

UNIVERSITY OF ZAMBIA EXAMINATION PAPERS SESSION, 1983.

LAW

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THE UNIVERSITY OF ZAMBIA
UNIVERSITY EXAMINATIONS - JULY 1983

L 110
LEGAL PROCESS
(CERTIFICATE IN LAW)

TIME: THREE HOURS (Plus 15 Minutes to read the Question Paper)

ANSWER: Any FOUR questions.

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1. "Although Zambia has been independent of British rule since 1964 a large body of English law is still applicable here." Is this statement accurate? If so,
 - (a) what forms of English Law are applicable? and
 - (b) what is the legal basis of their application.

2. A layman who was recently fascinated by watching the jury at work in a British Television programme called "Crown Court" approaches you to give him an opinion on whether or not trial by jury should be introduced in Zambia. Advise him on the advantages and disadvantages of this system of trying cases.

3. Discuss the composition and powers of the following courts:-
 - (a) the Supreme Court of Zambia.
 - (b) the Native Courts.
 - (c) the Local Courts.

4. (a) What are the advantages of being legally represented in court proceedings.
 - (b) Outline the rules which courts of law apply in the interpretation of statutes.

5. "It is a maxim among these lawyers, that whatever has been done before may legally be done again; and therefore they take especial care to record all the decisions formerly made against common justice, and the general reason of mankind. These under the name of precedents, they produce as authorities to justify the most iniquitous opinions; and the judges never fail of directing accordingly."

(Quotation appears on page 179 of the book "Gulliver's Travels" written by Jonathan Swift).

With this statement in mind justify the role of precedent in our courts to-day.

6. (a) What qualifications must a person possess before can be considered for appointment as a High or Supreme Court Judge.
- (b) Discuss how Magistrates and Local Court Justices are appointed.
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THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATION - JULY, 1983

L 140

TIME: THREE hours (Plus 15 minutes to read the paper)

ANSWER: THREE Questions

NOTE: Candidates may bring into the Examination the following materials provided they are unmarked save for underlining.

1. Penal Code, Cap 146 Laws of Zambia
 2. Casebook on Criminal Law by Hatchard and Ndulo.
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1. (a) Kabwe is found in possession of a watch five days after it had been reported stolen. He claims that he bought it from a man in a bar but says he can give no further information. There is no other evidence to link him with the theft.

Advise as to KABWE'S criminal liability, and in particular consider how the prosecution could try to establish Kabwe's guilt.

(b) Consider the appropriate charge(s) in the following cases and indicate how the particulars of the offence should be framed.

- i) Jonas tells Whale a false story as to why he cannot repay a loan he received from Whale on the due date. Whale agrees to let Jonas have an extra two months to pay.
- ii) Mwila tells Chirwa that he is collecting money for a charity. Chirwa gives him K5. The statement is a lie and Mwila uses the money for his own purposes.

2. (a) CFULU, a police officer, tells NJAIDI to stop and answer certain questions regarding a recent robbery. NJAIDI refuses and walks away.

What action, if any, may CHULU take to get NJAIDI to answer?

- (b) KAPEYA and BWEEMBYA attack FOLOKO and SAILI in separate incidents. KAPEYA is convicted of unlawful wounding in that he struck FOLOKO with a stick causing him to suffer several abrasions. Bwembya is convicted of attempted murder in that he struck Foloko with a hammer intending him grievous harm and in fact causing him to sustain several broken ribs.

Discuss the correctness of the convictions in each case and consider what action an appeal court might take in such circumstances.

3. MWENSO has very poor eye-sight as a result of a childhood accident. A number of youths approach him one day and mock him because of his disability. Mwenso becomes annoyed and picks up a large stone which is close-by. He hurls it at the boys but because of his poor vision, he misses and the stone hits MAGWAZA who is the driver of a car which is passing by at that moment. Magwaza is knocked unconscious. His car swerves across the road and is crushed by an oncoming lorry. Magwaza dies instantly.

Consider the criminal liability of Mwenso.

Consider criminal liability in the following cases:-

- (a) Sosala goes to the home of Mwiche who is the Manager of the National Standard Bank. He threatens to kill Mwiche if he does not hand over the keys to the bank. Mwiche does so. Sosala goes to the bank and takes some money.
- (b) Zingani, a pickpocket at a bus station, takes Liso's wallet. He walks away and has gone some twenty metres when Liso realises what has happened. He chases after Zingani who threatens to kill him if he does not go away.
- (c) Chaane is a businessman and is taking a bag containing K10,000 to the bank. The bag is attached to his wrist by a chain. Silva, intending the steal of the money, tries to pull the bag away but fails because the chain keeps the bag attached to Chaane's wrist. Chaane suffers bruising to his arm as a result.

Lumina and Mooya decide to steal from Simoni's house which they believe is empty. Lumina says that no violence is to be used and Mooya agrees. However, Mooya goes to Chombwe and borrows a gun from him. Chombwe suspects the gun is for use in a crime of violence but Mooya pays him K100 to keep quiet and ask no questions. Lumina gets into Simoni's house by opening a window. He then opens the front door to enable Mooya to enter. Simoni suddenly appears. Mooya panics, takes out the gun and shoots Simoni dead.

Consider the criminal liability of all parties. What would be the position if there was no evidence as to who fired the fatal shot?

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATION - JULY, 1983

L 150

TIME: THREE hours (Plus 15 minutes to read the paper)

ANSWER: any four questions.

Candidates are allowed to refer to the constitution of Zambia (1964) and (1973)

1. (a) What are the constitutional provisions relating to emergencies in Zambia.
- (b) Regulation 33(1) of the Preservation of Public Security provides that:

"Whenever the President is satisfied that for the purpose of preserving public security it is necessary to exercise control over any person, the President may make an order against such person, directing that such person be detained and thereupon such person shall be arrested, whether in or outside the prescribed area, and detained".

Regulation 33(6):

"Any police officer of or above the rank of Assistant Inspector may, without warrant, arrest any person in respect of whom he has reason to believe that there are grounds which would justify his detention under this regulation, and may order that such person be detained for a period not exceeding twenty eight days pending a decision whether a detention order should be made against him, and the provisions of sub-regulation (5) shall apply in respect of his detention during such period.

L 150 Cont

Provided that a person arrested under this sub-regulation shall be released where, before a decision is reached as to whether or not a detention order should be made against him, the police officer who arrested him finds, on further inquiry, that there are no grounds which would justify his detention under this regulation.

Elliot Chilekwa was detained under regulation 33(6) by an Assistant Inspector on 18th. November, 1982. A detention order by the President was served on him on 14th December, 1982. No grounds for his detention were given to him, until his detention was revoked on 26th. December.

He wishes to sue the state for wrongful detention. Advise him.

- (2) Hon. Lason Sangwano a Cabinet Minister without portfolio has just received a letter of expulsion from the Party from Secretary General of the party on the ground of misappropriating party funds. .

He has come to you for advise on:

- (a) the consequences of his expulsion
 - (b) whether he can seek redress in a court of law.
- (3) (a) Discuss the method of electing the President in Zambia.
- (b) How can he be removed ?

/3.....

4. i) During a debate in the national Assembly the Hon. Member of Parliament for UNZA lost his temper and insulted everyone present in the house. He was then suspended by the Speaker in his capacity as Chairman of the Standing Orders Committee.
- He wishes to bring an action against the speaker. Discuss citing relevant authorities.
- ii) Another Member of Parliament is being sued by UNZASU for defamation. What would be the result.?
5. What is the composition and function of the house of chiefs.
6. Justice Preamble Maningi a Supreme Court Judge has been suspected of breaching the leadership Code. You are a Presidential Adviser. What course of action would you advise.
7. Comment of any one on the following:
- (a) Nkumbula V. Attorney-General
 - (b) Feliya Kachasu V. Attorney-General
 - (c) The Patel Currency Case.

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - JULY, 1983

L 210

LEGAL PROCESS

TIME: THREE hours (Plus 15 Minutes to read the Examination Paper).

INSTRUCTIONS: ANSWER Four Questions (At least ONE Question must be from Part I)

PART I:

1. After a distinguished career in the Attorney-General's Chambers and later in private practice you have now been honoured by being appointed a Judge of the High Court of Zambia. The very first case you have to decide is a case of murder.

In the course of presenting the State's case the State Advocate cites a case decided by the Supreme Court of Zambia late last year and the State Advocate also insists that that case is "On all faws" with the case that you have to decide. The State Advocate further submits that another High Court Judge in Ndola applied the Supreme Court decision earlier this year without hesitation. The State Advocate passionately asserts that the decision in question is a correct statement of the law, and that at any rate you are "under a duty" to follow it.

You abhor the decision of the Supreme Court as a matter of principle. Moreover, you are not yourself convinced that the decision is a proper or accurate statement of the law. Further, because of your long association with the defence side in criminal trials of this nature your moral intuition tells you that in the particular case before you, the cause of justice will be better served by refusing to apply the decision of the Supreme Court.

- (a) What does the State Advocate mean when he tells you that you are under a duty to follow a decision of the Supreme Court and that another High Court Judge in Ndola had applied the Supreme Court decision in question.

- (b) Assuming that there is such a duty but that you do not intend to carry it out on grounds of the personal conviction mentioned above, what permissible legal grounds are available to you to thwart another courts' decision and formulate your own.

(Use decided cases to illustrate your arguments).

2. Samuzala Ngonga and Fumbelo Mutayipi belong to tribe X, one of the tribes in Zambia. Tribe X always holds circumcision ceremonies (called Mukanda) for young males of their tribe. Samuzala Ngonga and Fumbelo Mutayipi are resident in Kitwe District's Chimwenwe Compound. Every year young males of X tribe go through the Mukanda ceremony in the bushy area near Chimwenwe Compound. During the Mukanda ceremony period alot of traditional music and dancing goes on.

John Bwalya a resident of Chimwenwe was attracted by the singing and playing of drums on a sunny Saturday afternoon. Bwalya decided to find out what was happening. As he followed a well beaten bush path he saw a red flag flying from the top of a tall Mopani tree. On the trunk of this Mopani tree was a large notice which read:-

"Mukanda Ceremony In Progress. Inga Wapita Ninshi Kuputulwa." (Literally the Bemba part of the notice means "if you pass, then you will be cut").

Bwalya became even more curious and proceeded further. After a short well and when the music seemed to be nearer he was suddenly seized by four hefty men who rushed him to a grass shelter where he was circumcised in the traditional manner. After his wounds healed, he reported the matter to the police, who have now charged Samuzala Ngonga and Fumbelo Mutayipi with causing grivecus bodily harm. Ngonga and Mutayipi are adamant that under customary law any uncircumcised person who intrudes into their Mukanda Camp is liable to be forcibly circumcised. They have approached you to advise them on their defence. They argue that Zambia recognises African Customary Law and as such they should

not be troubled for having done what their customary law demanded to be done.

Advise them on whether or not their defence will succeed. (You are expected to cite statutory provisions and decided cases in support of your submissions).

PART II:

3. "It would certainly save judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it when a defect appears a judge cannot simply fold his hands and blame the draftsmen. He must set to work on the constructive task of finding the intention of Parliament". (Per Denning L.J. in SEAFORD COURT ESTATES V. ASHER (1949) J.K.B. 481 at 499).

With this quotation in mind critically discuss the various rules or principles regarding statutory interpretation.

4. Trace the changes in Zambia's judicial system which have taken place since 1924 with particular reference to the following:-
- (a) appointment, qualifications and removal of judges and magistratee from office;
 - (b) appellee structure;
 - (c) jurisdiction over persons;
5. Comment on the following subjects ;
- (a) the provision of legal services for poor persons in Zambia.
 - (b) the advantages and disadvantages of trial by jury;
 - (c) the acquistorial and inquistorial systems.

6. "Just as an English oak, so with the English common law. You cannot transplant it to the African continent and expect it to retain the tough character which it has in England. It will flourish indeed but it needs careful tending. So with the common law. It has many principles of manifest justice and good sense which can be applied with advantage to the peoples of every race and colour all the world over! but it has also many refinements, subtleties and technicalities which are not suited to other folk. These off-shoots must be cut away. In these far off lands the people must have a law which they understand and which they will respect. The common law cannot fulfil this role except with considerable qualifications."

Now that you have studied various branches of the law comment on the performance of Zambian Judges when they have been faced with issues involving principles of English common law.

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - JULY, 1988

L 220

LAW OF CONTRACT

TIME: THREE hours

- INSTRUCTIONS: (i) Read the questions carefully before you attempt an answer.
- (ii) Answer any four Questions.
- (iii) This is not an open book examination and therefore, no material of any kind is to be consulted in the examination room.
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"The difficulty which is apparent through nearly all the reported cases is the reconciliation of two principles (a) that of freedom of contract, by which a person is held bound by an agreement into which he has deliberately entered and (2) that of freedom of work by which an employer is prevented from restraining a servant from exercising his energies in work for himself or others to an extent greater than is necessary for the protection of the employer....".

(Palmer A.J.; in African Lakes Corporation LTD V. Murray (1947) 4 L.R.N.R. 166 at p 167. Discuss with the aid of decided cases.

- (a) How far is the sufficiency of consideration necessary for the formation of a valid contract?
- (b) Uncle Barry, a young man about town, has been living above his means for many years and is now facing bankruptcy. His Aunt Agatha who is keen to see him settle down at last has introduced him to a young lady with a view to marriage. In order to give Uncle Barry a decent start in his married life, Agatha would like to see all his debts cleared. She writes to all of Uncle Barry's creditors and offers to pay half of his outstanding debts on condition that the creditors accept this payment in full settlement of the debts. All the creditors agree and are duly paid by Agatha.

L 220 Cont.....

Uncle Barry, who has married the young lady, a wealthy heiress, is now presented with a demand from Never Kapenda, one of his former creditors for the balance of the original debt. Advise Uncle Barry.

3. "The classic judgment in Hedley V Baxendale (1954) has continuously been recognised as enshrining and formulating the guiding rules which are to be followed in deciding whether damage which has been the result of a breach of contract should be paid for by the contract breaker" - Lord Morris in The Herron 11 (1967)

Describe the guiding rules referred to in this statement and discuss the way in which they have been applied by the courts.

4. Mr. Banda is a seventeen year old under-graduate in the school of Law, University of Zambia. He is married with one child. His father is a Managing Director of Mutende Investments LTD, a giant conglomerate with interests in brewing, tobacco and newspaper industries. Mr. Banda lives off campus, in an exclusive residential area - Mt. Pleasant - where he rents a three-bedroomed flat.

Mr. Band obtained the following items on credit from the University Bookshop:-

Prescribed and Recommended books for K100; James Hardley Chase novels worth K50.00; Selected Works of Karl Marx and Frederick Engels and three volumes of Lenin's collected works, all valued at K30.00.

The Manager of Kabulonga Supermarket knows both Mr. Banda and his father. Banda is in the habit of replenishing his weekly supplies of groceries from Kabulonga Supermarket for the maintenance of his family on credit. In the first nine months he used to pay whenever the bill was presented at the end of each month. He has failed to pay for the last three months a total bill of K140.00.

Two months ago, Banda celebrated his first wedding anniversary in style. He requested Kabulonga Supermarket to supply him on credit Mosi lagers, Meat, Softies, Chicken, and assorted wines and spirits. The bill came to K300.00. The supermarket also supplied on credit two suits of the most up-to-date fashions worth k300.00. He already had two suits but not of the latest fashions.

Mr. Banda has failed to pay the University Bookshop and Kabulonga Supermarket.

They now ask you to advise them of their legal rights in these circumstances.

5. On 16th April, 1982, Bwalya wrote to Mudenda offering him books costing more than K3,000 at a bargain price of K2,000, adding that if he did not hear from him by the 30th of the same month he would consider himself free to look elsewhere for a buyer. mudenda received the letter on 18th and replied the same day saying, "I would like to buy your books. Please let me know if I could pay you K1,000 cash and K1,000 by cheque dated the 30th of this month". But Mudenda omitted to include the post office mail box number and because of the incomplete address the letter reached Bwalya on the 28th.

On 24th, Mudenda telephoned Bwalya, inquiring about the latter's response to his request to which Bwalya replied that he had not received any letter from him. At this point, the line went dead.

On 26th, Bwalya received an offer of K2,500 from Musonda for the same books and accepted it.

You have been retained by the well-known firm of Richmond Smith and Co. Mudenda has come to you for advice. Advise him accordingly.

/4.....

6. Kapelwa Musonda has hanging in his Art Gallery a painting described as "Early Bemba-artist unknown",, priced at K80.00. Dickson Mwansa sees the painting and recognises it to be a genuine "Constable" worth at least K15,000, and he immediately offers Kapelwa Musonda the K80.00. Kapelwa Musonda having had his suspicious aroused by Dickson Mwansa's behaviour, refuses to sell. Dickson Mwansa therefore misinforms Kapelwa Musonda that he is Charles Simpasa, world famous art connoisseur, and that this painting is just what he requires to complete his collection of unknown Bemba painters, and in order to do so he is prepared to pay K100.00. Kapelwa Musonda, aware of the prestige that could attach to him through such a sale, agrees to sell at this price. Two weeks later, Kapelwa Musonda sees a photograph of the same painting in the Times of Zambia together with a notice which states that the painting is a genuine "constable" and is to be sold that very day at the auction rooms of Messers Fred Joe Ltd. Kapelwa Musonda rushes to the auction rooms and arrives just in time to seize the auctioneer's hammer as he prepares to knock down the painting to Mbewe.

Advise Kapelwa Musonda as to his legal position.

7. "When a company inserts in printed conditions as exemption clause purporting to exempt them from all and every breach, that is not readily to be construed or considered as exempting them from liability for a fundamental breach; for the good reason that it is only intended to avail them when they are carrying out the contract in substance; and not when they are breaking it in a manner which goes to the very root of the contract". Discuss with the aid of decided cases.

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - JULY, 1983

L 230

LAW OF TORTS

TIME: THREE hours

INSTRUCTIONS: Answer Any FIVE questions

1. "Arising out of the various and ever -increasing clashes of the activities of persons living in a common society, carrying on business in competition with fellow members of that society, owning property which may in any of a thousand ways affect the person or property of others - in short, doing all the things that constitute modern living - there must of necessity be losses, or injuries of many kinds sustained as a result of the activities of others. The purpose of the law of torts is to adjust these losses and afford compensation for injuries sustained as a result of the activities of others." (Wright).

Comment. How tortious liability is different from contractual and criminal liability?

2. A and B represent rival student revolutionary groups. They often engage in very noisy, riotous meetings.
- (i) At one meeting B commences a heated verbal attack on M and advances upon him yelling "If you were a different colour I'd thrash you." A, a friend of M, races over and pushes B. Does B have a cause of action against A? Does M have a cause of action against B?
- (ii) As a result of the attack on B, his supporters surrounded A and prevent him from leaving the hall by the only door. No one touches him and L, one of the supporters of B, tells him that he can leave if he wants to go out by a window seven feet off the floor. Does A have a cause of action?

3. What do you understand by:

- (a) Volenti non fit injuria
 (b) Vis Major

Discuss the extent to which they may be pleaded in defence in actions of torts.

4. (a) Carefully state the principle of vicarious liability and discuss its basis and justification in modern times.
- (b) X was the owner of a pick-up van. Y was the driver engaged by X who had given strict instructions to Y not to use the van except for carrying farm produce, of which X was the owner. On a particular day, when Y was carrying the farm produce to the market, he asked his girl-friend G to come along with him. On his way, he gave ride to P and S. Subsequently due to his rash and negligent driving, he met with an accident and knocked down R, causing serious injuries to R, G, P and S. They all sue X to recover damages. Will the action succeed? Give reasons.

5. "'Reasonable foresight' as the test of remoteness of damage is not quite the same as 'reasonable foresight' as the test for the existence of a duty of care, and it is still further qualified by the fact that neither the precise extent of the damage nor the precise manner of its infliction need be foreseeable". Winfield. Discuss.

6. Defendants in their daily paper published an advertisement showing three couples dancing around a tube of "Splendid", a toothpaste. The male partner of one of three couples is shown making faces and trying to run away from the female partner as if she was smelling. Below the picture was the following caption: "WHEN THERE'S MUSIC IN THE AIR..... MAKE SURE YOU ARE NICE TO BE NEAR..... Don't let embarrassing foul odours spoil your fun. Clean your teeth with SPLENDID everyday and make sure you are always nice to be near. Splendid stops foul odours and makes your teeth strong and healthy. Use it everyday and see why popular people all over the world say SPLENDID".

P. a practising lady physician sees the advertisement and feels that the picture of the lady whose partner is shown trying to run away was her and sues the defendants for libel. What has she to prove to make a prima facie case? What defences can the defendants raise to absolve themselves from liability or to mitigate the damages?

7. X, a young man of 34 years of age, was injured in a road accident caused by the negligence of the D's servant. He sustained serious brain and bodily injuries which resulted into his partial loss of memory, impairment of hearing, loss of smell and taste. He complained constant severe pain in the neck, was unable to walk without a stick. He remained in the hospital for three months and after being discharged, he remained constantly under medical treatment. He died after ten months.

At the time of accident, X was the Head of Planning and Development division in the Ministry of Agriculture. He was in very good health. He had two daughters/^{one} aged two and a half years and ^{the other} one-year old. His wife had a nursing job in the government hospital at the time of ^{the} accident, which she gave up.

In an action brought against D and the driver, under what different heads can damages be claimed and how would the court proceed about calculating the amount of damages to be granted? In support of your answer refer to some leading cases.

8. (a) Is an occupier of dangerous premises bound to take precautions against children trespassing thereon and coming to harm? Discuss the case law.
- (b) The plaintiff slipped on a banana peel lying on a pavement outside the defendant's fruit store and suffered a sprained back in an attempt to retain his balance. Does the plaintiff have a cause of action?

THE UNIVERSITY OF ZAMBIA
UNIVERSITY EXAMINATIONS - JULY, 1983

L 250

CONSTITUTIONAL LAW

TIME: THREE hours

INSTRUCTIONS: The following may be consulted in the Examination:

- (i) The constitution of Zambia (1964 edition)
- (ii) The constitution of Zambia (1973 edition)

ANSWER: Questions 1 and 2 and then two others.

1. The Republic of Acadia was granted independence by Britain in 1970 with a constitution which provided for an executive president, the cabinet, a politically neutral public service, and a justiciable bill of rights. Formation of political parties by individuals was allowed. Political opposition to the ruling party, although not very strong at the time of independence, was steadily growing in Acadia principally because of the governments repressive tendencies towards dissidents. And it was clear that in the first post independence general and presidential elections due to take place in 1975, the government party was going to lose those elections. Fearful of this, the government unilaterally declared that Acadia was going to be a one-party state in 1974 and that that decision was final. The only thing that the government did was to appoint a constitutional commission to work out the form which the one-party constitution of Acadia was to take. In the meantime the government of Acadia had emphasised that in the one-party state certain principles has to be preserved and retained - especially the rule of law, the independence of the judiciary, a bill of rights guaranteeing freedoms of individuals, and free and fair elections. Advise the government of Acadia on the following points:
- (i) the extent to which the principle of the independence of the judiciary can be restricted in a one-party state;
 - (ii) whether or not the one-party state is compatible with human rights;

(iii) the possible outcome of a suit which certain individuals have instituted on the ground that the introduction of the one-party state in Acadia will infringe on the freedom of assembly and association, the freedom of expression, and the freedom against discrimination on grounds of political opinion as provided for under the existing constitution.

2. Mr. Bonzo was detained on the 10th of March, 1979, by the President pursuant to the powers conferred on him by the Preservation of Public Security Regulations. Bonzo's grounds of detention were communicated to him on 25th March, 1979, and his detention was gazetted on the 12th April, 1979. The grounds of detention was to the effect that

".... between January and February of 1979 you conspired with other persons in Zambia to commit crimes and that you organized and managed the commission of crimes in Zambia; that you with other persons in Zambia engaged in political activities intended to arouse tribal animosity among the people of Zambia and to overthrow a legally constituted government in Zambia".

Mr. Bonzo now hires you as a constitutional lawyer to challenge the legality of this detention. Prepare a detailed memorandum to this effect.

3. Examine fully the constitutional and statutory basis of emergency laws in Zambia and clearly indicate their impact on personal liberties in Zambia.

L 250 Cont.....

4. Of the following topics comment on (a) and then two others i.e. three in all:
- (a) The concept of 'constitutionalism'
 - (b) The doctrine of separation of powers
 - (c) The Lochner-Lewanika concessions, 1890
 - (d) The constitution (Amendment Act) (No. 5) of 1969
 - (e) The Kačnasu case, 1967.
5. Discuss the main salient features of the self-government constitution (1963-64) of Zambia and indicate how this constitution differed from the previously obtaining colonial-type constitutions of Northern Rhodesia.
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END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA
UNIVERSITY EXAMINATIONS - JULY, 1983

L 310

EVIDENCE

TIME: THREE hours (Plus 15 Minutes to read the Examination Paper).

INSTRUCTIONS:

1. You are appearing as an advocate for chamba Valley Local Authority. The plaintiff, in an action claiming a declaration that a certain way across land of which the defendant is the owner is a public right of way. The defendant, giving evidence, states that until these proceedings, he had never heard of anyone claiming the use of the way in question. You have in your possession a letter written to an advocate by the defendant some years ago complaining that a man is using the way and is claiming a right to do so and asking the lawyer what steps can be taken to stop him. You also know that the defendant had gone to his spiritual adviser, a catholic priest, where, during a private conversation, he admitted that a year ago another man called Juma had similarly claimed such a right; and it is also known that the defendant consulted a lawyer called John, whom he asked for advise or how best to defeat the plaintiff's claims. This lawyer is quite willing to give evidence on your side. It appears that during the Zimbabwe liberation war, the Zambian army had made a study of the farm as a possible camp for combatants. The idea was dropped because it was discovered the land had a public right of way, you learn this information from a journalist's article in the Times of Zambia. At the time the story appeared, the government referred the story. You have summoned the journalist who wrote the article but he has refused to answer any questions or disclose his source in the army. You wish to know the name so that you can summon the army officer who the journalist admits has a copy of the report. The journalist points out that in any case he is sure the state would refuse to allow the document to come to court. What use can

you make of the material discovered, can you compel the journalist to answer questions and the state to produce the report?

2. Towa, her former husband, Waza, and her present husband, Nguza, were picked up for questioning shortly after the burning of a bank in Lusaka. All three were told that they could retain counsel if they wished, but when they named Kwazo and Company as their firm of Lawyers, the police told them they would not allow counsel from that firm to come anywhere near the police station. The police instead offered them legal aid counsel. Each declined to have those. Towa and Waza were questioned in Nguza's presence by police officer Moya. After prolonged questioning in the Tonga language which Towa had a very poor understanding of, Towa allegedly gave a detailed confession, accusing Nguza and Waza of serving as her accomplices in starting the fire. The confession was taken down in Tonga. Neither Nguza nor Waza said a word. At their trial in the High Court, the prosecution tendered the confession. Towa denied ever having made a statement to the police. The Judge, without holding a trial within a trial after finding as a fact that Towa, made a statement to the police admitted the confession. The Judge went on further to state that Towa had not disputed the voluntariness of the confession, but the fact that it was made. The judge further held that, although he could not use Towa's confession against the others he could use it to corroborate the admission the others made by keeping quiet when Towa was making the confession. The defence have appealed, arguing that the Judge erred in the manner in which he dealt with the question of the admissibility of the confession and its effect. Further that even if the Judge was to find such a confession to be voluntary, this would be a proper case for the exercise of his discretion.

Discuss.

3. Mwanza was charged with defilement in court A and was jointly charged with John in another court for the theft of a book and a doll. He is alleged to have committed the defilement case on the daughter of a colleague of his. The little girl, aged 7, gave unsworn evidence describing what went on and stating that Mwanza had attacked her and that she sustained injuries in the attack. The police, and Tembo testified that shortly after the incident, the girl, Mary, had gone up to Mwanza and said: "This is the man." To this allegation, Mwanza remained completely silent and when he saw a policeman approaching, he ran away. At the trial, the mother of the girl testified that Mary came home crying and that, after promising her some sweets, she told her that she had been sexually assaulted by Mwanza. John, who is jointly charged with Mwanza on the theft charge before another court, volunteered to give evidence in the defilement case and stated that he had been present when Mwanza committed the offence. He added that since the crime, the police had searched Mwanza's flat without a warrant. In their search they found ten pictures of nude small girls.

DISCUSS the evidential issues that arise.

4. Ndavutika is charged with the theft of Petauke's Automobile. Kalikeka, a man of defective intellect, witnessed the theft being committed and two months thereafter picked up Ndavutika's national registration card and kept it. Kalikeka receives a letter from Petauke requesting him to attend court on 12th March 1983, for the purpose of giving evidence on behalf of the prosecution. Kalikeka declined to go to court as the ground that on the appointed date he would be in Kitwe to try to prove to his old girl friend that he is fully recovered from his mental malady and that consequently arrangements for their marriage on 24th October 1983 should be made forthwith.

Consider the consequences of Kalikeka's refusal to attend court.

5. James and Jim were charged with burglary and theft. The evidence alleged that they broke into the flat with intent to commit rape and steal. They were unable to commit rape as Mary, the occupant of the flat, shouted for help and some one came to her aid. While in the flat, however, James stole a briefcase belonging to Mary's boyfriend. At the trial, James, through his counsel, denied the burglary and theft and alleged that Mary had invited him to the house and that this whole prosecution was because Mary was the local police chief's girl friend. James repeated these allegations on oath. Jim, on the other, had described the prosecution key witness, Mary, as a liar. The prosecution has information that last year, James broke into Anne's house and later pleaded a similar defence but that he was convicted. They also know that Jim has a previous conviction for theft. They further suspect that on the same night, James is the man who broke into a shop shortly before the break in at Mary's house. At the scene of the incident, a revolver, which the police believe belongs to James, was found. While James is in the witness box, the prosecution show him a gun and ask him whether it is his. James refuses to answer the question. The prosecution insists that he is obliged to answer all questions put to him in the witness box. They further seek permission to attack the character of both James and Jim.

Discuss.

6. Mary, a married woman who was on an oral pill, discovered to her surprise that she was pregnant. She and her husband had decided to have no more children. To ensure that this was so, Mary was on the pill and the husband, as an additional precaution used a sheath during the period when conception is most likely. In October of last year, the husband was away for the whole month on a foreign trip. Mary laxed in her taking of the pill. She had a casual affair in the middle of October with Mr. Captain after having had too much to drink at a party to mark the introduction of socialism. Mary did not discover she was pregnant until she was three months.

The husband was very suspicious and disputed the fact that he could be the father. Mary decided that in the circumstances, she would terminate the pregnancy and pretend that it was a miscarriage. During one of the husband's foreign trips, she approached a back street aborticnist in Bauleni compound. She was then in her seventh month of pregnancy. The abortion was not well done and Mary became very ill and was rashed to the University Teaching Hospital where a premature baby was born alive. Mary's condition got worse by the day. On the 5th. of May, Joyce, a friend of hers, visited her in hospital. There was a conversation which took this form:

Joyce: What is wrong Mary?

Mary: Oh, it is my husband, I know I may die, but some how, I shall revenge.

Joyce visited Mary again on the 8th May. They again had a conversation which went as follows:

Joyce: How are you feeling today?

Mary: Oh, I am dying, I want to tell you one last word: If you ever want to get rid of a pregnancy, do not ever go to Bauleni; that woman, Mrs. Banda, is no good. She has killed me.

Joyce: I thought you said it was your husband.

Mary: Well, I mean ...

She did not finish her statement as she died. Mrs. Banda is charged with manslaughter. The prosecutor wishes to use Mary's statement in evidence.. Mary's husband is planning to contest the legitimacy of the baby born to Mary. Both Mary's husband and the prosecutor come to you for advice concerning the law.

7. Mr. Banda and members of his family retired to bed at about 20.00 hours one evening. When he retired, his overalls and a jacket were hanging on a hook in his bedroom. When Mr. Banda arose at 05.30 hours the following day, he noticed that his overalls and jacket were missing and that some of the rooms of his residence had been ransacked. He reported the matter to the police and also to his local Party Chairman. Musonda was found wearing one of the shirts and was seen by a child of Mr. Banda. The local Party Chairman sent for him. He asked him where he had found the shirt and Banda said he had bought it. The local Party chief told him that he would not leave his house until he was satisfied how the shirt came into the possession of Mr. Musonda. Musonda then told the Chairman that he would like to go home and consult his wife. He was allowed to go. The next day, Musonda asked to see the Chairman and told him in Bemba that he and his friends, Chanda and John, had broken into Mr. Banda's house. Whereupon the Chairman wrote this down in English. He reported the matter to the police who arrested both Chanda and Musonda. Chanda denied any knowledge of the break in and alleged that Musonda was deliberately implicating him. The police broke into Chanda's house. and found a watch, one of the items stolen from Mr. Banda's house. The High Court convicts both Chanda and Musonda. They have appealed to the Supreme Court on the grounds that it is unsafe to act on John's evidence. What result? Give reasons.
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END OF EXAMINATION

L 320

PROPERTY LAW AND SUCCESSION

TIME: THREE hours (plus 15 minutes to read examination
PAPER)

ANSWER: FOUR questions only. At least one from each section.

NOTE: Statutes may be brought and used in the examination room provided they do not contain any notes or annotations.

SECTION A:

1. Yousuf built a tavern, part of which he operates as a butchery in an area falling within the Lusaka Development Plan. The land in this area is used for agricultural purposes. Before constructing the tavern, he applied for a development permit from the Planning Authority of the area. For a whole year Yousuf heard nothing from the Authority on his application. He therefore decided to go ahead with the construction work and although the Planning Authority was aware of this, it took no action.

On his business becoming very successful and posing a challenge to the business of Simon, his immediate neighbour in the area, the Planning Authority informed Yousuf that his application for a development permit was unsuccessful. The reason given for the rejection of the application was that the establishment of a tavern on agricultural land was injurious to the amenities of the area. Although the rejection of the application related to the tavern, the Planning Authority subsequently served an enforcement notice requiring the demolition of all the structures, by him.

What procedures and remedies would you advise as available to Yousuf?

2. (a) How accurate is it to posit that the right of compulsory acquisition of land is an incident of sovereign power and whether compensation is payable or not is a matter within the discretion of the sovereign?
- (b) Evaluate the effectiveness of the law relating to compulsory acquisition by the state. What improvements would you suggest?

3. In 1960 L. acquired a shop on Cha Cha Cha Road in fee simple. L. let the premises to T. in 1968 for a period of twenty years at a premium of K2000 and an annual rent of K4000 payable quarterly. The lease which was prepared by L's solicitor contained the usual covenants including a clause:

"Provided always and it is hereby agreed that if the tenant commits a breach of covenant or becomes bankrupt it shall be lawful for the lessor to reenter upon the premises and immediately thereupon the term shall absolutely determine."

The lease also contained T's covenant not to use the premises for any purpose other than a cafe or restaurant without the consent of the landlord.

L. left the country in 1974 to represent Zambia on an international commission with the agreement that T. should pay the rent when it became due into L's bank account. On L's return last month he was informed by his Bank that T. had paid nothing into his account. L. also learned that during his absence T. had obtained a beer licence. Using his personal key, L. entered the enclosed area behind

the cafe and found crates of beer. He also saw a new van with "Phuza Phuza Bar and Cafe" painted on the sides.

L. is angry about the rent and because he strongly opposes drinking he objects to the sale of beer.

Advise him about any available remedies and the procedure to follow.

Would your answer be different if it was discovered that in fact T. had paid the rent when due into L.'s account but through a banking error it had not been credited to L?

4. (a) Distinguish between a mortgage and a conditional sale.

(b) Mr. Mumba owned a 99-year lease in Blackacre. He wished to raise K100,000 in order to develop the land. His calculations showed that once the buildings were erected, a process which would take five years, the income from the land would allow him to pay interest on the loan at 8% and repay K1000 of the capital each year. As the capital outstanding and thus the interest payable each year was reduced, a sum, increasing annually would be available for himself. His expectation was that interest rates would rise.

With this plan in mind he entered into a mortgage with the Zambia National Building Society under which he borrowed K100,000 at 8%, the capital repayable at the rate of K1000 per annum starting five years hence, and K2000 per annum in the last six years of the lease.

After ten years the interest rates on loans declined to 6½%. Mumba then claimed to be entitled to pay off the capital forthwith, on the ground that the terms of the mortgage made it irredeemable and therefore void.

Will he be successful?

SECTION B:

5. (a) Write notes on any two of the following:-
- i) ademption and abatement;
 - ii) lapse;
 - iii) republication;
 - iv) revocation.
- (b) Mr. Bufumu died in 1982 at the age of 60 leaving a valuable estate. During most of his life he had been a member of the Church of Zambia but a few years before his death, he met Reverend Jeremiah Mulauli who had recently founded a new church, the Zambian Witnesses of Zion, which subscribed to the belief that the world would come to an end in 1985. Bufumu joined the church and accepted the Reverend as his spiritual adviser.

The Reverend suggested that Bufumu should make a will leaving money to the church to carry on its work in the few remaining years.

When Bufumu died a will was found, properly executed, leaving his entire estate to the Zambian Witnesses of Zion, also a letter written by Bufumu explaining that the Reverend had convinced him of the truth of the world's end in 1985. He added "with regard to my wife, I have never forgotten that she committed adultery in 1950 shortly after we were married."

SECTION B:

Bufumu's widow was totally dependent on her husband and his five grown sons all had expected to share in their father's estate under the applicable customary law.

Advise the widow and sons on available legal remedies, if any.

6. (a) "The public are warned that it is an offence under section 6 of the Administrator - General's Act (CAP 200) to intermeddle with the property of the deceased."

Working Paper on Customary Law of
Succession - Law Development Commission.

Discuss.

- (b) To what extent do schemes such as the National Provident Fund, the Civil Service Pensions and Superannuation, alleviate the weaknesses in the customary law of intestate succession?

SECTION C:

7. "The notion of individual ownership is foreign to native ideas. Land belongs to the community and not to the individual. The title of the native community generally takes the form of a usufructuary right, a mere qualification of a burden on the radical or final title of whoever is sovereign." Viscount Haldane, in Amodu Tijani V. Secretary, (1921) 2 AC. 399.

A Court Assessor in Matimba V. Kulumbwa (1976) Z.R. 304 said :

"I concur with my friends that the owner of the land is the chief. A headman is only there to re-allocate the land to the subjects."

SECTION C:

On the other hand, C.M.N. White emphasising the point that 'African land tenure in Northern Rhodesia can best be defined as individual tenure' explained:

'Specific land rights are acquired and exercised by individuals. Such land rights are attributes of persons and they emerge as individualistic rights except for those cases where some element of lineage landholding is present. Hence the sum total of rights which make up the systems of African land tenure in Northern Rhodesia can only be regarded as equivalent to individual tenure'. (1959) J.A.A. 174

To what extent, if at all, are the above propositions reflective of customary land tenure in Zambia?

3. The UNZA Land Commission has recommended the abolition of Reserves and Trust land and the creation of two classes of land, namely (a) State land, which will continue to be regulated by the statutory law and the common law of leases, and (b) customary land. The Commission has however expressed no view on gradual assimilation of the two classes of land.

Comment on:

- (a) the recommended abolition of Reserves and Trust Land; and
- (b) the degree of assimilation, if desirable between the two classes of land and how this can be achieved.

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - JULY, 1983

L 330

COMMERCIAL LAW

TIME: THREE hours (Plus 15 minutes to read the Paper)

ANSWER: Four question (two from each Part)

PART I:

- (a) Kabeke works for a parastatal company which usually sends him on tours of rural areas. On a visit to Mununshi Banana Scheme, he was impressed by the quality of banana being sold for 10 ngwee per kilo. They were twice as big and thrice as sweet as those on the Lusaka market. It worked out that it would cost him 40 ngwee to transport a kilo of bananas to Lusaka. The cheapest market price being K1.60 per kilo, he could get a handsome profit of K1.20 per kilo since he intended to sell the bananas himself and not to employ middlemen. With the intention of becoming a full time banana vendor if the venture proved successful, Kabeke obtained a K6000 car loan from his employers. Together with his entire life's savings of K4000, he managed to buy a second hand diesel truck and to employ Banda as his driver. The journey took roughly five days hence Kabeke's strategy was to buy green bananas and pack them into a container. In this way they would be slightly ripe and hence just right for market on arrival. Kabeke made a profit of K400 on the first two trips. On the third trip, the truck full of bananas broke down in Ndola on the second day. The garage told Banda that the truck would be ready in three days but in the meantime, he should store the bananas in a cool place. Banda deciding that this would be a headache went to the city market and advertised his "Mununshi Bananas going cheap". Thinking that he was making a profit, Banda sold the bananas for 30 ngwee per kilo. He realized K1500 of which he pocketed K500. He then telephoned Kabeke to inform him of the situation. Kabeke is very

PART I: L330

angry since Banda's only mandate was to deliver the bananas and the amount realized is so little. Kabeke wants to bring an action against Banda but Banda insists he did his best in the circumstances. Advise him of the legal issues involved.

(15 marks)

- (b) Apparent authority has been defined as "the authority of an agent as it appears to be" (Hely - Hutchinson V. B Brayhead Ltd. (1968) I QB 549 at 583).

(10 marks)

- (a) Mubanga is a reputed second hand car dealer. His practice is to sell all cars entrusted to him within 7 days. Musonda entrusted him with the sale of his three red Toyota Cressidas at K7000 each. He was to be paid a commission of K1000 on each sale. As there was a big shortage of cars Mubanga assured Musonda that the cars would be gone in no time as the same make had even fetched as much as K10,000. However Mubanga who had just come to the end of his financial year had made fantastic profits. He was therefore in the mood to enjoy his money. Two weeks went by without him doing anything about the cars. One of the cars, was parked in the open air where it was exposed to sun and rain. Its paintwork began to peel. Mubanga then decided to repaint all three cars blue as a courtesy. He asked his 10 year old son to do the job. The little boy, anxious to go back to play, painted all cars within 15 minutes. One could still see the underlying original paint which made the cars look at least three years older than they actually were. Unknown to both parties, the government had issued foreign exchange to car importers. The following week, there was an influx of new Toyota Cressidas on the market at K10,000 each. Mubanga panicked and sold two of the cars to the first customers he could get at K4000 each. He tendered K6000 to Musonda as the amount realized, having deducted his K2000 commission.

Musonda refuses to accept the money. You are his lawyer. He tells you he wants to recover the full K14,000 from Mubanga as he does not think Mubanga has earned his commission. Advise Musonda.

(15 marks)

- (b) In the meantime Mubanga has found a customer for the third car and signed a contract for its sale at K5000. Prior to that but unknown to Mubanga, Musonda has come and driven the car away having decided to keep it rather than sell it at a loss. What are the options open to Mubanga who feels he is being deprived of a chance to earn his commission?

(10 marks)

3. (a) Manda has a large maize estate in Zimbabwe. He specializes in the provision of animal feed. Chileshe, the only mill owner in Luapula valley is not aware of this. Since the Zambian crop has failed Chileshe signs a contract for the supply of 4000 tons of maize in 4 equal instalments of 1000 tons every three months. Chileshe explains to Manda that he needs the maize for his mill which supplies mealie meal to the entire Luapula valley. He further mentions that it is very good business as there is no competition and the villagers only grow cassava. Manda tells him he will provide the brand known as "Superior Cobs Grade One". Chileshe does not know that this is the best grade animal feed maize usually reserved for veal calves only. Chileshe takes delivery of the first instalment and mills it. However, his normally happy customers all return the meal complaining that it contains too much fertilizer and is not fit for human consumption Chileshe immediately sends a telex message to Manda to stop any further deliveries. Is he entitled to do so? Are there any possible remedies open to Manda or to Chileshe?

(15 marks)

/4.....

3. (b) What constitutes "delivery" and "acceptance" for the purpose of S.27 of the sale of Goods Act?

(10 marks)

4. (a) Explain the relevant principles of law in the following cases:

- (i) Mulenga sold his car to Bwalya and was induced to receive a cheque as payment. The cheque was dishonoured on presentation so Mulenga immediately informed the police as well as putting a personal call message on the radio specifying the car's particulars for the general information of the public and requesting Bwalya to return it. Two days later Bwalya sells the car to Mutale who had not heard the radio message. On taking Mutale to court, Mutale is instructed to return the car to Mulenga.
- (ii) Mwemba sells beans to Phiri, the price to be payable within thirty days, As soon as the truck leaves his premises, Mwemba receives a telephone call from a business associate informing him that he has just learnt from reliable sources that Phiri has been unable to pay his debts for the past year therefore all his suppliers were demanding cash before delivery. Mwemba sends a driver with his private Mercedes Benz Car to catch up with the truck and turn it back, which the driver does.

(10 marks)

- (b) Inonge orders from Mutumba 300 dresses for re-sale by specific order. They are to be 150 blue and 150 pink to be packed into 30 boxes of 10 dresses each, (5 pink and 5 blue) Mutumba delivers 30 boxes of 15 dresses each and although each box contains some blue and some pink, they are randomly packed with no special attention paid to colour specifications. Frustrated, Inonge unpacks all the boxes and finds that there are actually altogether 250 blue and 200 pink dresses. Advise Inonge.

(15 marks) /5.....

5. Mr. Mvula is the Managing Director of Bwafwano Garage which sells second hand cars for cash or by hire purchase. Some of the cars that are sold at the Garage are the property of Bwafwano Garage while others are not. The latter cars are brought to the Garage to be sold on behalf of owners at a commission. In this category, fell a Honda Quintet which Mr. Muzuulu took to the Garage to be disposed of for K20,000 on his behalf.

While window-shopping in Lusaka's fabulous Cairo Road Mrs. Muyatwa, a newly-wed who had just been admitted to the Bar as an Advocate of the High Court of Zambia, was captivated by the beauty of the car in the showroom of Bwafwano Garage. She instinctively went into the showroom, not only to quench her curiosity, but also to inquire about its availability for purchase. Mr. Mvula personally came to attend to her. He told her that he could offer her terms if she did not have cash. Mrs Muyatwa was very pleased with the suggestion made by this "prince charming". She told him that she would come back the following day after consulting her husband. The following day Mrs. Muyatwa went back to Bwafwano Garage where she was handed to sign a document entitled "Hire Purchase Agreement between Bwafwano Garage and the Purchaser". Before signing, clause 10 was brought to the attention of Mrs Muyatwa. This clause read:

"The Purchaser acknowledges that no guarantee on the part of the seller as to the passing of ownership of the car is given or implied".

Mrs. Muyatwa was not happy with this clause but then her "prince charming" assured her that she should not worry about the clause because the Garage has always passed ownership to all Purchasers who had finished paying their instalments. Reluctantly, Mrs. Muyatwa signed the Agreement. She noticed that she was required to put down K100 as a deposit before delivery and then to pay 25 monthly instalments of K1,000 each - bringing the purchase price to K25,000. Notable about this Agreement was the fact that it did not contain the cash price. The Agreement was also not signed by Mr. Mvula or anybody on behalf of Bwafwano Garage until the tenth day following delivery.

PART II: L 330

Mrs Muyatwa accelerated the payment of instalments by paying K20,000 in the first instalment. Just after paying the purchase price she met Mr. Muzuulu at the Lusaka Golf Club, who told her that he wanted to make the Honda Quintet a birthday present to his girl-friend, Inonge, and that he had accordingly instructed Bwafwano Garage to repossess the car.

Advise all the parties on their rights on the contract.

(25 marks)

6. (a) What is the Principle of Insurable interest? Critically examine its application in relation to the case of Macaura - Northern Assurance Co. Ltd. (1925) A.C. 619.

(10 marks)

- (b) The principle of disclosure like that of indemnity are primarily intended to protect insurance companies at the expense of other parties to the contract of insurance. Discuss.

(15 marks)

7. (a) What are the various ways in which a cheque may be crossed? Explain the significance of each method of crossing.

(7½ marks)

- (b) John works in the accounts section of his employers' firm dealing in the furniture business. He tells his employer that K400.00 is owed by the employer to Maseti Furniture Company for goods supplied when this was not true. As a result of this misrepresentation a cheque is drawn on the employer's bank by John in favour of the Maseti Furniture Company.

The cheque is not crossed and John forges the endorsement in the name of the furniture company and negotiates it at the popular Forum Bar where he drinks regularly. His employer meanwhile has got wind of the forgery and issues instructions to stop the payment of the K400.00 cheque.

PART II: L 330

- (i) Advise whether the Forum Bar is entitled to the amount of the cheque.
- (ii) Would your answer be the same if there was no such firm as the "Maseti Furniture Company"?
(10 marks)
- (c) What are the essential circumstances in which a transferee of a bill of exchange will obtain a good title despite defects in the title of his predecessor?
(7½ marks)
-

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - JULY, 1983

L 340

ADMINISTRATIVE AND LOCAL GOVERNMENT LAW

TIME: THREE hours, plus 15 minutes for reading the paper.

ANSWER: FOUR Questions; Two from Part A; and Two from Part B

PART A:

(Answer two questions from this section).

1. The President of the Republic of Kozo has declared a state of emergency. On 10th October, 1980, a detention order made pursuant to Regulation 33(6) of the Preservation of Public Security Regulations is served on Jean. On 12th October Jean's detention order is revoked. She is immediately served with another detention order made pursuant to Regulation 33(1) of the Preservation of Public security Regulations. This detention order is signed by the Secretary of State for Defence and Security. Jean is handed a sheet of paper written in English stating the reasons for her detention.

"Between 25th January 1980 and 20th August 1980, you were observed to be in the company of people who are organising hostile expeditions in a neighbouring state against the Republic of Kozo. You also attended meetings in the same period which were intended to devise ways and means of overthrowing by unlawful means the lawfully constituted Government of Kozo. These activities are prejudicial to the security of the Republic of Kozo. It is therefore, necessary to detain you in the public interest".

The constitution of Kozo and its Preservation of Public Security Act and the Regulations made thereunder are ⁱⁿ pari materia with the Zambian Constitution and the Preservation of Public Security Act. Jean has contacted you to challenge her detention order. Advise Jean.

2. S., a Jehovah's Witness, applied to the appropriate licensing authority for a trader's licence, to operate a market stall, under the Trades Licensing Act 1968.

S. carried out the procedure for his licence application correctly. He says that he was given no opportunity to appear before the licensing authority to give evidence or to answer any objection. He also says that no official reason was given to him for the rejection of his application.

Two days before the licensing authority met, S was approached in the street by X, a member of the authority. X told S that traders' licences were not issued to Jehovah's Witnesses.

When the licensing authority met, X participated in the proceedings and actively opposed S's application, on the grounds that the issue of such a licence would operate against the public interest.

Section 15 (1)(e) of the Trades Licensing Act 1968 provides that:

".... a Licensing Authority may in its discretion refuse to issue a licence if it is satisfied -

(e) that the issue of such licence would operate against the public interest."

The Licensing Authority has rejected S's application. Now he wishes to apply to the court 'so that he can set his rights'. Advise S.

/3.....

PART A: Cont.....

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3. The Industrial Relations Court is established by Part X of the Industrial Relations Act 1971. Section 101 (3) of that Act reads:

'An award or decision of the court on any matter referred to it for its decision or on any matter otherwise falling within its sole jurisdiction shall be final and binding upon the parties thereto and on any parties affected thereby, and such award or decision shall not be questioned in any proceedings or court.'

B seeks your advice. He has been a party to proceedings in the Industrial Relations Court. He does not dispute that these proceedings were properly before the court. But he is very unhappy with the court's decision. He thinks that it 'was so unreasonable that no reasonable tribunal could have come to it. He wants you to apply to the High Court for a writ of certiorari to quash the decision of the Industrial Relations Court.

In the light of the case law on the finality of the decisions of tribunals, advise B as to:

- (a) whether or not the Zambian High Court is likely to entertain a challenge to the finality of a decision of the Industrial Relations Court; and
- (b) in the event that it does, whether or not B is likely to be granted a writ of certiorari.

/4.....

(Answer two questions from this section).

4. In a sense, judicial control of delegated legislation will prove to be either wholly successful or a total failure..... anyone who challenges the validity of delegated legislation in the courts will only succeed if he can prove that it is ultra vires the enabling Act and thus void. If the challenged instrument is found by the court not to be ultra vires, then it is intra vires and entirely valid".

Yardley, Principles of Administrative Law (1981) P29.

It may thus be seen that judicial control of delegated legislation may only be exercised within the ambit of the ultra vires doctrine. Is there a need for judicial control of delegated legislation to be supplemented by other methods of control? Discuss.

5. His Honour, the Chief Justice of New Zealand, in his address on "The Place of the Administrative Tribunal in 1969" to the Third Commonwealth and Empire Law Conference observed:

".... as well as to ensure judicial participation in the development of the law in what may prove to be its most lively spheres as to safeguard sound adjudication, the tribunal system must not be allowed to erode the position of the courts The constant aim must be the maintenance of public confidence in the machinery of justice in whatever area it is required in modern society. And in the end it is to the courts that people look for justice."

To what extent do you think that the exercise of judicial review by the courts over the decisions of tribunals actually promotes 'sound adjudication'? Support your view by discussing critically the various arguments for and against the development of a system of specialised administrative tribunals.

6. 'The words "as they think fit" do not mean "as they choose".'
(per Lord Wrenbury in Roberts v Hopwood (1925) All E.R. 24 at 42G).

Explain, by reference to appropriate authorities, the extent to which the courts may review the exercise by a statutory authority of an apparently unfettered administrative discretion.

7. 'Take the financial independence of local authorities. At present each has, in theory, a completely free hand in determining the services it intends to provide and the way it finances them. But in practice things happen differently...'

(Quote from an article in the Guardian Weekly,
October 1981, analysing the French decentralisation proposals).

To what extent, in your view, does the above quote apply to the Zambian situation? Support your contention by a careful analysis of those provisions of the Local Administration Act 1980 relating to the provision of services, the raising of revenue, and the exercising of financial scrutiny over, district councils.

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - JULY, 1983

L 410

JURISPRUDENCE

TIME: THREE hours (plus 15 minutes to read the question Paper).

ANSWER: FOUR Questions - TWO from Group - A and TWO from
Group B:

GROUP - A:

1. Law has, of necessity, to be enacted through the medium of language. Language is one of the most ingenious, though one of the most imperfect, inventions of the human mind. It is here that the role of interpretation of the letter of the law assumes a highly significant role. In the process of interpretation the approach of the various "Schools of Jurisprudence" becomes highly relevant. Which one or more out of the Analytical/Sociological/Realist/Natural Law approaches do you consider to be relatively more appropriate for contemporary societies in the developing world in general and Zambian Society in particular passing through a transitional, troubled, turbulent period and committed to the ushering in a new and just socio-economic order for which Constitutional Commitment to this or that ideology is expressly provided for?

Your view should be supported by a critical, though brief, evaluation of the merits and demerits of various approaches.

2. The concept and content of ownership and property is conditioned and moulded by the socio-economic-political context of a particular society at a particular period of time. Jurists, through their definitions of ownership, merely articulate the net result or impact of this complex setting.

Comment, elucidate and critically evaluate.

/2.....

GROUP A: Cont.....

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3. Critically comment on the following statements:

- (a) "A right is neither a legally protected interest alone, nor a legally guaranteed power alone; it is a legally guaranteed power to realise an interest".
- (b) "The 'fact - sceptics' and the 'rule sceptics' do project an important element of truth which cannot/should not be ignored. However, those who unduly emphasize these aspects suffer from the perennial defects of over exaggeration".

GROUP B:

4. The states of Utopia and Realia were engaged in a bloody war for four years involving discriminate bombing by realia forces in flagrant defiance of recognised rules of International Law with regard to warfare. Utopia suffered incalculable material loss. Cities were virtually demolished though it did succeed in protecting human lives by adopting modern devices e.g. underground tunnels etc. Acute housing shortage was one of the many major problems which it faced soon after the war was over. Utopia was traditionally committed to a free market economy., sanctity of right to property and ownership, etc. Under the law, as it existed, landlords had unrestricted rights in the matter of fixing rents of the houses and almost an unrestricted right of evicting tenants by regaining possession . Soon after the war the Parliament of the state of Utopia enacted The Rent, Mortgage and Letting Control Act which regulated both the power of fixing rents, of eviction of tenants and other rights of landlords. It also categorised premises covered by the Act.

/3.....

GROUP B: Cont.....

L 410

One of the provisions of the said Act was that if the landlord regained possession of the premises, they became decontrolled. For this purpose, 'possession', it was provided, shall be construed as meaning 'actual possession' and a landlord, it added, "shall not be deemed to have come into possession by reason only of a change of tenancy made with consent".

The following four cases under the said Act decided by the highest court have had a mixed reaction both from the jurists and the public:

- (i) A was the tenant of X. A decided to give up the premises. He, alongwith B, who was looking for a rented premises, met X's agent by appointment a week before A left the premises. A handed the key to the agent, who immediately handed it over to B. The court held that X had come into actual possession and the premises had, therefore, become decontrolled and hence not governed any more by the said Act.
- (ii) P was the tenant of Z. P decided to give up the premises. He dropped the key of the premises into the letter-box of the office of Z's agent, which was closed for the week. It was held that Z had come into actual possession and the premises had thus became decontrolled.
- (iii) R was the tenant of Q, the landlord. He was living in that house with his mistress. Due to some differences with her, R discontinued staying with her. The mistress continued to stay in that house. It was held that R had lost possession of the house.
- (iv) L was the tenant of M, the landlord, He was living in that house with his legally married wife. Due to some differences L deserted her and discontinued staying with her. The deserted wife continued to stay in that house. It was held that L was still in possession of the house and could not be said to have lost possession.

Present a critique of the above decisions in the light of juristic definitions of possession and legislative and/or judicial policy.

- (i) Under the constitution and the law of the state of Universia every citizen was guaranteed freedom of movement and of expression. Workers were guaranteed the "right" to strike. The National Trade Union Congress gave a call for strike in all industrial establishments on the issue of restrictions recently imposed by the government on the quantum of wage - hike which workers could claim.

Workers resorted to picketting to prevent those of their fellow-workers who sought to disregard the Union's call given after a 90 percent 'Yes' ballot by workers. A, a worker, insisted, on going to the rear entrance of an industrial establishment to join about two dozen pickets who were trying to prevent those of their fellow workers who were going to work disregarding the Union's call. B, the police-officer on duty, prevented A from going on the ground that according to him (B) two dozen pickets were all that were needed under the circumstances. Despite B's direction to the contrary, A brushed past B and joined the pickets. A is hauled up before the court for preventing a public servant in the discharge of public duties. One of the main contentions of A is that he has a right to freedom of movement and to strike and B is, therefore, under a corresponding duty not to obstruct him and was consequently liable to pay damages to him for the violation of his rights.

GROUP B: Cont.....

L 410

(ii) The municipal corporation conveyed, in 1956, to a company, X & Co. Ltd., a plot of land for 99 years for use as an airfield. The corporation undertook to maintain it for use by the company. In 1970 the corporation purported to revoke the company's interest in the plot of land. The company sought for an injunction against the corporation so as to prevent it from infringing the "right" of the company under the conveyance. The corporation's main contention before the court is that the court cannot issue an injunction since that would amount to compelling the corporation to fulfil its obligation to maintain the airfield i.e. be equivalent to an order for specific performance - something not permissible under the general principles of law. If at all, the company could only claim damages.

As a presiding judicial office you have to decide the two cases. Give your well reasoned decision in the light of conceptual analysis of right in a wider sense identifying the jural relations involved and precedents, if any.

6. The state of Pakrania was ruled by a monarch who was almost a dictator. Under the leadership of a fanatic religious fundamentalist a small but well organised group of militants amongst the people of Pakrania, the ruler is forced to quit and go into exile. This small group comprises whites while the overwhelming majority of the population comprises blacks. The fanatic leader without assuming any office in the state hierarchy virtually dictates the policy of the state.

GROUP B: Cont.....

L 410

Under his directions the puppet regime that captures power rules by issuing decrees enforcing, for example (a) the worst form of apartheid (b) enforcing conservative religious dogmas, to wit, that the legal value of the evidence of one man equals that of two women etc. Apart from such measures a title of repression is let loose whereunder the Party Militiamen become a law unto themselves. They indiscriminately detain people opposed to them, kill them, torture them under secret and/or retrospective decrees. Opportunists volunteer information, abet and aid the militiamen and the puppet regime in their nefarious designs and actions. A reign of terror is let loose. The opportunists are motivated not only by the aim of personal gain but also of liquidating and/or settling scores with those against whom they had personal enmity or grievances and they, by and large, succeed in the task. The secret decrees issued by the puppet regimes are fortified by enacting retrospective secret statutes satisfying the formal and procedural requirements of the constitution in force.

The puppet regime is eventually ousted. Those who suffered as a result of the "laws" and decrees of the regime and of the actions of the Party Militiamen and opportunists now seek judicial remedy praying for punishment to and damages from the opportunists, the Party Militiamen and those who held responsible positions under the puppet regime. They argue that

- (i) Law which does not have a minima of justice in it does not deserve to be termed as law and hence those who obeyed such a lawless law parading as rule of law must be punished;
- (ii) Law and morality cannot be entirely divorced. Morality is one of the primary and foremost concern of law since recognised morality is as necessary to society as recognised government; Consequently, they plead, decrees'/' "laws" and actions of the puppet regime, the militiamen, etc. under them should be appropriately dealt with by the judiciary which is the custos mores of the people, and has the residual power to uphold morality as also

GROUP B: Cont.....

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the rationale and reason underlying the concept of law and not merely the letter of the law in complete disregard of considerations of justice and morality.

Those against whom action is brought argue.

- (i) Law ought not to have direct concern with morality in so far as it has not been expressly and unambiguously incorporated in a statute or decree validly enacted or made in accordance with the procedure established by law;
- (ii) If the courts strike down laws/decrees so enacted/made the majesty of law and fidelity to law would dissolve and disappear resulting in a state of affairs in which every one would be a law unto himself - considering this or that statute/deGREE as legal or illegal on the criterion of his own notions of morality and justice.

You have been appointed as Minister of Justice after the overthrow of the puppet regime. What policy - guidelines would you lay down? Should the alleged offenders be dealt with and be punished by the courts? Should the considerations projected by the complainants be taken into account and followed by the courts? Should the new regime enact a comprehensive retrospective law to adequately deal with such persons against whom complaints have been lodged so as to ensure that they do not escape the net of law and of the fundamental assumptions underlying the concept of law? Should the alleged offenders be left to be dealt with by the complainants in the streets - the state tolerating a temporary phase of "instant justice" till orderly and established norms underlying the concept of law become a normal feature as this course will be consistent with the new regime's respect for the Rule of Law?

GROUP B: Cont.....

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Tender your well reasoned advice to the Cabinet supported by juristic opinions, precedents, decided cases, reports etc. with regard to relationship between law, morality and justice as also with regard to the aforesaid contentions.

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - JULY, 1983

L 420

BUSINESS ASSOCIATIONS

TIME: THREE hours (Plus 15 minutes to read the question paper)

NUMBER: Four questions (Two from each section).

SECTION A:

- (a) "A promoter is neither an agent of, nor a trustee for, the company he promotes but he stands in fiduciary position towards that company".

Explain this proposition of law with the help of decided cases.

(10 marks)

- (b) Miss. Mukuwa has been a very prosperous legal practitioner until last year when she could not withstand stiff competition from the recently formed Legal Services Corporation. She then decided to invest most of her wealth in a company she personally promoted to deal in upholstery business. Other shareholders in that company were Mr. Dube and Miss. Mudenda, also lawyers. The three shareholders were also the only directors of the company.

Four months after the company had become operational, Miss. Mukuwa, at a full board meeting, raised the question of her payment for promotion services by rendering the company a bill for K5,000. Both Mr. Dube and Miss. Mudenda disputed the bill - not that it was not supported by receipts but because the company could not have legally incurred any expenses before its incorporation. They also reminded Miss. Mukuwa that whatever services she had rendered to the company before it was incorporated was past consideration in terms of the long established law in Clinton's Claim (1908) 2 Ch. 515. Miss Mukuwa, on the other hand, has contended that by virtual of the provision she had inserted in the company's articles

SECTION A: Cont.....

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of association that directors had power to pay preliminary expenses out of company funds, she was entitled to her promotion services.

As an arbitrator, how would you resolve this conflict?

(15 marks)

- (a) Section 8 (3) (a) of the Companies Act provides that "the memorandum of association must also state the amount of share capital with which the company proposes to be registered and the division thereof into shares of a fixed amount".

Discuss the significance of share capital, and also the need to have it divided into shares of a fixed amount.

(10 marks)

- (b) Explain with the help of decided cases how the concept of separate legal personality has caused hardship to third parties. How has the judiciary reacted to this hardship?

(15 marks)

- (a) Lord Davey in *Burland v Earle* (1902) A.C. 83 stated that "... it is clear law that in order to redress a wrong done to the company or to recover monies or damages alleged to be due to the company, the action should prima facie be brought by the company itself." Explain the implication of this statement and give examples of alternative ways of instituting corporate action.

(10 marks)

/3.....

SECTION A: Cont... ..

L 420

(b) During the world-wide economic recession of the last decade, UNZACO Ltd. experienced serious liquidity problems which led the company to reconstruct its share capital structure and to bring in new investors. At a meeting held by the directors on 12th July, 1980, it was resolved to recommend the following measures to the shareholders:-

1. That the company's authorised share capital be raised from K60,000 to K100,000;
2. That the share capital of the company be divided into 50,000 ordinary and 50,000 deferred shares, at the par value of K1 each; and
3. That the deferred shares should not have any voting rights but rank pari passu with ordinary shares in respect of dividends and return of capital in the event of the company winding up.

The shareholders, without holding a meeting, unanimously endorsed the recommendations of their directors and gave them a green light to implement the new measures.

Acting on their mandate, the directors invited Master Buka Mulwila, the Managing Director of the vast Mulwila economic empire, to invest in UNZACO Ltd. Before accepting the invitation Master Mulwila consulted his father on the best strategy to adopt. The father, who had more than rudimentary knowledge of business law, advised the son to bid for all the 50,000 ordinary shares. After protracted consultations with shareholders and Master Buka Mulwila the directors finally bent to the wishes of the Mulwila empire, and accordingly an offer to sell 50,000 ordinary shares in UNZACO was formally made to Master Buka Mulwila, who readily accepted it.

SECTION A: Cont.....

L 420

Upon acquiring 50,000 ordinary shares in UNZACO, the Mulwila empire decided to turn the company into an academy of business law, on similar lines with the Kamuzu Academy in Malawi. Master Buka Mulwila by coincidence met the other shareholders at the Lusaka Club during Lusaka Open Lawn Tennis Competition, and over a 'scotch' he broke the news that he would instruct the directors of UNZACO to alter the objects of the company to enable the company to be converted into an academy. The shareholders vehemently opposed the idea but all Master Mulwila said was: "Well, gentlemen, the decision is irrevocable".

Advise the parties as to their rights.

(15 marks)

SECTION B:

- (a) Why has ZIMCO Ltd. been made the Government's apex holding company for all the parastatal companies?

(10 marks)

- (b) In the recently announced reshuffles President Yaya swop permanent secretaries with parastatal companies managing directors. One of such permanent secretaries turned into managing director was Mwazauka, also intimately known in the Eastern Province as the "fighting Angoni Bull." The parastatal company to which Mwazauka was posted is called TAPASOSWA Co. Ltd., and is jointly-owned by the Government, through its agency INDECO, and private entrepreneurs from South Africa and the United Kingdom.

Prior to the announcement of Mwazauka's new appointment, the private shareholders of TAPASOSWA Co Ltd. (who were managing the company) had not been consulted and they had meanwhile earmarked another candidate for the post

SECTION B: Cont.....

L 420

of managing director. On the day Mwazuka was to take up the new post, he first went to State House to take on oath of allegiance to President Yaya. But when he went to the premises of TAPASOSWA Co. Ltd. he was turned away by a security guard who said he had instructions to turn away any persons with dubious credentials. Infuriated by this rebuke, Mwazuka warned the guard that it was not to be long before he found himself without employment.

Mwazuka drove straight to Freedom House to narrate what had happened. Before party militants were mobilised to go to TAPASOSWA Co Ltd. to teach the 'recalcitrants' a lesson, the opinion of the party legal counsel was sought on the matter. The legal counsel quickly rushed to the ~~Companies~~ Registry where he discovered that the power to appoint a managing director for TAPASOSWA Co Ltd. was, by virtue of the management contract, vested in the private shareholders. He accordingly advised the top party functionaries that the law was not on their side. To this Mwazuka said:

"Nonsense we are a participatory democracy and what the President or the Party says is the law. I am going to obtain an order of mandamus to compel those racist shareholders to allow me to assume my rightful position just as my counterparts who have been posted to other parastatal companies". True to his word, Mwazuka has approached you to set the legal machinery in motion. What is your advice? Are there other possible ways of helping Mwazuka?

(15 marks)

- (a) Examine critically the two co-operative principles of
- (a) open and voluntary membership; and
 - (b) democratic management and control of a co-operative society.

(10 marks)

/6.....

SECTION B: L 420

- (b) Give a fairly reasonable account of the preparatory work that the intending members of a co-operative society have to do before the Registrar of Co-operative Society can register their co-operative Society. If the Registrar is not satisfied with preparatory work, what actions can he take?

(15 marks)

- (a) What is the difference between partnership and a sole trader? Explain this in relation to Ngenda and Advocates, which is a law firm operated solely by Mr. Ben Ngenda but formed under the Partnership Act.

(10 marks)

- (b) Florence who is a partner in Twikiza & Co. had originally contributed K5,000 to the share capital while the other partner whose name is Jobs only provided skills. The partnership ran successfully for 10 years before problems started. Most of the requisite machinery broke down when there was no foreign exchange to be used for replacement. As a result, Twikiza & Co. sustained a loss of K3,000.

The creditors have sued to recover their money but Jobs has refused to contribute to the partnership debt, arguing that his original contribution was in form of skills only.

Advise the parties on their rights.

(15 marks)

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - JULY, 1983

L 430

INTERNATIONAL LAW

TIME: THREE hours

ANSWER: FOUR questions, at least ONE being chosen from EACH Section.

Candidates may bring unmarked Ian Brownlie's Documents on International Law and African Affairs.

All candidates will be permitted 15 minutes reading time during which NO ANSWER MAY BE BEGAN

SECTION A:

Answer either (a) or (b)

1. (a) How has the growth of international organisations affected custom and agreement as sources of international law or forms of international regulation?

(b) What impact, if any, have emergent states of the 'Third World' made on international law and relations?

2. In 1748 an explorer from Mwezi proclaimed sovereignty over two islands namely Junza-A-Jilo and Mupani. Junza-A-Jilo was densely populated with an active fishing industry and Mupani Island lying some 1050 kilometres south of Junza-A-Jilo, was sparsely populated almost desolate with no visible trade but rich in penguin life. The proclamation was officially endorsed and published. Mwezi granted concession for the exploitation of minerals and other natural resources on both islands. An expedition sent to survey both islands duly surveyed and returned home after spending three weeks in each island. Nothing much happened until 1902 when, in protest to an expedition sent by Ziswa state in 1901, Mwezi sent another team which found on Junza-A-Jilo, Ziswa's National flag and a trading post supported by an Administrator-General. On Mupani Island they found another of Ziswa's trading posts. Both occupations having been effected by Ziswa in 1899. Both Mwezi

SECTION A: Cont.....

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and Ziswa claimed territory of the two islands. Discuss the merits and demerits of the claims regarding each of the two islands.

3. It is said that the universal succession theory deduced from the analogy with municipal law of inheritance that the successor state is totally subrogated in the contractual relationship of its predecessor; and the negative succession theory, deduced from the hiatus in sovereignty the conclusion that the contract was abrogated and no obligations with respect to it were acquired by the successor state are, both unsound deductions. Discuss giving reasons for your views.

SECTION B:

4. Write brief notes on two of the following:
- (a) The Genocide Convention.
 - (b) The Advisory Jurisdiction of the International Court of Justice and the development of International Law.
 - (c) The African Charter on Human and People's Rights.
5. Answer either (a) or (b)
- (a) "The United Nations have managed successfully to surmount the tensions of the 'Cold War period' and despite recent set backs continue to lead the World into détente. The secret of this success lies in the United Nations' capacity to adapt to changing conditions of World politics. The two constitutional mechanisms which account for this flexibility are the complementary structures of the General Assembly and the Security Council". Discuss.
 - (b) What contribution has been made by regional groupings and alliances under the United Nations Charter to the maintenance of International peace and Security?

SECTION B: Cont....

L 430

6. Answer either (a) or (b)

(a) Critically examine the principle of self-determination as it has been applied in colonial and post-colonial situations. What does its history indicate about the viability of the nation-state as the basic unit of the international system?

(b) Discuss the Mandates and Trusteeship systems of the League of Nations and the United Nations in light of the continuing problem of Namibia.

7. Answer either (a) or (b)

(a) The IMF and GATT provisions relating to restrictions on Trade offer a comprehensive scheme of international action designed to eliminate all manner of restraints to international trade. Further, the relevant provision of the two instruments create an economic environment conducive to, and necessary for the accelerated economic development of the less developed countries. Discuss.

(b) Discuss the structure and functions of either the International Monetary Fund or the Southern Africa Development Coordination Conference.

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - JULY, 1983

L 440

CONFLICT OF LAWS

TIME: THREE hours

INSTRUCTIONS TO CANDIDATES:

Answer any four Questions. Question No. 1 is compulsory.
Refer to latest case laws.

1. X, a body corporate incorporated under the laws of the state of New York, entered into an agreement with Y, a body corporate incorporated under the laws of Canada to carry a Cargo of Cotton from Newfoundland in a Canadian ship for delivery to X, in New York and accordingly bills of lading were signed in Newfoundland.

The Newfoundland carriage of Goods by Sea Act 1932, provided in S.I. that 'subject to the provisions of this Act', the Rules set out in the schedule thereto should 'have effect in relation to and in connection with the carriage of goods by sea in ships carrying goods from any port in Newfoundland to any other port whether in or outside the Newfoundland. Section 3 provided that 'Every bill of lading or similar document of title issued in Newfoundland which contains or is evidence of any contract to which the Rules apply shall contain an express statement that it is to have effect subject to the provisions of the said Rules as expressed in this Act. Art.' 111, rule 8, provided that any clause, covenant, or agreement lessening the carriers liability under the Rules should be null and void and of no effect. Art. IV, rule 2, provided that neither the carrier nor the ship shall be responsible for loss, or damage arising or resulting from (a) act, neglect or default of the master, mariners, pilot or the servants of the carrier in the navigation or in the management of the ship, (c) perils, dangers and accidents of the sea or other navigable waters.

The bills of lading signed by the parties did not contain the statement required by section 3 of the Newfoundland Act. The bills of lading contained a statement 'this contract shall be governed by English Law.' The ship while carrying the cargo from Newfoundland to New York ran into bad weather in Canada and owing to the negligence of the master of the ship the cotton was damaged. X, took delivery of cargo in New York in a damaged condition and paid freight.

X, brings an action against Y, in Canada claiming damages for failure to deliver the cotton in like condition as received on board and claimed that Y's ship was a common carrier and as such insurer of goods. Y, Pleads that the bill of lading and the Rules exempted it from liability even if the damage was caused by the captain's negligence and the contract was governed by the law of Newfoundland.

Decide and discuss the proper law of contract for the above said case with the help of latest decisions.

2. The conflict of Laws or Private International Law is that branch of law which deals with cases in which some relevant fact has a connection with another system of law on either territorial or personal grounds, and may on that account, raise a question as to the application of one's own or the appropriate alternative (usually foreign) law to the determination of the issue, or as to the exercise of jurisdiction by one's own or foreign courts.

Discuss in the light of above the nature, basis and scope of conflict of laws. Illustrate your answer with reference to modern doctrines and theoretical propositions.

3. X, a British subject domiciled in Italy, died leaving movable property in England and Italy and immovable property in Italy. X, left two Wills one in English and other in Italian. By English Will X, gave the residue of her property in England to her niece, Y absolutely. By an Italian Will X, appointed her grand-nephew M, heir of her movable and immovable property in Italy subject to a usufruct in favour of M's mother during

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her life. Neither Will left anything to W, who was X's only son.

W, claimed a declaration that he was entitled, notwithstanding the testamentary disposition of his mother, to one moiety of her movable and immovable property in Italy and one moiety of her movable property in England as his legitimate portion under Italian law.

Art. 8 of the Italian code provided that succession whether under an intestacy or under a will, was regulated by the nationality of the deceased. Art. 9 provided that the substance and effect of testamentary dispositions were deemed to be governed by the nationality of the testator. Decide with the help of leading cases.

Under English law the succession to movable property is governed by the law of domicil. Decide with the help of leading cases.

4. (a) X, was borne in Zambia of English parents domiciled in Zambia. He was educated in England but returned to Zambia in 1960 soon after attaining his majority. In 1965 he married in Zambia. In 1968 he left Zambia for good and went to England where he lived with his mother-in-law and looked around for an estate on which to settle down. Owing to the bad weather and the high price of land he became dissatisfied with England and was undecided to settle in England or France or Zambia. On 28th September, 1969, his wife died.

Where was X, domiciled on 28th September, 1969.

- (b) John, domiciled in France married Anna domiciled in Zambia. They lived in Malawi as husband and wife. In 1972, John leaves Anna in Malawi and returns to live in France. Anna returns to Zambia and continued living there up to 1976.

Where is Anna domiciled in 1976. Decide.

5. The parties were Muslims domiciled in Zambia when they married there in 1958. The marriage was potentially polygamous. By the middle of 1961 the husband acquired a domicile of choice in England. In 1963, the husband petitioned for a divorce on the ground of the wife's desertion since 1959. The wife cross-petitioned for divorce on the ground of the husband's cruelty before 1961 and of his adultery since that date.

Discuss and decide the following with the help of cases:-

- (i) What are the legal characteristics of the type of marriage over which the English matrimonial courts exercise jurisdiction to pronounce a decree of divorce?
- (ii) If a marriage is at its inception potentially polygamous, can it subsequently be impressed with a monogamous character and under what situations?
- (iii) Does acquisition of English domicile preclude this husband from marrying a second wife while his first wife is alive?
- (iv) What recognition will be extended by an English court to a valid marriage that is found to be potentially or actually polygamous? Refer to statutory law also.

6. (a) Hand W, Polish by nationality and domicile, were married in Austria on May 19, 1945. The marriage was void. On June 12, a daughter Barbara was borne to them. As from June 30, Austrian legislation retrospectively validated such religious marriages, subject to their registration in a public register. In 1949, by which time Hand W had both acquired a domicile in England their marriage was registered in Austria as having been lawfully married since May 19, 1945.

In 1950, W and X, went through a ceremony of marriage at London. They had a son, M, borne before this marriage. Is M, legitimate? Decide giving reasons.

6. (b) H, a husband, at all times domiciled in Italy, M married there W, in 1953. He was granted a divorce decree by proxy by a Mexican Court, which decree would not be recognised in Italy. He went to live in Denmark and, on a one day visit to England in 1964, H, married M, who was resident and domiciled in Denmark. H and M returned to Denmark to live. H, petitioned the English court for a decree of nullity on the ground that he was already married when he married M.

Will M succeed?

7. Both branches of English conflict rule for tort liability have been subjected to severe criticisms. By insisting that the tortious act must be actionable in England as well as not justifiable by the law of the place where it was committed, English law manifests an illiberal attitude and mechanical jurisprudence.

Discuss and illustrate with the help of leading cases.

8. What are the conditions under which foreign judgements may be enforced in England? What are the defences which may be effectively set up in actions in English courts to enforce such judgements?

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - JULY, 1983

L 450

INTERNATIONAL TRADE AND INVESTMENT

TIME: THREE hours (Plus 15 minutes to read the question paper)

ANSWER: Four Questions. Answer at least one from each Section.

SECTION A:

1. Korea gives subsidies to the production of colour T.Vs. There is no colour T.V broadcasting in Korea, and virtually all production is exported. U.S. T.V. manufacturers complain that because of Korean subsidies they are losing their markets in S.E. Asia.

Advise the U.S. government on what steps it could take.

2. What success has been achieved in regulating international trade in raw materials by means of agreements between producers and consumers? Explain the price control mechanisms of any two of such agreements.

3. (a) Imports of canned tomatoes from Italy are causing considerable problems for U.S. tomato producers in the U.S. market. What can the government do about it?
(b) What developments have flowed from dissatisfaction with Article XIX of GATT?

4. Discuss the various ways in which international community has tried to encourage trade between developed and developing countries and assess their successes, if any.

SECTION B: L 450

5. The important consideration for a foreign investor is the political situation and possible threat of nationalization by the state of Situs. How is the foreign investor protected against nationalization by (i) its home government (ii) international institutions.

 6. Private investment is admittedly considered to be essential for growth and development of the developing countries. What are the factors which influence the investors to invest in one country rather than the other.

 7. Multinational corporations are considered to be involved in many malpractices which are adverse to the economic interests of the host countries. Elaborate precisely those malpractices. Describe the measures which have been taken to regulate their activities :
 - (a) under the Andean Foreign Investment Code.
 - (b) by the United Nations.

 8. What are the salient features of arbitration? Discuss the applicable law of arbitration by the International Centre for Settlement of Investment Disputes and the provisions for enforcement of its award.
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END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

UNIVERSITY EXAMINATIONS - JULY, 1983

LL.M. CONSTITUTIONAL AND ADMINISTRATIVE LAW

L500

INSTRUCTIONS:

- (i) TIME ALLOWED: 3 (Three) HOURS
- (ii) ANSWER TWO Questions from Part A and One Question from Part B.
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PART A

ANSWER TWO QUESTIONS FROM THIS SECTION:

"The rights of the individual depend for their very existence and implementation upon the continuance of the organized Political Society - that is the ordered society established by the constitution. The continuance of that society itself depends upon national security, for without national security any society is in danger of collapse or overthrow. National security is thus paramount not only in the interests of the State but also in the interests of each individual member of the State; and measures designed to achieve and maintain that security must come first; and, subject to the provisions of the constitution, must override, if need be, the interests of individuals, and of minorities with which they conflict". - per Blagden, C.J. in Kachasu v. Attorney-General for Zambia (1967).

How far is this view reflected;

- (a) in the range of constitutional and statutory powers conferred on the executive in Zambia in emergency situations;
- (b) in the judicial approach to the conflict between individual rights and national security in Zambia?

Twapia was a former British dependency which became independent from Britain in 1966 under the usual Westminster - type of constitution made in London. In 1970 Twapia became a Republic within the Commonwealth of nations. The government of the Republic of Twapia now proposes to introduce a one-party State. However, it is generally agreed by all politicians in Twapia that under the new one-party constitutional order, certain cardinal or core attributes of democracy must be entrenched especially a free electoral system which would enable every eligible citizen of Twapia to vote and to freely compete in elections to all representative institutions; maintenance of the rule of law; independence of the judiciary; respect for individual rights and freedoms. The government of Twapia has hired you as one of its constitutional lawyers to advise it on the following matters;

- (a) the best technique for bringing about a democratic one-party State capable of attaining the objectives of Twapia;
- (b) whether or not to incorporate a bill of rights in the new constitution and the reasons for your views - particularly the question of whether or not the one-party system is compatible with the constitutional protection of human rights;
- (c) the status of the party constitution under the new system.

Advise the government of Twapia on all these three counts drawing on the experiences of Ghana (1964), Tanzania (1965) Malawi (1966), and Zambia (1972).

The constitution of Pamodzi of 1970 established a presidential form of government, with a strong executive President who was not responsible to the legislature. It also contained a justiciable Bill of Rights along the Zambian model. On January 1 of 1972, Lieutenant Moyo, together with a group of middle ranking army officers, staged a coup. The incumbent President Bonzo was murdered and Lieutenant Moyo declared himself President. The legislature was dissolved and some of its members jailed. A National Council of Redemption (NCR) was established. Decree No. 1 of the Revolution vested all executive and legislative powers in the NCR acting under its chairman, Lieutenant Moyo. Decree No. 10 of the Revolution, which was duly enacted by the NCR on February 1, 1972 authorised the President to detain anyone who, in his opinion, was guilty of advocating, teaching, aiding, or abetting the commission of crime, sabotage, unlawful acts of violence and of terrorism as a means of accomplishing political change.

Alfred Kojo, the former Minister of Broadcasting and Propaganda (and a leading figure in the overthrown dictatorial regime) was picked up by the police and was subsequently detained by President Moyo acting under the authority of degree No. 10. He now applies to the High Court for Pamodzi for release on the following grounds;

- (a) that Decree No. 10 is unconstitutional;
- (b) that the NCR, having unlawfully seized legislative power from a duly elected legislature, is unlawful and has no power to make legally binding decrees;
- (c) that the 1970 constitution remains the supreme law of Pamodzi and under its terms his continued detention is unlawful.

Assume that you are a lawyer for Alfred Kojo. How would you advise him on all the three counts bringing out clearly Hans Kelsen's theory on the juristic implications of a revolution? Also discuss with reference to any decided cases on those issues;.

PART B

ANSWER ONE QUESTION FROM THIS SECTION.

'The point at which the political process provides or can provide effective control is the line to which judicial review should advance. Unless it does, there must continue to be an area of governmental activity in respect of which aggrieved citizens can look to neither the political process nor the courts for effective redress.'

(Thomas, Parliamentary Control of Administrative Action)

To what extent do the courts and the political processes in Zambia provide citizens with effective redress against maladministration? Do you agree with Thomas's view of the proper extent of the power of judicial review? Discuss.

Critically evaluate the effectiveness of legislative supervision of delegated legislation in Zambia.

END OF EXAMINATION