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**FREEDOM OF CONTRACT IN ZAMBIA**

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FREEDOM OF CONTRACT IN ZAMBIA

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SCHOOL OF LAW

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## DEDICATION

This Work is dedicated to my dear Father and Mother and to my beloved brothers and sisters

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## ABSTRACT

Any attempt to assess the relevance or otherwise of the concept of 'Freedom of Contract' would be failure without stating the fact that the Law relating to Commercial Contracts lies at the very core of development in any society<sup>1</sup>. The law of Contract is that branch of the laws which regulates Commercial transactions called Contracts that are entered into between individuals. It is suggested that a Country would be said to be or not be rich or developed to the extent that its citizens are poor or rich. If the citizens are poor a Country is said to be poor.<sup>2</sup>

Be it noted that the development of the Law of Contract is closely tied with that of Commerce.<sup>3</sup> With the economic and social development of modern societies the need for the Law of Contracts becomes far more pressing.<sup>4</sup>

The author is like the great Sociologist Ihering of the view that the law is an instrument for serving the needs for Society.

The purpose of the law must be to further and protect the interests of society.<sup>5</sup>

The main preoccupation of Zambia, like any third world Country, is that of working out ways of realising economic development. It ought inevitably to follow that the law should be there to foster and not to inhibit development. This it seems, could be best done by widening the scope of freedom relative to Commercial initiatives of individuals. Individuals should not be unduly hampered in their efforts to execute commercial transactions. There should be 'Freedom of contract'.

It is pertinent at this point to say a word about 'Freedom of contract'. It must be recollected that during the 18th and 19th Centuries the Theories of Natural Law and the philosophies such as that of Laissez-faire reigned supreme.<sup>6</sup> The Judges of the day were themselves influenced by current thought.<sup>7</sup>

To the judges the said theories entailed encouraging almost unlimited freedom of contracting and thus evolved the doctrines of 'Freedom of Contract'.<sup>8</sup>

However, with time and especially by the end of the 19th Century the importance attached to the said concept was constantly dwindling understandably because mainly of three factors Viz: the emergence and widespread use of the standard form contracts, curtailment of free choice and intention as grounds of legal obligation, and, the emergence of the Consumer as a party to a Contract.<sup>9</sup> It is not here proposed to enter into a detailed discussion of this subject because a Chapter is reserved just on the subject of 'Freedom of contract'.

The question that will exercise our minds is whether there is freedom of contract in Zambia and whether the said concept still derives any importance. We shall respond to this question by firstly in the first Chapter, underscoring the fact that the bulk of the law in force in Zambia is the same law that is in force in England. This appears to be important because economic development takes place in stages.<sup>10</sup>

Zambia might not be at the same stage of economic development as England. Therefore, there would be no justification for the existence of the law for the regulation of Commercial transactions at the same level as that of England. A consideration of this will help us in the final analysis to say whether or not there is need to widen or restrict the scope of freedom of Contract.

In the second chapter we shall devote ourselves to an understanding of the Classical concept of freedom of contracting. In addition we shall examine the reasons for the demise of the concept of freedom of Contract and to say whether or not in Zambia the concept is otiose.

In the third chapter we shall examine some of the legislation that tends to work against freedom of contract and state whether there is any justification in retaining such laws. Lastly in the fourth Chapter it is suggested to make recommendations in relation to the Concept of Freedom of contract.

## CHAPTER I

Our concern under this Chapter is in the main to drive home the fact that the bulk of Zambia's laws (the law of Contract included) are imported directly from England. It seems clear that an understanding of the foregoing position of the law in Zambia will help us in answering the question whether the restrictions brought to bear by the English Laws are justifiable in Zambia. It perhaps needs emphasis that freedom of Contract demised as the Law of Contract continued to develop in England. It was not as a result of mechanical determination by the law makers.<sup>11</sup>

As has been suggested in the abstract, the development of the Law of Contract is relative to that of Commerce. In England, as commerce developed the Law of Contract naturally also developed.<sup>12</sup> It seems to follow therefore, that the restrictions on the Freedom of contract in Zambia ought to be commensurate to the level of development of Commerce obtaining here in Zambia. Lets now proceed to examine the laws imported from England to Zambia.

English laws have been made to apply in Zambia by virtue of the English law (Extent of Application) Act (Cap 4), the British Acts Extension Act (Cap 5), the High Court Act (Cap 50) and the subordination courts Act (Cap 45).

It is expressly, provided under the English law Extent of Application Act (Cap 4) that common law, doctrines of Equity and Statutes which were in force in England on the 17th August 1911 and any statutes of latter date than the 17th August 1911 but applicable to Zambia or which hereafter shall be applied by any Act or otherwise shall be in force in Zambia. This provision simply is to the effect that all the laws that were in force on 17th August, 1911 in England are directly applicable in Zambia. The importance of the 17th August 1911 is that on that date a legislative body was instituted in Zambia (then known as Northern Rhodesia).<sup>13</sup>

It is noteworthy that the said Cap 4 is subject to a number of qualifications. Under the High court Act,<sup>14</sup> it is provided that foreign statutes applicable to Zambia shall be in force so far only as the limits of the local jurisdiction and local circumstances permit. The High Court is empowered to construe English Statutes with such verbal alterations as may be necessary to make the English Statutes applicable in Zambia.

In the same vein the Subordinate Courts Act makes provision to the effect that all British Acts declared by any Act to extend or apply to Zambia shall be in force so far only as circumstances of Zambia permit, that, it shall be lawful for a subordinate Court to construe the said British Acts with such verbal alterations as may be necessary.

Both the High Court and the subordinate courts Act do not assign any meaning to the words 'Local Circumstances'. Again the words

'such verbal alterations as may be necessary are not defined.

This operates to water down the significance of the conditions for the application of the English Statute for one can not tell with any precision when a British Statute will be altered so as to make it applicable in Zambia. The importance however, of the said provision of the High court and subordinate courts Acts, is that they confer upon the Courts power not to call in aid the provisions of any British Statutes applicable to Zambia if such statutes do not conform to local circumstances.

Another fact worthy of note is that certain Statutes though applicable by virtue of Cap 4, may nevertheless be made not to be applicable by an Act of Parliament. On the other hand certain statutes though excluded by Cap 4 from being applicable to Zambia may however be made to apply. For example Cap 5 makes applicable to Zambia Certain British Statutes which were passed after 17th August, 1911. In addition to Cap 5 there are other Zambian Statutes which extend the application to Zambia of certain statutes of England notwithstanding that they were passed after 17th August, 1911.<sup>15</sup>

We shall now briefly examine the applicability of English 'common Law' and 'Doctrines of Equity'. Cap 4 expressly extends the application of English common Law and Doctrines of Equity to Zambia but subject to local written law.<sup>16</sup> The High Court and Subordinate courts are expressly empowered to administer the said 'Common Law' and doctrines of equity concurrently in all civil

matters before them.<sup>17</sup> Suffice to state that where there is a conflict or variance between the rules of 'Equity' and the rules of 'Common Law' the rules of Equity must prevail.<sup>18</sup> Again, 'Common Law' and 'Doctrines of Equity' are not defined by the said Cap 4. However, Common Law essentially refers to judge-made laws of England whereas 'Doctrines of Equity' refers to principles which evolved by the Court of Chancery in England in order to ameliorate the hardships that were engendered by the ramifications of common Law.<sup>19</sup>

Whereas British Statutes are applicable to Zambia subject to local circumstances and subject to such verbal alterations as may be deemed necessary 'Common Law' and 'Doctrines of Equity' are subject only to local written laws. In other words common Law and Doctrines of Equity must never go against local written laws.

With the introduction of Common Law has been introduced also in Zambia the doctrine of 'Judicial Precedents'. Judicial Precedent is the term that is employed to assert the fact that every Court in the judicial hierarchy is bound by the principles of law expounded in the decisions of the courts that are superior to it. It needs no emphasis that Courts exercising concurrent jurisdiction do not bind each other and that the Highest court in the hierarchy is not bound by its own decisions.<sup>20</sup>

Although there is no provision to the effect that in determining cases before them, courts in Zambia shall have recourse to reported decisions of foreign jurisdictions, almost invariably

Zambian courts do in fact refer to decisions of superior courts of England, the East African court of Appeal and the superior courts of other Common Law jurisdictions.<sup>21</sup> It is proposed that decision of foreign courts are merely of persuasive rather than binding force on Zambian courts.<sup>22</sup> In practice however the decisions of foreign Courts have closely been adhered to and a judge<sup>23</sup> will only decline to follow such decisions if he distinguishes them or if he shows that a decision is question had been given per incurium.<sup>24</sup>

Having attempted at a synopsis of the law in Zambia that was imported from England we shall examine shortly the rise and fall of the Concept of 'Freedom of Contract'.

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## CHAPTER II

### HISTORICAL ACCOUNT OF FREEDOM OF CONTRACT

In this Chapter we shall examine the history of Freedom of Contract. This is important because law is only best understood if it is looked at in its historical context. Law can not be divorced from the past, culture and customs. It is an integral part of society rather than an abstract set of rules.<sup>1</sup> It is, for instance, difficult to appreciate why only English Statutes in force in England on 17th august 1911 were made applicable to Zambia, until we uncover the historical significance of that date viz that it was on that date that a Legislative Assembly was constituted in Northern Rhodesia.<sup>2</sup>

### EVOLUTION OF FREEDOM OF CONTRACT

Elements of 'Freedom of Contract can be traced as far back as the mediaeval era but it did not become a fully established legal concept until the 18th and 19th Centuries.<sup>3</sup> The 19th Century was marked with an emergence of a multiplicity of schools of jurisprudential thought and diverse philosophies.<sup>4</sup> The judges of the day were themselves largely influenced by the then prevalent thought. For instance, the theories of Natural law to many a judge of the 18th Century presupposed that men and women had an inalienable right to make their own contracts for themselves. Similarly, the 19th century philosophy of laissez-faire entailed that the law should interfere as little as possible with the contractual transactions of individuals.<sup>5</sup> The law was there only to enable the concerned parties to realise their aspirations and

to lend its aid to a party whose interests were prejudiced because of the default of the other party to the contract.<sup>6</sup> Similarly, the function of judges was taken to be no more than that of an umpire whose only task was to respond to the appeal, 'how is that' When a wrong was made.<sup>7</sup> As a result, all such ideas entailed encouraging almost unbridled freedom of Contract.<sup>8</sup>

#### 11(b) FUNDAMENTAL ASPECTS OF FREEDOM OF CONTRACT

The Concept of freedom of contract consisted of two limbs; the first presupposes that contracts were based on mutual agreement and the second is that a contract is the result of a free choice of the parties to a contract.<sup>9</sup> The two said limbs were the very essence of the 19th century 'Will theory of contracts!'<sup>10</sup> By the 'Will Theory of Contracts' is suggested that a contract is a real agreement between two or more parties and that such a union of Wills is inherently worthy of respect; for it extended the reach of an individuals personality. Indeed, the 'essence of contract is agreement and the essence of agreement is a Union of wills.'<sup>11</sup> This observation is still tenable even in the modern law of Contract for even today the bulk of contracts are based upon the agreement of the parties concerned at least touching the essentials of the Contract in question.<sup>12</sup>

As far back as 1552 it was submitted that;

'In Contract it is not material which of the parties speak the words, if the other agrees to them, for the agreement of the minds of the parties is the only thing the law respects in Contracts'.<sup>13</sup>

The exponents of the phenomenon of agreement were divided over one fundamental aspect. Some contended that the wills of the parties had to be in reality at one; others that it was sufficient that the parties should be taken objectively to have manifested this agreement without any Consensus ad idem.<sup>14</sup>

In this regard, Sir Anson wrote, 'where the consensus and idem or agreement is the ideal basis of contract, the Court will assume the existence as a necessary sequence of certain overt acts of the parties. Their minds must needs be out of reach of a Court of Law, but where they exhibit all the phenomena of agreement, the existence of agreement will be taken for granted.'<sup>15</sup> Cheshire Fifoot put it thusly, 'A contracting party is bound because he has agreed to be bound.'

However, agreement is not a mental state but an act, and, as an act, is a matter of interference from conduct. The parties are to be judged not by what is in their minds, but by what they have said or written or done'.<sup>16</sup>

From the above quotations one thing is clearly evident viz; that it is not the intent of the parties that matters in contracts,<sup>17</sup> rather, it is what a reasonable man would infer from the conduct of the parties as amounting to agreement. So then, a contract would be deemed to have been made whenever in the contemplation of a reasonable man a contract would be said to have been entered into.<sup>18</sup> In doing this the Courts are actually creating contracts for parties. However, the Courts have always vehemently maintained that it is not for the Courts to make contracts for indi-

viduals.<sup>19</sup> That, 'when we speak of the intention of contracting parties we mean... the sense is which it is to be inferred from the words used or from the transaction or from both that the one party gave and the other received.'<sup>20</sup> Further, that the function of an English judge is not to seek and satisfy some elusive mental element but to ensure as far as practical experience permits, that the reasonable expectations of honest men and women are not prejudiced.<sup>21</sup>

It is noteworthy that the very development of the law especially during the latter half of the 19th century did fundamentally erode the importance attaching to the agreement and the intention of the parties to a contract.<sup>22</sup> The courts evolved such doctrines as the doctrine of frustration whereby the intention of the parties no matter how bonafide would be upset. By the doctrine of frustration is asserted that the Courts will obliterate a contract if there should occur certain unforeseeable events which it would be impossible to perform the contract.<sup>23</sup> In terminating such contracts the Courts have forcefully maintained that they infact give effect to the intention of the parties.<sup>24</sup> However, it is difficult to see how the Courts give effect to the intention of parties when the Courts dissolve a contract which parties entered into freely and voluntarily.

As has already been stated, the second ground upon which is rested the other foot of the concept of Freedom of contract is 'Freedom of Choice'.<sup>25</sup>

### 11(C) FREEDOM OF CHOICE

Freedom of Choice relative to the concept of 'Freedom of Contract' was freedom in three respects. In the first place, it was freedom because nobody was bound to enter into any contract if he did not elect to do so. Secondly, it was freedom because in a competitive society everyone had a choice of persons with whom he could contract. Lastly, it was freedom, for individuals could make contracts virtually on any terms that they pleased.<sup>26</sup>

The first of the above facets of freedom of choice has continued to the present day.<sup>27</sup> A person can not venture to contract save he so choose. However, even this is not without limitation. Many times individuals execute certain contracts because they are induced to do so by certain economic factors.<sup>28</sup> For instance an individual may opt to travel by train in preference to bus because it is cheaper to travel by train.

The second facet of freedom of choice is true to the extent that due to growth of competition in the commercial and industrial fields, men and women could choose from a wide spectrum of men and women with whom to contract.<sup>29</sup> There existed no limitations as to the class of person with whom an individual could contract. However, the very growth of commerce and industry engendered certain limitations.<sup>30</sup> For instance, certain fields of trade were continually monopolised by vast corporations. Thus, a person could only contract with the existing Railway corporation because it was the only one in being.<sup>31</sup>

Freedom in the third respect viz, freedom to contract upon any terms was somewhat restricted even in the classical understanding of it. Firstly, every contract was required to be in accord with

public policy.<sup>32</sup> Courts could always serve any contractual relation which was found to be bad on grounds of policy. The principle of public policy is precisely this; ex dolo malo non oritur actio; No Court will lend its aid to a man who founds his cause of action upon an immoral or an illegal act.<sup>33</sup> In addition, legislation was constantly being passed which operated to water down the importance of freedom to contract on any terms.<sup>34</sup> As early as 1831, Acts had been passed to protect employees from the practice of being paid in kind instead of in cash.<sup>35</sup> Needless to say, the law of contract as it stands today entails in many instances that the terms of contracts are not the result of individual negotiation.<sup>36</sup> An employee's contract is normally governed by collective Agreements. In many instances an individual must either accept the terms laid down in toto, or go without.<sup>37</sup> It is worthy of note that the classical context of freedom of contract took no account of limitations brought to bear by certain Socio-economic factors which in many instances virtually enjoined an individual to Contract.<sup>38</sup>

#### SANCTITY OF CONTRACTS

Another issue deserving of our attention is that of 'Sanctity of Contracts'. 'Sanctity of Contracts is employed to assert the fact that Contracts Voluntarily executed should be held sacred and enforced by the Courts of Law.<sup>39</sup> Sir, George Jessel M. R. once said, 'If there is one thing more than another which public policy requires, it is that men of full age and competent understanding shall have the utmost liberty of contracting and their contracts, when entered into freely and voluntarily, shall be

held sacred and shall be enforced by Courts of justice'.<sup>40</sup> The basis of 'Sanctity of contracts' was that the parties entered into contracts of their own choice and volition and settled the terms by mutual agreement.<sup>41</sup> It suffices to point out that from the earliest times certain limits were brought to bear on the 'Sanctity of contracts'. For instance contracts induced by fraud or duress, or contracts designed to violate criminal law could not be tolerated by the Courts. There are other limitations on the doctrine of 'Sanctity of Contracts' but it suffices to state that the same limitations outlined above apply Mutatis Mutandis.<sup>42</sup> Having accounted for the classical context of 'Freedom of Contract' we shall henceforth account for the fall of the concept of Freedom of Contract.

#### DEMISE OF FREEDOM OF CONTRACT

Today, freedom of contract is generally regarded as a reasonable social ideal only to the extent that equality of bargaining power between contracting parties can be assumed, and no injury is done to the economic interest of the Community at large.<sup>43</sup> Freedom of Contract with time lost or ceased to have much idealistic attention.<sup>44</sup> The demise of the said doctrine is attributed mainly to three factors. The first is legislative interference especially in the area of consumer protection. Secondly, most contracts are longer a result of mechanical arrangements between parties. Thirdly the massive use of standard form contracts.<sup>45</sup>

#### LEGISLATIVE INTERFERENCE

Statutory inroads into freedom of contract is not entirely a recent development. As early as the 17th century legislative

Acts had been passed which tended to bridle the freedom of contract.<sup>46</sup> The circumstances in which the legislature declared agreements or promises void were numerous. The reasons for such declarations were equally diverse. Although 'Sin' on the one hand and 'Crime' and 'Breach of Contract' on the other hand are today pretty distinct conceptions, the case has not always been so; for the obligations of religion and of law in the field of promises were initially almost undistinguishable.<sup>47</sup> Some legislative Acts were outrightly religiously oriented. For instance, it was provided under the Sunday Observance Act 1677 that no tradesman artificer, workman, labourer or other person whatsoever shall do or exercise any worldly labour, business or work of their Ordinary Calling on Sunday. Thus, in Smith V. Sparrow,<sup>48</sup> a sale of nutmegs on a Sunday was held not to be actionable as being in contravention of the Sunday Act. Other statutory enactments were based on moral considerations. It has, for instance, since 1644 been considered that wagers or gamblers contracts were against public policy and thus unenforceable. The law relating to gaming acts culminated into the passing of the 1892 acts which made void any promise to pay any person money paid by that person as a wager.<sup>49</sup>

#### CONSUMER PROTECTION

The law relating to consumer protection tends to restrict the freedom to contract. The principle of consumer protection is that the law will intervene whenever due to the inferior bargaining position of one of the parties, the other might take advantage of his weakness.<sup>50</sup> By far the most important statute in this regard is the Unfair contract terms Act.<sup>51</sup> By this Act it is inter

alia intended to restrict the use of exemption clauses.<sup>52</sup> There are many areas in which freedom of contract has been bridled but for now it suffices to state that today most contractual relations are entirely governed by statutes.<sup>53</sup> To this end, whatever contract that any person aspires to execute it must be in accord with statutory requirements.

#### STANDARD FORM CONTRACTS

As has been stated, one of the cardinal tenets of freedom of contract is that a contract is based on agreement.<sup>54</sup> This is true today only in exceptional cases; for indeed in many instances, the detailed terms of contracts do not depend on agreement at all.<sup>55</sup>

Many contracts today are executed on the basis of a standard form contract put forward by one party.<sup>56</sup> Faced with a standard form contract, a person is left only with either to take or to go without. He can not negotiate for terms as he may desire. A person only has to fill in the forms presented to him and nomore.<sup>57</sup> This clearly is an affront to freedom of contract and more so where the standard form contract seeks to exempt the party forwarding it from liability.<sup>58</sup> The author will not venture to make suggestion in justification of standard form contracts because our concern here is to demonstrate how freedom of contract has been eaten away.

#### IMPLIED TERMS

The increase of implied terms of contracts is another fact attributable to the decline of freedom of contract.<sup>59</sup> Where as emphasis on individual freedom and agreement were in the nine-

teenth century said to be the basis of contracts, it is to be regretted that judges have always been ready to import terms into Contracts notwithstanding that the parties to a contract had not expressed those terms.<sup>60</sup> Sir, Frederick Pollock wrote; ' Our Courts formerly were averse to going beyond the strict letter of instruments and would only in extreme cases imply terms that were not expressed or at least imported by some generally understood custom.<sup>61</sup> Bowen L J ( as he then was), justified the said implied terms in the following words: "In business transactions such as this, what the law desires to give effect by the implication is to give such business efficacy to the transaction as must have been intended at all events by both parties ..., not to impose on one side all the perils of the transaction, or to emancipate one side from all the chances of failure but to make each party promise in law as much, ... as it must have been in the contemplation of both parties that he should be responsible for in respect of those perils or chances".<sup>62</sup> It is unfortunate that this purported attempt to give efficacy to the intention of the parties has been perverted for it is noted that nowadays Courts go so far as to adjust the rights and obligations of the parties by taking recourse to circumstances not provided for by their contract.<sup>63</sup>

The legislature equally has implied certain terms in Contracts. among others are those provided for by the Bill of Exchange Act,<sup>64</sup> the Sale of Goods Act<sup>65</sup> and the Merchant Shipping Act.<sup>66</sup>

There are many areas where the Courts and the legislature alike have imported terms into contracts. The effect of such implied terms is that they tend to defeat the very essence of freedom and

sanctity of contracts viz the parties freedom to contract on any

terms.<sup>67</sup> Whatever the reasons which might be advanced to justify the importation of such implied terms, the thing of first importance to note is that the implied terms tend to restrict the scope of the individuals freedom to contract. The importance of this point is that commerce will not grow if commercial men or business men are hindered in their efforts to realise their business aspirations and are constantly being interfered with by the legislative enactments and judicial pronouncements.<sup>68</sup>

It is however important to emphasis the fact that the encroachment on freedom of contract pointed out above were not a result of a deliberate act of anyone.<sup>69</sup> Rather, it was the inevitable result of the growth of the law relating to contracts.<sup>70</sup> As commerce and industry grew the law had to keep in step in order to combat the inevitable exigencies of development.<sup>71</sup> This is the reason in this paper why we are not concerned with the importance of freedom of contract to Britain or indeed to any other country. Rather we are saying in Zambia that it appears to be too early to preclude freedom of contracts because of the level of development at which she is. If need arises, however, we should do so because then our judgment would be based on practical experience as opposed to more prophetic utterances.

In the chapter that will follow, it will be our concern to examine the various ways where Freedom of Contract has been fettered in Zambia and to say whether the contract laws in being are meet, regard being had to our level of development.

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49. Gaming Act 1892
50. P. S. Atiyah An Introduction to the Law of Contract  
Claredon Law Series Oxford 1981 P. 22
51. Ibid P. 23 52. Ibid
53. Sir David Hughes Parry The Sanctity of Contracts in English Law, Stevens & Sons London 1959 P. 24 etseq
54. Ibid P. 16
55. Anson's Law of Contract, Claredon Oxford 1984 P. 5
56. Ibid P. 16
57. Ibid
58. Ibid
59. Sir David Hughes, The Sanctity of contracts in English Law, Stevens & Sons London, 1957 P. 39
60. Ibid p. 42 .
61. Pollock on Contracts , 13 the Ed. P. 222
62. Per Bowen L. J. in the Mooreock (1889) 14 P. D. 64
63. Sir David Fughes, The Sanctity of Contracts in English Law 1959
64. Bills of Exchange Act , 1892
65. Sale of Goods Act, 1890
66. Merchant Shipping Act, 1894
67. Sir David Hughes Parry, The Sanctity of contracts in English Law, Stevens & sons, London 1959
68. Ibid
69. P. S. Atiyah An Introduction to the Law of Contract  
Claredon Law of Series, Oxford 1981
70. Ibid P. 9
71. Ibid P. 72

### CHAPTER III

In the preceding chapter we studied the rise and fall of freedom of Contract. We pointed out that the demise of freedom of contract is attributable both to legislative Acts and Judicial pronouncements.<sup>1</sup> In Zambia the situation is more or less the same as that of England. By virtue of Cap 4, Cap 5, Cap 45 and Cap 50 of the Laws of Zambia English law is applicable to Zambia.<sup>2</sup>

Indeed numerous statutes and Common Law rules can be cited in support of the fact that in Zambia freedom of contract is severely fettered. The question that will be sought to be answered in this Chapter is whether Zambian Law, particularly that relating to freedom of Contract, is meet as to the social economic set up of Zambia. This question is important because "...the form and content of the law varies over time, altering and adapting to take account of the dynamic nature of modern society".<sup>3</sup> Further, law evolves as society evolves.<sup>4</sup> Therefore the Laws that were evolved in the 19th century that tended to curtail freedom of contract in England were merely a reflection of the stage of development that England had attained.<sup>5</sup>

At this point we shall examine how the Zambian Parliament and the courts have suppressed freedom to contract.

The Zambian Parliament has severely eroded freedom of contracts by passing laws that render certain contractual undertakings void. This is most pronounced in the field of consumer protection. In Zambia the Zambia Bureau of Standards, is for instance, empowered to examine the quality of goods produced in Zambia with

the view of ascertaining that those goods are of accepted standards.<sup>6</sup> Goods not of accepted standards must never be offered for sale.<sup>7</sup> This means that a seller or producer is obliged to tender for sale only those goods which the Zambian Bureau of Standards will permit. In this way individuals are not free to contract on any terms that they may please.

Another example of the tendency by the Zambian Parliament to bridle freedom of contract in the area of consumer protection is the passing of the Rent Act.<sup>8</sup> The policy underlying the passing of the Rent Act is to: (a) control the amount of rent which private land owners may charge and (b) provide security of tenure for tenants.<sup>9</sup> Under Section 4 of the Rent Act the High Court is empowered to determine the standard rent of any premises either on its own motion or on application by the tenant or Land Lord. Under Section 3 the Land Lord is bound by duty to apply to the High Court to determine for him the consideration for his tenancy contract.

It is criminal to fail to comply with this provision. It is further provided that the Land Lord may not terminate the tenancy failing the obtaining of an order from the High Court and this even in the face of a breach by the tenant of a condition of the tenancy.<sup>10</sup> Where the tenant sublets the property which is the subject matter of the tenancy, still, the Land Lord can not eject the subtenant.<sup>11</sup> In fact the subtenant's rights are not affected by the fact that the tenant in question sublet the property unlawfully.<sup>12</sup> Under Section 23, the Land Lord can not rely on the agreement between him and the tenant respecting the duration for

which the tenancy should run. In other words upon the expiry of the tenancy, the Land Lord has no power to exercise possession of his property for as long as the tenant elects to remain in possession. In effect this means that upon the expiry of a tenancy, the law creates another one for the parties on the same terms and conditions as the initial tenancy.<sup>13</sup> Again the provisions under the Rent Act outrightly infringe upon the wills of the parties to a tenancy agreement. The parties may not agree on any terms which they may please if such terms are not in accordance with the provisions of the said Act. The Act allows little freedom of contract.

The Roads and Road Traffic Act (Cap. 66). Under this Act is provided the terms and conditions relating to contracts of carriage of passengers. This Act provides inter alia for the consideration furnishable under the contract.<sup>14</sup> Further the Act empowers any passenger in a public service vehicle who has paid his fare to recover the money paid if the vehicle fails to start on its journey from its terminal point within 6 hours of the time approved or if the operator fails to convey him to his destination, within a reasonable time.<sup>15</sup> Failure by the operator to refund money paid is criminal.<sup>16</sup> The effect of all such Acts is to exclude parties from contracting otherwise than is statutorily prescribed. The result is that there is no freedom of contract.

The judiciary has also suppressed the freedom to contract by evolving certain doctrines such as the Restraint of Trade doctrine and further by importing terms into contractual agreements. In the paragraphs following below we shall examine how the impor-

tation of terms fitters individual's freedom of contract.

#### IMPLIED TERMS

In certain cases courts do annex terms and even conditions to agreements between parties even where those parties had not envisaged the incorporation of such terms into their agreement.<sup>17</sup> In importing such terms the courts do so with the view of giving effect to the intention of the parties.<sup>18</sup> In Dahl V. Nelson,<sup>19</sup> Bonkin & Company, it was stated "...when the parties to a mercantile contract ... have not expressed their intentions in a particular event... a Court of law in order to ascertain the implied meaning of the contract, must assume that the parties intended to stipulate for that which is fair and reasonable... There may be many possibilities within the contemplation of the contract... which were not actually present to the minds of the parties at the time of making it, and, when one or other of these possibilities becomes a fact, the meaning of the contract must be taken to be not what the parties did intend... but that which the parties would presumably have agreed upon..." This annexation of terms to contracts operates to oust the freedom of contracting parties to elect what terms should govern their agreement.<sup>20</sup> In this way freedom of contract is suppressed.

In addition to importing terms, courts have also evolved such doctrines as the Restraint of Trade doctrine.<sup>21</sup>

## DOCTRINE OF RESTRAINT OF TRADE

A contract would be in restraint of Trade if the performance there of would limit competition in any trade or business or profession or would restrict one of the parties in the exercise of his trade or occupation.<sup>22</sup> Contracts in restraint of trade are contrary to public policy and therefore void.<sup>23</sup> The justification for holding contracts in restraint of trade to be contrary to public policy is that contracts in restraint of trade tend to create monopolies...<sup>24</sup> "the Common Law abhors monopolies..."<sup>25</sup> This applies to Zambia by virtue of Cap 4.

The question that arises at this point is what public policy is. Public policy is a "a principle of judicial legislation or interpretation founded on the current needs of the community."<sup>26</sup> In other words each society has its own public policy. Public policy is a variable quantity.<sup>27</sup> It is not of universal application. It is "influenced by the judges' training, outlook and philosophy, varying with the prevailing fashions in moral, economic or social practices."<sup>28</sup> In Fender v. Midmay,<sup>29</sup> it was stated that rules of public policy have to be moulded to suit new conditions of a changing world.

At this point one thing seems clear, viz, each society's public policy is peculiar only to that society. This being the case it

would be idle to invalidate a contract in Zambia on grounds of public policy developed in another country because to do so would be to pay a blind eye to the fact that each country's public policy is based on considerations that are peculiar only to it. This assertion can be demonstrated for instance by considering the Rent Act.<sup>30</sup> The policy of the Rent Act<sup>31</sup> was expressed as follows in the case of Horford Investments v. Lambert;<sup>32</sup> "the policy of the Rent Act was and is to protect the tenant in his home whether the threat be to extort the premium for the group or renewal of his tenancy, to increase his rent, or to evict him..." Certainly the Rent Act is meant to protect the tenant from unjustifiable ejection or an increase in rent payable.<sup>33</sup> This is good. The problem is however that in certain cases the standard rent is far below what the Land Lord would expect.<sup>34</sup> In the result contractors and other developers of real estate may well be reluctant to build houses for prospective tenants and buyers.<sup>35</sup> The resulting scarcity would encourage clandestine transactions in land.<sup>36</sup> In this way protection for the consumer overrides the quest for development.

In the authors view much as the consumer needs to be protected this should be counter balanced with the quest for economic development. The logical thing to do in this regard would be to let market forces to determine the consideration for contracts including tenancies.

After all Zambia is pursuing liberal economic policies which entail that the government should interfere as little as possible in private contractual undertakings.<sup>37</sup>

Suffice at this point to examine the rise of consumer protection in England. Protection of the consumer in England was taken to be a matter of national interest.<sup>38</sup> It was therefore imperative that freedom of contract should give way before consumer protection.<sup>39</sup> Statutes were used so as to achieve certain social results as social security. This indeed ties in well with Professor W.W. Rostow's findings who asserted that it became necessary at the level of development that had been achieved to provide social security and to provide durable consumers goods and services.<sup>40</sup> Society was not so much concerned with the fostering of economic development as with social security. It therefore became absolutely necessary to pass law that would protect the consumer.<sup>41</sup>

The concern of the Zambian government currently is not that of encouraging 'high mass consumption'.<sup>42</sup> Rather it is that of encouraging productivity.<sup>43</sup> This is evinced by the fact that the government has implemented fully fledged structural Adjustment programmes by for example liberalising trade, by lifting import controls by lifting price controls, by privatising parastatals etc.<sup>44</sup> The results of the said Structural Adjustment Programmes are evident. There is an emergence of new entrepreneurs such as charcoal burners, street vendors, etc.<sup>45</sup> It is in light of this realisation that the author submits that the laws viz-a-viz contract should allow for free competition by providing for freedom of contract as understood during the era of laissez-faire philosophies which more or less is what Zambia is going through.<sup>46</sup> If however, problems arise as a result of free trade then laws should be passed to ameliorate the same. In this way the laws

that would be passed would be based on practical experience rather than on speculation. We can not for instance fear that if rent is not controlled or if contractual agreements in restraint of Trade are not severed some mischief would be engendered on account only that such mischief resulted in England.

#### THE FUNCTION OF LAW IN SOCIETY

Suffice at this point to say something about the role of the laws in society. Law is an instrument of social engineering.<sup>47</sup> It is a means of serving the needs of society.<sup>48</sup> The purpose of law is to further and to protect the interests of society.<sup>49</sup> Law therefore is the picture of what goes on in society.<sup>50</sup> The source of law are activities of society itself.<sup>51</sup> Hence the centre of gravity of legal development lies not in legislation nor in juristic science or juristic decisions but in society itself.<sup>52</sup> When making decisions judges are themselves swayed by considerations relating to policy, political and economic set up of the society.<sup>53</sup> Legal rules are not made simply for their own sake.<sup>54</sup> They are made because there is a need for them.<sup>55</sup> Although it is not easy a task, it is nevertheless possible to identify certain causes of the creation of a particular law.<sup>56</sup> For instance the 1893 Sale of Goods Act was passed as a means of codifying the law of Sale.<sup>57</sup> The Sale of Goods Act was passed because there arose a need for a clear legal framework within which trade could be conducted.<sup>58</sup> This was the underlying policy behind the passage of the Sale of Goods Act.

The foregoing observations seem to suggest that law makers make law in the light of the needs of society. When British law

makers were making the law which is applicable also to Zambia,

they had only Britain in mind and not Zambia because as has been suggested law is made because a need in a particular society arises.<sup>59</sup> on the basis of this premise, it seems logical to contend that the law that was imported from England by virtue of Cap 4, Cap 5, Cap 45 and Cap 50 does not take account of the particular needs of Zambian Society. If it does it is mere coincidence. The only reason for the adoption of the said law was because up until 1911 Northern Rhodesia did not have a Legislative Assembly of its own<sup>60</sup> hence it was imperative to import foreign laws. The reason for passing that Act (Cap 4) was not because it had been realised that in Zambia there had occurred the same circumstances as those that occurred in England up until 1911.<sup>61</sup> This observation alone raises suspicion to the effect that the law from England afortiori the law relating to freedom of Contract is ill adapted to the Zambian society.

In Zambia government needless to say is pursuing the Structural Adjustment Programmes.<sup>62</sup> The Structural Adjustment Programme (SAP) entails inter alia, the liberalisation of the economy which entails that government interfere sparingly in the economic affairs of the nation.<sup>63</sup> It is envisaged that market forces should determine the relations between buyer and seller.<sup>64</sup> It seems that Freedom of Contract would thrive given such an environment in view of the fact that the said freedom of contract arose because of the<sup>65</sup> philosophies such as laissez-faire.<sup>65</sup> The policies being pursued are more or less the same as those envisaged by the 19th Century philosophies of laissez-faire.<sup>66</sup> In addition, since law is

an effective means of society change,<sup>67</sup> law could be employed in Zambia to effect the desired goal viz development via trade liberalisation<sup>68</sup> and in this regard the law that encourages individuals to execute such transactions in contract as they please and on the terms that they deem fit.

The author by accounting for the various ways whereby 'Freedom of Contract' has been fattered does not in the slightest suggest to demean the values of consumers in society. Rather it is being contended that since development in Zambia is at its very thresh-<sup>69</sup>old, as much as possible it ought to be ensured that nothing that hampers development is allowed to exist. development takes place only if there is a class of entrepreneurs willing to assume the risks interest in all contractual speculations.<sup>70</sup> The said entrepreneurs must be given freedom to transact in a wide spectrum of activities.

In Zambia as has already been stated there seems to be a conflict of interests. On one hand there is that of protecting the consumer. On the other hand there is that of encouraging free trade.<sup>71</sup> Lord Jessel M. R. once said, 'if there is one thing which public policy requires it is that men of full age and competent understanding shall have the utmost liberty to contract and once their contracts are freely and voluntarily entered into, they should be held sacred and enforced by the Courts of law!'<sup>72</sup> The question at this point is; which policy should prevail, between that of protecting the consumer and that of encouraging free trade? It is the considered view of the author that at the level of development that Zambia is (third world country) encouragement

of free trade should prevail.<sup>73</sup> This is because the need to protect the consumer arises in and is a characteristic feature of the stage of high mass consumption.<sup>74</sup> Here (the age of high mass consumption) protection of the consumer is taken to be a matter of National interest.<sup>75</sup> Hence consumer protection laws are passed in order to achieve the desired end viz social security.<sup>76</sup> Zambia being a third world country has its priority advancement of economic development.<sup>77</sup> So then the fostering of economic development is of first importance. Laws that tend to militate against the freedom of individuals to enter into contractual agreements that they choose should sparingly be passed in a country like Zambia for the simple reason that Zambia is at the moment encouraging free trade.<sup>78</sup> Hence I submit that the government should get its hands off the economic sphere and leave it into private hands and allow market forces to be the determining factor as to the bulk of the essentials of business transactions.

In the Chapter following hereunder we shall be considering the possible reforms that ought to be implemented in order to remedy the contradictions that exist between the law currently in force and the policies of the Zambia government.

## NOTES

1. Supra Chapter II
2. Supra Chapter II
3. John Ellison, Jim Bedingfield, Tom Harrison,  
Business Law for BTEC, Business Education Publishers  
Sunderland 1987 P 12 etseq
4. Ibid P. 12
5. Ibid P. 13 At P. 13 it is stated to the effect that  
at the stage at which England was "Consumers" rights  
are a matter of national interest ...."
6. 55(a) Zambia Bureau of Standards Act
7. Ibid
8. Rent Act 1972 (Cap 438)
9. Horford Investments V. Lambert (1951) at 37 at P. 52
10. 523 Rent Act 1972 (Cap 438)
11. Ibid
12. Ibid
13. Ibid
14. Section 155 of Cap 766
15. Section 165 of Cap 766
16. Ibid Section 165 (3)
17. Sir David Hughes Parry ' The Sanctity of Contracts  
in English Law, Steven and Sons 1959 London P. 40
18. Ibid P. 42
19. (1881) 6 App. Cas. 38
20. Sir David Hughes Parry, The Sanctity of Contracts in  
English Law Stevens and Sons London 1959 P. 40
21. Ibid P. 56
22. Ibid P. 56

23. Nordenfelt V. Maxim Nordenfelt (1894) Ac 535
24. Colgate V. Batchelar (1956) Cro. Eliz 872
25. Sir David H. Parry. The Sanctity of Contracts in English Law  
Stevens & Sons London 1959 P. 57.
26. Opail P. 58
27. Davies V. Davies (1887) 36 CL D P. 364
28. Fender V. Mildway (1938) ACI
29. (1938) AC I
30. Cap 438 of the Laws of Zambia
31. Ibid
32. (1951) CL 37
33. Ibid at P. 52
34. Ben Turok Development in Zambia, Zed London 1979 P. 21
35. Ibid P. 22
36. Ibid P. 22
37. Research report done at the University of Zambia School of Humanities and Social Sciences in 1995 by Thaddeus Lubinga P. 11
38. John Ellison, Jim Beddingfield, Tom Harrison Business Law for ETEC Business Education Publishers Ltd. Sunderland 1981 P. 12 etseq.
39. P. s. Attiyah An Introduction to the Law of Contract Clarendon Law Series Oxford 1981
40. W. W. Rostow, Stages of Economic Growth, Cambridge University Press, 1962 P. 73 etseq
41. Ibid P. 73 etseq
42. Research Report on "Crisis Adjustment and social Change among Women in the informal sector done at the University of Zambia School of Humanities by Thaddeus Lubinga 1995
43. Ibid
44. opail p 11
45. opail p 11 also The Utua Reader No. 66 November/December

46. O.S. Atiyah An Introduction to the law of Contract Clarendon law series, London 1981.
47. Dias, Jurisprudent, Butterworths, London (1985) p 430 etseq
48. Ibid, p 424
49. Ibid, p 424
50. Ibid, p 425
51. Ibid, p 425
52. Ibid, p 425
53. Ibid, p 420 etseq
54. John Ellison, Jim Bedring field, Tom Harrison Business Law for BTE6 Business publishers Sunderland 1987 p. 12
55. Ibid, p 12
56. Ibid, p 12
57. Ibid, p 13
58. Ibid, p 12
60. Cap 4 of the Laws of Zambia
61. The reason was that Zambia (the Northern Rhodesia did not have a Legislative Assembly of its own. See Cap 4 and Dr. Kangania's Thesis on The Evolution of the Modern Courts System, 1980, University of London.
62. Thaddeus Lubinga and Mark Here Mwila, Research Report, School of Humanities and Social Sciences, University of Zambia, 1995, p 11
63. Ibid, p 11
64. Ibid, p 11
65. P.S. Atiyah An Introduction to the Law of Contract, Clarendon Law Series, London 1984
66. Laissez-fair entailed minimal state interference in the economic sector, see *opcit* p. 4 etseq
67. Ante p. 15
68. (a) Dias, Jurisprudence, Butterworths, London, 1985 p 420 etseq

- (b) Thaddem Lubinga, Jere Wmila, Research Report on "Crisis, Adjustment and Social Change among women in the Informed sector", University Zambia, School of Humanities and Social Sciences, 1995
69. Ben Turok, Development in Zambia, Zed London, 1979, p 26
70. W.W. Roston, Stages of Economic Growth, Cambridge University Press, Cambridge, 1962, p. 20
71. There is existence consumer protection laws as Rent Acts, road and Road traffic Act, Employment Act, etc. The Government has implemented SAP which entails liberalisation of Trade: see Ante.
72. Numerical printing Co. V. Sampson 1875
73. Ben Turok, Development in Zambia, Zed 1979 London p 71 etseq
74. W.W. Rosta, Stages of Economic Growth, Cambridge University Press, Cambridge 1962 p 11
75. Ibid, p 11
76. John Ellison, Jim Bedingfield, Tom Harrison, Business Law for BTEC, Business Ed. Publishers, 1987, p 13
77. Ben Turok, Development in Zambia, Zed, London 1969, p 71 etseq
78. Thaddeus Lubinga, Research on "Crisis, Adjustment and Social Change" University of Zambia, School of Humanities and Social Sciences, 1995

## CHAPTER IV

### CONCLUSION AND RECOMMENDATIONS VIZ-A-VI FREEDOM OF CONTRACT IN ZAMBIA

It is here suggested to make recommendations in relation to the law touching 'Freedom of contract'. The author shall first make a synopsis of the gist of the author's contention respecting freedom of contract in Zambia and thereafter make recommendations accordingly.

From what has been said in the preceding paragraphs, it seems clear that the law relating to contracts and in particular that relating to 'Freedom of Contract' is not suited to the prevailing socio-economic circumstances in Zambia. This assertion stems from the following findings:

(1) Zambia is currently pursuing liberal economic policies.)

Liberal economic policies now in being are or seem to be the same thing as laissez-faire policies of the 19th century England.<sup>2</sup>

Freedom of Contract in England arose as a result of laissez-faire economic policies.<sup>3</sup> Therefore if the liberal economic policies of

Zambia are to be viable freedom of contract ought to be encouraged in the same manner that Freedom of Contract was en-

couraged in England in contemplation of liberal or laissez-faire

economics. Zambia has in place laws that straddle freedom of contract and this is most pronounced in the area of consumer

protections.<sup>4</sup> In this regard is cited the Zambia Bureau of

Standards Act which requires that no person shall offer for sale

goods contrary to the provisions thereof. Further the penal code<sup>5</sup> can be cited which provides that it is criminal to tender for sale goods which endangers public health.

The contention resulting from the foregoing observations is that although Zambia is pursuing liberal economic policies it at the same time has in place laws which militate against those policies by inhibiting 'Freedom of Contract'. Liberal policies necessarily entail that there should be freedom of Contract<sup>6</sup> (this was the case in laissez-faire England).

(ii) Zambia is not at the same stage of development as England because in Zambia it is only now that we have a wide spread emergence of entrepreneurs<sup>7</sup> - this is a phenomenon of the stage called preconditions for take off stage of economic development.<sup>8</sup> England is at the stage called the age of high mass consumption which stage is characterised by provision of social well fare<sup>9</sup> and generally passing of consumer protection laws. Zambia although it is only at the preconditions for take off stage, it has passed laws (or adopted laws by virtue of Cap 4 from England) to protect the consumer.<sup>10</sup> Consumer protection is not a phenomenon of the stage of preconditions for take off but of the stage of high mass consumption.<sup>11</sup> Therefore the laws viz consumer protection laws are not suited to the station in development at which Zambia stands.

It should not be supposed that the author is trying to contend that consumer protective laws are not necessary or indeed that

consumers should not be protected by the law. Rather the contention is that consumer protection laws are not suited to the stage in development at which Zambia is viz stage of preconditions for take off. In addition, consumer protection laws necessarily straddle freedom of contract. Liberal economic policies entail that there should be freedom of contract. Therefore it seems that consumer protection laws outrightly militate against the very essence of liberal policies that is, freedom of contract.

(iii) Generally the law relating to contracts was evolved in England and extended to apply to Zambia by virtue of Cap 4, Cap 5, Cap 45 and Cap 50 of the laws of Zambia. The contention is this regard is that since the law of a particular country is only a result of the prevailing economic, cultural and historical factors of that country in question,<sup>13</sup> the laws that Zambia still imports from England are unsuited to Zambia by virtue only of the fact that the prevailing economic, historical and cultural factors in Zambia are not the same as those prevailing in England.<sup>14</sup> In this same regard certain policy consideration upon which courts base their interference with freedom of contract are ill adapted to Zambia. Take for instance the English common law doctrine of 'Restrain of Trade'. By this doctrine the Courts in England could obliterate any contractual obligations found to be in Restraint of Trade because contracts in Restraint of Trade are contrary to England's public policy.<sup>15</sup> The English Common Law Restrain of Trade doctrine applies to Zambia by virtue of Cap 4. The contention here is that policy is not of universal applica

tion.<sup>16</sup> It is a variable quantity influenced by the judges' training, outlook and philosophy, varying with the prevailing fashions in moral economic or social principles or even with changing economic or social practices.<sup>17</sup> On this premise alone it can reasonably be argued that the public policy that was imported from England does not augur well with the liberal policies now being pursued by Zambia because it straddles freedom of contract.

Therefore before importing laws based on the public policy of another country regard ought to be had to the effect that public policy is not of universal application.

Suffice to submit that it is not her being contended that freedom of contract is a good thing and therefore should have been allowed to thrive in England. Rather it is being acknowledged that 'Freedom of Contract' demised in England not because of a deliberate act on the part of the state but as a result of the natural process of development.<sup>18</sup> As commerce grew and as the law developed 'Freedom of Contract diminished not as a result of a deliberate act of the State but rather as an inevitable result of development.<sup>19</sup> In Zambia's freedom of Contract diminished not as a result of the natural process of development but rather by a deliberate act of the legislative viz; imposition of English Statutes, common<sup>Law</sup> and doctrines of equity.<sup>20</sup>

In light of the foregoing observation the author submits that 'Freedom of Contract ought to have been allowed to thrive until

it is ousted by the natural process of development.

While making the foregoing propositions the author is awake to the fact that 'Freedom of Contract' was characterised by certain undesirable elements.<sup>21</sup> However the contention is that 'Freedom of Contract' in the late 19th Century England was becoming otiose simply because the social-economic set up of England was assuming a different direction viz protection of the consumer against the dangers brought to bear by the exigencies of economic development.<sup>22</sup> The major preoccupation of Zambia is not that of protecting the consumer but it is that of encouraging productivity.<sup>23</sup> In Zambia almost all consumer goods are imported<sup>24</sup> hence there is no imminent danger to which the consumer is exposed from the local industry, thus, the existence of the Zambia Bureau of Standards<sup>25</sup> is questionable.

A combination of the findings outlined above only leads to one conclusion, that the law relating to freedom of contract currently in force in Zambia is not suited to the prevailing socio-economic factors. To this end the author makes the following recommendations.

There is need for reform of the law and in this respect not only the law of contract but all such law as tends to straddle freedom of contract. It should be restructured in such a way as to accommodate and incorporate freedom of contract. Further it is not sufficient to reform the law alone. There has to be a reformation of lawyers and legal scholar's thinking. The author

accordingly suggests that this could be best done by changing the mode of teaching law. The law student should be taught in addition to how to win cases the impact of law on society. The Zambian law student ought to be taught law in relation to the practical Zambia situation.

NOTES

1. Thaddeus Lubinga
2. Laissez-faire economic entailed liberations of trade and less state interference with the individuals contractual aspirations. See P. S. Atiyah, An Introduction to the Law of Contract, Claredon, Oxford 1981 P. 4
3. Supra Chapter III Ibid P. 4
4. Supra chapter III
5. Cap 146 of the Laws of Zambia
6. Supra Chapter II
7. Supra Chapter III
8. W. W. Roston Stages of Economic Growth London 1962 P. 6 etseq
9. Ibid P 10 etseq
10. Zambia Bureau of Standards Act, Rent Act 1972 Road & Road Traffic Act Cap 766, Employment Act etc.
11. Op cit P. 10
12. P. S. Atiyah An Introduction to the Law of Contract Claredon Press, Oxford 1981 P. 22
13. Dias Jurisprudence Butterworths, London 1985 P. 425
14. Zambia is a Third World Country, Britain is not see Ben Turok Development in Zambia Zed Ltd, London 1979, P. 71 etseq.
15. Sir David Hughes Parry C. C. The Sanctity of Contract' in English Law, Steven & Sons, London 1959, P. 56
16. Ibid P 58 etseq
17. Ibid

18. P. S. attiyah An Introduction to the Law of Contract, Claredon, Oxford, 1981 P. 9
19. Ibid
20. By virtue of Can 4 of the Laws of Zambia
21. Sir David Hughes Parry, Opil, P. 57
22. John Ellison, Jim Bedding filed, Tom Harrison Business Law for BTEC, Business Education Publishers, Sunderland P13.
23. Supra Chapter III
24. Opil Ben Turok P. 100
25. The Zambia Bureau of Standards is established by the Zambia Bureau of Standards Act. It is constituted for purposes of investigating that the goods produced in Zambia are of accepted standards.

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