

THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW
2005 SECOND SEMESTER

1. L142 CRIMINAL LAW II: SPECIFIC OFFENCES
2. L152 CONSTITUTIONAL LAW
3. L222 LAW OF CONTRACT
4. L232 LAW OF TORTS
5. L242 CRIMINAL LAW II: SPECIFIC OFFENCES
6. L252 CONSTITUTIONAL LAW II
7. L262 FAMILY LAW
8. L322 LAND LAW & CUSTOMARY SYSTEMS OF TENURE
9. L342 ADMISTRATIVE LAW
10. L352 NATIONAL HUMAN RIGHTS LAW
11. L382 LABOUR LAW
12. L412 JURISPRUDENCE II
13. L422 COMPANY LAW
14. L462 INTELLECTUAL PROPERTY LAW II
15. L482 ALTERNATIVE DISPUTE RESOLUTION
16. L492 TAXATION

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2005 SECOND SEMESTER

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THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

2005 ACADEMIC YEAR, SECOND SEMESTER EXAMINATIONS

L142 – CRIMINAL LAW II: SPECIFIC OFFICES

INSTRUCTIONS

TIME : THREE (3) HOURS Plus Five (5) Minutes to read through the paper

QUESTIONS : Answer any Four (4) Questions

DOCUMENTS ALLOWED IN EXAM HALL : Penal Code, cap 87

QUESTION ONE

Section 200 of the Penal Code provides:

Any person who of malice aforethought causes the death of another person by an unlawful act or omission is guilty of murder.

- (a) What are the main elements of murder?
- (b) What is the punishment for murder? Is there any exception to the general rule regarding penalty for murder?

[17.5 MARKS]

QUESTION TWO

Indecent assault, before the recent amendment, is an offence under the Penal Code:

- (a) Cite the relevant section dealing with indecent assault against a woman or a girl.
- (b) What are the main elements of the **mens rea** of indecent assault?

[17.5 MARKS]

QUESTION THREE

What is meant by 'takes' and 'moves' under section 265 (1) and section 265 (5) of the Penal Code?

[17.5 MARKS]

QUESTION FOUR

Common assault is treated as a single offence under the Penal Code. In fact, it consists in two distinct offences.

You are required to:

- (a) Identify the two offences.
- (b) Describe the actus reus of one of the offences you have identified.

[17.5 MARKS]

QUESTION FIVE

Carefully set out the facts of the case R. v. Moloney [1985] AC 905 and indicate whether or not the accused person was convicted of murder or another offence.

[17.5 MARKS]

QUESTION SIX

An accused person who is charged for theft or stealing must be acquitted if he or she could satisfy the court that he had bona fide claim of right in the thing in it (the thing the subject of the allegation of theft).

Explain [Give one example]

[17.5 MARKS]

QUESTION SEVEN

X unlawfully wounds Z. He is charged for an offence and is sentenced for a certain terms of imprisonment:

You are required to

- (a) define wound and cite section of the Penal Code under which the accused must be charged.

(b) Describe the mens rea of unlawful wounding, if any.

[17.5 MARKS]

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW

2005 ACADEMIC YEAR SECOND SEMESTER
FINAL EXAMINATIONS

L222: LAW OF CONTRACT

TIME: THREE (3) HOURS

INSTRUCTIONS: ANSWER QUESTION 1 AND ANY OTHER 3 QUESTIONS

1. **Sarah who resides in Lusaka recently inherited a house in Kasama on the death of a relative. She offered to sell the house to Mulenga, a retiree from Lusaka University, who intended to settle in Kasama. Mulenga had indicated that he wanted to buy a house in a good residential area as he intended to finish a book he had began writing many years ago. Sarah assured him that the house was in a good area and conducive for the intended purpose. Sarah had however never been to Kasama and was relying on a description given to her by the executor of the will. Mulenga upon realizing that Sarah had never been to Kasama requested that he be given a week to confirm whether the house met his requirements. He then telephoned a relative based in Kasama and asked him to confirm Sarah's assertions. The relative did not call Mulenga back and all attempts by Mulenga to reach him proved futile. After a week Sarah called Mulenga to enquire whether he was still interested. Thereupon Mulenga accepted Sarah's offer and indicated that he would be transferring K80million as part payment into her account. Sarah subsequently acknowledged receipt of the money by sending Mulenga an email. In this email she also instructed Mulenga to pay the balance of the purchase price of K40 million to Galaxy Motors for a motor vehicle she had procured.**

Sarah yesterday received a phone call from Mulenga who had since traveled to Kasama. Mulenga told her that he had just discovered that the house was in a street next to the football stadium where Riva pool Stars a popular local team plays. Sarah did not know this. Mulenga told Sarah that the noise caused by the people attending matches at the stadium would be intolerable. Mulenga indicated that he had relied on Sarah's word when accepting the offer. He said he was not prepared to proceed with the sale.

Sarah seeks your advice; she would like to know whether she can take any action to force Mulenga to conclude the sale. She would also like to know whether Mulenga would have legal grounds to avoid his agreement to buy the house.

Meanwhile Galaxy Motors are also threatening litigation

Advise Sarah.

2. Dave is a football player with Kalingalinga United. He is famous for his good looks. He agrees a modeling contract with Vermani to model Vermani spectacles and shoes, for a fee of K50million. The contract specifies that Dave will be photographed with these products for a period of a year from June 2005 with respect to the spectacles and from December 2005 with respect to the shoes.

During a half time team talk in April 2005, the Kalingalinga United manager kicks a tea urn in anger at the team's dismal first half performance. Dave is splashed with scalding tea and is badly burned on the face. With plastic surgery he will not suffer any appreciable scars, but the prognosis is that this improvement in his appearance will take 2 years to accomplish.

To recover from the trauma of the accident, Dave takes a walking holiday in the Luangwa National Park in May 2005. A local beast of burden stamps on his left foot crushing the bones. On his return to Lusaka his big toe is amputated.

Vermani cancel Dave's contract to model their products. They obtain the services of another sportsman, but have to pay K80million for those services.

Vermani had paid an advance of K20million to Dave. They now seek this sum from Dave, together with K30million the extra money they had to pay to replace Dave as their model.

Advise Dave if he can successfully resist Vermani's claim.

3. Chanda was a supplier of computer programs who was registered as required by the Computer Sales and Distribution Act 1991. Chanda supplied a multi-media presentation program to Ninette, without the statutory invoice describing the program, as required by the Act when Ninette told him that, as between friends, such formalities were unnecessary. The agreed price for the program was K5million, which Ninette now refuses to pay.

Chanda delivered to Peter a computer chess program for K1million. Again, he failed to provide the statutory invoice. Two weeks later, the program caused Peter's computer to crash and it cost Peter K3million to have it fixed. Peter is claiming damages.

Chanda supplied Olivia an accounting program for K2million. The program was accompanied by the relevant statutory invoice. Although Chanda did not know this, Olivia ran a brothel and used the program to prepare the brothels accounts.

Advise Chanda. To what extent, if any, he is able to recover what is due to him. Would your advice differ if Chanda's registration had expired before the transactions were entered into, although Chanda was unaware of this?

4. Last week Percy Bogus entered Mweene's jewellery shop and announced himself to be "Brian Wizz the well known football star." Although Mweene had only a vague idea of what Wizz looked like, he had heard of him and was delighted at the thought of a celebrity making a purchase in his shop. Bogus selected a number of jewellery items and Mweene allowed him to pay by cheque in the name of Wizz, and to take them away. Mweene had asked for proof of identity and was shown a drivers licence in Wizz's name.

Immediately on leaving Mweene's shop with the jewellery, Bogus sold it to Henry, a dealer in second hand jewellery. Henry had no reason to suspect that Bogus had acquired the jewellery improperly.

Mweene has now learnt that the bank has declined to accept the cheque and that it was not Brian Wizz who came to his shop. Bogus has disappeared. Mweene wishes to recover the jewellery from Henry. Advise Mweene.

5. Sally agrees to allow her share of the matrimonial home to be used as security for a loan from the bank to her husband Jerry's business. Jerry's business fails and the bank wishes to repossess the matrimonial home. Sally now says that she only agreed to provide security for the loan after pressure from her husband. The bank had advised Jerry that he would not get the loan unless Sally agreed to allow her share of the matrimonial home to be used as security for the loan.

Discuss in the light of recent case law.

(b) In *Pau on v Lau Yiu Long* [1980] Lord Scarman spoke of the ‘coersion of the will so as to vitiate consent’ whereas in *Barton v Armstrong* [1975] Lord Wilberforce stated that “duress in the English law of contract deflects without destroying, the will of one of the contraction parties”. By reference to case-law on economic duress analyse and illustrate these viewpoints and consider which most accurately reflects the approach favoured by the judges.

“Contractual damages are meant to put the plaintiff in the same position, so far as money can, as if the obligations concerned had been faithfully carried out. This is an easy assertion to make; the difficult part is applying this principle to the facts.”

Evaluate and illustrate this statement with reference to decided cases.

Bill works from home as a freelance editor. Work is sometimes slow and he decides it would be fun to extend the family home to create a mini gym for him to use. In order to get the finance to do this Bill decides that he needs to increase his existing mortgage with the National Building Society (NBS). He arranges to meet the manager, John, who is an old school friend. Over a pint at the local pub, John advises Bill that an increased mortgage will only be possible if he takes out the NBS Extension Policy but that it will require Bill’s wife, Freda, to agree to the policy since it is in effect a new mortgage. Bill says “I am sure I can persuade Freda to agree, I am clever at that sort of thing.” The following day Bill gets Freda to sign the form on the pretext that it is security for an existing overdraft relating to his business. Freda does not read the form and therefore does not see a statement encouraging signatories to the policy to obtain independent legal advice. Bill takes Freda away for a three week summer holiday during which time the work is almost completed and it is clear the ‘extension’ is a purpose-built gym. Since Bill has not had any work for two months he has fallen behind with payments.

Advise the parties.

**THE UNIVERSITY OF ZAMBIA
SECOND SEMESTER EXAMINATIONS**

2005 ACADEMIC YEAR

DECEMBER 2005

L 232

LAW OF TORTS

TIME: THREE [PLUS 5 MINUTES TO READ THE QUESTION PAPER]

INSTRUCTIONS:

THERE ARE SEVEN QUESTIONS IN THIS PAPER.

ANSWER ANY THREE QUESTIONS. QUESTION ONE IS COMPULSORY AND CARRIES 18 MARKS. THE OTHER THREE QUESTIONS CARRY 14 MARKS EACH. BOOKS, STATUTES AND OTHER DOCUMENTS CONTAINING TORTS MATERIAL ARE NOT ALLOWED IN THE EXAMINATION ROOM

QUESTION ONE (A compulsory question)

The brief facts of the celebrated landmark case of Overseas Tankship (U.K) Ltd. V. Morts Dock and Engineering Co. (1961) A.C 388 (Wagon Mound No.1), in the tort of negligence, were as follows:

The defendants had discharged oil into Sydney Harbour (Australia) from their ship. The wind and tide carried the oil beneath the plaintiffs wharf where welding operations were being carried on by the plaintiffs employees. The plaintiffs welding works manager temporarily stopped the welding work, but later continued with it after he was advised that molten sparks from the welding works would not cause the fuel oil to burn on the surface of the harbour water in the open air.

As the welding was going on, some molten metal set on fire some waste mater floating in the oil on the surface of the water, and the fire damaged the Plaintiff's wharf. Apart from

the fire damage to the wharf, the oil also inhibited or endangered the use of the plaintiff's slipways that were between the water and the land.

This case involved the concepts of '**foreseeability**', '**causation in law**' **causation in fact**' and '**remoteness of damage**'

1. (a) Which type of damage suffered by the plaintiff did the court say was reasonably foreseeable?
 - (b) Which damage did the court say was unforeseeable and therefore remote?
 - (c) Which damage was said to be a result of causation in law?
 - (d) Which damage was said to be a result of causation in fact?
2. When you compare the facts of Wagon Mound (No.1) of 1961 and those of Wagon Mound (No.2) of 1967,
 - (a) What did the court in the 1967 case say on the type of foreseeable damage?
 - (b) What did this 1967 Wagon Mound case say on the risk of fire on an oily water surface?

NOTE: Each of the foregoing six subsections of this question carries (3) marks, making a total of 18 marks.

QUESTION TWO

Barnabas Simute and Jones Samabai are traders at the Lusaka Cross-boarder market, and their stalls are contiguous. One Saturday morning the two men had a prolonged altercation, in which Barnabas Simute called Jones Samabai a '**twit and naïve buffon**'. Samabai was riled by this comment, to which he retorted with the following remarks.

“I do not argue with incorrigible cheap shoplifters like you. It is also well known in the whole of Lusaka that you are in the habit of forcibly deflowering virgin imbeciles”. The heated argument between the two traders took place in the presence of and was heard by so many other traders, shoppers and passers by. A journalist who writes for a bi-weekly Lusaka tabloid known as **‘The Lusaka Investigator’** also witnessed the altercation and filed an article to his newspaper about the incident. Upon reading the article in ‘The Lusaka Investigator’ Barnabas was devastated with mortification and did not report for work for one week. He now intends to file an action in some tort against Samabi, the reporter and proprietors of **“The Lusaka Investigator.”**

- (a) Comment on whether the remarks made by both men constitute any kind of tort. If you think that only the remarks made by one of them amount to a tort, state which words amount to the tort and give your reasons. You should also state the name of the tort and define it.
- (b) ‘The Lusaka Investigator’ Proprietors have asked you to be their lawyer in this matter and intend to advance some defence to the tort. What defence if any would you advise them to put up? Explain the defence you have named if any, which you think is available to them.

QUESTION THREE

A long the banks of the Lake Kariba, a number of tourist lodges have been constructed, both on the Zimbabwean side, on the South-bank of the lake and on the north-bank on the Zambian side of the lake. One of these lodges on the Zambian side is owned by Frederico Hapunda. In the year 2000, the Siavonga District Council, on the Zambian side of the lake, introduced the Kafue weed onto the surface of the Lake to create an evergreen cover along the shore as a decoration. In the last five years, the weed has covered the entrances to all the lodges. This development has created a difficulty for both canoes and motorized boats in reaching the lodge harbours.

As a consequence, all the lodges have experienced a substantial loss of clientele. In order to restore the state of his lodge-harbour to the unimpended pre-2000 position, Hapunda has spent several millions of Kwacha each year, since 2001, in dredging the harbour and scooping out the weed. He is now contemplating to take legal action against the Siavonga District Council.

- (a) What tort, if any, has Siavonga District Council committed? If you think any tort has been committed, define or describe it, and state the two divisions of the tort you have mentioned.
- (b) If Hapunda retains you as high legal counsel in this matter, what would be your advice to him? Does he qualify to sue in this type of tort?
- (c) Cite one decided case whose facts were similar to the facts in the Siavonga case.

QUESTION FOUR

Anne Zulu had just escorted her little five-year old son to School. Two minutes after she turned away to return home, she saw her son being run down by a school bus, breaking both legs of the little boy. When Anne saw these injuries, she passed out and suffered from semi-permanent disorder.

- (a) In what branch of negligence can Anne bring an action for damages? Define this branch of negligence.
- (b) Cite one relevant decided case to support your answer and state the court's decision in the case that you have cited.

QUESTION FIVE

George Andrew is the owner of a restaurant whose electrical system is defective. He has no idea about electricity and cannot, therefore, tell any defects in the electrical system of his restaurant. He asked Patson Phiri, a renowned expert electrician in the neighbourhood to repair the defective electrical system at a fee. In the course of repairing

the system, an explosion occurred, which caused a conflagration that consumed Andrew's house and two other houses in the neighbourhood.

- (a) To what extent, if any, is Andrew liable to his two neighbours whose houses were destroyed by the fire?
- (b) Reproduce or restate the common duty of care, which an occupier of premises owes to his visitors. You are asked to reproduce it verbatim as it is in section 2(2) of the Occupiers Liability Act, 1957.

QUESTION SIX

Machipisa Zulu was riding a motorcycle at a fast speed of 110 kilometres per hour, exceeding the permitted speed limit of 65 kilometres per hour on the particular stretch of the Lusaka-Kabwe Road, also known as the Great North Road. It was a bright sunny Monday midday in February 2004. The sides of the road were over-grown with tall grass, which could not enable any motorist to see what was behind the bends of the road. At one corner of the road a broken down truck, laden with fifty-five bags of charcoal was left. Machipisa was not aware of the presence of this broken down truck at the bend. When he suddenly saw it as he negotiated the bend, it was too late for him to avoid smashing into it, due to the high speed at which he was traveling. Both at the back and in front of the stationary truck, there were no yellow triangles or other warning signs to advise other motorists to approach the bend cautiously. After being tossed of the motorcycle as a result of the collision with the truck, Zulu broke some bones in his neck and sustained many lacerations and shock.

He intends to sue the driver and owner of the lorry in some tort. In what tort do you think he is likely to sue? What defence, if any, would the two 'defendants-to-be' have against Zulu? Buttress your answer with one relevant authority.

QUESTION 7

Listed below are five general defences in the law of torts. Pick two of them, which you think may be raised by a defendant who is sued in the tort of negligence. Make brief notes on each of the two defences you have chosen. Cite one decided case for each defence.

THE LIST

1. Necessity
2. Abatement
3. Act of God
4. Justification
5. Self-defence

END OF EXAM

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

2005 ACADEMIC YEAR, SECOND SEMESTER EXAMINATIONS

L242 – CRIMINAL LAW II: SPECIFIC OFFENCES

INSTRUCTIONS

- TIME** : **THREE (3) HOURS. Plus Five (5) minutes to read through the paper.**
- QUESTIONS** : **Answer Question One (1) and any three (3) other Questions, i.e. [1 + 3] = 4 Questions. You must clearly indicate, at appropriate place(s), the number and sub-numbers of the Question attempted.**

You must support your answers, citing relevant cases and provisions of the Penal Code.

Document allowed into Exam Hall: Penal Code, cap 87

QUESTION ONE (COMPULSORY [21 MARKS])

The People v. Lungisaniwiso (2005): The facts of this case were that the prisoner X had hired his car to Z for one week. A day later Z had a traffic accident owing to careless driving in which the right-hand head-light was damaged. Seven days after the accident Z returned the car to the prisoner X, but without repairing the headlight which was estimated at about K2,350,000. He paid for the hiring charge, but refused to pay compensation for the damaged headlight. Later in the afternoon, the prisoner X entered the office of Z and openly took Nokia 1200 cell-phone (handset) valued at K3,220,000. belonging to Z as a security, stating an intention to return it when the claim, regarding the damage headlight, was settled. The defendant was convicted of theft, and sentenced for four (4) years imprisonment with hard labour. The prisoner X appealed to the High Court against both conviction and sentence.

You are required to answer the following two (2) questions. [Be sure to cite at least two decided cases].

- (a) What were the reasons, or evidence advanced by the prosecution on the basis of which the trial court convicted the defendant for theft?

- (b) Would it make any sense for the High Court to allow the appeal: quash the conviction and set the sentence aside?

QUESTION TWO [13 MARKS]

'Most people, especially urban bourgeoisie believe that they know what rape is, but their knowledge is derived from social definition of what rape is, and, even this is distorted, as it is not a legal definition. For them 'true' rape involves the use of weapon, the infliction of grave harm and occurs in a lonely place late at night. The 'true' rape victim is not a virgin, but someone who is promiscuous...and the rapist is a stranger or a psychopath, etc. whatever descriptions or definitions one may attach to rape, it is always and essentially a crime of violence.

Do you disagree? [Cite two decided cases].

QUESTION THREE [13 MARKS]

Section 4 of the Criminal Code (CC) of Riverland provides:

'Whosoever shall be convicted on indictment of any assault occasioning actual bodily harm shall be liable to imprisonment for any term not exceeding five years.'

You are required to:

- (a) List, without elaboration, all the elements of the offence of an 'assault occasioning actual bodily harm.'
- (b) Explain whether or not the expression 'actual bodily harm' limits harm to harm to the 'skin, flesh and bones' of the victim. [Cite two decided cases].

QUESTION FOUR [13 MARKS]

Briefly distinguish between the offences of misprision of treason and treason felony under the Criminal Law of Zambia [Give two examples].

QUESTION FIVE [13 MARKS]

In R.v. Olugboja (1982) QB 320, the court employed a number of expressions in order to establish whether or not Olugboja really consented to the sexual intercourse as claimed by the defendant. These include: 'constrained consent', 'not free agreement', 'pressured choice,' 'not a real consent,' 'reluctant acquiescence,' 'submission,' etc.

- (a) Identity two of the preceding expressions that nearly describe the state of mind of the victim in Olugboja's case at the time of sexual intercourse.

- (b) Describe one circumstance, in the light of the decision in *Olugboja*, which raises the presumption about the absence of consent – in cases involving rape [Be sure to support your contention].

QUESTION SIX [13 MARKS]

In discussing murder Prof. Clarkson and his co-author-Keating contend that 'In such cases the defendant has acted with a degree of control and deliberation that embraces his responsibility for the outcome of his actions and affects our judgment of him as a moral agent. He is not simply showing indifference to the value of human life; he is actually taking positive and purposeful steps towards the ending of the life of another.'

To what extent does the above fit squarely with the decision of the court in *Lungu v. The People* (1972) ZR 95? [Cite two decided cases].

QUESTION SEVEN [13 MARKS]

Section 309 of the Penal Code provides:

Any person who, by any false pretence and with intent to defraud, obtains from any person....or induces any other to deliver to any person....is guilty of misdemeanour.....

Sections 309 through 317 deal with offences involving false pretences, and there are certain elements shared by most of these offences.

- (a) List at least three of these elements.
- (b) Choose one of the elements you have identified and briefly explain it [make reference to two decided cases].

END OF EXAMINATION

**THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW**

University Second Semester Examinations – December 2005

L252 Constitutional Law II

Instructions

- 1. TIME: THREE (3) Hours (Plus 5 Minutes to read the question paper)**
 - 2. ANSWER: QUESTION ONE AND ANY OTHER THREE QUESTIONS**
 - 3. You may consult any unmarked/clean statutes**
-

QUESTION 1

The issue of the best mode of adopting the Constitution has gripped the nation for some time now. The government has firmly rejected a recommendation of the Mung'omba Constitutional Review Commission that the new constitution should be adopted by a Constituent Assembly. The OASIS Forum, which is a grouping of the three main church mother bodies, the Law Association of Zambia and NGOCC (Non-Governmental Organisations Coordinating Committee) has been leading the struggle for a people-driven Constitution making process. The OASIS Forum requests two backbenchers to present a motion in the National Assembly requesting the Assembly to suspend some standing orders to enable the Assembly debate the issue of setting up a Constituent Assembly. The motion is defeated by 64 votes to 54 as all the MMD MPs, nominated MPs and Ministers from the opposition vote against it.

The OASIS Forum announces that it will decampaign all the MPs who voted against the motion. The names and pictures of the MPs concerned are then published in the **Post Newspaper**.

Responding to a point of order raised by Mwale, a Minister, the Speaker rules that he has found a *prima facie* case of gross contempt of the House against the OASIS forum and the **Post Newspaper** and refers the matter to the House Committee on Privileges. The Committee finds the five Executive Committee members of the OASIS Forum and the Editor in Chief of **The Post** guilty of gross contempt of the House for publishing the advertisement in **The Post**, and sentences the six defendants to one-month imprisonment after affording them a hearing.

Choolwe, an opposition MP, denounces this decision. In a speech to UNZA students in NELT, Choolwe, describes the National Assembly as little more than a rubber-stamp. He says that MMD MPs lack independence and cannot go against the President's wishes. Many of the MPs are dependent on the President's goodwill for jobs and other favours. He also says the practice of the President appointing opposition MPs as Ministers or Deputy Ministers is undemocratic and undermines the National Assembly's independence. Finally, Choolwe disassociates himself from the decision to imprison the OASIS Executive Committee and the Editor in Chief of **The Post**, which he describes as undemocratic.

The National Assembly reacts by expelling Choolwe from the House for gross indiscipline and violating the doctrine of collective responsibility.

The OASIS Forum, **The Post** and Choolwe approach you for legal advice. Advise them.

[40 Marks]

QUESTION 2

A new reform-minded government has just taken office in Zambia after Presidential and Parliamentary Elections. One of the major areas identified for reform is human rights as this subject impacts on all areas of human endeavour. The Zambian Bill of Rights has shown remarkable continuity since 1963 despite the many political changes that have taken place. You have been hired as a consultant to advise on what needs to be done to strengthen the Bill of Rights.

Write a memorandum outlining the shortcomings of the Bill of Rights and the Reforms required, drawing on experiences from Zambia, other countries and international law.

[20 Marks]

QUESTION 3

The Red Party, an opposition party, plans to hold a mass rally at Kitwe Freedom Park. The purpose of the rally is to drum up support for its Presidential candidate, a fiery critic of the government. The rally is scheduled for the 12th of November. On 2nd November, the Party gives notice to the police of its intention to hold the rally. On 9th November the Police Commander phones the Red Party Secretary General to inform him that the rally cannot take place because he has received information that the Red Presidential candidate, Mbombo, will insult the

President. Furthermore, the President will be visiting his farm in Ndola Rural on that date. When the Red Party asks if the rally could be shifted to the 19th of November, the Police Commander says the matter is closed and is not open to negotiation.

The Red Party proceeds to hold its rally on 12th November, which is attended by thousands of people. The rally is peaceful until the police arrive and declare that the rally is illegal and everybody should disperse. The police then start beating up those resisting the order. They arrest 100 people, including Mbombo and the Secretary General of the Red Party, and charge them with unlawful assembly. The accused are locked up and only released after three days.

The Red Party hires you as its lawyer. Advise.

[20 Marks]

QUESTION 4

In a system of separation of powers the legislature is required to provide checks and balances to the executive branch. Under the Constitution and the Law in Zambia, what powers does the legislature have over the executive? What factors, if any, affect the effectiveness of the legislature in checking executive power? How did the Mwanakatwe Commission propose to enhance the ability of the Legislature to check executive power?

[20 Marks]

QUESTION 5

The Vanguard Newspaper, which is a privately owned newspaper, is very popular in Zambia. It has the reputation of digging deeper and exposing scandals in government. In its edition of the 7th of August 2005 it publishes a story revealing that Parliament has approved payment of gratuity to the President to the tune of K650, 000,000 and that his salary has been doubled. In its editorial **The Vanguard** condemns the award of gratuity and describes the President as 'greedy', selfish and lacking compassion for the people. The Newspaper argues that the President is already entitled to a life-long pension, a house, vehicles and staff are at state expense after leaving office. The President, using his power under *the Penal Code*, bans the edition in question and orders confiscation of all the copies. The editor of **The Vanguard** is arrested and charged with defamation of the President.

The Vanguard hires you as its lawyer. Discuss the legal issues arising from the case, supporting your answer with appropriate authorities.

[20 Marks]

QUESTION 6

The provision of bail is a prime element in the criminal justice system. From the principle that an accused is presumed innocent until proven guilty by a court of law flows the principle that pre-trial detention should be kept to the minimum or should not be used at all.

With the aid of appropriate legislation and cases discuss critically the current law on bail in Zambia.

[20 Marks]

QUESTION 7

It is axiomatic that human rights come under serious threat during a state of emergency. Therefore, emergency powers must be considered a last resort.

With the aid of appropriate authorities discuss critically the provisions relating to emergency declarations in Zambia, pointing out any safeguards against abuse and their effectiveness.

[Note: You are not required to discuss Article 26 of the Constitution]

[20 Marks]

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

**THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW**

SECOND SEMESTER EXAMINATION: 21ST DECEMBER 2005

L 262 – FAMILY LAW

INSTRUCTIONS

- 1. STATUTES ALLOWED**
 - 2. ANSWER QUESTION 1 AND ANY 3 OTHERS**
 - 3. ALL QUESTIONS CARRY 15 MARKS EACH UNLESS OTHERWISE SPECIFICALLY STATED.**
 - 4. TIME: 3 HOURS**
-

QUESTION 1

Wilful refusal to consummate a marriage by a party thereto is one of the grounds upon which a marriage may be annulled. Discuss.

QUESTION 2

Write short notes (with the help of case law) to explain how the following principles are applied in family law:

- (a) Lex loci celebrationis
- (b) Lex domicilii.

QUESTION 3

Seliya, a Zambian girl aged 17, and Jacobus a Dutch expatriate teacher at Samba Maria School in Luapula Province, are in love and wish to know whether they can marry under Seliya's customary law or cohabit as partners until Jacobus returns to the Netherlands where non-marital cohabitation is registrable.

Advise them, basing your answer on the laws of marriage in Zambia and decided cases.

QUESTION 4

Write an essay and discuss the law, if any, governing domestic violence and “ouster” orders.

QUESTION 5

Fwambo and Happy have recently been divorced. They are now fighting over custody of their two children, Mary (F) aged 4 and Juma (M) aged 3. Their respective advocates have advised them that courts are not concerned with “whether the father’s claim is superior to the mother’s or vice versa”, and that guilt or innocence is rarely a determinant as to custody of children unless the conduct of one of them is very grave as in *Re L (infants)* 1962 3 All ER 1.

Discuss what the court will take into account in considering custody of the children.

QUESTION 6

In the case of Charity Wanjiku Oparaocha and Winfrida Murambiwa (2004) the Supreme Court of Zambia held that a mistress was a dependant because the late Dr. Christopher Ozobia Oparaocha paid for her flat and maintained her.

Write a legal opinion on this judgement, basing your answer on the law and decided cases.

QUESTION 7

Write a legal opinion on “Marriage interference” and the efficacy of this phenomenon in family law in Zambia.

END OF EXAMINATION

**THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW**

**2005 Academic Year- second Semester Examinations
L.322 -LAND LAW AND CUSTOMARY SYSTEMS OF TENURE**

TIME: THREE HOURS

**INSTRUCTIONS: NO STATUTED ALLOWED
ANSWER QUESTION ONE AND ANY OTHER
THREE QUESTIONS**

- I (a) "The modern tendency is to enact legislation designed to protect tenants against their landlords. At Common law, the matter was in general one of contract: provided a landlord did not contravene the terms of his bargain he might at will evict his tenant, or under the threat of eviction secure his agreement to pay an increased rent of what ever amount he could exact."

D.J. Hayton, Megary's Manual of The Law of Real property, 6th edition page 566.

Critically discuss the above statement in view of the state of the Law in Zambia.

(20 MARKS)

- (b) The term "development" is central to the power of planning authorities to control the use and development of land in Zambia

Discuss

(20 MARKS)

2. You are a research assistant to professor Ikashana Imikendu. Professor Imikendu has requested you to contribute a chapter in his book (land Law in Zambia) entitled "The President's Powers To Alienate Land under Customary Holding in Zambia."

Proceed.

(20 MARKS)

3. You are an advocate in the firm of Messrs Lincoln Chambers. This afternoon your old client Mr. Chindindindi has called on you. Mr.

Chindindindi has informed you that he in 2004 entered into a three year Commercial lease agreement with one Sakubita Samudengu. The lease agreement was in relation to Mr. Samudengu's Plot 900 Malambo Road, Lusaka. The tenancy agreement commenced on 1st January 2004 at an annual rental of K20 million. In the course of this month the landlord, Mr. Samudengu, sold the premises to one Ibrahim Patel. After purchasing the property, Mr. Patel served a notice to quit on Mr. Chindindindi on 1st November 2005 asking your client to vacate the premises on 31st March 2006.

Your client has informed you that he would not want to vacate the premises and has asked you to apply for a new tenancy. A perusal of the notice to quit indicates that the landlord would oppose an application for a new tenancy on the ground that he is intending to occupy the demised premises for purposes of carrying a business therein.

Advise Mr. Chindindindi on the issues he has raised and on any other matter incidental thereto.

(20 MARKS)

4(a) Critically discuss the basis of the British South Africa Company's claim to land in Northern Rhodesia.

(13 MARKS)

(b) Discuss the decision in *Zimco properties Vs Dinalar Randie Enterprises* (1988/89) ZR 114

(7 MARKS)

5(a) Discuss the Law Governing the informal land Tenure system in Zambia.

(14 MARKS)

(b) Discuss the Law relating to caveats in Zambia

(6 MARKS)

6(a) Discuss the Nature of Interests under customary Holding in Zambia

(10 MARKS)

(b) One of the most controversial principles in the Lands Act is the vestment clause. Discuss the origins of the vestment clause and the controversies it has raised.

(10 MARKS)

7. Write short notes on the following

- (a) Procedures to follow to enable one obtain a duplicate certificate of Title
- (b) Registrar's powers To Rectify the Register
- (c) The President's powers of eminent domain.
- (d) Modes of acquisition of land under Customary Holding.

END OF EXAM

THE UNIVERSITY OF ZAMBIA
THE SCHOOL OF LAW

SECOND SEMESTER – EXAMINATION DECEMBER 2005

L342: ADMINISTRATIVE LAW

INSTRUCTIONS:

1. ANSWER QUESTION ONE (1) AND ANY OTHER THREE QUESTIONS
 2. YOU HAVE FIVE MINUTES TO READ THE QUESTIONS
 3. TIME: THREE (3) HOURS.
-

QUESTION ONE

On 1st December 2005, the State House Press Secretary issued a statement to the media to the effect that the Chief Executive of the Food Reserve Agency (FRA) had been dismissed from his employment with immediate effect. The reasons given were among others the current shortage of the maize. The statement disclosed that the FRA had failed to collect maize from the rural areas, which was now being destroyed by the rains.

The Food Reserve Agency is created pursuant to the provisions of the Food Reserve Agency Act. Section 3 of the Act provides:

- 3. (1)** There is hereby established the Food Reserve Agency, which shall be a body corporate with perpetual succession and a common seal, capable of suing and of being sued in its corporate name, and shall, subject to the provisions of this Act, have power to do all such acts and things as a body corporate may by law do or perform.
- (2)** The provisions of the Schedule shall apply to the Agency.

The Schedule referred to in Section 3(2) of the Act provides for the administration of the Agency. Paragraph 8 of the Schedule provides:

- 8. (1)** The Agency shall, on such terms and conditions as it may determine, appoint a Director who shall be the Chief Executive Officer of the Agency, and who shall be responsible for the administration of the Agency and the implementation of the decisions of the Agency.
- (2)** There shall be a Secretary to the Agency who shall be appointed on such terms and conditions as the Agency may determine.
- (3)** The Secretary shall be responsible for the day-to-day affairs of the Agency under the general supervision of the Director.

(4) The Agency may appoint on such terms and conditions as it may determine, such other staff as it considers necessary for the performance of its functions under this Act.

(5) Notwithstanding any other law, the Director or the employees of the Agency shall not be considered as public officers.

In making the decision, the statement revealed the President was exercising his powers under Article 44 of the Constitution, which reads:

44. (1) As the Head of State, the President shall perform with dignity and leadership all acts necessary or expedient for, or reasonably incidental to the discharge of the executive functions of Government subject to the overriding terms of this Constitution and the Laws of Zambia which he is constitutionally obliged to protect, administer and execute.

(2) Without prejudice to the generality of clause (1), the President may preside over meetings of the Cabinet and shall have the power, subject to this Constitution to-

- (a) dissolve the National Assembly as provided in Article 88;
- (b) accredit, receive and recognise ambassadors, and to appoint ambassadors, plenipotentiaries, diplomatic representatives and consuls;
- (c) pardon or reprieve offenders, either unconditionally or subject to such conditions as he may consider fit;
- (d) negotiate and sign international agreements and delegate the power to do so;
- (e) establish and dissolve such Government Ministries and departments subject to the approval of the National Assembly;
- (f) confer such honours as he considers appropriate on citizens, residents and friends of Zambia in consultation with interested and relevant persons and institutions; and
- (g) appoint such persons as are required by this Constitution or any other law to be appointed by him.

(3) Subject to the provisions of this Constitution dealing with assent to laws passed by Parliament and the promulgation and publication of such laws in the Gazette, the President shall have power to-

- (a) sign and promulgate any proclamation which by law he is entitled to proclaim as President; and
- (b) initiate, in so far as he considers it necessary and expedient, laws for submission and consideration by the National Assembly.

(4) When any appointment to an office to be made by the President is expressed by any provision of this Constitution to be subject to ratification by the National Assembly-

- (a) the National Assembly shall not unreasonably refuse or delay such ratification but the question whether the National Assembly has so acted unreasonably shall not be enquired into by any court;
- (b) if such ratification is refused the President may appoint another person to the office in question and shall submit the appointment for ratification; or

(c) if the National Assembly refuses to ratify the second appointment it shall be invited to ratify an appointment for the third time but the third appointment shall take effect irrespective of whether such ratification is refused, or is delayed for a period of more than fourteen days.

(5) Subject to the other provisions of this Constitution and any other law, any person appointed by the President under this Constitution or that other law may be removed by the President.

(6) In the exercise of any functions conferred upon him under this Article, the President shall, unless he otherwise obliges, act in his own deliberate judgement and shall not be obliged to follow the advice tendered by any other person or authority.

(7) Nothing in this Article shall prevent Parliament from conferring functions on persons or authorities other than the President.

The statement also revealed that the provisions of Article 33 were also taken into account. The Article reads:

33. (1) There shall be a President of the Republic of Zambia who shall be the Head of State and of the Government and the Commander-in-Chief of the Defence Force.

(2) The executive power of the Republic of Zambia shall vest in the President and, subject to the other provisions of this Constitution, shall be exercised by him either directly or through officers subordinate to him.

On the same day the Chief Executive has retained you and wants your advice on his legal rights in the circumstances of the case. He wants to know the legality of the President's action and whether there is anything that can be done to protect his position. He has a contract with the Agency, which expires in December 2008. Please advise him.

QUESTION NUMBER TWO (2)

Mr. Van Der Merwe is a South African national who came to Zambia in January of 2005 to explore the possibility of doing business. He applied and was given a temporary permit for a period of three months, which was renewed on a number of occasions. The last permit he held was to expire on 31st October 2005. On 1st October 2005, he left Zambia to go and see his family back in South Africa.

Whilst in South Africa he learns that the Minister of Home Affairs had issued a warrant for his deportation, which was published in the Government Gazette since he could not

be located within Zambia. In making the decision the Minister relied on the provisions of Section 26(2) of the Immigration and Deportation Act, which provides:

(2) Any person who in the opinion of the Minister is by his presence or his conduct likely to be a danger to peace and good order in Zambia may be deported from Zambia pursuant to a warrant under the hand of the Minister.

You are the presiding Judge having granted leave to apply for judicial review to Mr. Van Der Merwe.

In his affidavit in opposition to the application for judicial review, the Minister deposed that the decision to deport the Applicant was in line with the provisions of Section 26(2) of the Immigration and Deportation Act and was based on intelligence provided to him by various law enforcement agencies. He went on to say, he was not under legal obligation to disclose the nature of the intelligence and the specific sources of the information. He maintained that the Court was not suited to evaluate the intelligence.

The Attorney General in his submission also reinforced the Minister's position by saying that if the Court was availed the details of the information, which formed the basis of the decision there is a danger of the Court substituting its evaluation of the intelligence with that of the Minister, which was not the essence of judicial review.

You are expected to make a ruling on this particular contention by the Minister. Please state your position as a Judge.

QUESTION THREE (3)

MULTIPLE CHOICE QUESTION: PLEASE INDICATE THE LETTER REPRESENTING YOUR ANSWER IN YOUR ANSWER BOOKLET.

Charles Mwila is a banker by profession who has retired after 35 years of service with one of the banks in England. He has come to Zambia with plans to establish a financial institution. On 25th January 2004 he applied for a licence to pursuant to Section 10 of the Banking and Financial Services Act, which reads:

10. (1) Upon application by any person, the Registrar, in consultation with the Minister, may grant a licence authorising the applicant to conduct any regulated financial service business.
- (2) The application shall be in such form and accompanied by such fees as may be prescribed by regulation.

(3) An appeal shall lie under Chapter VIII against a decision of the Registrar to refuse to grant the application.

After a few weeks Mr. Mwila received a reply from the Registrar advising him that his application had been rejected and was accordingly advised to exercise his right of appeal as provided for in Part VIII of the Banking and Financial Services Act. The said part provides:

CHAPTER VIII APPEALS

111. (1) Where the Registrar or the Bank of Zambia makes any decision against which, as provided by this Act, an appeal lies under this Chapter, the Registrar or the Bank of Zambia as the case may require, shall, by notice in writing-

(a) inform the applicant or other person affected by the decision of the reasons for the decision; and

(b) invite the applicant or person to make such written representations as he wishes within a time limited by the notice.

(2) The decision of the Registrar or of the Bank of Zambia, as the case may be-

(a) does not take effect until the expiry of the time limited by a notice under paragraph (b) of subsection (1) for making representations; and

(b) where representations are made in that time, is further stayed pending expiry of the time limited by this Chapter for lodgement of an appeal to the Minister.

(3) The Registrar or the Bank of Zambia may, on receipt of any representations referred to in paragraph (b) of subsection (1), reaffirm, revoke or vary his or its decision and shall notify the applicant or other person accordingly.

112. (1) If, after receipt of any representations from the applicant or person affected by its decision, the Registrar or the Bank of Zambia reaffirms his or its decision, the applicant or other person (hereinafter called the "appellant") may, within seven days of receipt of the notice reaffirming the decision, notify the Minister that he desires to appeal against the decision.

(2) The decision of the Registrar or of the Bank of Zambia, as the case may be-

(a) does not take effect until the expiry of the period limited by subsection (1) for giving notice of an appeal; and

(b) where a notice of appeal is lodged within that time, is further stayed pending the outcome of the appeal.

113. Within seven days after receipt of a notice of appeal, the Minister shall convene an Appeal Tribunal, consisting of a Chairman who is an advocate of the Court of not less than seven years' standing and two other persons having such qualifications as may be prescribed by regulation in relation to the kind of appeal concerned or, in default of such prescription, as the Minister may consider appropriate.

114. (1) The Appeal Tribunal is to determine the appeal on its merits, having regard to the provisions of this Act and the public interest, and may confirm, vary or quash the decision the subject of the appeal.

(2) The Tribunal may determine its own procedure and is not bound by the rules of evidence, and may inform itself of any matter in such manner as it sees fit.

(3) The Appeal Tribunal shall afford the appellant the right to appear by himself or by counsel or agent.

115. The decision of the Tribunal is final and binding on the parties to the appeal except as to any point of law, and in cases where the appeal is allowed, it is the duty of the Registrar or the Bank of Zambia, as the case may require, to give effect to the decision of the Tribunal.

Charles lodged the appeal and the Minister in turn appointed a Tribunal, which heard the appeal. On 6th December 2005, the Tribunal delivered its ruling confirming the decision of the Registrar. Charles Mwila was unsatisfied he has accordingly retained a lawyer who promptly lodged an application for leave to apply for judicial review of the Registrar's decision refusing to grant him a licence to operate a financial institution. He wants the decision quashed on ground of illegality. He contends that the Registrar in making his decision took into extraneous factors such as Mwila's tribe. You are a Judge of the High Court who has been allocated the case. What is your decision:

- (a) Grant him leave
- (b) Grant him leave and stay the decision of the Registrar
- (c) Grant him leave without staying the decision of the Registrar
- (d) Reject the application for leave
- (e) Reject the application for leave and direct him to commence proceedings against Bank of Zambia by way of writ of summons and apply for a declaration and certiorari.

QUESTION FOUR (4)

Francis Mabonga is a Civil Servant who is occupying a government house, which was up for sale. He made the necessary application to buy the property as a sitting tenant. He later received a response to the effect that his application to buy the house had been rejected in that he had only occupied the said house for a period of six months hence he was not eligible to buy it. The letter went on to say that the property had been offered to Mr. Katamba another civil Servant who had paid for it in full and had been issued a certificate of title to that effect by the Registrar Lands and Deeds Registry.

Mabonga moved the Court for judicial review and prayed for an order of certiorari to quash the decision to sell the house to Katamba, which Order was granted by the Court. Katamba is startled by this development and has come to you advice. Please advise on his legal position in the circumstances of this case.

QUESTION FIVE (5)

The People's Church is a religious organisation registered in Zambia pursuant to the provisions of the Societies Act way back in 1964. On 6th December 2005, the Minister of Home Affairs announced that he had received reports to the effect that the said organisation was involved in Satanism and was with immediate effect proscribed in Zambia.

On 7th December 2005, Bishop Sangulube came to see you as a lawyer for your advice. He is deeply disturbed by this development and he is convinced that these rumours were being spread by his fellow preachers who were jealous of the rapid growth of his congregation and that his organisation was not in any way involved in Satanism.

The relevant provision of the Societies Act reads as follows:

13. (1) The Minister may, in his discretion, cancel at any time the registration of any society effected under the provisions of section seven if he is satisfied that it is expedient so to do on the ground that-
 - (a) the society concerned has, in his opinion, among its objects, or is, in his opinion, likely to pursue, or to be used for, any unlawful purpose or any purpose prejudicial to or incompatible with the peace, welfare or good order in Zambia; or
 - (b) the interests of peace, welfare or good order in Zambia would, in his opinion, be likely to suffer prejudice by reason of the continued registration of such society.

Please advise him.

QUESTION SIX (6)

Joseph Kumhalo is a South African who is studying law at the University of Cape Town. He is on a visit to Zambia. Whilst here he has met you and learnt that you are pursuing a law programme at the University of Zambia and one of the courses you have studied is administrative law. He has informed you that Judicial Review in South Africa is regulated by the Promotion of Administrative Justice Act (PAJA), which he has learnt you had the opportunity to consider during the course of the semester. He is surprised that there is no similar legislation in Zambia. He wants to know the weaknesses, if any, of the law on judicial review in Zambia in comparison to South Africa. Please explain to him.

QUESTION SEVEN (7)

In *Council of the Civil Service Unions and Others vs. Minister of the Civil Service* [1983] All ER 939, Lord Diplock said:

To qualify as a subject for judicial review the decision must have consequences which affect some person (or body of persons) other than the decision-maker, although it may affect him too. It must affect such other person either (a) by altering rights or obligations of that person which are enforceable by or against him in private law or (b) by depriving him of some benefit or advantage which either (i) he has in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there has been communicated to him some rational ground for withdrawing it on which he has been given an opportunity to comment or (ii) he has received assurance from the decision-maker will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn. (I prefer to continue to call the kind of expectation that qualifies a decision for inclusion in class (b) a 'legitimate expectation' rather than a 'reasonable expectation', in order thereby to indicate that it has consequences to which effect will be given in public law, whereas an expectation or hope that some benefit or advantage would continue to be enjoyed, although it might well be entertained by a 'reasonable' man, would not necessarily have such consequences.

Why was it necessary for the Court to provide that the decisions which have the effect described in Class (b) are also subject to judicial review?

----- END OF THE EXAMINATION -----

THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW

2005 ACADEMIC YEAR SECOND SEMESTER
FINAL EXAMINATIONS

L 352 – NATIONAL HUMAN RIGHTS LAW – TUESDAY 6 DECEMBER 2005

TIME: THREE HOURS

INSTRUCTIONS: ATTEMPT ANY FOUR QUESTIONS. NO DOCUMENT OTHER THAN THE ZAMBIAN CONSTITUTION IS ALLOWED. CANDIDATES ARE STRONGLY ADVISED TO WRITE LEGIBLY AND TO BE CLEAR AND CONCISE IN THEIR ANSWERS.

1. **Evaluate**, in the light of practice in Zambia, the **desirability** of emergency powers as formulated in the Zambian constitution and the **effect** of those powers on the enjoyment of human rights.
2. **Assess the contribution**, if any, of (i) the Human Rights Commission, (ii) the Electoral Commission, (iii) the Environmental Council, and, (iv) the Anti-Corruption Commission, to the promotion and protection of human rights in Zambia.
3. Notwithstanding the human rights guaranteed under the Zambian Constitution and international human rights treaties to which Zambia is a party, a number of Zambian statutes contain provisions that appear to offend against human rights norms. **Discuss** any such **four statutes** you have studied, clearly **identifying** the contentious provisions and **demonstrating** the extent to which they are at variance with human rights norms.
4. Critically consider the **status, content, formulation, and relevance** of the Directive Principles of State Policy and the Duties of a Citizen in Part IX of the Zambian Constitution.
5. With the aid of **examples**, clearly **distinguish** between the following concepts under human rights law: (i) limitations, claw backs and derogations; and (ii) monism, dualism and harmonization.
6. Briefly assess the **role and performance** of Zambian courts in the protection of human rights, illustrating your answer with decided cases.

*****END OF EXAMINATIONS*****

Prof. C Anyangwe

THE UNIVERSITY OF ZAMBIA
SECOND SEMESTER EXAMINATIONS – 21ST DECEMBER 2005

L 382

LABOUR LAW

TIME: Three Hours

ANSWER: QUESTION ONE and any three other questions

Candidates may consult any statutes relating to industrial relations

1. On 6th June 2003, Jason Sangwapo, a mature age student, graduated from the University of Zambia at a colourful ceremony with a degree in social work (with credit). Since then he had been among the hundreds of UNZA graduates roaming the streets of Ndola looking for a job. On 20th April 2005, Sangwapo finally found a job at a new bank in Ndola called Chemical Bank, as a teller. There he met and fell in love with Inonge who had been working at the same bank since May 2004 as an Accountant. They got married on 18th December 2005. On 19th December 2005, management informed the Sangwapos that since it was Chemical Bank policy that no two spouses could work at Chemical Bank, one of them had to go. Since Jason had joined later than Inonge he was given three months salary in lieu of notice and his job terminated with effect from today the 21st of December 2005. Jason fainted briefly.

After regaining composure, he has now come to you this afternoon for legal advice. Advise him citing relevant authorities.

2. Celtel Phiri has been in employment as a cashier at Fashion Boutique in Cairo Road since June 2004. One fateful day a prisons officer from Chimbokaila prison came to the shop and said to Phiri: *“you see I told you, there is life after prison. I am happy to see that that you are fitting back in society very well and becoming a useful citizen again, please keep it up”*. The shop owner who had overheard the conversation was shaken and he could see that Celtel was uncomfortable. After the Prisons Officer left the shop owner interrogated

Celtel who then confessed that that he had spent fourteen years in prison for aggravated robbery. Celtel was promptly sacked on the spot.

Celtel has made an appointment to see you after the labour law examination. He wishes to be advised on the legal issues involved in this matter.

Preamble Maningi has been an electrician with Chabashani Mines in Kalulushi for the last two years. The mine is owned by investors from Asia. Maningi and his fellow workers who are about 150 altogether feel that they are being exploited by the mine owners and have attributed this to the absence of a union.

Preamble has been very active in holding clandestine meetings with his fellow employees with a view to forming a trade union. One of their colleagues, by the name of Makobo has spilled the beans to management who summoned Preamble and warned him that they would not tolerate such activities in their mine.

Preamble ignored the warning and went on to organize a meeting at lunch hour on 1st December 2005.

On 10th December 2005, Preamble received a letter of summary dismissal from the Director of Administration. No reasons were given.

He has approached you for your legal advice on the legal issues involved in this matter.

Dr Esnart Chitalu was employed as heart surgeon at Chamba valley hospital in Lusaka owned by two brothers from Lebanon. On 1st October 2005 she carried out a heart transplant on a leading opposition party leader at the hospital. The operation was such a resounding success that the politician is now enjoying very good health. The politician was so grateful that he visited Esnart at her apartment in Makeni and gave her US \$ 5,000 just to say thank you and she used the money to buy herself a BMW. News has reached the owners of the hospital and they

have demanded that she surrenders the \$ 5,000 to the hospital. Esnart has refused. At 09:00 hours this morning she received a letter of summary dismissal. Kindly advise her.

A Lecturer in the School of Agriculture at the University of Zambia, Dr Talktime Lungu, has come up with a formula for producing chicken feed. Using that feed, day old chicks grow so fast that after three weeks they are ready for eating. The University has been realizing quite a reasonable amount of money from selling the said chicken feed to the public. It is a well known fact that UNZA lecturers are grossly underpaid. In September Dr Lungu resigned from UNZA to set up a production plant at his servant's quotas and began also selling the chicken feed to the public at a slightly cheaper price than the University. By November no one was going to the University to buy the feed as everyone was flocking to Lungu's house to buy the feed.

The management at UNZA has heard about this and they wish to take action to stop Lungu from producing the feed. Advise the UNZA management.

Nkumenkume Siachitema was employed as a driver for Pamodzi Hotel. On the morning of 15th December 2005 he was instructed to take some hotel guests to the airport. On his way back he found a nasty accident by the entrance to the University of Zambia. Two students had been knocked down by a drunk driver. Fortunately they were still alive but they had suffered multiple broken bones and needed to be rushed to hospital. Being a good Samaritan Nkumenkume decided to help. As he was speeding to the UTH, he smashed into another vehicle at Addis Ababa traffic lights causing extensive damage. The damage caused amounted to \$5 million.

A few hours later Nkumenkume received a letter dismissing him summarily and his terminal benefits were withheld so as to help pay for the damage that he had caused. Kindly advise on the legal issues arising in this matter.

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A few hours later Nkumenkume received a letter dismissing him summarily and all his terminal benefits were withheld so as to help pay for the damage that he had caused. Kindly advise on the legal issues arising in this matter.

THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW

SECOND SEMESTER EXAMINATION PAPER, 13th DECEMBER, 2005 ON

L412: JURISPRUDENCE – II
(LAW AND SOCIETY)

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

INSTRUCTIONS

Statutes are allowed in the examination room.

There are four Parts to this Paper. Answer question **ONE** which is compulsory and one question from each Section.

SECTION A

QUESTION ONE

Article 23 of the Constitution of Zambia as materially relevant provides:

23(1) Subject to clauses (4), (5) and (7), a law shall not make any provision either of itself or in its effect.

(4) Clause (1) shall not apply to any law so far as that law makes provision –

(c) with respect to adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law;

(d) for the application in the case of members of a particular race or tribe, of customary law with respect to any matter to the exclusion of any law with respect to that matter which is applicable in the case of other persons.

Discuss the legality, fairness and justice of these provisions

THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW

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Discuss the legality, fairness and justice of these provisions

THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW

SECOND SEMESTER EXAMINATION PAPER, 13th DECEMBER, 2005 ON

L412: JURISPRUDENCE – II
(LAW AND SOCIETY)

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

INSTRUCTIONS

Statutes are allowed in the examination room.

There are four Parts to this Paper. Answer question **ONE** which is compulsory and one question from each Section.

SECTION A

QUESTION ONE

Section 23 of the Constitution of Zambia as materially relevant provides:

23(1) Subject to clauses (4), (5) and (7), a law shall not make any provision either of itself or in its effect.

(4) Clause (1) shall not apply to any law so far as that law makes provision –

(c) with respect to adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law;

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SECTION B

QUESTION TWO

What are the major elements of the Rule of Law?

Discuss

QUESTION THREE

The UNZA Municipal Council concerned with the gravity of the HIV/AIDS pandemic has approached the Central Government to enact comprehensive legislation to contain this crisis. The Council has suggested inter alia criminalisation of infecting others by those who know their HIV status and compulsory testing of persons as the situation dictates. Impatient at delays in having a reply from the Central Government, the Council proceeds to pass by-law on criminalisation and compulsory testing.

Advise the Central Government as to what position it should take.

SECTION C

QUESTION FOUR

Writing on Rights of the Individual W. Friedman has inter alia noted:

“.....The relation of the rights of the individual to those of his fellow individuals in the community has gradually led to a profound modification of the legal values of modern democracy. It has increasingly tempered individual right by social duty. Democracy has not accepted the elimination of rights; it has not recognised Comte's and Duguit's "right to do one's duty" as the only right. But democratic communities have universally, though with varying speed and intensity, accepted the principle of social obligation as limiting individual right”

Legal Theory, Fifth Ed. at p. 399

Discuss the evolutionary process from individual right to social obligation.

QUESTION FIVE

“Individual rights and equality do not sufficiently characterise democracy. They may exist under a benevolent despotism. In modern democracy both ideals find their highest fulfilment and justification in the citizen’s right to participation in government, the “Government of the People” (Lincoln). This, in modern states, means representative government through elected deputies”

W. Friedman, *Legal Theory*, Fifth Ed. at p. 419

Evaluate the efficacy of representative Government In Zambia

SECTION D

QUESTION SIX

Evaluate the Public Order Act, Cap. 113, as an instrument of regulation

Discuss

QUESTION SEVEN

Discuss what role the law plays in

- (a) Stability
- (b) Formalism, and
- (c) Security

**THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW**

**UNIVERSITY SECOND SEMESTER
EXAMINATION L 422 COMPANY LAW
DECEMBER 2005**

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

**INSTRUCTIONS: 1. ANSWER ANY FOUR QUESTIONS. ALL QUESTIONS CARRY EQUAL MARKS.
2. CANDIDATES MAY BRING A CLEAN COPY OF THE COMPANIES ACT AND ANY RELEVANT UNMARKED STATUTE.**

Q1. A company may be wound up voluntarily or by the court. Critically discuss the circumstances leading to either mode of winding up.

Q2. (a) Write short notes on the following:

- (i) Reserve capital
- (ii) Floating charge
- (iii) Mortgage

- (b) (i) Ordinary Resolution
- (ii) Extra-Ordinary Resolution
- (iii) Special Resolution

Q3. (a) Critically Discuss the appointment and duties of directors.
(b) Distinguish the duties of Directors from those of Promoters

Q4. Salomon v. Salomon is

A decision not cast in concrete, where a company is being used as a 'special purpose vehicle,' the court may lift the corporate veil. Discuss when the court can so order and other circumstances.

- Q5.** (a) Define a debenture and distinguish it from a shareholder.
(b) Some judges have stated that there is no difference between a company in receivership and a company in liquidation.

Do you agree?

- Q6.** It is a principle of law that the proper plaintiff in an action in respect of a wrong which is alleged to have been done to a company is **prima facie** the company. If this is a transaction which might bind a company then such a wrong can be ratified by a simple majority of members. In such a case the court will not intervene at the suit of the minority.

Discuss in what circumstances.

- Q7.** (a) A public company may raise its capital by issue of shares or debentures by inviting the public to subscribe for them. Discuss three ways (methods) of raising capital by a private company.
(b) Write short notes on:
(i) Allotment of shares
(ii) Loan capital
(iii) Paid up capital
(iv) Nominal (or authorized capital)

END OF EXAMINATION

**THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW**

**UNIVERSITY SECOND SEMESTER EXAMINATION, DECEMBER 2005
L462 – INTELLECTUAL PROPERTY LAW II**

INSTRUCTIONS

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

ANSWER: FOUR QUESTIONS (Question One is Compulsory)

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

1. List and write brief notes on the five subject matter of Intellectual Property.
2. What is the best way to achieve international protection for a patent?
3. Write brief notes on:-
 - (a) Inventive Step;
 - (b) Industrial Applicable;
 - (c) Novelty;
 - (d) Claims.
4. What is the skilled but unimaginative worker test? Is it realistic test?
5. Outline all the possible functions of a trademark.
6. Discuss the decision in the **Coca-Cola Trade Mark Application (1986) 2 All ER 274.**
7. What sort of work is protected by Copyright?
8. How does an individual obtain Copyright in his or her work?

THE END OF THE EXAMINATION

**THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW**

SECOND SEMESTER EXAMINATION: DECEMBER 2005

ADR L 482: ALTERNATIVE DISPUTE RESOLUTION

DURATION: THREE HOURS

- INSTRUCTIONS:**
- 1. ANSWER FOUR QUESTIONS**
 - 2. ALL QUESTIONS CARRY EQUAL MARKS**
 - 3. YOU MAY CONSULT UNMARKED/
CLEAN COPIES OF THE
ARBITRATION ACT NUMBER 19 OF
2000**
-

QUESTION 1

Using examples distinguish between the concepts of the powers of an Arbitrator and the Jurisdiction of an Arbitrator.

QUESTION 2

Give a brief explanation of the following:

- (a) Expert witness;
- (b) Leading question;
- (c) Security for costs;
- (d) Privileged documents; and
- (e) Costs in the cause

QUESTION 3

Describe the principle of Kompetenz – Kompetenz and explain how it arises in the context of the Zambian Jurisdiction. What would be the effect if such a principle was not available in the Zambian Jurisdiction.?

QUESTION 4

You have been appointed as an Arbitrator and after your appointment you communicate to lawyers of the parties that you intend to call for a Preliminary Meeting. While the Claimants lawyers agree to attend the Preliminary Meeting, the Respondents lawyers write back to say that there is no legal requirement to hold a Preliminary Meeting. Explain how you would respond to the Respondent's lawyers.

QUESTION 5

Define the term "Corts" as applied to arbitration proceedings and indicate the basis of the Arbitral Tribunal's general discretion as to costs and the principles to be followed in awarding costs.

QUESTION 6

The High Court of Zambia has certain Jurisdiction in relation to arbitration proceedings. Explain the rationale of this Jurisdiction and instances in which it may be exercised.

QUESTION 7

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

- (a) The claimant fails to conform to the timetable for submission of its plaint.
- (b) The defendant requires for a "Document Only Arbitration", during the Preliminary Meeting.
- (c) You have given your award and it has been delivered to the parties. A couple weeks later, one of the parties writes to you to say that he does not understand what you meant to say in the award relating to the question of costs. Is he entitled to approach you?
- (d) You have just received a copy of an award given against you by the Arbitrator. Attached to the award, obviously in error, is a fee note

- (e) addressed by the opponent to the Arbitrator which includes the words "Additional gratuity for favours rendered". What would you do?
- (f) At the continuation of the hearing in arbitration, the respondent fails to appear, and despite an adjournment, followed with a telephone reminder of the hearing, he still does not appear.

The Claimant insists the hearing continues. What would you do?

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

SECOND SEMESTER UNIVERSITY EXAMINATIONS – 15TH DECEMBER 2005

L 492 - TAXATION

TIME: THREE HOURS

ANSWER: QUESTION ONE and any three other questions

Candidates may consult unmarked copies of the Income Tax Act, CAP 323

1. First Vending Bank Limited is a bank owned by Jason Sangwapo and his wife Chitalu. It was originally incorporated under the laws of Zambia but because of the high tax on banking income in Zambia they wound up the bank voluntarily and set it up in Francistown, Botswana where the tax regime is comparatively much lower compared to that obtaining in Zambia. The Sangwapo are resident in Lusaka. The Managing Director and all the other managers are all based in Francistown. Nearly 80% of the bank's customers are Zambian teachers working in Francistown.

On 30th November, 2005 the Bank declared a total dividend amounting to 240,000 Pula (equivalent of K240,000,000) which has been remitted to the Sangwapos. The Zambia Revenue Authority has assessed a tax of K36,000,000 on the dividends at 15%. The Jason and Chitalu have disputed the assessment because they feel that they should not pay any tax at all and have taken the matter to the Revenue Appeals tribunal.

You are a Research Assistant for the Vice-Chairman of the Tribunal and he has requested you to write a reasoned judgment. Do so, citing relevant provisions of the law.

2. Chief Siachtema, his spouse Makonga and their two friends from the UNZA Law School days in the early 1990s, Inonge and Hantobolo Bwalya are in partnership in the a law practice under the name and style Royal Chambers. Their interest in the partnership is based on a formula of 1:2:3:4. The Chief has been wheel chair bound following since the loss of both legs after a hunting expedition in the year 2002

At the end of fiscal year 2005, they have made a gross profit of K73 million. You have been informed that their business expenses amounted to K23 million.

Determine the tax due from each one.

3. On 1st December 2005, Yakata Sports Limited, a company incorporated in Zambia entered into an agreement with Adidas (South Africa) PTY, a South African manufacturer of sports wear for the supply of basketball jerseys worth K60 million. The sale agreement was signed at the Sun Hotel in Livingstone. On 10th December the jerseys arrived at the Lusaka International Airport and Yakata Sports duly paid duty of K9 million. The jerseys were sold like hot cakes. By Monday 12th December Yakata had sold all jerseys and made a gross profit of K198 million.

The company has approached you for advice on their tax liability.

4. Namwala Ranches Limited have a Toyota Hilux 4 x 4 that has been in use for transporting beef from Namwala to Maxabuka for the last twelve years. The vehicle has now reached its useful life.

You have been informed that the written down value of the truck is K6,250,000 at the end of their year 2005. At the end of the same year the company made a gross profit of K25,000,000 while business expenses amounted to K28 million. On 14th December, 2005 the Toyota Hilux was sold for K3,150,000.

The company wishes to be advised of its tax liability if any.

5. Tilyenji Books Ltd, is one of the four subsidiary companies owned by Giga Publishers Limited and is listed on the Lusaka Stock Exchange. Giga holds a *controlling share of 5,000,000 shares at a par value of K2,000 per share. The other shareholder is Katongo Mwendapole with 2,000,000 shares.*

In November of the year 2005, Tilyenji declared a dividend of K100 per share. In December, 2005 Giga Publishers also declared a total dividend of K8 million.

Determine the tax obligations involved in these transactions.