penal code (cap. 87), and the criminal procedure code (cap. 88), in answering the questions. You may also look at the constitution of Zambia. Question one carries 18 marks and each of the three other questions carries 14 marks.

TIME: Three hours, plus 5 minutes to read the question paper.

QUESTION ONE (COMPULSORY)

A cardinal principle of criminal law is embodied in the Latin maxim: "An act does not make a person legally guilty unless the mind is legally blameworthy" (TOLSON, (1889) 23 QBD, 168 at 187). But there are some serious crimes in which '**mens rea**' is not a constituent part of their ingredients. In such offences the proof of '**mens rea**' has either been ruled out by statute or by necessary implication. Name two of such offences and explain what the '**Mens rea**' is in each of the two offences you have named.

QUESTION TWO

Name any two presumptions in criminal law and briefly discuss both of them.

QUESTION THREE

"What does the law say about attempting to commit an impossible offence? Give two examples of such futile attempts.

QUESTION FOUR

Compare the facts and the court decision of the M'Naghton's case (1843) with the facts of the case of Woolmington V. DPP (1935). Point out any one distinction between these two cases.

QUESTION FIVE

Morris Pinto has been charged with the offence of Reckless Diving, when he drove along Kafue Road at a highly excessive speed of 140 kilometres per hour, instead of 65 Kilometres per hour, and crashed into a roadside tree near Munda Wanga Botanic Gardens, after failing to negotiate a corner. He has put up the defence of intoxication at his trial.

Discuss the essence of this defence and cite any two judicial precedents on it.

QUESTION SIX

Gordon Bwalya, Patrick Phiri and six others persons organised themselves to break into Kafue Shoprite and steal there from, without causing injury to the security guard, or any another person. But unknown the other accused persons, Patrick Phiri, had a pistol on him. They tied up the security guard at the shop and stole the goods therefrom. As they were leaving the shop, Patrick shot the

security guard dead. All the eight men have now been charged with the murder of the security guard.

- a) What can the other seven men do to avoid being convicted of murder?
- b) Cite a decided case to support your answer.

QUESTION SEVEN

Briefly discuss the theory of punishment called "**Deterrence**". In your discussion state its two types. In what way is this theory related to retribution?.

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

2006 ACADEMIC YEAR, FIRST SEMESTER EXAMINATIONS

L.242 (VACATION COURSE) FINAL EXAMINATION

INSTRUCTIONS: This examination paper has seven questions. You are required to answer only four questions. Question one is compulsory, which means that all candidates must answer it. You are permitted to refer to clean, unannotated copies of the Penal Code and the Criminal Procedure Code during the examination. You may also refer to Acts 13 of 1994, 42 of 1996 and 14 of 2001.

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

QUESTION ONE

Indicate the offences committed by each of the two persons mentioned in question 1(a) and Question 1 (b) below. These offences are provided in the Penal Code. State the penalties for each offence and indicate if there are defences available to each of the accused persons who had parted the grass-wall and were caught.

- (a) Bwalya Chintomfwa, aged 23 years, sneaked into a roofless, grass walled shelter where three young girls aged between 15 and 20 years, were taking their bath from water in a drum. Chintomfwa decided to watch the nudity of the three girls by piping through openings in the grass wall of the shelter.

As he enjoyed his inquisitiveness, he was grabbed from behind by some morally upright citizen and handed over to the police.

The police are now, considering the appropriate offence in the Penal Code to lay against the naughty intruder. They have asked for your advice.

Indicate to them what the appropriate offence is under the given facts. State what the penalty for the offence is and whether the accused has any defence available to him.

Note: Take note that criminal trespass under Section 306 of the Penal Code, is not the appropriate offence under the facts given above, because the shelter was not a building or premises in a conventional sense.

- (b) Beauty Simasiku is a grade 12 school girl at Fatima Girls School in Ndola and is three months pregnant. She intends to get rid of the pregnancy so that she could be able to go to Evelyn Hone College in Lusaka, the following year to pursue her Diploma in Pharmacy Studies without the trouble of looking after a baby. She has approached Hankombo Ng'anga-mphati for herbs to carry out her own miscarriage. Hankombo has provided her with the necessary herbs and a miscarriage has been successfully carried out.

What offence, under the offences against morality category in the Penal Code has the supplier of the abortion-herbs committed? State the Penalty of this offence. State also if the accused has any defence available to him.

QUESTION TWO

- (a) Define the offence of 'Forgery' explaining the meaning of each of its two ingredients. Cite one decided case to support your answer.
- (b) Point out one difference between the offence of forgery and the offence of obtaining goods by false pretences.

QUESTION THREE

- (a) Chenjelani Zulu imported into Zambia a book, published in Cuba, entitled 'How to Overthrow African Governments South of the Sahara Desert.' This book is one of the publications that have been prohibited in Zambia by the Zambian President under Section 52 of the Penal Code.

Chenjelani Zulu was found reading the book at his home by an undercover policeman. Zulu has been taken to the Police Station and a charge is being preferred against him. What offence, under the Penal Code, will the Police lay against him?

- (b) Is mere possession of a prohibited publication an offence also under the Zambian Penal Code? If it is an offence, which Section creates that offence?

QUESTION FOUR

- (a) 'Death occurring within a year and a day' is one of the elements of the offence of murder. Why was this element made part of the offence of murder?
- (b) What is the 'Mens rea' in the offence of 'Common Assault' contrary to Section 247 of the Penal Code?

QUESTION FIVE

Kamayoyo Sandando has been a sales manager in Zambia Sugar Company for 18 years without earning any promotion to the higher management echelon of the company. In order to rise to the position of General Manager, he had given twenty million Kwacha (K20,000,000.00) to the Managing Director.

The Managing Director after receiving the 'gift', has summarily dismissed the incumbent General Manager for reporting for work fifteen (15) minutes late and has replaced him with Kamayoyo Sandando.

Does this scenario amount to any offence under the Anti-Corruption Act, No. 42 of 1996? Assume that Zambia Sugar Company is a privately-owned company and not a public corporation.

Discuss, indicating the relevant Section or Sections in the Act, if any.

QUESTION SIX

Discuss any two categories of money laundering under the Money Laundering Act, No. 14 of 2001.

- (a) What is meant by money laundering?
- (b) Explain the meanings of the two subsections of section 9 of the Money Laundering Act, Act No. 14 of 2001

QUESTION SEVEN

Explain the difference between 'trafficking in narcotic and psychotropic substances' and 'possessing' such drugs under the Narcotics and Psychotropic Substances Act, No. 13 of 1996.

.....END OF EXAMINATION.....

THE UNIVERSITY OF ZAMBIA SCHOOL OF LAW

UNIVERSITY FIRST SEMESTER EXAMINATIONS, JULY 2006

L251: CONSTITUTIONAL LAW I

INSTRUCTIONS:

1. **TIME:** THREE (3) HOURS [PLUS 5 MINUTES TO READ THE QUESTION PAPER]
 2. **ANSWER:** QUESTION ONE (1) and THREE OTHER QUESTIONS. YOU MUST ANSWER AT LEAST ONE QUESTION FROM EACH SECTION.
 3. YOU ARE ALLOWED TO CONSULT CLEAN, UNMARKED STATUTES RELEVANT TO THE COURSE.
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SECTION A

COMPULSORY

QUESTION ONE

Zambezia is a country in Southern Africa whose laws are similar to those of Zambia. President Hamujomba sets up a Constitutional Review Commission under the Chairmanship of State Counsel Jobwinjo to recommend a new Constitution which will consolidate the democratic gains of the Republic as well as enhance the protection of human rights. The Commission is established under the investigations Act, which is on all fours with the Zambian Inquiries Act. The Commission receives both written and oral submissions from members of the public and submits its report to President Hamujomba after two years. One of the key recommendations of the Commission is that the new Constitution should be made by a Constituent Assembly followed by a referendum.

However, President Hamujomba rejects a Constituent Assembly. After studying the Commission's Report the Cabinet issues a White paper in which it rejects at least seventy five per cent of the recommendations. A bill containing the draft Constitution based on the White Paper is then

published in both the Government Gazette and the media and members of the public are invited to make comments on it. After two months the Bill is presented to the National Assembly, which passes it easily as the President's Party controls at least three-quarters of the seats in the Assembly. Constitutional amendments require the support of at least two-thirds of the members of the Assembly in order to pass. The Bill is taken to the president for his assent.

The Constitutional Coalition, concerned that the people's will has been hijacked by the ruling Party, approaches you for legal advice on whether it is possible in law to stop the President from assenting to the legislation and also to direct him to establish a Constituent Assembly as recommended by the Commission.

Advise the Coalition, with the aid of appropriate authorities.

[25 Marks]

SECTION B

ANSWER AT LEAST ONE QUESTION FROM THIS SECTION.

QUESTION TWO

The concept of free and fair elections lies at the core of any democratic system of government. Discuss the various elements that are indispensable for the holding of free and fair elections.

[25 Marks]

QUESTION THREE

An electoral system refers to a method that a country adopts for choosing national leaders. It encompasses procedures, rules and regulations for the electorate to exercise their rights to vote and determines how elected MPs occupy their allocated seats in the legislature.

Discuss the advantages and disadvantages of the two major electoral systems in the world, that is, the Single-Member Plurality (SMP) and the proportional Representation System (PR).

[25 Marks]

SECTION C

ANSWER AT LEAST ONE QUESTION FROM THIS SECTION

QUESTION FOUR

The Independence Constitution marked a major break from the past. Discuss the major changes that were introduced by the Independence Constitution which were intended to lay the foundations for constitutionalism and the rule of law.

[25 Marks]

QUESTION FIVE

Discuss critically the electoral system devised under the 1962 Constitution. What was the rationale behind it? Did it achieve its intended purpose?

[25 marks]

QUESTION SIX

How were the rights of Africans protected in Northern Rhodesia? How effective was this protection? Discuss, with the aid of appropriate authorities.

[25 Marks]

SECTION D

ANSWER AT LEAST ONE QUESTION FROM THIS SECTION

QUESTION SEVEN

In the case of *Nkumbula v. Attorney-General* (1972) the petitioner argued that the introduction of the one-party state would, *inter alia*, violate his freedoms of expression, association and the right not to be discriminated

against on the grounds of his political opinion. Were the petitioner's fears justified in light of Zambia's experience with the one party state?

[25 Marks]

QUESTION EIGHT

The decision to introduce a One-Party State created a lot of anxiety as it presaged, in the minds of many people, the establishment of authoritarian rule. Discuss some of the recommendations of the Chona Commission meant to provide checks and balances in the system, which the government rejected on account of the "geo-political situation in Southern Africa."

[25 Marks]

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY FIRST SEMESTER DEFERRED EXAMINATIONS-JULY 2006

L251: CONSTITUTIONAL LAW I

INSTRUCTIONS:

1. **TIME:** THREE (3) HOURS [PLUS 5 MINUTES TO READ THE QUESTION PAPER]
 2. **ANSWER:** QUESTION 1 and **THREE** (3) OTHERS. You must answer at least one question from each section.
 3. Only clean, unmarked statutes may be brought into the Examination Hall.
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SECTION A

QUESTION 1 (Compulsory)

"The 1964 Independent Constitution created neither a Westminster Parliamentary System nor an American style Presidential System."

Discuss, supporting your answer with appropriate illustrations.

[25 Marks]

SECTION B

QUESTION 2

Discuss critically how political responsibility and popular representation contribute to the sustenance of constitutionalism. **(25 Marks)**

QUESTION 3

Discuss critically the extent to which the doctrine of the separation of powers applies under the Westminster system of government. **(25 Marks)**

QUESTION 4

Discuss critically why the Constituent Assembly is the preferred mode of adopting the Constitution by the vast majority of informed people in Zambia. **(25 Marks)**

SECTION C

Question 5

Proponents of the one-party system have argued that the one-party parliament was "lively" while critics have condemned it as having been a mere rubberstamp.

Discuss the extent to which the executive branch was accountable to the National Assembly during the one-party state in Zambia. What factors impacted on the National assembly's ability to effectively make the executive accountable? **(25 Marks)**

QUESTION 6

The one-party state marked a significant departure from the previous constitutional order. What were the major changes introduced under the One-Party Constitution of 1973?

(25 Marks)

QUESTION 7

Examine the manner and extent to which African interests were protected in Northern Rhodesia during colonial rule. **(25 Marks)**

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

**THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW**

FIRST SEMESTER EXAMINATIONS – JULY 2006

L311 LAW OF EVIDENCE

TIME: 3 HOURS [Plus 5 minutes to read through the Paper]

**INSTRUCTIONS: ANSWER QUESTION 1 AND ANY THREE (3)
OTHERS. QUESTION 1 CARRIES 18 MARKS**

QUESTION ONE

“The importance of the presumption of innocence is such that, apart from insanity and express statutory reversals of the burden of proof, there should be no erosion of this principle.”

Discuss.

[18 marks]

QUESTION TWO

“Privilege relates to a person’s or class of people’s right to refuse to answer a question or supply information which would otherwise be relevant in determining an issue.”

Discuss.

[12 marks]

QUESTION THREE

Kasale and Nzipu were jointly charged with theft from Robert's House. Kasale has two previous convictions for fighting in public. Nzipu has recently been dismissed from his job for insubordination.

Can counsel cross-examine on these matters if:

- (i) Kasale admits that he had been in Robert's House on the day in question, but it was because they were having a homosexual relationship.
- (ii) The Police allege that Kasale made a confession during questioning at the Police Station. Kasale denies this, saying the Police are lying.
- (iii) In his evidence in chief [i.e. during examination in chief] Nzipu says he has never previously been charged with an offence.

[12 marks]

QUESTION FOUR

Discuss the significance of the following cases with respect to corroboration.

- (a) Shamwana v The People [1985] ZR
- (b) Chimbo & Others v The People [1982] ZR 20 [SC]
- (c) Machobane v The People [1972] ZR 101 [CA]

(d) Sakala v The People [1972] ZR 35

[12 marks]

QUESTION FIVE

The exceptions to the rule against hearsay are so numerous that much of the relevant law is concerned not with the exclusion but with the admissibility of hearsay as evidence.

Discuss.

[12 marks]

QUESTION SIX

Sodom is on trial for attempted buggery [sexual offence] of three [3] boys, Adam, Ben and Cain who are aged 8, 11 and 15. The three[3] boys all give evidence at the trial that Sodom, a Scout Leader at an annual scout event approached them in their respective tents in the early hours of the morning, invited them for tea in his ten and when each went he attempted to commit buggery with them.

Sodom denies these allegations and says that he called the boys to his tent because they had been smoking in their tents. He alleges that they have colluded and made up the stories.

The prosecution wishes to use the evidence of each of the boys to confirm the evidence of the others and wishes also to bring the evidence of three [3] other boy scouts who allege that similar events took place at the previous annual scout camping, although no actual attempts of buggery took place.

Discuss.

[12 marks]

QUESTION SEVEN

Outline the rules of law which deal with the actual mechanics of evidence during the course of a trial, what questions may be asked of a witness in examination in chief, cross examination and re-examination; and to what effect.

[12 marks]

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

2006 FIRST SEMESTER DIFFERRED EXAMINATIONS

L321: LAND LAW AND PROPERTY RELATIONS

TIME: THREE (3) HOURS PLUS 5 MINUTES OF READING THE PAPER

INSTRUCTIONS: ANSWER QUESTION ONE AND ANY OTHER THREE

STATUTES ARE NOT ALLOWED IN THIS EXAMINATION

1. (a) Diana Phiri, a third year law student was asked to present a paper on the basic foundation of property law in the English system. In her presentation, she asserted that although English land law is based on the doctrines of tenure and Estates, the understanding of the law is based on the rights and interests in land, public policy and the legal structure within which the system operates. Discuss

(25 marks)
- (b) With the aid of case law, discuss the major implied covenants under a Landlord Tenant relationship

(15 marks)
2. Discuss the law relating to concurrent and future interests

(20 marks)
3. Write brief notes on the following;
 - (a) The Statute of Frauds
 - (b) Equitable mortgages
 - (c) "Once a mortgage, always a mortgage"
 - (d) The doctrine in Walsh Vs Lonsdale

(20 marks)

4. Explain the rule against remoteness of vesting and the statutory limitation under the application of the Trusts Restrictions Act, Chapter 63 of the Laws of Zambia
(20 marks)

5. Discuss the Bonafide Purchaser Rule
(20 marks)

6. One of the most important consequences of the distinction between legal and equitable rights or interests is the different way in which these rights can effect the new occupiers and or owners of the land over which such rights exists. Discuss
(20 marks)

7. Discuss presumed grant as a mode of acquisition of land and servitudes
(20 marks)

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

2006 FIRST SEMESTER DIFFERRED EXAMINATIONS

L321: LAND LAW AND PROPERTY RELATIONS

TIME: THREE (3) HOURS PLUS 5 MINUTES OF READING THE PAPER

INSTRUCTIONS: ANSWER QUESTION ONE AND ANY OTHER THREE

STATUTES ARE NOT ALLOWED IN THIS EXAMINATION

1. (a) Diana Phiri, a third year law student was asked to present a paper on the basic foundation of property law in the English system. In her presentation, she asserted that although English land law is based on the doctrines of tenure and Estates, the understanding of the law is based on the rights and interests in land, public policy and the legal structure within which the system operates. Discuss

(25 marks)
- (b) With the aid of case law, discuss the major implied covenants under a Landlord Tenant relationship

(15 marks)
2. Discuss the law relating to concurrent and future interests

(20 marks)
3. Write brief notes on the following;
 - (a) The Statute of Frauds
 - (b) Equitable mortgages
 - (c) "Once a mortgage, always a mortgage"
 - (d) The doctrine in Walsh Vs Lonsdale

(20 marks)

4. Explain the rule against remoteness of vesting and the statutory limitation under the application of the Trusts Restrictions Act, Chapter 63 of the Laws of Zambia
(20 marks)

5. Discuss the Bonafide Purchaser Rule
(20 marks)

6. One of the most important consequences of the distinction between legal and equitable rights or interests is the different way in which these rights can effect the new occupiers and or owners of the land over which such rights exists. Discuss
(20 marks)

7. Discuss presumed grant as a mode of acquisition of land and servitudes
(20 marks)

END OF EXAMINATION

**THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW**

VACATIONAL EXAMINATIONS

FEBRUARY 2006

LAND LAW L 321

INSTRUCTIONS: ANSWER ANY FOUR QUESTIONS

DURATION: THREE HOURS

1. On 1st February 2006, James Phiri offered Bernard Musumali to purchase a property known as stand 80 Lusaka. Bernard Musumali was at the material time a sitting tenant of stand number 80 Lusaka. On 10th February 2006, James Phiri and Bernard Musumali reduced their agreement in writing into a Law Association of Zambia contract of sale. Bernard Musumali failed to raise the purchase price for the property. In view of the failure of Bernard Musumali to raise the purchase price, James Phiri offered the same property to Samson Musankwa.

On 16th February 2006, James Phiri signed another contract with Samson Musankwa relating to the same property. In both transactions James Phiri, was represented by Messrs Quick Sand Advocates. Samson Musankwa settled the purchase price and proceeded to obtain a certificate of title in respect of Stand 80 Lusaka. However, when Samson Musankwa sought to obtain possession of the property in question, he found Bernard Musumali in the property, who resisted to vacate the property claiming that he had entered into a valid and binding contract with James Phiri. Infuriated by this turn of events, Samson Musankwa approaches you for advice. **Please advise.**

2. Citing appropriate examples distinguish the concept of tenure from estate.
3. Mary Mulenga was the Receiver of Trust Bank Limited. John Banda borrowed a sum of K500 million on a facility from Trust Bank Limited. John Banda provided his property on Subdivision A of Stand Number 1959 Kitwe as collateral. John Banda defaulted in repaying the K500 million. Consequently, Trust Bank Zambia Limited commenced an action against John Banda claiming repayment of the said sum of K500 million and in default thereof, possession of Subdivision A of Stand Number 1959 Kitwe. John Banda is not in a position to repay the K500 million and at the same time he is apprehensive that he would in the course of events lose

his only property – S/D A of 1959 Kitwe. John Banda decides to approach you for advice. **Please advise**

4. Write short notes on the following:
 - (i) Joint tenancy;
 - (ii) The tests to be employed in order to determine whether an object has become a fixture;
 - (iii) Injunction; and
 - (iv) Statute of Frauds 1677.

5. Describe the historical development and rationale behind the doctrine of bona fide purchaser for value of the legal estate without notice.

6. Edward Liswaniso is the registered proprietor of S/D A of Farm 401 A Lusaka. He is desirous of obtaining a loan from Zambezi Bulding Society. However, Edward Liswaniso has no money to bear the legal fees and registration costs for the mortgate. As a result, Edward Liswaniso decides to deposit the certificate of title with Zambezi Building Society, as security. Edward has severe financial obligations to meet. Upon advice from his wife, Mary Liswaniso, Edward Liswaniso decides to sell S/D A of 401 A Lusaka. Since the certificate of title is deposited with Zambezi Building Society, he decides to obtain a duplicate certificate of title. Upon obtaining a duplicate certificate of title, Edward Liswaniso sells S/D A of Farm 401 A Lusaka, to Peter Banda. Zambezi Building Society conducts searches monthly on all the properties whose certificates of title are deposited with it. Consequently, a search in the month of January 2006, reveals that S/D A of Farm 401 A Lusaka is registered in the name of Peter Banda . Zambezi Building Society decides to sue Peter Banda claiming that his title is void ab initio. Peter Banda approaches you for advice. **Please advise.**

7. Define a lease and describe in detail the essential requirements for a lease.

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA SCHOOL OF LAW

UNIVERSITY FIRST SEMESTER EXAMINATIONS, JULY 2006

L341 ADMINISTRATIVE LAW 1

INSTRUCTIONS:

1. ANSWER 4 OUT OF 7 QUESTIONS. ALL QUESTIONS CARRY EQUAL MARKS.
 2. YOU CAN BRING WITH YOU THE CONSTITUTION, LOCAL GOVERNMENT ACT, INQUIRIES ACT, COMMISSION FOR INVESTIGATIONS ACT OR ANY UNMARKED STATUTE.
 3. TIME: THREE (3) HOURS (PLUS 5 MINUTES FOR READING THE EXAMINATION PAPER)
-

QUESTION 1.

Define 'Decentralization' and its constituents. Would you say Zambia has a decentralized Political System? (25 marks)

QUESTION 2

If the Judiciary strictly enforced fundamental rights and clearly interpreted the Inquiries Act in Nkumbula v Attorney-General 1972 ZR, Zambia may not have been a one party state and the country would have been spared the excesses of that era. Discuss the merits and demerits of the decision. (25 marks)

QUESTION 3

When you compare the legal regime governing the Commission for Investigations and ombudsman in other jurisdictions, our legislation needs serious reforms. Discuss. (25 marks)

QUESTION 4

Define the following:

- (i) Administrative Law
- (ii) Constitutional Law
- (iii) Delegated Legislation

(25 marks)

QUESTION 5

Discuss and critically analyze the facts and decision in Roy Clarke v Attorney-General.

(25 marks)

QUESTION 6

Procedural fairness is the hallmark of administrative law. **Discuss** the Concept.

(25 marks)

QUESTION 7

Only 'Public Bodies' are amenable to administrative law action. **Discuss**.

(25 marks)

END OF EXAMINATION

**UNIVERSITY OF ZAMBIA
SCHOOL OF LAW**

**EXAMINATION; FIRST SEMESTER VACATION COURSE L421,
15TH FEBRUARY 2006: 1400 HOURS**

INSTRUCTIONS:

- (1) YOU CAN BRING UNMARKED COMPANY LAW, REGISTRATION OF BUSINESS NAMES, PARTNERSHIP ACT, COOPERATIVE ACT, OR AN ACT CONSTITUTING A STATUTORY CORPORATION IN THE EXAMINATION**

- (2) TIME THREE (3) HOURS AND (5) MINUTES TO READ THE QUESTIONS.**

QUESTION 1 COMPULSORY (21 MARKS)

- (1)** Chris, Jones, and Ronald formed a partnership to carry on business as nebraska garage which dealt in selling and repairing of motor vehicles. The partnership appointed mpezeni as a salesman.

Mpezeni was Responsible for the purchases of the Partnership. Unknown to Chris, Jones, and Ronald, Mpezeni was carrying on business for himself alone.

Kwacha limited, the suppliers of motor spare parts to Nebraska Garage were also unaware of the fact that Mpezeni was carrying on business separate from the partnership because he used to purchase for the partnership. However, Mpezeni started getting stocks on credit account and he subsequently defaulted to pay K200,000,000=00 (Two Hundred Million Kwacha).

Kwacha limited continued to give him the stock without question, believing that it was for the partnership.

After sometime, the partnership business was insolvent, and the three partners Chris, Jones and Ronald were surprised to find among its debt K200,000,000=00 (Two Hundred Million Kwacha) which they were not aware of.

When questioned by the partners, Mpezeni admitted having been carrying on a 'side business.'

However, kwacha limited insists that the partnership is liable for the K200,000,000 (Two Hundred Million Kwacha) debt. **As Counsel for Kwacha Limited write your legal opinion**

(21 Marks)

(2) Discuss briefly the following:

- (a) whether a retired partner is liable for debts incurred subsequent to his retiring?
- (b) whether a person who becomes a partner of an existing firm is liable for a debt incurred before he became a partner?
- (c) whether a retired partner is liable for the partnership debt incurred while he was partner?

(13 Marks).

(3) Compare and Contrast a cooperative and a partnership as business Associations?

(13 Marks).

(4) Discuss the following business associations

- (a) Private Limited Company?
- (b) Company Limited by guarantee?
- (c) Public Limited Company ?

(13 Marks)

(5) What are the rights of partners in the following circumstances:

- (a) to expel a partner;
- (b) to dissolve a partnership;
- (c) to admit a new partner.

(13 Marks)

(6) (a) Discuss and illustrate the circumstances under which a partnership may come to an end

- (b) you intend to go into business with another person of your choice. Prepare a simple partnership agreement of the chosen business.

(13 Marks)

(7) One may choose to be sole trader, others may choose to form a Private Limited Company. Discuss advantages and disadvantages.

THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW
L422 COMPANY LAW
SEPTEMBER 4TH 2006

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

INSTRUCTIONS: ANSWER FOUR QUESTIONS. QUESTION ONE IS COMPULSORY

CANDIDATES MAY BRING A CLEAN COPY OF THE COMPANIES ACT

- Q1.** (a). Magodi Company Ltd had two directors, who later on fell out and could not meet to transact the business of the company. Director Mango petitioned for winding up alleging that director orange was lavishly expending the company's resources, while director orange alleged that Mango was oppressive. However, the company was being efficiently and profitably run by the management team. In your opinion could it be equitable for the court to wind up the company?
30 MARKS
- (b). Write short notes on a 'debenture'?
10 MARKS ✓
- ✓ **Q2.** Discuss what is meant by "lifting the veil" of the corporate personality.
20 MARKS

Q3. Write short notes and give examples of the business for which the following resolutions are required to be passed:

- (i) Ordinary Resolution — *directed*
 - (ii) Extra-ordinary resolution — *Variation of class right*
 - (iii) Special Resolution → *Articles*
- 20 MARKS**

Q4. A promoter should not make secret profit. **Discuss** the accuracy of this statement.

*- Entores v Newsgroup
- Auerbach v Bass*

20 MARKS

*① property
②*

Q5. (a). Critically **discuss** circumstances when the court may wind up the company and powers of the court when hearing the winding-up petition

10 MARKS

(b). What are the powers and duties of the Liquidator?

10 MARKS

Q6. (a). **Why** and by **what** procedure may a company voluntarily wind up?

15 MARKS

(b). Write short notes on a mortgage.

5 MARKS

Q7. (a). List the documents required to be submitted to the registrar of companies in order for company to be registered.

10 MARKS

(b). Write short notes on the following;

- (i) The Reserve Capital
- (ii) Loan Capital
- (iii) Nominal Capital
- (iv) The issued Capital
- (v) The paid-up Capital

10 MARKS

THE UNIVERSITY OF ZAMBIA

FIRST SEMESTER UNIVERSITY EXAMINATIONS – 7TH JULY 2006

L 441 – CONFLICT OF LAWS

TIME: THREE HOURS

ANSWER: QUESTION ONE and any three other questions

Candidates may consult unmarked copies of the Foreign Judgments (Reciprocal Enforcement) Act, CAP 76

1. Kamuzu Ngwazi was born in Malawi and came to Zambia at the age of 4 in 1969 with his parents. Both his parents died in Zambia and are buried in Luanshya. After graduating from UNZA in 1992 he went for further studies in the U.S.A. He stayed on in America and now works as an aeronautical engineer for NASA in Houston, Texas. In the year 2000 he met and fell in love with Lonah, a Pakistani lady and also a devout Muslim who was also working at NASA. Lonah's parents insisted that if Kamuzu wanted to marry their daughter, he had to convert to Islam. In August 2001 Kamuzu, a devout Seventh Day Adventist converted to Islam and the two got married in October that same year at a beautiful Muslim wedding.

In February 2006 Kamuzu was deported to Malawi for selling cocaine. He flew to Lusaka on 3rd April 2006. Before leaving Houston he had borrowed \$6,000 from his wife. On 10th May 2006 he renounced the Islamic faith and converted back to the SDA. On 16th May 2006 he filed a petition for divorce in the High Court for Zambia.

On 1st June 2006 Lonah sued Kamuzu in a court in Houston and obtained judgment against Kamuzu for failure to pay back the \$6,000 he owed her. Five days prior to the hearing of the matter Kamuzu had received an e-mail from Lonah notifying him of the suit. He responded by saying he had no money for a ticket to Houston.

Lonah arrived in Lusaka yesterday and wishes to enforce the judgment from the Houston Court against her husband. You are Judge Maningi's clerk and His Lordship has requested for a written statement from you as whether he can entertain the petition. Advise.

2. Jason Sangwapo who is domiciled in Zambia became insane at the age of 18 in 1966 because of smoking too much cannabis. His father, a powerful businessman in Kitwe decided to send him to England in 1967. Jason has been residing as a lunatic in England all these years till his death on Monday 3rd July 2006. Being the only child alive he inherited a fortune from his father. You have been retained as the family lawyer to advise on the distribution of the property.
3. General Motors , an American company, brings proceedings against Don Corleone, an American, in respect of a debt incurred in New York and serves process on Corleone while Corleone is staying at Pamodzi Hotel in Lusaka. He wishes to question whether the Zambian courts will have jurisdiction. Advise.
4. Preamble Maningi bought a vanette in South African from Botha on a conditional sale agreement under which title would not pass to Maningi until the full price was fully paid. This was effective under South African law. Maningi brought the vanette to Lusaka and resold it to Tambatamba who had no notice of Botha's rights. Would title pass to Tambatamba?
5. A University of Zambia bus was taking UNZA students to Namibia for games. After crossing into Namibia the driver became sick and could not drive. One student from the basket ball team volunteered to drive. After a few hours the student driver failed to negotiate a corner and hit into a stationary truck. The truck in turn went and hit a cow which died on the spot. The owner of the cow has filed a suit against the University of Zambia for compensation in the sum of \$4,000. Advise the University.

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

L451 – INTERNATIONAL TRADE LAW

FIRST SEMESTER EXAMINATION – 2006

INSTRUCTIONS

1. ANSWER QUESTION ONE AND ANY THREE OTHER QUESTIONS
 2. YOU HAVE THREE HOURS TO WRITE THE EXAM PLUS FIVE MINUTES TO READ THROUGH THE EXAM PAPER
 3. NO STATUTES OR TREATIES ARE PERMITTED
-

QUESTION ONE

- (a) Ruritania is a Least Developed Country situated in Africa. Since it gained its independence in 1990 it has maintained a closed economy and little contact with the outside world. In June 2006 Ruritania elected into office a new government which has promised to open up its economy to the outside world as well as joining the World Trade Organisation (WTO).

The new Minister of Trade and Commerce of Ruritania has tasked you as the trade legal expert to prepare a comprehensive paper on the benefits and incentives as well as disadvantages for Ruritania to join the WTO.

Please do so.

[30 Marks]

- (b) Discuss any of the two exceptions to the Most Favoured Nation (MFN) clause.

[10 marks]

QUESTION SIX

You have been asked by the Zambia Chamber of Commerce and Industry to prepare a paper on how the WTO dispute settlement Mechanism operates.

Please do so.

[20 marks]

QUESTION SEVEN

Write short notes on the following

(a) Market Economy Model

[4 marks]

(b) Closed Economy Model

[4 marks]

(c) Countervailing Duty

[4 marks]

(d) Non-Tariff Barrier

[4 marks]

(e) Dumping

[4 marks]

**THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW**

**UNIVERSITY FIRST SEMESTER EXAMINATION, JULY 2006
L461 – INTELLECTUAL PROPERTY LAW I**

INSTRUCTIONS

TIME: THREE HOURS (plus 5 minutes to read through the paper)

ANSWER: FOUR QUESTIONS: Question ONE is Compulsory

You may bring in the examination room CLEAN patents Act, Trade Marks Act and Copyright Act.

1. List and write brief notes on the five subject matter of Intellectual Property.
2. What is the function of the claims in a patent application?
3. Write brief notes on:-
 - (a) Industrial Applicable;
 - (b) Novelty;
 - (c) Fair Use.
4. What is the skilled but unimaginative worker test? Is it realistic test?
5. Outline all the possible functions of a trademark.
6. Discuss the decision in the **Coca-Cola Trade Mark Application (1986) 2 All ER 274.**
7. What sort of work is protected by Copyright?
8. How does ownership of an intellectual property right conflict with competition?

THE END OF THE EXAMINATION

**THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW**

**UNIVERSITY FIRST SEMESTER EXAMINATION, JULY 2006
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THE END OF THE EXAMINATION

**THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW**

FIRST SEMESTER EXAMINATION: JULY 2006

ADR L481: ALTERNATIVE DISPUTE RESOLUTION

DURATION: THREE HOURS

INSTRUCTIONS: 1. ANSWER FOUR QUESTIONS

2. ALL QUESTIONS CARRY EQUAL MARKS

**3. YOU MAY CONSULT UNMARKED/CLEAN
COPIES OF ACTS OF PARLIAMENTS OR
STATUTORY INSTRUMENTS**

QUESTION ONE

- (i) What is Mediation
- (ii) What is the difference between Mediation and Arbitration.

QUESTION TWO

Briefly describe the general procedure used at a Mediation.

QUESTION THREE

Explain with reasons how you would deal with the following situations:

- (a) If at the Mediation you recognize a participant as someone that you know.
- (b) If at the Mediation the participants request for a transcript of the proceedings to be used in litigation in the event that the Mediation does not succeed.

- (c) If at the Mediation a participant who is not represented by a lawyer objects to the presence of a lawyer representing the other participant.
- (d) If at the Mediation the participants refuse to proceed with the Mediation.
- (e) If at the Mediation the parties reach an agreement that you consider unfair.

QUESTION FOUR

How would you explain the Mediators role and the Mediation process in the Opening Statement.

QUESTION FIVE

What do you need to accomplish in the Joint Session.

QUESTION SIX

Write short notes on the following:

- (a) Med-Arb.
- (b) Early Neutral Evaluation
- (c) Kinesics
- (d) BARTNA
- (e) Evaluative Mediation.

QUESTION SEVEN

What happens in a caucus and what do you seek to achieve.

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

POSTGRADUATE DIPLOMA IN HUMAN RIGHTS LAW

FIRST SEMESTER EXAMINATIONS – 5TH JULY 2006

L. 6301. REGIONAL HUMAN RIGHTS LAW

ATTEMPT ANY FIVE QUESTIONS. 3 HOURS

1. “The right to food is both an individual and a collective right. The core content of the right implies food availability and accessibility.”
Explain this right and expatiate on its scope. **14 marks.**
2. The challenge of cultural relativism. Critically discuss. **14 marks**
3. “The principles of equality and non-discrimination are great human rights aspirations. But they are unattainable. Inequality and discrimination can never be eliminated in the real world of human existence.”
Assess the cogency and veracity of this statement in the light of human rights norms and practice. **14 marks**
4. Compare and contrast the normative range of the European and the Inter-American human rights systems. **14 marks**
5. Show how in Europe and in the Americas no state in either region may escape monitoring of its human rights record. **14 marks**
6. Discuss the strategy used by regional human rights systems to expand their initially narrow normative range to something much wider. **14 marks**
7. Identify and discuss three types of cases that have come before the Inter-American Court of Human Rights and the European Human Rights Court. **14 marks**
8. Asianocea is a new human rights region operating other the auspices of the League of Asianocea States (LAS). You have been hired as a human rights consultant by LAS on whether to adopt the model of the European human rights system or the model of the Inter-American human rights system or a creative mixture of both.
Advise LAS. **14 marks.**

**THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW**

FIRST SEMESTER FINAL EXAMINATION

L6401: NATIONAL HUMAN RIGHTS LAW

INSTRUCTIONS:

- 1. CANDIDATES ARE ALLOWED TO BRING INTO THE EXAMINATION ROOM CLEAN AND UNMARKED TEXTS OF THE CONSTITUTION OF ZAMBIA AND OTHER RELEVANT STATUTES AND INTERNATIONAL INSTRUMENTS**
 - 2. CANDIDATES SHOULD ANSWER QUESTION 1 AND THREE OTHER QUESTIONS**
 - 3. THIS EXAMINATION IS FOR THE DURATION OF THREE (3) HOURS (Plus 5 minutes to read the paper)**
-

QUESTION 1

The current National Bill of Rights in Part III of the Constitution has numerous shortcomings which have seriously reduced its efficacy. Discuss, in as much detail as possible, at least five of what are regarded to be disadvantages that impact on the effectiveness of the Bill of Rights. **[25 marks]**

QUESTION 2

Human rights are regarded to be universal, indivisible, interdependent and interrelated. What is the significance of this in the context of the right to life? **[25 Marks]**

QUESTION 3

Article 111 in Part IX of the Constitution of Zambia reads:

"The Directive Principles of State Policy may be observed only in so far as State resources are able to sustain their application, or if the general welfare of the public so unavoidably demands, as may be determined by Cabinet."

In light of Zambia's international human rights obligations, how would you interpret the application of Article 111 with regard to economic, social and cultural rights? **[25 Marks]**

QUESTION 4

Article 12(3) of the Constitution of Zambia allows the use of force under particular circumstances. Discuss the provisions in the context of international principles that apply. **[25 Marks]**

QUESTION 5

The exercise of human rights may be subject to limitations or derogations under certain circumstances. With examples of case law, discuss the subject of derogations in normal times and during emergencies and explain their significance. **[25 Marks]**

QUESTION 6

A comparative examination of Part III of the Constitution of Zambia (the National Bill of Rights) and the International Covenant on Civil and Political Rights (ICCPR) reveals that the two documents are similar. Considering that Zambia is a State party to the ICCPR, discuss the similarities and differences of the two documents and how this impacts on the promotion and protection of human rights in Zambia. **[25 Marks]**

QUESTION 7

- (a) With the aid of relevant legal provisions, discuss the status of the right to life of the unborn child in Zambia. **[15 Marks]**
- (b) Briefly discuss the introduction of Bills of Rights in Commonwealth African constitutions. **[10]**

END OF EXAMINATION. MAY THE GOOD LORD BLESS YOU.