

THE UNIVERSITY OF ZAMBIA
UNIVERSITY EXAMINATIONS - 2001
SECOND SEMESTER
SCHOOL OF LAW

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**THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW**

UNIVERSITY SECOND SEMESTER EXAMINATIONS, JULY/AUGUST, 2001

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CERTIFICATE IN LAW

L142 – CRIMINAL LAW - II

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

INSTRUCTIONS: Question One is COMPULSORY.

ANSWER QUESTION ONE AND ANY OTHER **THREE**
QUESTIONS , MAKING A TOTAL OF **FOUR** QUESTIONS.
CLEAN, UNMARKED COPIES OF THE **PENAL CODE** AND
THE **CRIMINAL PROCEDURE CODE** MAY BE BROUGHT
AND REFERRED TO IN THE EXAMINATION ROOM.

QUESTION 1 (COMPULSORY):

One Saturday morning Chipwaya Mabwe was crossing Lusaka Centre from Chibolya where he had gone imbibing hard spirits, to Garden Compound where he lives. As he walked through the town centre he, for no cause, punched Donad Weshamo twice on the nose and left him sprawled on the ground, bleeding from the nose. As he neared Garden Compound, he forcibly grabbed a radio-cassette from another man who was by-passing him from the opposite direction . A few metres from his one-room hut where he lives, he met a woman and asked her to follow him into his hut. When she declined his request, he pressed himself against her body and kissed her without her consent, squeezing her bottom in the process.

What offences, if any, has Chibwaya Mabwe committed from the time he left Chibolya compound up to the time he threw himself onto his old reed-mat in his one-room hut to sleep? Cite the relevant provisions in the Penal Code and state the maximum penalties. Since he has a place of residence, Chipwaya Mabwe is not a rogue or vagabond.

QUESTION 2:

Section 204 of the Penal Code (CAP.87), defines the element of 'malice aforethought' in the crime of murder. Cite any two decided cases where some of the instances given in Section 204 of Cap. 87 were applied. Your cited

authorities should be traceable cases, preferably from the cases we discussed in this course (2000/2001 year).

QUESTION 3:

A boy aged 18 years in a village has lived in his house with a 15 year old girl for two weeks, Police were informed and have charged him with defilement of a girl under the age of 16 years. Cite, in the Zambian Penal Code, the relevant section of the law. What **two** defences can the boy advance to escape penalty in this case? (one such defence involves customary law).

QUESTION 4:

Write brief notes on any **three** of the following:-

- a. Mens rea in the offence of riot.
- b. The elements of the offence of infanticide.
- c. The distinction between indecent assault and rape. Cite the provisions in the Penal Code.
- d. The definition of theft.

QUESTION 5:

Which sections in the Penal Code create the offences of:-

- a. Racial hatred? What is the Penalty?
- b. Tribal war? What is the Penalty?

QUESTION 6:

- a. What is the offence of Incest? Give its maxim penalty.
- b. What procedural element is needed before incest proceedings can be instituted?

QUESTION 7:

State the elements of the offence of forgery and either give an example of a forgery case or cite a decided authority.

END OF EXAMINATION

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THE UNIVERSITY OF ZAMBIA
UNIVERSITY SECOND SEMESTER EXAMINATIONS – JULY 2001

L222
LAW OF CONTRACT

TIME: THREE (3) HOURS

INSTRUCTIONS: ANSWER ANY FOUR QUESTIONS

1. Mabvuto an enterprising economics student at the University of Zambia, born in 1984, receives an email from Iraq from Baghdad Trading House (BTH) with instructions to procure on their behalf 10 tonnes of copper from Copperbelt Mining Co (CMC). The email indicates that Baghdad Trading House has already negotiated with Lusaka Merchant Bank (LMB) to provide a line of credit for the proposed procurement. Mabvuto would in this regard be expected to execute a mortgage debenture deed on their behalf.

Mabvuto negotiates with CMC and secures on behalf of BTH a price of \$500,000.00 per metric ton, the ruling price on the international market at the London Metal Exchange is \$646,000.00 per metric ton. During the negotiation period Mabvuto was invited to meetings in Cape Town where CMC accommodated him in a beach front five star hotel. The hotel and air travel were fully paid for by CMC and in addition Mabvuto was paid an allowance of \$1000.00 for incidental expenses.

Mabvuto completes the transaction on behalf of Baghdad Trading and executes the deed with Lusaka Merchant Bank.

However ten days later Mabvuto receives notification from CMC that LMB have cancelled their line of credit and repudiated their contract with BTH. CMC who were ready to commence shipment threaten to sue Mabvuto.

Mabvuto approaches you for advice on his legal position. He would also like to know whether he is entitled to his commission from BTH.

2. Peter owned two adjoining properties one of which he occupied. The other was occupied by a tenant, William.

After having been in occupancy of this property as a tenant for 10 years and observing all the covenants contained in the lease agreement, William approached Peter with a proposal to purchase the property from him. Peter indicated that he would have no objection to selling the property to William provided William would agree to continue to observe the covenants that were hitherto contained in the lease agreement. Amongst the covenants were;

- no alteration of the perimeter wire fencing,
- no carrying out of any form of trading or business activity on the property,
- no growing of any agricultural crops on the property,
- no construction of permanent structures exceeding 50 meters in height.

William agreed to continue to observe these covenants and committed himself to ensuring that all future occupiers would likewise be obliged to observe these covenants.

In drawing up the contract of sale Peter stipulated that he was selling his property subject to the conditions outlined above. In addition a clause was inserted in the agreement which obliged all future occupiers to observe these covenants. Two years later William died and his wife who was the sole beneficiary of his estate sold the property to Mubanga.

Mubanga immediately began work on constructing a three story office building and warehouse on the property.

Peter who is watching this development with dismay comes to you for legal advice. He intends to sue Mubanga and stop this new development.

- (ii) Had Peter come to you prior to the sale to William what advice would you have given him to ensure continued observance of lease covenants.

3. (a) Certain contracts made by infants are treated as “void”, while others are said to be “voidable”. Name the contracts falling into the two categories and explain the meaning of “void” and “voidable” in this context

(b) Ben, an infant bought a lap top computer for K8million, paying K500,000.00 at the time of purchase and promising to pay the balance in installments of K1,250,000 over a six month period. What would be the legal position if;

- i) Ben fails to pay any of the installments and refuses to return the computer.
- ii) Ben who has failed to pay any of the installments, sells the computer to his friend(who is not a minor) and delivers the computer to him.
- iii) Ben finds that he really does not have any use for a laptop and wants to return it and reclaim the K500,000.00 he has already paid?

4. (a) Which contracts are illegal at common law? What are the effects of this illegality.

(b) State with reasons which, if any, of the following contracts would be illegal;

- i) Mr and Mrs Banda agree to live apart and for Mr Banda to pay his wife a monthly allowance of K1 million.
- ii) Mr and Mrs Mulenga agree to part in five years time when their children will have grown up. Mr Mulenga to provide an allowance to his wife of K200,000.00 per month.
- iii) Chilufya who is employed as a salesman by Top Class Trading in Lusaka agrees not to work as a salesman in Lusaka at the end of his contract of employment.

5. Discuss the extent to which a party to a contract may assign (i) his rights and (ii) his liabilities under that contract. In what forms may such assignments be made?

(b) Mwaba owes James K500,000.00. James owes Mweemba K200,000.00. Can James transfer to Mweemba K200,000.00 of the K500,000.00 which Mwaba owes him? If so how? Use decided cases to illustrate your answer.

6. Fred entered into a contract to lease a warehouse at the Lusaka International Airport from UT Refrigeration Services Ltd for a period of one year with an option to renew. Fred indicated to UT that he wanted to utilize the cold storage facility in the warehouse as a temporary storage site pending the export of processed beef to the United Kingdom where he had contracts with several buyers. The beef that Fred intended to export was to originate from Southern Province. Fred entered into a contract with Good Carriers Ltd to transport 200 head of cattle to Lusaka Abattoir Co where the animals were to be slaughtered and processed in readiness for export. Good Carriers accordingly picked up the live consignment in Choma, however whilst in transit in Mazabuka the animals were quarantined due to a suspected outbreak of foot and mouth disease in the area. Good carriers were required to stable and feed the animals for a period of 7 days. During this period Fred had gone to London to finalize arrangements with his customers for the processed beef. Unfortunately word of the suspected outbreak had reached agricultural authorities in the UK who immediately imposed an indefinite ban on the importation of beef products from Zambia.

Meanwhile Lusaka Abattoir Co had slaughtered the animals and processed them in readiness for export.

Upon his arrival Fred receives a claim from UT Refrigeration Services for the payment in advance of three months rent as per the lease agreement. He also receives an invoice from Good Carriers for delivering the consignment to Lusaka Abattoir Co as agreed plus costs of stabling and feeding the animals in Mazabuka which was outside their agreement. Lusaka Abattoir Co has also made a claim as per their contract with Fred for services rendered.

Fred is reluctant to pay any of the claimants and is being threatened with legal action by all parties.

Advise Fred of his legal position and what options if any are open to him to avoid liability.

7. (i) Distinguish between implied and apparent authority of an agent.

(ii) Zulu, the managing director designate, of Zenith Marketing Co, having lodged in incorporation papers for Zenith, entered into a contract with Randburg Mining Co on 30th June 1999 to procure uncut industrial diamonds on behalf of Zenith Marketing Co. Delivery was scheduled for 10th September 1999 and payment 30 days later. Zenith Marketing Co was duly registered on 1st July and passed a resolution ratifying the transaction entered into on its behalf by Zulu. By 12th October Randburg Co had not delivered the diamonds and Zenith is contemplating legal action. Advise Zenith Marketing Co on its legal position.

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**UNIVERSITY OF ZAMBIA
UNIVERSITY SECOND SEMESTER EXAMINATIONS,
JULY, 2001**

L232 – LAW OF TORT II

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

INSTRUCTIONS: **THIS EXAM CONSISTS OF SEVEN QUESTIONS.**

YOU MUST ANSWER FOUR OF THE SEVEN QUESTIONS.

(You may consult an unmarked copy of Cap. 74 of the Laws of Zambia.)

QUESTION ONE

General Mining Ltd. was in the final stages of negotiations with the Zambia Privatisation agency for the purchase of the Kwacha Copper Mines. Joe Smith, Vice President for Operations was sent to Zambia to evaluate the Mines. He flew with his pilot, Buck Jones to Lusaka for a short visit. While Joe met with ZPA officials, Buck ate chicken and chips at Miller's Bar and Grill. Just before take off for the Copperbelt, Buck began to feel like he had heartburn and took an antacid. Ten minutes into the flight, Buck's pain became unbearable and he had to turn the plane around. Five minutes later, Buck lost consciousness and Joe, with no pilot training, had to fly the plane back to Lusaka. He managed to land the plane at the airport but was off line and slid into a plane owned by Zambian Tours Ltd. Both planes were damaged, but repairable. Zambian Tours wishes to bring negligence claims against Joe, Buck, and General Mining. Analyse Zambian Tours' claims including defenses and damages.

QUESTION TWO

How has the common law changed with regard to remoteness of damage over time? What factors have influenced courts in this area? What are the arguments for the different approaches to remoteness of damage?

QUESTION THREE

Discuss the nature of the reasonable person and how the reasonable person relates to the circumstances of a case in negligence.

QUESTION FOUR

United Mines has been dumping waste into a public stream for years. The stream flows for two kilometers before flowing into a large river. The waste renders the stream dangerous to humans, but the river remains safe. United Mines has always posted signs along the stream warning against drinking and swimming. Despite that children have always played in the stream. Youngster Banda was one of those children. At the age of nineteen he contracted leukemia and died while still in school. His parents now wish to sue United Mines for negligence and nuisance. Analyse the claims of both the parents and the estate including defenses and damages.

QUESTION FIVE

Exotic Nurseries Ltd., located in a residential neighborhood of Lusaka, grows unusual plants for the home and garden. Two years ago it obtained a beautiful flowering potted plant called the crawling diva. The crawling diva grew well under Zambian conditions and sold well. Last year, vandals went through the neighborhood breaking pots, pipes, and other things. Unpotted crawling divas were washed into Phil Banda's garden where they took root and began to crawl and crawl and crawl. Phil ignored them and they crawled into Mike Phiri's garden. Mike wants to bring claims for damages against Exotic Nurseries and Phil under Rylands v. Fletcher and nuisance. He also wants an injunction ordering Phil to destroy the crawling divas in his garden. Analyse Mike's claims including defenses and damages.

QUESTION SIX

Discuss the common law of duty in negligence as it applies to pure economic harm and nervous shock. How do these rules relate to the neighbor principle? What other principles are incorporated into these rules?

QUESTION SEVEN

Five people, Lucky, Lucky's wife Mary, Rich, Penny, and Farthing, were out in the bush. One night they all got drunk. They then went out on the river in a small canoe meant for two people. The boat capsized and Lucky, who was not lucky, was eaten by a crocodile. Mary wants to sue Rich, who is rich, for negligence. Penny and Farthing do not have a penny or a farthing between them. Analyse Mary's claims on behalf of herself and Lucky's estate including defenses and damages.

END OF EXAMINATION

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**UNIVERSITY OF ZAMBIA
UNIVERSITY SECOND SEMESTER EXAMINATIONS,
SEPTEMBER, 2001 – deferred/supplementary**

L232 – LAW OF TORT II

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

INSTRUCTIONS: THIS EXAM CONSISTS OF SEVEN QUESTIONS.

YOU MUST ANSWER FOUR OF THE SEVEN QUESTIONS.

(You may consult an unmarked copy of Cap. 74 of the Laws of Zambia.)

QUESTION ONE

Lusaka Cheeseworks has been making cheese at their current rural location for twenty-five years. Until last year open fields surrounded this location. Last year Stopem Security began breeding Rotweilers on an adjacent plot. Normally the wind blows from Stopem Security's property to Lusaka Cheeseworks property. One day in October the wind shifted and carried the smell of the cheese to the breeding area. The rotweillers went into a feeding frenzy and ate their young. Stopem is considering suing the Cheeseworks under both nuisance and rylands *v. fletcher*. Analyse its claims including any relevant defenses and remedies.

QUESTION TWO

Discuss in detail how Zambian law deals with the situation where the victim of a tort dies before he can bring an action to trial against a tortfeasor.

QUESTION THREE

Dr. Bob, a licensed medical doctor, was shopping when Patience collapsed on the sidewalk. Dr. Bob administered first aid correctly, but did nothing more. The first aid saved Patience's life, but Patience suffered permanent brain damage. This could have been prevented through an injection of a drug available in a chemist only meters away. Patience's family wishes to sue Dr. Bob for negligence. Analyse their claim including any relevant defenses and remedies.

QUESTION FOUR

What does the term "Strict Liability" mean in tort law? How does this concept differ from other concepts of liability in tort law? Are there elements of "Strict Liability" in torts based on fault and elements of fault in torts based on "Strict Liability"?

QUESTION FIVE

Grace, an elderly widow with four grown children, suffered a heart attack at 3:00 in the morning. Phiri, her next-door neighbor, heard her cry out and found her unconscious. He placed her in his car and drove towards UTH at a high rate of speed. Banda had just left a bar and was driving at well below the speed limit when Phiri drove into the back of his car. Grace was killed instantly. Analyse the negligence claims of Phiri, Banda, Grace's estate, and Grace's children against both Phiri and Banda. Consider any relevant defenses and remedies.

QUESTION SIX

Discuss in detail how Zambian law deals with liability when more than one person is at fault in a negligence case. Consider the fault of multiple defendants, plaintiffs, decedents, and heirs.

QUESTION SEVEN

Joe and Phil, the Misery brothers, were working in a mine. One day they discovered a way to make the work more interesting. Everyday, they tried to beat the previous days quota of ore. This became more and more difficult. One day Joe suggested shortening the fuses on explosives and running to and fro. This worked the first two days. On the third, Phil was caught up in the explosion and badly injured. Phil wants to sue the mine for Joe's negligence. Analyse Phil's claim including any relevant defenses and remedies.

END OF EXAMINATION

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THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW

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UNIVERSITY SECOND SEMESTER EXAMINATIONS, JULY/AUGUST, 2001

L242 – CRIMINAL LAW- II

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

INSTRUCTIONS: Question One is COMPULSORY.

ANSWER QUESTION ONE AND ANY OTHER **THREE**
QUESTIONS , MAKING A TOTAL OF **FOUR** QUESTIONS.
CLEAN, UNMARKED COPIES OF THE **PENAL CODE** AND
THE **CRIMINAL PROCEDURE CODE** MAY BE BROUGHT
AND REFERRED TO IN THE EXAMINATION ROOM.

QUESTION 1: (COMPULSORY)

Hamaundu Hankanga was on 5th February, 2000, hit by Sooli Sitenge with an iron bar on the right leg and right thigh several times, shattering all the leg and thigh bones. The victim was taken to the University Teaching Hospital (U.T.H.) in Lusaka, where a broken-bones-expert surgeon examined him and made a finding that the patient would pull through if the whole limb was amputated from near the hip. The patient was hospitalised for fifteen months mostly left in the care of Timothy Bwembya, a Junior resident doctor, who, at one time administered to the patient some medication that caused blood-poisoning, from which Hamaundu Hankanga died on 6th May, 2001, before the amputation of the limb could be carried out.

Sooli Sitenge has been arraigned on the charge of the murder of Hamaundu Hankanga. Give your legal opinion on the following aspects of the case:-

- a. The essence of the charge of murder in Zambia, and whether in this case there is any defect in the charge.
- b. Bearing in mind the principle of the 'chain of causation' in criminal matters, is the 'but for' test applicable in this case? Whatever your response to this question, give two hypothetical illustrations of causation in homicide cases. One example should illustrate a case where accused is held liable for having caused the deceased's death, and the other example should be where accused cannot be said to have caused the death of his victim.

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- c. If the amputation had been carried out, Hamaundu Hankanga died during the operation, and the surgeon was charged with 'doing grievous harm' to Hamaundu Hankanga, what section in the Penal Code, Cap 87, gives immunity to surgeons who perform their duties on patients in good faith without malice and with all reasonable care and skill? Reproduce in your answer all the words of that section.

QUESTION 2:

One Saturday morning Chipwaya Mabwe was crossing Lusaka Town Centre from Chibolya, where he had gone imbibing hard spirits, to Garden Compound where he lives. As he walked through the town centre he, for no cause, punched Donad Weshamo twice on the nose and left him sprawled on the ground, bleeding from the nose. As he neared Garden Compound, he forcibly grabbed a radio-cassette from another man who was by-passing him from the opposite direction, and warned the owner of the radio not to put up any resistance. A few metres from his one-room hut where he lives, he met a woman and asked her to follow him into his hut. When she declined his request, he pressed himself against her body and kissed her without her consent, squeezing her bottom in the process.

What offences, if any, has Chipwaya Mabwe committed from the time he left Chibolya compound up to the time he threw himself on to his old reed-mat in his one-room hut to sleep? Cite the relevant provisions in the Penal Code and state the maximum penalties. Since he has a place of residence, Chipwaya Mabwe is not a rogue or vagabond.

QUESTION 3:

Section 204 of the Penal Code (Cap.87), defines the element of 'malice aforethought' in the crime of murder. Cite any two decided cases where some of the instances given in Section 204 of Cap. 87 were applied. Your cited authorities should be traceable cases, preferably from the cases we discussed in this course (2000/2001 year).

QUESTION 4:

Write brief notes on any **three** of the following topics:-

- a. 'Overt acts' in a treason charge.
- b. 'exportation' in a theft charge. Can theft occur without exportation?
- c. Abduction of a woman with her consent but against the consent of her parents or guardians.

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- d. 'Child destruction' as stated in the Zambian Penal Code.
 - e. 'A thing capable of being stolen' in the offence of theft.

QUESTION 5:

Discuss the offences committed by each speaker in the speeches quoted below, citing their maximum penalties as well.

SPEECH A:

" We, the people of the Five-nchushi tribe in this country have been oppressed and exploited for too long. I implore you, my tribesmen, to take up your bows, arrows, spears, axes and guns so that this year we can wage a war of attrition on that, 'Ruthless tribe' that has misruled us for forty-years."

SPEECH B:

" Brothers and sisters, I wish to inform you that our Government has just adopted a wicked policy to castrate all males in our tribe, with the object of obliterating us from the face of the earth. My source of this information is impeccable." This statement caused a lot of dispondency among the speaker's tribe, and the investigations by an impartial commission of inquiry showed that the allegation was false. Can an accused in this charge advance any defence regarding the source of his information?

QUESTION 6:

Choose **two** of the three topics listed below and discuss the **two** you have selected.

- a. On 1st June, 2000, Mwelwa Mukali stabbed Mubita Matakala in the abdomen with a long knife. Mukali was charged with unlawful wounding, was tried, convicted and sentenced to nine months imprisonment on 1st July, 2000. He was due for release from prison on 1st March, 2001.

However, when Matakala died of the wound on 31st December, 2000, the Police went to prison, collected Mukali and charged him afresh with the more serious charge of murder. Will the Police succeed in their application?

- b. Two sisters who were not in good terms had a big fight one Saturday morning. The elder sister had just given birth to a baby-boy three days before. During the fight the baby was safely laid in a chair ten metres away from the spot of the fight. In the course of the fight, the younger

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sister dashed where the innocent baby was, grabbed it by his legs and smashed his head against the Mubanga tree nearby, causing instant death to the baby.

She has been charged with murder, but her lawyer has applied to Court for the reduction of the charge of murder to one of 'Infanticide' so that she can escape the likely death sentence. Will her lawyer succeed in the application?

- c. Sanganu Samutu wants to enjoy witnessing a night train accident of a train filled with passengers from the Copperbelt to Lusaka. At Chisamba Station, before the train arrived, he untied a few bolts and nuts from the railway line before the railway Police on patrol caught him 'fragrante delicto'. Under what offence in the Zambian Penal Code can Sanganu Samutu be charged?

QUESTION 7:

State the elements of the offence of forgery and either give an example of a forgery case or cite a decided authority.

END OF EXAMINATION

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THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW

FINAL EXAMINATION FIRST SEMESTER - JULY 2001

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L252: CONSTITUTIONAL LAW

INSTRUCTIONS: Answer Question ONE and any other THREE Questions.

TIME: THREE (3) HOURS

1. Charles Mwanza is the Managing Editor of the Lusaka Herald. On 30 June 2001 the paper carried a story in Issue No. 10 to the effect that the Government had made a decision to spend US\$10 million on new and elaborate security arrangements at the President's residence. The position of the Government was that existing measures were inadequate since they were put in place in 1935 when Lusaka became the capital city.

The following day the President declared Issue No. 10 of the Lusaka Herald a prohibited publication pursuant to Section 53(1) of the Penal Code, which reads:

If the President is of the opinion that there is in any publication or series of publications published within or without Zambia by any person or association of persons matter which is contrary to the public interest, he may, in his absolute discretion, by an order published in the Gazette and in such local newspapers as he may consider necessary, declare that that particular publication or series of publication, or all publications or any class of publication specified in the order published by that person or association, shall be a prohibited publication or prohibited publications, as the case may be.

The Editor has come to you and wants to know the constitutionality of Section 53(1) and ultimately President's action. Please advise him.

2. The Republic of Anzania has the same laws as Zambia. On 30 April 2001 a group of women went to the streets to protest against the implementation of the IMF Structural Adjustment programme. They argued that the implementation of these measures by the Government would result in job losses for their husbands. This will ultimately affect the welfare of their children the majority of whom were

still under 5 years. The strike started in Anzania's biggest town. A day later other towns followed and it was quite obvious that within a few days demonstrations would engulf the entire country. ✓

On 3 May 2001, President Charles Banda responded by declaring a state of emergency under Article 31 of the Anzania Constitution. He proceeded to exercise his powers under the Preservation of public Security Act and made rules providing for the detention without trial of individuals who were a threat to national security.

In exercise of the powers conferred by the Regulations the President signed detention orders for five women who were considered as the ringleaders. On 10 June the detainees were furnished with the grounds of detention in the language they stood as required by Article 26 of the Constitution and a week later their detentions were published in the Gazette.

The husbands of the five detained women have come to you for legal advice. They would like to know the legality of the detentions. Please advise them.

3. The Peoples Party has declared its intention to contest this year's Presidential and Parliamentary Elections. As part of its campaign strategy the Party has declared that once elected into power it will appoint a fifteen member committee of experts to review the present Zambian Constitution and formulate a new one that will reflect and meet people's aspirations and stand the test of time. You are of the experts identified by the Party. What is your response to this proposal?
4. The United National Independence has embarked on a serious and vigorous campaign to revitalise itself. The Party's leadership has appointed a number of committee's to look into the past performance of the party. The leadership of the Party was convinced this was necessary in order to chart a new course for the future. One such committee has been appointed, to look into the one-party constitutional order. The Party wants to know from the committee the major flaws of the One-Party Constitution. The Party wants to acknowledge its past mistakes apologise to the Zambian people and move on. You have been consulted by the Committee to provide them with the brief on this aspect. Prepare the brief for the Committee.

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5. Peter Kapasula was elected Member of Parliament in 1996 on the Movement for Multi-Party Democracy Party (MMD) ticket. In February 2000 he left the MMD and joined another opposition party. In the same month the National Secretary of the MMD wrote to the Speaker informing him that Kapasula had ceased to be a member of the MMD hence his seat should be declared vacant and fresh elections held in line with the provisions of the Constitution. The Speaker did not respond to the representations and in February 2001, the National Secretary of the MMD sought the intervention of the Court. In the High Court the Judge refused to hear the case. He held that he had no jurisdiction to look into the internal affairs of Parliament.

He observed that Parliament in the England was a court in its own right and courts in that country had no authority to enquire into how Parliament conducted its business. Similarly in Zambia Parliament was a court hence he had no authority to review its conduct.

The National Secretary wants to know the legality of the Speaker's conduct and the Judge's decision. Please advise him.

6. James Banda was a Grade 9 pupil at one of the Government schools in Lusaka who sat for his examination in the year 2000. He failed to go through the pass mark by three points. He has discovered that the pass mark for girls was much lower than that set for boys. He has learnt that some girls in his class who got lower points than his had in fact been admitted to Grade 10. He has also learnt that if he had been treated as a girl he would have qualified for admission to Grade 10. He is aggrieved by the discovery. He is convinced that some right guaranteed by the Zambian Constitution has been violated. He has come to you and he wants to know whether he has a case. Please advise him.
7. A report commissioned by a non-governmental organisation on the prospects of constitutionalism in Zambia has concluded that the major stumbling block to the realisation constitutionalism is the constitutional position of the President. A Committee has been constituted whose purpose is to establish the changes necessary, touching on the Presidency, to enhance the prospects for constitutionalism. You have been co-opted into the committee and asked to make your own set of recommendations. Prepare a brief on such recommendations for consideration by the rest of the Committee.

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THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

SECOND SEMESTER EXAMINATION, JULY/AUGUST, 2001

L 262 - FAMILY LAW

TIME : THREE (3) HOURS (PLUS '5' MINUTES TO READ THE PAPER).

INSTRUCTIONS:

ANSWER ANY FOUR (4) QUESTIONS. ALL CARRY EQUAL MARKS UNLESS OTHERWISE INDICATED. MARKS ARE OUT OF SEVENTY (70).

QUESTION 1:

Sukwa Longwe has been married to Inonge for 40 years. He has decided that the best way to provide for his family after he dies is to write a will.

He informs you that he has four children with his wife namely Muanji (22), Buka (20), Cheswa (18) and Dingi (15). He also has a sister who is married, a brother, and a mother. He also tells you that he has a mistress MSADABWE and two children namely Chisi (5) and Chance (4).

Further, he tells you that he owns the matrimonial home as joint tenants with Inonge, and he has 10% shares in a farm held in a tenancy in common with other members of his family (brothers, sister and mother). Besides these there are various household goods and personal effects.

- a. Write a will using these facts and provide particulars where not given.

(10 Marks)

- b. What difference would dying intestate make to the estate? Advise

(9 Marks)

QUESTION 2:

"Marriage is a voluntary Union of one man to one wife for life to the exclusion of all others" Lord Penzance in Hyde V. Hyde (1866). Discuss.

(17 Marks)

QUESTION 3:

Heather an English woman came to Zambia to work, and met and married Mambo a Zambian man who told her that although under his customary law he could marry more than one wife, he felt that she was so special he would never do so. After a few months Heather tired of his adoring, but boring, company and left him. She soon forgot about Mambo, and began a relationship with Chenda who had briefly married Mambo's sister, Linda. Linda had died two years previously. Shortly after meeting, Chenda and Heather married. However after the ceremony, Heather could not bring herself to have sexual intercourse with Chenda, as she is tormented by the thought of his relationship with Mambo's sister.

Advise Heather on the validity of her marriages.

(17 Marks)

QUESTION 4:

Freda and Siame married 10 years ago, and were initially very happy. However Siame started to go out with his friends every Friday night, leaving Freda at home with their daughter, Ayo. Siame frequently slept out or returned home drunk waking Freda and Ayo with his shouting and swearing.

One Friday, Siame crashed his car returning home after a night in the Pub, and was severely injured and left with a permanent spinal injury. Freda visited Siame everyday whilst he was in hospital, but when he was discharged and returned home Freda realised that the marriage was effectively at an end.

Freda continued to cook for Siame, and also to bath and dress him. She did not tell Siame her feelings, but she began to have an affair with a neighbour, Wanga. Freda told Wanga that she would never leave Siame whilst he still needed her, but five years after the accident Freda moved out of the matrimonial home to live with Wanga, taking Ayo with her. Freda said that Siame's depression and irritability had proved too much for her, and she could no longer cope with the strain of looking after him.

Siame has refused to consider divorce, saying that he loves his wife and that he misses Ayo.

Advise Freda as to whether she has any basis for divorce, and what the Matrimonial Causes Act 1973 provides as basis for divorce. **(17 Marks)**

QUESTION 5:

Anne and Mhango were married five years ago, and had a daughter, Bupe, who is now 2. Mhango was a famous footballer but the marriage ran into problems when he started taking drugs. One night whilst under the influence of drugs, Mhango became violent and beat up Anne, breaking her collarbone. Mhango was horrified by what he did and swore never to touch drugs again. However Anne divorced him on the basis of his behaviour.

Anne subsequently married Kasanga, and Bupe lives with them. Kasanga adores Bupe and would like to adopt her. Mhango has tried to maintain contact with Bupe.

Advise Anne and Kasanga whether they will be able to adopt Bupe.

What steps would they take if adoption was possible? **(17 Marks)**

QUESTION 6:

Patu and Mpande have been married for six years, after cohabiting for two years. During the six year period, two children were born, Sashi aged six, and Moono aged four. Mpande and the two children are very close, as he works very near their matrimonial home and creates time to spend with them, taking them to the Manda Hill shopping mall or for a drive to his sisters' and brothers' homes in Rhodes Park and Northmead.

Patu is a Journalist at Zambia National Broadcasting Corporation. She travels all over the world to cover assignments. She has recently fallen in love with another Journalist, Nene who usually travels in the same delegations with her. Her marriage is breaking and she has decided to leave Mpande for Nene, taking the children with her. She has also told Mpande that while Sashi is his child, Moono is a result of the affair with Nene.

Mpande is distraught at the prospect of losing the girls, both of whom he loves very much. He does not believe the story about Moono but says even if it is true, it does not change the way he feels about the child.

Advise Mpande. **(17 Marks)**

QUESTION 7:

By Section 24 of the Matrimonial Causes Act 1973, on granting a decree for divorce a decree for nullity of marriage or a decree of judicial separation or at any time thereafter, the Court may make any of several orders for property adjustment.

- a. What are the orders, and what are the matters the court has to take into account in the exercise of that duty?
- b. Comment on the guidelines given by case law, and by *Wachtel v. Wachtel* (1973) in particular. **(17 Marks)**



**THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW**

UNIVERSITY EXAMINATIONS – SEPTEMBER, 2001

L 262 – FAMILY LAW – DEFERRED / SUPPLEMENTARY EXAMINATIONS

**TIME : THREE HOURS PLUS FIVE (5) MINUTES TO READ THROUGH
 THE QUESTION PAPER.**

INSTRUCTIONS:

- i. Answer any **FOUR** questions
 - ii. All questions carry **17 Marks** except question ONE which carries **19 Marks**
 - iii. Candidates may bring into the examination room UNMARKED and UNANNOTATED statutes except the Matrimonial Causes Act 1973 and Rules.
- =====

QUESTION 1

In resolving disputes affecting children, e.g. in divorce and custody proceedings the interests of the child are considered paramount. Discuss. **(19 Marks)**

QUESTION 2

Discuss the defects which sometimes exist that may cast doubt upon the validity of marriage. **(17 Marks)**

QUESTION 3

Lumba aged 27 and Chenje aged 30 married in 1991. In 1996 Chenje, a free lance journalist was jailed for 2 years for a seditious article. During his term in prison Lumba began a relationship with Londwe and this relationship is still continuing. In December 2000 Lumba petitioned for divorce on the basis of unreasonable behaviour, alleging that he did not adequately provide her with enough money for necessities and that he was 'cold and indifferent' towards her. She says she has lost all affection for him and no longer wants him. She is however seeking maintenance from his K1,500,000 per month income he makes from freelance writing. Londwe is a college lecturer and earns K1,000,000.00 per month and owns a two bedroomed flat which he occupies with his son from a previous marriage. The hearing of the matter has been set down for Thursday 20th September, 2001.

Advise :

- i) whether it is likely that Lumba will obtain a divorce.
- ii) The form that ancillary relief may take.
- iii) The status of the small holding matrimonial home Lumba and Chenje have in Makeni should Lumba obtain a divorce.

Where possible support your answer with authorities.

(17 Marks)

QUESTION 4

Inche a student in the School of Education is extremely concerned about the issue of property grabbing. Inche does not own much apart from books and personal effects, and wants to know whether or not to write a will.

Advise on the advantages and disadvantages of dying intestate.

(17 Marks)

QUESTION 5

Mukena petitioned Muka for divorce, on the basis of 5 years separation. Muka had been sentenced to 12 years imprisonment and even with remission still has to serve another three years. He does not want a divorce.

Advise Mukena and Muka with regard to the relevant law on divorce.

(17 Marks)

QUESTION 6

Titus and Monta (his wife) agreed that in order to improve their financial standing he (Titus) should take a well-paid job in Pretoria, the contract for which was of 2 years duration. Titus left in April 1995 and returned in June to visit her periodically. Unknown to Titus, in September 1995 Monta committed adultery with Maji and has continued to see him. Maji has intimated that he would like to marry Monta if she can obtain a divorce from Titus. Monta decided in September 1999 that she did not wish to continue to live with Titus but did not tell him as she wanted him to continue maintaining her.

Maji a married man, has also failed to get a divorce from his wife Keti. Keti is a Staunch Catholic who says divorce is against her religious belief. She is a teacher at a Catholic Mission School and her job depends on her remaining married. She is 40 years of age.

Advise all parties with regard to the law of divorce. There are no children of the marriages.

(17 Marks)

QUESTION 7

Parental responsibility means all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his/her property. Discuss. (17 Marks)

✓

**THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW**

UNIVERSITY EXAMINATIONS – SEPTEMBER, 2001

L 262 – FAMILY LAW – DEFERRED / SUPPLEMENTARY EXAMINATIONS

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Advise :

- i) whether it is likely that Lumba will obtain a divorce.
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Where possible support your answer with authorities. (17 Marks)

QUESTION 4

Inche a student in the School of Education is extremely concerned about the issue of property grabbing. Inche does not own much apart from books and personal effects, and wants to know whether or not to write a will.

Advise on the advantages and disadvantages of dying intestate. (17 Marks)

QUESTION 5

Mukena petitioned Muka for divorce, on the basis of 5 years separation. Muka had been sentenced to 12 years imprisonment and even with remission still has to serve another three years. He does not want a divorce.

Advise Mukena and Muka with regard to the relevant law on divorce. (17 Marks)

QUESTION 6

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Maji a married man, has also failed to get a divorce from his wife Keti. Keti is a Staunch Catholic who says divorce is against her religious belief. She is a teacher at a Catholic Mission School and her job depends on her remaining married. She is 40 years of age.

Advise all parties with regard to the law of divorce. There are no children of the marriages. (17 Marks)

QUESTION 7

Parental responsibility means all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his/her property. Discuss. (17 Marks)

✓

**THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW**

SECOND SEMESTER EXAMINATION, JULY/AUGUST, 2001

L322 - LAND LAW & CUSTOMARY SYSTEMS OF TENURE.

TIME : THREE HOURS (Plus 5 Minutes to read the Paper).

INSTRUCTIONS:

1. Answer **Question One** and **three other Questions**.
 2. You are **allowed** use of **unmarked statutes in the Examination Room**.
 3. **Question One is COMPLUSORY.**
-

Question 1:

- a. “ African Customary Law of Tenure has no conception of land holding comparable to the English idea of a fee simple absolute in possession, or a theory whereby the ownership of all land in England is in the crown alone and everybody else holds his land only as tenant of the King “ T. O. Elias – **The nature of African customary Law**” page 146. Critically analyse the above “statement.

(20 Marks)

- b. What were the theoritical basis for the 1975 land reforms and 1985 Amendments to the Land Conversion of Titles Act.

(14 Marks)

Question 2:

Write short notes on the following:

- a. The rationale for land use controls.
- b. The Supreme Court decision in MAY VIJAYGIRI GOSWAMI AND DR. MOHAMMED ANWAR ESSA AND COMMISSIONER OF LANDS SCZ Appeal No. 49 of 2001.
- c. The nature of interests in crown land.
- d. The Rationale and constitutional basis for compulsory acquisition of property.
- e. Tenure in site and service and Improvement Areas. **(22 Marks)**



Question 3:

- a. You are an advocate in the firm Messrs Mushota, Gwaba Msimuko and Associates. This morning the Senior Partner in the firm Mr. Chishimba Natala has referred to you a new client one Charllotte Simasiku.

Mrs Simasiku tells you that she used to work for a Zimbabwean Company called Lenton Holdings Limited some ten (10) years ago. She tells you that in 1992 the company relocated back to Zimbabwe following the stiff competition brought about as a result of MMD Government policy of economic liberalisation. Mrs Simasiku tells you that before the company ceased operations in Zambia a number of employees including herself were given houses as a sign of gratitude by the company.

Mrs simasiku tells you that after being declared redundant she left for her home village in Namushekende, Mongu where she has since settled. She tells you that she left the house under the care and custody of her friend one Mulenga Chibalabala a former work mate. She tells you that some five years ago she came to Lusaka with the hope of getting title deeds to her property but was informed by Mulenga Chibalabala that their former employers (Lenton Holdings Ltd.,) were coming back due to the macro economic stability the country was enjoying then. Mrs Simasiku left for Namushekende upon being told so by Mulenga Chibalabala. Mrs Simasiku tells you that she came to Lusaka last month and was surprised to learn that her former employer has not come back to Zambia and that Chibalabala was still in occupation of the premises. When she approached Chibalabala and requested him to vacate the premises he refused by responding that he himself had applied for the title deeds to the premises. Upon learning this Mrs Simasiku rushed to the Lands and Deeds Registry to place acaveat. Despite the caveat the Commissioner of Lands approved Mulenga Chibalabala's application for title deeds and has since been issued with the title deeds.

Mrs Simasiku wish to seek for your learned legal advice. Advise her.
(15 Marks)

- b. Discuss the modes of acquiring land under customary tenure in Zambia.
(7 Marks)

Question 4:

- a. “ A short evaluation of this Act (RENT ACT) reveals that it has had the least impact.... It would be safe, however to conclude that, to all intents and purposes that the Act has fallen into desuetude” A. C. Mulimbwa – “Land policy and Economic Development in Zambia” Zambia Law Journal – Special edition 1998 (Dedicated to the memory of the Late Dr. Mulimbwa).

Critically analyse the above statement.
(15 Marks)

- ✓
- b. Discuss the decision in Construction and Investment Holding Limited vs. Williams Jack and Co.)Zambia) Limited 1972 (ZR) 66. **(7 Marks)**

Question 5:

- a. You are an advocate in the firm of Messrs Banda Syaziba Kaoma and Associates. This morning your old client one Rumbizai Chikoli has called on you to seek legal advice. Mr. Chikoli whose line business is selling Chibuku tells you that he did apply to the Kitwe Planning authority to build and operate a beer hall in Buchi Township. He tells you that there has been some objections from existing bar owners that there was no need for establishment of another Bar in the areas as the existing ones were adequate to satisfy the guzzlers of Buchi Township.

Mr. Chikoli seek your leaned advice on the matter and the prospects of the objection being sustained by the Kitwe City Planning Authorities.

(15 Marks)

- b. What was the rationale behind the enactment of the Housing (Statutory and Improvement Area Act 1974? What were the guiding principles in the drafting of the Act and how were the same incorporated under the Act?

(7 Marks)

Question 6:

- a. Relate the chief's powers in land matters under the traditional setting in Zambia to those under the Lands Act 1995. **(13 Marks)**

- b. The 1995 Land Act has dropped certain principles embedded in the 1975 Land (conversion of Titles) Act which were seen as prohibitive of an open land market. Discuss. **(9 Marks)**

Question 7:

- a. You are an advocate in the firm of Messrs Malupande Mutale Zulu and Partners. This morning the Senior Partner in the firm MRS WANJALENI MUTALAMA has referred to you a new client one Mrs Yihemba Sakuwaha. Mrs Sakuwaha tells you that she has a problem with the Lusaka City Council the owners of Plot No. 56 Kalomo Road, Chilenje South where she resides. She tells you that the Council on 28th July, 2001 evicted her and her family from the said plot and confiscated her personal effects in order to recover the outstanding rent. Mrs Sakuwaha tells you that the lease agreement is between the Council and her employer Akokwa Bauleni Limited.

✓

Mrs Sakuwaha wishes to know whether she has in law any remedy against the City Council for the eviction as well as the confiscation of her property. Advise her. **(15 Marks)**

- b. Discuss the High Court decision in William Cerlisle Wise vs. The Attorney-General 1990/1992 **(7Marks)**

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW

SECOND SEMESTER UNIVERSITY EXAMINATIONS
JULY/AUGUST, 2001

L 332 - COMMERCIAL LAW - II

TIME : **THREE HOURS (Plus 5 Minutes to Read the Paper)**

INSTRUCTIONS:

1. This is not an open book examination. Students may however take into the examination hall and consult clean copies of any relevant statute.
 2. The paper is divided into 3 sections. Candidates must attempt Question 1 and at least one question from each section.
 3. In all Candidates must answer four Questions.
-

SECTION 1:

QUESTION 1 – COMPULSORY:

On the 7th April 2001, Kwekwe bought a second hand BMW Car along Deadan Kimathi Road opposite the Customs Office. He paid K60 million cash for it to Swiftfinger who imported it from South Africa in March, 2001.

On 9th April 2001, Kwekwe approached Prospect Insurance Brokers to arrange for the insurance of his newly acquired car. He was advised that to comprehensively insure the car for the one year with Western Insurance, a leading insurance company, it would cost him K4 million in premiums.

Kwekwe was then handed a proposal form by an agent of Prospect Insurance Brokers which he immediately completed and handed back to the agent of Prospect Insurance Brokers. One of the questions in the proposal form read as follows:-

“ Has the motor vehicle been stolen previously or has there been any reported attempt to steal it?”

To this question, Kwekwe answered “No”.

Prospect Insurance Brokers then gave Kwekwe a cover note headed “Western Insurance Corporation Limited” signed by Prospect Insurance Brokers for and on behalf of Western Insurance Corporation Limited. The cover note indicated the period of cover as 365 days from the 10th April 2001. In return, Kwekwe paid Prospect Insurance Brokers by cheque drawn on Continental Bank on the 10th April 2001. The cheque was deposited the same day.

On 11th June 2001, while enjoying a drive in his car with his girl friend Melody on Great East Road, police officers from Intepol stopped Kwekwe and advised him that the vehicle had been stolen from Brixton in South Africa. They accordingly seized the vehicle and directed that it be parked at Lilayi Police Training School.

As Kwekwe was driving to Lilayi in anger, he collided with an on-coming truck. Although he survived the accident, his vehicle was damaged beyond economic repair.

Kwekwe reported the accident to the Police and to Prospect Insurance Brokers on the day it happened. At the time he reported, a clerk at Prospect Insurance Brokers informed him that his cheque for K4 million drawn in their favour on the 10th April had been returned by Continental Bank with the answer “R/D” but that due to an oversight on their part, they did not contact him earlier. Kwekwe then visited his brokers who apologised most sincerely for not paying the cheque “due to a mix up in account numbers”.

Advise the parties as to their legal positions.

SECTION 2:

Question 2:

- (a) With the help of decided cases, critically assess the maxim that “an insured must not take with both hands.”
- (b) “ It is the duty of the Court always to lean in favour of insurable interest if possible for it seems to me that after the underwriter has received the premium the objection that there was no insurable interest is often as nearly as possible, a technical objection and one which has no real merit, certainly as between the assured and the insurer” – per Brett M R in Stock v. Inglis (1894) 12 QBD 264.

Evaluate the significance of this principle.

Question 3:

Aspect, a businessman, owns a Toyota Carolla motor car which is comprehensively insured by Madison Insurance Company under a policy called the Shield Motor Policy. Under the policy cover was extend for accident damage, fire and theft but not loss or damage caused by riots.

On the morning of 14th June 2001, Aspect was driving his said motor car from Chelston to town. On reaching Marshlands, Aspect noticed a group of people on the road with two or three vehicles in flames on the road. It then occurred to him that the University students had, as earlier reported, run riot over unpaid allowances damaging property in the process. He saw the students running towards him and two or three stones were thrown at his car. Aspect, to avoid trouble, quickly u-turned to head back towards Chelston. As he turned to the left instead of to the right an army vehicle that was being driven in the outer lane also in the direction of town, hit into his vehicle causing extensive damage to the car. Had Aspect u-turned to the right, the accident would not have happened.

Although the vehicle could be driven in its damaged state, Aspect abandoned it and ran for his dear life. The students soon caught up with the accident vehicles and set them ablaze.

Aspect has lodged in a claim on his insurance and Madison would like to know whether they are obliged to pay this claim and if so to what extent?

Question 4:

Mambazo insurers his mansion against loss by fire. He also has a life policy under which his young brother Mwambazi is beneficiary. This fact is known to Mwambazi.

Mambazo picks a serious quarrel with his young brother over the latter's careless life style. The young brother decides that it was time he got the benefits under the elder brother's life policy. He sets Mambazo's house on fire while Mambazo was fast asleep. Fortunately Mambazo wakes up before his bedroom is gutted. He picks up their three months' old baby and throws it out of the window before he and his wife run through the fire and manage to get to safety without injury. Their baby dies, not as a result of the fire fumes, but damage to the skull upon being thrown out.

Mambazo knows exactly who caused the fire, so he approaches Mwambazi in the guest wing and challenges him to a fight. Mambazo picks up an axe and advances towards Mwambazi. On seeing this, Mwambazi quickly draws his knife and stubs Mambazo in the stomach with it. Mambazo dies instantly.

Consider the liability of the insurance company if any.

SECTION 3:

Question 5:

- (a) Wisdom, an established businessman, maintains an account with Triumph Bank. One morning, he reads in the Daily Nonsense, a local newspaper that he is about to be declared bankrupt and his account in his bank is in red. The newspaper quotes that Wisdom's overdraft was now in the region of K200 million. When Wisdom visits the bank the following morning, the clerk who had given the details to the press confirms that this was the state of affairs.

Identify the legal issues involved and critically discuss.

- (b) What is subrogation in insurance law and to what extent may parties to an insurance contract modify or limit its effect?

Question 6:

Discuss the legal problems arising from any three of the following:-

- a. "days of grace" in insurance law.
- b. Inchoate instrument under the Bills of Exchange Act, 1882.
- c. The position of a broker under the Insurance Act No. 27 of 1997.
- d. Signature by procuration on a negotiable Instrument.

Question 7:

- a. What was the decision in JOACHIMSON v. SWISS BANK CORPORATION (1921) and how has it helped in understanding the relationship between Banker and Customer?
- b. Identify the circumstances in which premiums paid would be recoverable by the insured.

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW

SECOND SEMESTER UNIVERSITY EXAMINATIONAL
JULY/AUGUST, 2000/ 2001

L342 – ADMINISTRATIVE LAW

TIME : THREE (3) HOURS (PLUS FIVE (5) MINUTES TO READ THE PAPER.

INSTRUCTIONS:

Read the instructions carefully. **Question One is compulsory.** Answer

Question one and any other **three Questions.**

Only unmarked statutes may be brought into the Examination Room.

Question 1: Compulsory Question.

- i) What is the institution of the Ombudsman and what is the rationale behind its creation? Trace its origin and development giving the different forms that it has taken around the world.
- ii) What is administrative adjudication and what is its rationale?
- iii) What is judicial review? Outline the grounds upon which one can apply for judicial review and (briefly) define them. **(25 Marks).**

Question 2:

- i) The great differences, which exist between states, will necessarily be reflected in the structures that they create to implement international human rights standards. The right of each state to choose the framework for a national human rights institution which is best suited to its needs has therefore been recognised and acknowledged internationally. However, certain essential elements have been identified for the development of appropriate and effective institutions. One such element is cooperation with other national and international institutions, inter-governmental organisations, and non-governmental organisations.

Identify **four (4)** other elements necessary for the effective functioning of a national human rights institution and determine whether or not these elements are applicable to and reflected in the organisation and functioning of the Commission for Investigations created under the Laws of Zambia. **(20 Marks).**

- ii) Are there any differences in the jurisdiction, powers and functioning of the Commissioner for Investigations and the National Human Rights Commission? If so, identify and briefly discuss these differences. **(5 Marks).**

Question 3:

The following notice appeared in the Times of Zambia dated the June 28th, 2001:

LUSAKA CITY COUNCIL

**THE TOWN AND COUNTRY PLANNING ACT, CAP 283
CITY OF LUSAKA PLANNING AUTHORITY**

NOTICE TO THE PUBLIC

NOTICE is hereby given that the proposed modifications of stand 164/284a Mulombwe Close, Fairview, was on the 15th May, 2001 submitted to the Hon. Minister of Local Government and Housing for approval under sector 18 [2]] of the Town and Country Planning Act, Cap 283 of the Laws of Zambia as shown on drawing number D Zam-A – 30351/30A.

It is proposed that stand 164/284a Mulombwa Close, Fairview which is bordered by stands 149/284a and 150/289a to the North and 163 to the East and Mulombwa Close to the South, at present zoned as residential on the basic map of the Approved City of Lusaka Development Plan, be re-zoned to Business (offices) as shown on modification number 171. The plot measures approximately 2574.6m square in extent. The modification is due to the reasons set out in section 18[2] [b] of the Town and Country Planning Act on account of circumstances which have arisen since the approval of the Development Plan.

A duplicate of the Proposed Modification as submitted for approval has been deposited at Civic Centre on Independence Avenue. The duplicate so deposited is available for inspection free of charge at the aforementioned address between the period of 08:00 hours to 12:00 hours and 14:00 hours to 16:00 hours by interested person (s).

Any interested person (s) who wished to make any presentation in connection with or objections to the proposed Modification may end such presentation or objections in writing to be received by the Town and Clerk of Lusaka not later than

the 27th July, 2001 and any presentations or objections shall state the grounds on which it is made.



Beulani Nyama
Acting Town Clerk
For/CITY OF LUSAKA PLANNING AUTHORITY

Mr. Haweta the proposed developer in the above advert has had his proposed modification plan refused by the Minister. Mr. Haweta has heard that you are a third year law student at UNZA who has just been studying the work of tribunals under administrative adjudication. Advise Mr. Haweta on the options open to him. **(12.5 Marks)**

- ii) Using the same advert above, Mr. Admodis has not been allowed to tender his objections and or presentations by the Town Clerk. He too has heard that you are a third year law student at UNZA who has just been studying administrative law. He wishes to seek redress before the Courts. Advise him on the means of redress available to him. **(12.5 Marks).**

Question 4:

" In constitutional democracy political power belongs to the people, and is exercised by the people or delegated to their representatives. Whatever the situation may be, power has defined limits with ground rules which all the members of society are expected to observe. As public power is largely exercised by the executive branch, there is need to ensure that officials of the state comply with the letter and spirit of the law. In this regard, the institution of the Investigator-General or Ombudsman was created as a check on the administration."

- a. Has the Zambian Ombudsman succeeded in checking executive power since it was created? **(10 Marks)**
- b. Briefly give the facts in the following cases and the Court's holding:-
- i) Maxwell Mwamba and Stora Mbuzi vs. Attorney General SCZ Judgment No. 10 of 1993.
 - ii) Attorney-General vs. Election Commission (1990/92) Z. R. 183.
 - iii) Nkumbula vs. Attorney General (1972) Z. R. 204 **(15 Marks)**

Question 5:

Tamanga Carriers is a private company involved in the transport sector providing mainly passenger transport from the City of Lusaka to various towns in Zambia.

Tamanga Carriers has been in operation since 1990 and is in occupation of Plot. No. 554 Lots Road, Lusaka under a renewable Lease Agreement between Tamanga Carriers and Zambia Railways. Tamanga Carriers is fully paid up to September, 2005.

Plot No. 554 Lots Road at which Tamanga Carriers is located in at the Southend of the City Centre and has over the years become a popular bus station because of its efficient service and the fact that it travels even to the remotest parts of the country. Moreover, it is easily accessible to the travellers as the main local bus station is 50 metres away.

On the 2nd day of February, 2001 the Managing Director of Tamanga Carriers received a letter from the Permanent Secretary of the Ministry of Local Government and Housing informing him that the Government had decided that it was in the national interest to close all bus routes and bus stations in the Lusaka Central Business District.

This, the letter stated had been necessitated by the Government's receipt of grant aid from the Japanese Government for road rehabilitation in the area, and the government was anxious to commence the rehabilitation works.

The letter informed Mr. Tamanga that his bus station was to be affected by the closure and further that during the closure the Tamanga Carriers were to operate from the Inter-City bus station. The Inter-City station is used by various different bus operators who are required to pay a weekly fee for operations from the station. The station is located 2km from the City Centre and the nearest local bus station. It is also filled with lots of beggars and pick pockets, and uncollected garbage.

The Permanent Secretary's letter which concluded by thanking Tamanga Carriers in advance for their co-operation concluded by informing Mr Tamanga that he had up to 17:00 hours on the 5th day of February, 2001 to relocate its operations to the Inter-City station, failure to which the station would be closed by city authorities.

On the 7th of February, 2001 Mr. Tamanga sought audience with the Permanent Secretary and asked that they reconsider the decision as he would not only lose business but also all the developments he had carried out at Plot No. 554 Lots road (Since commencing operation from the station Tamanga Carriers had constructed shelters, conveniences and a fast foods restaurant at the station).

The Permanent Secretary informed Mr Tamanga that the decision could not be reversed and he could only extent the closure of the Tamanga Station to the 10th of February, 2001. By the 13th of February, 2001, Tamanga Carriers had not relocated its operations to the Inter-City station and the Ministry of Communications and Transport sent the following letter:-

Dear Sir,

Re: Closure of Bus Station:

Reference is made to the above subject matter.

The Government through the Ministry of Local Government and Housing informed you on the 2nd of February, 2001 of the closure of your bus station in order to facilitate the rehabilitation of road works in the Lusaka Central Business District. This order was later extended at your request to the 10th of February, 2001. You have failed to comply to this directive Section 24[2] of the roads and Road Tariff Act clearly stipulates the powers invested in the relevant authority as regards traffic on any road for the maintenance of which it is responsible. Furthermore, the conditions of the road service licence requires that the holder shall observe in all respects the orders and provisions laid down in the Road Traffic Act and the subsidiary Regulations.

This letter therefore orders you to move from the closed bus station with immediate effect as directed by the government through the Ministry of Local government and Housing . Failure to do so will put in your breach of your road service licence conditions as stipulated above leading to the revocation of your operating licence.

Yours faithfully,

NB: You have up to 17:00 hours today to re-locate or else.

(The Note below (NB) was written on the letter by hand and the road traffic commissioner who signed it was Mr Tamanga's arch rival at school. Infact, Mr. Tamanga was picked headboy over him and later Mr Tamanga 'won' Mrs Tamanga over the said commissioner and The Permanent Secretary of the Ministry of Local Government and Housing is the Commissioner's first cousin).

Mr. Tamanga has now come to you to seek legal advise on what he can/must do.
(25 Marks)

Question 6:

- i) The Sanitary and Sanitation Act 2000 (fictitious statute provides):

15[1] The Urban and Local Councils may establish bath and wash houses and open bathing places in the various townships to cater for the homeless and those persons that do not have facilities to bath or wash their belongings at home.

15[2] The bath and wash houses and open bathing places shall also be authorised to sell bathing soap and detergents.

The Lusaka City Council established bath and wash houses under the Act in Bauleni and Chawama Townships. The Newly elected FDD Councillors of the 2 townships are of the view that the bath houses are not making enough money to sustain themselves. They therefore want to introduce laundry facilities at a fee at the bath and wash houses.

Advise the Councillors.

(10 Marks)

- ii) Although the institution of the Ombudsman has its origin in Scandinavian countries, the Zambian model was in response to the unique problems facing Zambia. **Outline** the duties and functions of the Zambian Commission for Investigations and state whether in your opinion it has addressed to the problems for which it was created. **(15 Marks)**

Question 7:

Extract from the Code of Discipline of the Matero University.

The University shall have power to impose disciplinary sanctions, which may include the imposition of a fine not exceeding K50,000.00 and the termination of the course of any undergraduate, on any student found guilty of any of the following:

- i) assaulting a member of the academic staff;
- ii) damaging property belonging to the University;
- iii) bringing the University into disrepute;
- iv) engaging in any conduct forbidden by the Vice Chancellor.

The University shall follow the following procedure:

- i) any allegation against a student shall be investigated by the Committee of Public Safety, composed of the Deans of each Faculty. The Committee shall prepare a report of the facts as found and shall recommend an appropriate sanction;
- ii) the case shall be heard by the Disciplinary Committee, composed of the Vice Chancellor and five members of the academic staff (including one member of the Law Faculty).

The students of the Matero University enjoyed snowy weather for the first time. Isaac and Andrew built a snowman in front of the University and Suzyo dressed the snowman in a gown belonging to Professor Zaza. The snowman was described in the local newspaper as "obscene". Liya threw a snowball at a friend but her aim was faulty and the snowball hit a visitor to the University. The Committee of Public Safety met and prepared their report on Isaac, Andrew Suzyo and Liya. The next day, the Vice Chancellor was informed that Eddie had sold mugs of his home-made Kachasu to students who had had to have lecturers in unheated rooms. He summoned Eddie, told him that he did not approve of alcohol, and stated that as there was no time to convene the Committee of Public Safety, he would ask the Registrar to prepare the report in Eddie's case. At the hearing before the Disciplinary Committee, the Vice Chancellor stated that the Committee always accepted the findings of fact made by the Committee of Public Safety and that it was the invariable practice of the Disciplinary Committee to impose fines on students who bring the University into disrepute. The Disciplinary Committee, composed of the Vice Chancellor, the Dean of the Faculty of Agriculture (Professor Limbani), and the Professors of Engineering, Drama, Mines, Theology and Education, imposed fines of K100,000.00 on Isaac and Andrew and fines of K25,000.00 on Suzyo and Liya. Eddie, who is undertaking research which it is rumoured will prove that Professor Limbani had been guilty of scientific fraud, had his course terminated.

Advise Isaac, Andrew, Suzyo, Liya and Eddie.

(25 Marks)

THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW

**UNIVERSITY SECOND SEMESTER DEFERRED/SUPPLEMENTARY
EXAMINATIONS SEPTEMBER, 2001**

L 342 - ADMINISTRATIVE LAW II

INSTRUCTIONS:

TIME : **THREE (3) HOURS** (Plus 5 Minutes to read to question Paper)

ANSWER : **FOUR Questions.** All questions carry equal marks.
Only **UNMARKED STATUTES** may be brought into the Examination Room.

=====

QUESTION 1

- i) What are the grounds upon which one can apply for judicial review?
- ii) What is administrative adjudication? Discuss the workings, powers and jurisdiction of a tribunal in Zambia that carries out this kind of adjudication.

QUESTION 2

- 1. What is a national human rights institution?
- 2. Identify and discuss the elements necessary for the development of an appropriate and effective national human rights institution.

QUESTION 3

It has been recognised that human rights considerations are relevant to almost every sphere of governmental activity and indeed to other areas of public and private life. The range of "National Human Rights Institutions" concerned with human rights issues reflect this reality. The majority of existing National Institutions fall in 2 broad categories.

Identify 2 National Human Rights Institutions in place in Zambia. Discuss their powers and functions, highlighting the differences between them.

QUESTION 4

- (i) The Hon. Minister of Local Government and Housing has through his Permanent Secretary issued a circular to all bus operators in Lusaka notifying them that due to the solar eclipse and the OAU Summit to be held in Lusaka, the (main) roads shall require Rehabilitation. That further to this requirement all (privately) operated bus stops will have to be closed during the rehabilitation period and further that the buses will not be allowed to operate on their usual routes. The circular is dated 15th June, 2001 and requires the bus operators to vacate the various bus stops by the 20th June, 2001 to face forced evictions.
- Mr Wowo operates a private station and fleet of bus that services most of the routes in Zambia from the Lusaka City Centre and he is one of the operators affected by the above circular.
- Mr. Wowo is displeased with this decision and feels cheated and highly prejudiced. He has come to your firm and has asked that you challenge this decision. Senior Counsel has asked you to write a brief to him stating what possible redress your client could seek and on what grounds. Senior Counsel also requires that you outline the remedy(s) available.
- (ii) Briefly give the facts in the following cases and the Court's holding:
- Maxwell Mwamba and Stora Mbuzi vs. Attorney General SCZ Judgment No. 10 of 1993.
 - Attorney General vs. Election Commission (1990/92) ZR 183
 - Nkumbula vs. Attorney General (1972) ZR 204.

QUESTION 5

- What is the institution of the ombudsman and why was it created?
- The Zambian institution of the Ombudsman was created in 1974 – discuss its powers and functions. Has it, in your opinion fulfilled the reasons for which it was created..

QUESTION 6

The Universities Act 2001 (a fictitious Act) established a control Commission designed to assess the performance of Universities. The Commission has power to inspect university departments, to attend lectures and tutorials and to examine any written work of students. Before undertaking an inspection, the Commission must give the Vice Chancellor of a University one week's written notice of its intended visit. The Commission delegates its functions to a series of specialist committees, composed of five academic members currently teaching in a University and who cannot have had any recent connection with that department. If the Commission determines that a department is unsatisfactory all teaching members of that department will have their salaries cut by 30 per cent.

On 8th July, 2001, the Vice Chancellor of the University of Matero was informed by telephone that the department of law of the University would be inspected on 15th July, 2001 the last day of term and the day after the law departments annual dinner and ball. The inspection committee was composed of five professors of law, including professor Tumbuwa, who had been dismissed from Matero University in 1999 for incompetence. The committee attended three lectures and two tutorials given by members of the law department, but did not examine any student's written work. Yesterday the Vice Chancellor received a letter stating: "The Law department of the University of Matero is unsatisfactory. The Vice Chancellor has heard that you have recently completed a course in administrative law. Advise the Vice Chancellor

QUESTION 7

- i. In identifying elements for the effective functions of National institutions there is need also to encourage and facilitate the development of appropriate and effective institutions.
How do you evaluate the appropriateness of an institution and how do you measure its effectiveness.
- ii. Increasingly special tribunals are being conferred with powers of adjudication. Discuss the reasons for creating special tribunals.

=====

END OF EXAMINATION

GOOD LUCK!!

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

SECOND SEMESTER FINAL EXAMINATION , JULY/AUGUST, 2001

L352 – NATIONAL HUMAN RIGHTS LAW – II

TIME : **THREE (3) HOURS (PLUS 5 MINUTES TO READ THROUGH THE PAPER].**

INSTRUCTIONS:

1. Documents allowed into Examination Hall:
 - a. Bill of Rights: Constitution of Zambia (1991, as amended 1996), Constitution of South Africa (1996).
 - b. Convention on the Elimination of All Forms of Discrimination against women (1979).
 - c. The African Charter on the Rights and Welfare of the Child (1990).
 2. Answer **Question 1**, plus **three** others = **Four Questions**.
 3. Write your **Computer No.** only on **ALL Answer Books**.
-

Question 1:

The Convention against Torture and Cruel, Inhuman or Degrading Treatment or Punishment (1984) provides in Article 21 [I]:

“ A State Party to this Convention may at any time declare under this article that it recognises the competence of the committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under this Convention. Such communications may be received and considered..... only if submitted by a State Party which made a declaration recognising in regard to itself the competence of the Committee...”

In respect of the Convention and Article 21, a Commentator has this to say:

“ If enforcement of the Convention is sought not via the multi-State jurisdictional system, but through the international machinery established by the Torture Convention....claimants may be frustrated by the declaration of competence requirement for inter-state and individual petitions. As such the Torture Convention followed the U.N. policy of substituting symbolism for real enforcement.” Consequently, it has made enforcement difficult to attain.

Carefully consider the above in relation to **Article 15 of the Constitution of Zambia 1991**, relevant articles in the **constitution of South Africa (1996)** and provide **brief notes** to the following:

- a. What is the precise definition of ‘Torture’.
- b. What does the Commentator mean by “ international machinery established by the Torture Convention?
- c. “ Claimants may be frustrated...” How serious a problem do you take this to be?
- d. In respect of implementation or enforcement of the Torture Convention, do you consider both measures as mutually exclusive? Be sure to support your argument.

(19 Marks).

Question 2:

Provide brief notes on **FIVE** of the following:-

- a. John Banda V. The People (1999) – High Court.
- b. Civil Liberties Organisation V. Nigeria (1995) – African Commission.
- c. The Little Red Schoolbook Case – ECHR, Ser.A.24
- d. The Lawless Case (G. Lawless V. Ireland) (1996), Ser. A
- e. The right to life (under the Constitution of Zambia).
- f. The Principle of notification - in a state of emergency.
- g. Human rights INGOs.

(17 Marks).

Question 3:

Article 1 – CEDAW – defines discrimination against women as:

“...Any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”

Argue in favour, or against the above definition. Be sure to support your argument. **(17 Marks).**

Question 4:

Evaluate the significance of the ‘best interests of the child’ principle as contained in the African Charter on the Rights and Welfare of the Child (1990). **(17 Marks).**

Question 5:

Article 17 [1] of ICCPR (1966) provides:

“No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.”

Contrast the above with the provisions under the Constitution of Zambia (1991), as amended (1996) and assess the latter’s effectiveness in the protection of the right to privacy. **(17 Marks).**

Question 6:

Sexual harassment is an egregious form of employment discrimination. It compromises the health and safety of women workers. States parties to CEDAW that do not have Laws protecting women against sexual harassment are in violation of their obligations under the Convention by failing to prohibit discrimination in employment.

- a. Briefly evaluate the constitutional guarantees in Zambia dealing directly with sexual harassment in workplaces.
- b. Outline specific employment rights, relevant to issue of sexual harassment as guaranteed under CEDAW (mention at least three). **(17 Marks).**

Questions 7:

The Constitution of Zambia (1991, as amended 1996) contains few, or no specific safeguards or guarantees for human rights in a state of public emergency. In contrast the Constitution of South Africa (1996) provides sufficient safeguards under a state of emergency to prevent any arbitrary use of powers and protect human rights and fundamental freedoms.

Critically examine:-

- a. The safeguards or guarantees provided under both constitutions and indicate whether they are consistent with international human rights Law governing the protection of human rights during a state of emergency.
- b. The advantages and disadvantages of such constitutional safeguards in enhancing the protection of human rights in situations of public emergency. **(17 Marks).**

**THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW**

UNIVERSITY EXAMINATIONS – JULY/AUGUST, 2001

L 362 – CIVIL AND CRIMINAL PROCEDURE



TIME : THREE HOURS PLUS TEN (10) MINUTES TO READ THE QUESTION PAPER.

INSTRUCTIONS:

- i) Answer question ONE and any THREE other Questions.
- ii) Question 1 carries 34 Marks while the rest carry 22 Marks each.
- iii) Candidates may bring into the examination room unmarked and unannotated copies of the following statutes:
 - a) The Subordinate Courts Act.
 - b) The High Court Act.
 - c) The Penal Code.
 - d) The Criminal Procedure Code.

COMPULSORY QUESTION:

1. Clean Living Limited (CLL), a company incorporated in Zambia, has its registered office at Plot. No 744, Freedom Way, Lusaka. The Sales Manager of Clean Living Limited approaches your law firm, Moonlight Chambers, with instructions to recover the sum of K60 million from Mwansabombwe General Dealers (MGD), another company incorporated in Zambia with a registered office at Plot. No. 66, Fairview Road, Lusaka. The debt arose out of a contract entered into on 24th January, 2001 between CLL and MGD whereby the former supplied the latter with blankets worth K60 million. The contract provided that MGD was to settle the amount in three equal monthly installments of K20 million each by 30th April, 2001, the first installment being due on 28th February, 2001. In breach of contract, MGD failed to settle the debt despite numerous reminders by CLL to honour its contractual obligation.

After your letter of demand to MGD is ignored, you decide to sue the company for recovery of your client's money, interest and costs.

Using the information given:

- i) complete the Writ of Summons you have been provided with. The Cause Number is 2001/HP/4630. The matter to be commenced in the High Court will be filed in the Principal Registry on 28th august, 2001. The Chief Justice's name is M.S.W. Ngulube. The Writ must be signed in the appropriate place but the certificate of service part of the Writ should be left blank. Endorse the claim on page 2 of the Writ, putting the address of your firm, 4th Floor, Tazara House, Independence Avenue, P. O. Box 30905, Lusaka, in the correct place on the Writ.
- ii) Prepare the Statement of Claim to accompany the Writ.

- 2. What are Interpleader Proceedings? Outline the procedure for Interpleader Proceedings in the Subordinate Court.
- 3. Under what circumstances can a Police Officer arrest a person without warrant? What should a Police Officer who has made an arrest without warrant do after effecting the arrest?
- 4. Write brief notes on any **FOUR** of the following:-
 - i) the Powers of the Director of Public Prosecutions to *enter a nolle prosequi*.
 - ii) Charges and Depositions.
 - iii) Preliminary inquiry
 - iv) Grounds upon which a Magistrate or Judge may refuse to grant bail to a prisoner.
 - v) Privileges enjoyed by a juvenile offender in a criminal trial.
- 5. a) When are actions in the High Court commenced by:
 - i) Writ of Summons?
 - ii) Originating Summons?
 - iii) Originating Notice of Motion?b) Outline the procedure for commencing civil proceedings in the Subordinate Court.
- 6. Outline the procedural differences relating to interrogatories, discovery and production of documents in the Subordinate Court and the High Court.

END OF EXAMINATION

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- i) the Powers of the Director of Public Prosecutions to *enter a nolle prosequi*.
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- iv) Grounds upon which a Magistrate or Judge may refuse to grant bail to a prisoner.
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- i) Writ of Summons?
- ii) Originating Summons?
- iii) Originating Notice of Motion?

b) Outline the procedure for commencing civil proceedings in the Subordinate Court.

6. Outline the procedural differences relating to interrogatories, discovery and production of documents in the Subordinate Court and the High Court.

END OF EXAMINATION

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**THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW**

UNIVERSITY EXAMINATIONS – SEPTEMBER, 2001

**L 362 – CIVIL AND CRIMINAL PROCEDURE
DEFERRED / SUPPLEMENTARY EXAMINATIONS**

**TIME : THREE HOURS PLUS FIVE (5) MINUTES TO READ THROUGH
THE QUESTION PAPER.**

INSTRUCTIONS:

1. Answer Question ONE and any other THREE questions.
2. Question ONE carries 34 MARKS while the rest carry 22 MARKS each.
3. Candidates may bring into the examination room UNMARKED and UNANNOTATED copies of the following statutes:
 - a. The subordinate Courts Act.
 - b. The High Court Act.
 - c. The Criminal Procedure Code.
 - d. The Penal Code

QUESTION 1 : COMPULSORY

Mabvuto Jere, a resident of John Laing Compound in Lusaka, approaches your law firm with a complaint to the effect that on 2nd April, 2001 at about Mid-day, he was walking along the pavement of Cairo Road in the southern direction, when a Mercedes Benz car, Registration number AAZ 1601 moving very fast towards the same direction, careered off the road and hit him. He sustained multiple fractures on his right leg and several bruises on his hands and body. As a result of the accident, Jere cannot work any more. His employment as a Bank Clerk was terminated on medical grounds. As he was the only bread winner for his family, which consists of a wife and six children, his family is now suffering as there is no other source of income.

Jere wants your firm, Lusaka Partners, to take up the matter on his behalf and ensure that he is compensated. Investigations reveal that the driver of the Mercedes Benz Car Khuluku Tembo, who also owns the motor vehicle. He lives at House No. 321, Lubuto Road, in Kabulonga. His vehicle was not insured at the time of the accident. Using the information given above:

- i. complete the Writ of Summon you have been provided with. The Writ will be filed in the High Court Registry on 24th September, 2001. The case no. is 2001/HIP/7841. Your firm's address is 3rd Floor, Kang'ong'o House, P. O. Box

✓

5628, Lusaka. Sign the writ in the appropriate place but leave the service part blank (17 Marks)

- ii. Prepare a Statement of Claim to accompany the Writ of Summons. (17 Marks)

QUESTION 2:

Write brief notes on any THREE of the following:

- a. Institution of criminal proceedings in subordinate courts. (7½ Marks)
- b. Charges and informations. (7½ Marks)
- c. Criminal jurisdiction of magistrates. (7½ Marks)
- d. Preliminary inquiry and committal proceedings. (7½ Marks)
- e. Arraignment. (7½ Marks)

QUESTION 3:

- a. Distinguish between non-joinder and misjoinder of actions. (11 Marks)
- b. Outline the procedure for interlocutory applications in subordinate Courts. (11 Marks)

QUESTION 4:

Write brief notes on any THREE of the following:

- a. Writs of Fieri Facias. (7½ Marks)
- b. Judgement Summons. (7½ Marks)
- c. Attachment of debts. (7½ Marks)
- d. Interpleader Summons. (7½ Marks)
- e. Composition Orders. (7½ Marks)

QUESTION 5:

Briefly outline the procedures for commencing various actions in the High Court of Zambia.

QUESTION 6:

Msiska has a house in Libala Township of Lusaka which he has rented to a company called Chisokone Enterprises for K850,000 per month. Msiska lives in Ndeke Township in Kitwe, Chisokone Enterprises has defaulted in paying rent for one and a half years now. Msiska wants to commence proceedings against Chosokone Enterprises to recover the arrear rental. Giving reasons for your answer, advise Msiska on which court he should commence his proceedings in.

END OF EXAMINATION



Endorsements to be made on the writ before issue thereof

The plaintiff's claim is for,

This writ was issued
of * whose address for service
is at and whose postal address
for service is at agent for
of , solicitor for the
said plaintiff who resides at†

Endorsement to be made within THREE days after service

This writ was served by me at
on the defendant on the day
of 2.....
Endorsed the day of , 2.....
(Signed)
(Signed)

*Here insert both actual and postal addresses.

†Mention the city or town and also the name of the street and number of the house of the plaintiff's residence, if any.

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

UNIVERSITY SECOND SEMESTER EXAMINATION, JULY/AUGUST, 2001

L 382 – LABOUR LAW

TIME : **THREE** (3) HOURS (Plus 5) Minutes to read the Question Paper).

INSTRUCTIONS:

1. Answer **Question One** and any **Three** other Questions.
2. **Question One** carries 34 Marks while the rest carry 22 marks each.
3. Candidates may bring into the Examination room **unmarked** and **unannotated** copies of the following statutes.
 - a. The Employment Act and amendments thereto.
 - b. The Industrial and Labour Relations Act and amendments thereto.
 - c. The Minimum Wages and Conditions of Employment (General) Order, 1997.

COMPULSORY QUESTION 1:

1. John Chibanda was employed as a lecturer at the University of Lusaka in Zambia. The University of Lusaka was a public university established in accordance with the provisions of the Higher Education Act (H.E.A.). "Ba John", as he was fondly referred to by his admirers, was a highly gifted public speaker. Not surprisingly he was elected President of the University of Lusaka branch of the National University Lecturers' Union (NULU).

On 4th May, 2001, "Ba John" called a meeting of all the members of NULU at the University at which he urged them to go on an immediate strike following the University's failure/delay in implementing improved conditions of service. "Ba John's" call for an industrial action met with immediate success as all the University staff vowed to remain on an indefinite strike. On 6th June, 2001, the University Vice-Chancellor wrote to "Ba John" advising him of the termination of his contract of employment with the University with effect from 4th May, 2001 for going on an illegal strike. The letter read in part:-

“ I am directed to inform you that since your strike action was clearly unwarranted, you by your said action, terminated your contract of employment with the University.....”

“Ba John” is extremely upset by the contents of the said letter. He has approached you and handed over to you the following documents:-

- a. the letter terminating his contract of employment;
- b. a copy of the Higher Education Act (H.E.A.)

The following are some of the provisions of the H.E.A.:

“5.10 If the Vice-Chancellor of the University has reasonable grounds for believing that a member of staff should be removed from his office or employment on grounds of misconduct or failure to perform functions of his office or employment, he shall –

- a. give notice of those grounds to the member in question;
- b. suspend the member in question from employment pending investigations;
- c. refer the matter to the University Tribunal; and
- d. make arrangements for the member in question to be afforded an opportunity of appearing before, and being heard by, the University Tribunal with respect to the matter.

5.11 (i) There is hereby established a Tribunal to investigate, consider and decide disciplinary cases referred to it under section 10.

(ii) A decision of the Tribunal shall be binding on all Parties before it.”

Advise “Ba John” as to his legal position and demonstrate the merits and demerits (if any) of the respective cases for “Ba John” as well as his former employer. Also advise your client on the most suitable forum for seeking the redress that you have been instructed to pursue.

Question 2:

Write comprehensive notes on the following:-

- a. the duties of an employer faced with a redundancy situation under Zambian employment law.
- b. the contribution of the Employment Act and the Industrial and Labour Relations Act No. 27 of 1993 to the explosion of common law "myths" of freedom of contract and freedom to 'hire' and 'fire.'

Question 3:

- a. Briefly outline the dispute resolution process in essential and non-essential services under the Industrial and Labour Relations Act of 1993.
- b. The National Union of Charcoal Burners (NUCB), is a duly registered union under the Industrial and Labour Relations Act (No. 27) of 1993 (ILRA) with Kabwe Kasolo as its National Chairman. In recent weeks Kabwe, together with other executive members have been pushing the Association of Charcoal Burners Employers (ACBE), to enter into negotiations for better conditions of service. ACBE does not recognise NUCB. Last week the government increased the prices of fuel, mealie meal and sugar resulting in a general call for improved salaries by all the thirty unions in the country. NUCB on its part called for a strike by its members who accordingly, complied. The entire executive of NUCB was subsequently dismissed from employment and they seek your advice on what step they should take next. Advise them.

Question 4:

- a. Explain the various incidents of oral as well as written contracts of employment under the Employment Act, Chapter 268 of the Laws of Zambia.
- b. "The employer is obliged to provide every employee with a written statement reflecting the main terms of employment in order to ensure that the terms of the employee's contract of employment are set out in writing so that the employee knows his legal rights in terms of the contract and can, if need be, insist upon them by legal action against the employer." – OWENS v. MULTILUX LIMITED (1974) IRLR 113 at p. 114.

Discuss and evaluate the above statement in the context of the Zambian employment law.

Question 5:

Describe the structure of the International Labour Organisation (ILO) and how compliance with its standards by member states is monitored.

Question 6:

" All reciprocal rights and duties of employer and employee depend upon the express and implied terms of the contract of employment" per HEPPLER & FREDMAN (1986)."

Giving reasons for your answer, state whether you agree with the above statement or not.

END OF EXAMINATION

**THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW**

UNIVERSITY EXAMINATIONS – SEPTEMBER, 2001

L 382 – LABOUR LAW – DEFERRED / SUPPLEMENTARY EXAMINATIONS

**TIME : THREE HOURS PLUS FIVE (5) MINUTES TO READ THROUGH
 THE QUESTION PAPER.**

INSTRUCTIONS:

- i. Answer Question ONE and any other THREE questions.
- ii. Question ONE carries 34 MARKS while the rest carry 22 MARKS each.
- iii. Candidates may bring into the examination room UNMARKED and UNANNOTATED copies of the following statutes:
 - a. The Employment Act and Rules.
 - b. The Industrial and Labour Relations Act and Rules.
 - c. The Minimum Wages and Conditions of Employment Act and any amendments thereto.

QUESTION 1: COMPULSORY

The National Union of Cloth Producers (NUCP) is duly registered under the Industrial and Labour Relations Act (No. 27) of 1993. The NUCP's National Chairman is an outspoken man by the name of Chintomfwa Chileshe. For the past two months, NUCP led by Chileshe's executive has been trying hard to make the Association of Cloth Producers Employers (ACPE) to enter into negotiations for improved conditions of service. ACPE does not recognise NUCP but recognises a rival union going by the name of Independent Union of Cloth Producers (IUCP) and so has refused to negotiate with NUCP. Chileshe and his executive had a meeting recently where a decision was made to go on strike. The executive immediately informed the members of the executive's decision to go on strike to press for improved conditions of service. The executive's decision seemed to have been accepted by the members as they all downed their tools. The entire executive of NUCP was subsequently dismissed from employment for inciting the workers to go on strike. They approached you for advice on what steps they should take next. What is your advice? (34 Marks)

QUESTION 2:

Write comprehensive notes on the following:

- a. incidents of oral and written contracts of employment under the Employment Act. (7 Marks)

- b. using decided cases, distinguish between wrongful dismissal, unfair dismissal and termination. (8 Marks)
- c. the duties of an employer and employee faced with a redundancy situation under Zambia employment Law. (7 Marks)

QUESTION 3:

The Enhanced Structural Adjustment Programme (ESAP) currently being implemented in Zambia calls for a deliberate effort on the part of the government to introduce and adhere to positive labour policies for sustainable growth and not contraction of employment opportunities. Discuss. (22 Marks)

QUESTION 4:

In his discussion on the individual employee involved in industrial action, Napier outlines disadvantages with which he or she is faced. Using decided cases, if any, discuss these disadvantages and the extent to which the Zambian law has addressed the issue, if at all. (22 Marks)

QUESTION 5:

In the case of *CROFTER HAND WOVEN HARRIS TWEED CO. v VEITCH* (1940) A.C. 463, it was observed that “.....the strike is the ultimate sanction without which collective bargaining cannot exist.” Giving reasons for your answer, state whether you agree with this observation or not. (22 Marks)

QUESTION 6:

- A. Discuss the tripartite set up in industrial relations. (11 Marks)
 - B. Describe the three major theories of industrial relations. Which one would you say best describes the present industrial situation in Zambia. (11 Marks)
-

END OF EXAMINATION

UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

UNIVERSITY EXAMINATIONS – OCTOBER, 2001

L 382 – LABOUR LAW – DEFERRED/SUPPLEMENTARY EXAMINATIONS

TIME : THREE (3) HOURS (Plus 5 Minutes to read through the Question Paper)

INSTRUCTIONS :

- (i) Answer **ANY FOUR (4)** questions.
 - (ii) ALL questions carry **25 marks** each.
 - (iii) Candidates may bring into the examination room **UNMARKED** and **UNANNOTATED** copies of the following statutes:
 - a. The Employment Act and Rules thereto;
 - b. The Industrial and Labour Relations Act and Rules thereto;
 - c. The Minimum Wages and Conditions of Employment Act and Rules thereto.
-

QUESTION 1:

In the context of the various theories that have been advanced, discuss the concept of the "Right to Strike".
(25 Marks)

QUESTION 2:

To what extent has the Minimum Wages and Conditions of Employment Act and rules made thereunder improved the welfare and working conditions of the employee in Zambia?
(25 Marks)

QUESTION 3 :

In **ROOKES v. BARNARD (1963) 1 Q.B. 623**, it was held that a threat to break off a contract of employment by strike action was a breach of an obligation actionable by the employer. Discuss.
(25 Marks)

QUESTION 4:

What is collective bargaining? Why is it important to labour relations in Zambia?
(25 Marks)

QUESTION 5:

In **CRUICKSHANK v. HOBBS (1977) 1 C. R. 725**, it was observed that an employer can declare a 'selected' employee redundant without the dismissal being categorised unfair. Do you agree with this observation? Give reasons for your answer.
(25 Marks)

QUESTION 6:

With the assistance of decided cases and statutory law, describe the concepts of constructive dismissal, unfair dismissal, wrongful dismissal and termination.
(25 Marks)

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW

SECOND SEMESTER EXAMINATION PAPER, JULY/AUGUST, 2001 ON

L 412 : JURISPRUDENCE – II
(LAW & SOCIETY)

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

INSTRUCTIONS:

1. Statutes are allowed in the Examination Room.
 2. Answer **Question 1** and **three** other questions.
-

Question 1:

Delivering judgement of the majority in **Mulundika and Others Vs. The People** [1996] 2 LRC.

2LRC, Ngulube, C. J. had **inter alia** this to say:-

“ The requirement of prior permission to gather and to speak, which permission can be denied sometimes for good and at other times for bad cause not contemplated by the constitutional derogation, directly affects the guaranteed freedoms of speech and assembly. It is little wonder that these are the freedoms most discussed by the Courts whenever a democratic society is being considered. The weight of judicial authority in commonwealth countries argues against the constitutionality of a provision like our section 5 (4) of the Public Order Act.” (At page 187).

Evaluate the efficacy of the Public Order (Amendment) Acts No. 1 and 36 of 1996 in a democratic society.

Question 2:

W. Friedman in his **Legal Theory**, 5th Edition makes the following observations on the Concept of Law:-

- a. “ All definitions or characterizations of law veer between two extreme positions: One extreme emphasises its coercive character; the other lays stress on the social acceptance, the actual observance of law by the community to which it is addressed. The coercive aspects of the legal norm rest both on the source of authority (sovereign command, hierarchical order) and on the enforceability by sanctions which may be civil, criminal, or administrative.....” (At page 14).
- b. “.....On the other hand, it is equally obvious that a community which had no general prescription at all, but only an infinite multitude of individual commands, would not be regarded as having a legal order. It would dissolve into millions of individual relationships. Taking these three essential elements into consideration, we may say, without an attempt at “definition” of the term, that the concept of law means a norm of conduct set for a given community and accepted by it as binding by an authority equipped with the power to lay down norms of a degree of general application and to enforce them by a variety of sanctions.” (At pages 15-16)

And what do you yourself say law is? Discuss.

Question 3:

- a. What is the relationship between law, morality and justice?
- b. Is an unjust law, law? Discuss with illustrations?
- c. Discuss custom as a source of law and in particular what conditions in the Zambian legal system are to be met for a custom to be enforceable law.

Question 4:

What is the Rule of Law and what permissible limitations have been placed in its application in the Zambian legal system? Discuss.

Question 5:

Discuss judicial precedents as a source of law and in particular the doctrine of **stare decisis** in the light of the following decisions of the High Court and Supreme Court of Zambia –

Kabande Kaindu Mushota, and Patrick Katyoka vs. Kenneth David Kaunda and the Attorney-General. 19997/HN/357

- b. **In the Matter of the Presidential Election held in Zambia on the 18th November, 1996 SJZ NO. 14 of 1998.**

And

- c. **Match Corporation Limited vs. Development Bank of Zambia, and the Attorney-General. SCZ Judgement No. 3 of 1999.**

Appeal No. 128 of 1997

Question 6:

Discuss the Evolution of personal liberties and freedoms and the balancing of these vis-a vis public policy and public interest.

Question 7:

Discuss and appraise the role of law and a lawyer in a developing democracy and economy with particular emphasis on Zambia.

END OF EXAMINATION

**THE UNIVERSITY OF ZAMBIA
SECOND SEMESTER EXAMINATIONS
JULY, 2001**

L422 – COMPANY LAW

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

INSTRUCTIONS : ANSWER FOUR QUESTIONS AND QUESTIONS ONE COMPULSORY.

Candidates may bring a clean copy of the Companies Act.

- 1.a. The Directors of Ziko Limited, a Company registered under the Laws of Zambia, decided at a Board Meeting to build a swimming pool for the benefit of all the retired employees of the Company.

There was no power in the Memorandum of Association to engage in the building of the pool, but it appeared that all the members of the Board of the Company, except Kasonde, were in favour of the project, but there was no meeting at which it was discussed or agreement to it signified.

The Company contracted Pleasure Pools Limited to build the pool at the cost of K15,000,000.00 and paid a deposit of K5,000,000.00. Kasonde sought an injunction against the company restraining it from further payments.

The Directors then informed Pleasure Pools Limited that the project was ultra vires and they do not wish to complete the Agreement.

You are the Legal Counsel for Pleasure Pools Limited, please advise.

(20 Marks).

- b. Write short notes on the following:-

- a. Authorised Capital;
- b. Paid up Capital;
- c. Issued Capital.

(11 Marks)

- 2a. Comment briefly on the distinction between a Voluntary winding up and a Compulsory winding up.

(6½ Marks)

- b. Although the case of Salomon V. Salomon has authoritatively demonstrated the fundamental nature of the principle of corporate personality in the Company Law, circumstances do exist in which this principle is or may be overlooked.

Discuss these circumstances. .

(6½ Marks)

3. Enos Kamuzu and John Kachasu purchase 'ROCKY COTTAGE' which has a superb view overlooking Kafue Gorge. They intend to use it as a tourist restaurant. Both wish to engage in the business of running the restaurant. Kamuzu and Kachasu seek your advice as to whether such business ought to be carried on by:

- a. A Public Company; or
- b. A Private Company.

Advise them.

(13 Marks)

4. Discuss the remedies available to a minority shareholder against majority shareholders' action that adversely affect his interest.

(13 Marks)

5. Write short notes and give examples of the business for which the following resolutions are used:-

- a. Ordinary resolution;
- b. Extraordinary resolution;
- c. Special resolution.

(13 Marks)

- 6a. Write short notes on the powers and duties of a member in a Company.

(6½ Marks)

- b. Write short notes on the powers and duties of a Director in a Company.

(6½ Marks)

- 7a. Define the following:

- i) Floating Charge;
- ii) Mortgage;
- iii) Debenture Stock.

(6½ Marks)

- b. What is the purpose of the Memorandum of Association and Articles of Association, give examples.

(6½ Marks)

END OF EXAMINATION

**THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW**

**SECOND SEMESTER UNIVERSITY EXAMINATION
JULY/AUGUST, 2000/ 2001**

**L 432 - INTERNATIONAL LAW – II : LAW OF INTERNATIONAL
INSTITUTIONS AND ORGANISATIONS.**

TIME : THREE (3) HOURS (PLUS 5 MINUTES TO READ THE PAPER).

INSTRUCTIONS:

1. ANSWER QUESTION ONE and any other THREE QUESTIONS.
 2. STUDENTS MAY CONSULT IN THE EXAMINATION ROOM,
UNMARKED COPIES OF THE UNITED NATIONS.
-

QUESTION 1: (COMPULSORY)

In the 1990s **ASTORIA** and **ANZAC**, two coastal states on the African Continent were involved in a bitter dispute over the breadth of Astoria's territorial water. ASTORIA claimed a territorial sea of 200 nautical miles. ANZAC claimed that customary state practice permitted only a twelve-mile claim.

On May 10, 1992 ASTORIA seized a fishing boat belonging to a citizen of ANZAC in its "territorial sea" – well beyond twelve miles from its coast and refused to return it unless the owner paid significant fishing licensing fees.

In response the government of ANZAC issued a statement encouraging its citizens with fishing boats to fish in ASTORIA's two-hundred –mile zone. At the same time the Parliament of ANZAC passed legislation under which the owners of boats seized by ASTORIA were to be reimbursed whenever their boats were seized or had to pay ANZAC's licensing fees.

ANZAC further responded to these boat seizures by suspending the sale of maize to ASTORIA. ASTORIA realising that its people were faced with prospects of starvation, now claims that ANZAC had used illegal economic and political force by withholding this vital commodity.

Assume that the representatives of ASTORIA and ANZAC are debating this incidence in the United Nations General Assembly, what is likely to be the position of ASTORIA and ANZAC to the following question:

Did either ASTORIA Or ANZAC violate the UN Charter's prohibition against the use of force?
(40 Marks)

QUESTION 2:

The rules of humanitarian law applicable in international armed conflicts are for the sake of convenience often divided into two broad categories: Those rules whose primary purpose is the regulation of the conduct of hostilities (or means and methods of warfare); and those rules which seek specifically to protect the victims of warfare. Name and briefly discuss **four rules** which seek to protect victims of warfare.
(20 Marks)

QUESTION 3:

In April 1993, after US President Bush left Office, he travelled to Kuwait. Upon his return to the USA it was discovered that during his visit to Kuwait Saddam Hussein had planned to assassinate President Bush. The USA responded in June 1993 by launching several missiles into Baghdad. The USA claimed that an unsuccessful armed attack on a former head of state justified this responsive use of force under Article 51 of the UN Charter dealing with self defence.

If you were the Iraq Ambassador accredited to the UN, what would your response be?
(20 Marks)

QUESTION 4:

Discuss the respective functions and powers of the General Assembly and the Security Council as stipulated in the United Nations Charter.
(20 Marks)

QUESTION 5:

Article 2[4] of the United Nations Charter prohibits threat or use of force in international relations. With the use of suitable examples, examine circumstances in which certain states have challenged this general prohibition and justified taking initiative in the use of force.
(20 Marks)

QUESTION 6:

The right of self defence is said to be vested in a state once it has been subjected to an armed attack. There is however, no legal definition of “armed attack” and the absence of such a definition makes it too easy for states to make spurious claims to the right. Briefly comment in light of the provisions of the United Nations Charter on self defence. **(20 Marks)**

QUESTION 7:

Comment on **two** of the following:-

- a. The “double veto” in the United Nations Security Council.
- b. European Court of Justice.
- c. Organisation of American States.

(20 Marks)

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

SECOND SEMESTER DEFERRED/SUPPLEMENTARY EXAMS.
SEPT 2001

INTERNATIONAL INVESTMENT LAW (L452)

TIME: THREE (3) HOURS (PLUS 5 MINUTES READING TIME)

INSTRUCTIONS:

1. Answer Question One and Any other Three
 2. Students are allowed to refer to all relevant statutes
-

Question One

You are an Investment Lawyer in the prestigious firm of Leonard Lane & Partners. On the 17th day of August 2001, an investor by the name John Dazzle, of Canadian Origin, walked into your office for legal advice on the legal framework for Foreign Investment in Zambia.

Mr. Dazzle represents a Canadian Conglomerate that is interested in investing in the mining sector in Zambia.

In the first place, Mr. Dazzle wants to know whether to initiate the investment through portfolio investment or through Direct Investment. However, he has confessed to you that he doesn't really know the difference between the two nor does he know the advantages or disadvantages of each method.

- A) Write Memorandum to Mr. Dazzle on the legal framework for foreign investment in Zambia and what are the supporting institutions that your client ought to know of.
- B) Explain to your client the distinction and peculiarities of portfolio investment and direct investment

Question Two

A country may have the best Investment Code with generous tax incentives to foreign investors and yet fail to attract the highly sought for investors. What are some of the additional factors that a country need in order to have a healthy flow of foreign investment.

Question Three

Critically discuss and analyse the notion of private property as a fundamental, primeval institution that exists Independent of state sovereignty **visa vie** the concept of permanent sovereignty over natural resources?

Question Four

Critically discuss the World Bank/IMF's justification for attaching conditionalities to their lending policies. Do you think there is any legal basis and moral justification on the imposition of conditionalities on borrower countries?

Question five

The debt crisis is said to be the yoke that hinders third world countries from attaining economic development. Critically discuss the origin of the debt crisis and the role of the IMF played and continues to play in debt management.

Question six

- a) Critically analyse and discuss the principles governing debt management at the Paris Club?
- b) Distinguish and discuss the Paris Club and the London Club;

Question Seven

Write short notes on the following:

- a) The principle of immanent default;
- b) International Convention on Settlement of Investment Disputes;
- c) The principle of imminent domain; and
- d) Special Drawing Rights (SDRs)

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

UNIVERSITY SECOND SEMESTER EXAMINATION, 2001

L462 – ADVANCED INTELLECTUAL PROPERTY LAW

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

INSTRUCTIONS: CANDIDATES MAY BRING IN THE EXAMINATION ROOM AN UNNOINTED COPIES OF THE FOLLOWING ACTS: COPYRIGHT AND PERFORMANCES RIGHTS, PATENTS, TRADEMARKS, REGISTERED DESIGNS, COMPETITION AND FAIR TRADING; AND ALL INTERNATIONAL TREATIES AND CONVENTIONS ON INTELLECTUAL PROPERTY

NO OTHER MATERIALS ARE PERMITTED

ANSWER QUESTION ONE AND THREE OTHERS

QUESTION ONE

- (a) “During the last century, before the existence of nay international convention in the field of industrial property, it was difficult to obtain protection for industrial property rights in the various countries of the world because of the diversity of their laws. Moreover, patent applications had to be made roughly at the same time in all countries in order to avoid a publication in one country destroying the novelty of the invention in the other countries. These practical problems created a strong desire to overcome such difficulties”. Per Intellectual Property Reading Material.

Critically discuss the substantive provisions of the Paris Convention for the Protection of Industrial Property and the importance this Convention has played in the protection of industrial property.

(15 marks)

- (b) Mabvuto is a professor of law at University College in the Republic of Ruritania, a country which is not a Member of the Union, that is the Berne Convention. Mabvuto has written a book entitled 'Intellectual Property in Developing Countries'. The book is published in the Republic of Ruritania on 20th June 2001. Mabvuto realizing the potential of his book decides also to publish the book in Zambia, which is a Member of the Union, on 19th July 2001.

Advice Mabvuto, giving reasons for your views and citing relevant cases (if any) whether, in each case of the following distinct and separate situations, his rights he enjoys under the Berne Convention have been infringed:

- (i) Douglas a lecturer in the School of Law realizing that Mabvuto's book is useful for his students makes copies of the book which he sells to his students, claiming that he has not infringed Mabvuto's rights because his book cannot be protected in Zambia as Ruritania is not a Member of the Berne Union.

(5 marks)

- (ii) In May 2001 the Government of the Republic of Zambia passed a law which requires that for any book published outside Zambia to enjoy protection under the Berne Convention it has to be printed in Zambia. The Government therefore argues that for Mabvuto's book to enjoy protection in Zambia it has to be printed in Zambia.

(5 marks)

- (iii) In Ruritania the term of protection for copyright work is life plus 70 years. Mabvuto realizing that Zambia offers a shorter term of protection, that is life plus 50 years, petitions the Government of Zambia to grant him the same term of protection he enjoys in Ruritania.

(5 marks)

- (iv) The Government of the Republic of Zambia realizing that Mabvuto's book can contribute greatly to the raising of awareness on intellectual property in Zambia translates the book in major languages namely, Bemba, Njanja, Tonga and Lozi. Mabvuto strongly objects to the translations alleging that it contravenes the Berne Convention.

(5 marks)

- (v) It has come to the attention of the Government of the Republic of Zambia that the Republic of Ruritania fails to protect in an adequate manner the works of authors who are nationals of the countries of the Berne Union. Zambia also decides to limit the rights that the book for Mabvuto enjoyed when it was published in Zambia.

(5 marks)

QUESTION TWO

“The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) is the most comprehensive multilateral agreement on intellectual property protection”.

Critically discuss the:

- (a) interface between intellectual property and international trade

(5 marks)

- (b) substantive provisions of the TRIPS Agreement in the areas of Copyright and Related Rights, Trademarks and Patents and how these provisions have effectively help to protect the aforesaid areas of intellectual property

(15 marks)

QUESTION THREE

You have been approached by Zambia Musical Copyright Society which is concerned with the huge amounts of money its members are losing because of the increase in the piracy of their music by third parties within and outside the country. The Society complains that despite Zambia having ratified the major international Treaties and Conventions on Copyright and Neighbouring /Related Rights namely, Berne Convention, Rome and Phonograms Conventions and Agreement on Trade-Related Aspects of Intellectual Property (TRIPS) the Government does little to enforce copyright and neighbouring rights provided for in the above stated treaties and conventions.

The Zambia Musical Copyright Society asks you to give a detailed explanation on how enforcement mechanisms of copyright and neighbouring rights works under the above stated treaties and conventions and what difficulties are encountered in enforcing the said rights.

Please do so.

(20 marks)

QUESTION FOUR

- (a) “One means for accomplishing economic development through the transfer of technology is the commercial transfer and acquisition of technology. Of course, technology can also be transferred and acquired by other than commercial methods. Personnel can be educated or trained at research and development institutions, technical institutes or centers of high learning. Such personnel can in turn study books, periodicals or other publications on special scientific technology. But these methods will inevitably fall short of enabling those personnel or others to apply that knowledge, especially the inventions described in patent documents, to manufacture products, produce goods or render services”. Per Intellectual Property Reading Materials.

Discuss the three principal legal methods of transfer and acquisition of technology.

(12 marks)

- (b) Ruritania is a developing country with abundant natural resources situated in Africa. Recently it has received numerous inquiries from developed countries which are interested in investing in the field of intellectual property. Ruritania Investment law does not contain measures to enable the Government of Ruritania control contracts concerning the transfer of technology. Ruritania desirous to ensure that contracts for technology transfer do not impose unjustified restrictions upon the acquirers of the technology (“transferees”, Ruritania’s local enterprises), which might be harmful to the economic interests of the country, is considering introducing a new law to enable it to control the transfer of technology to, or within, the country.

Ruritania Government decides to approach you for advice on the provisions that should be included in the new law that will enable it to control the transfer or licensing of technology. Please advise.

(8 marks)

QUESTION FIVE

- (a) Discuss the intellectual property rights that are protected under the World Copyright Treaty and how the same are enforced.

(10 marks)

- (b) Discuss the advantages of Patent Cooperation Treaty system.

(10 marks)

QUESTION SIX

- (a) Mondri is a leading pharmaceutical company incorporated in Zambia which manufactures a number of different drugs and medicine. Four months ago Mondri invented a new drug called veron which is scientifically proved to cure HIV/AIDS as well as boosting the immunity of HIV/AIDS patients. Mondri has patented veron with the Zambia patent Office.

The invention of veron has been received with joy by the Zambia people more especially the HIV/AIDS patients who see the hope of recovery or having their lives prolonged. However, the price for veron is too expensive and beyond the reach of an average Zambian. The Non-Governmental Organizations concerned with the plight of HIV/AIDS patients have been demonstrating and petitioning the Government to either force Mondri to reduce the price of veron or subsidize the cost of veron so that it is affordable to HIV/AIDS patients.

Due to budget constraints the Government does not have the money to subsidize the cost of veron and due to the large number of people suffering from HIV/AIDS it has declared HIV/AIDS pandemic a national disaster. Mondri on the other hand has refused to authorize other companies to manufacture veron claiming that it has not realized the money it invested in the research leading to the invention of veron.

The Government approaches you as an intellectual property expert, to advise on the ways and means, other than subsidizing the cost of veron, the Government can use to make veron less expensive and therefore affordable to HIV/AIDS patients without breaching Mondri's patent rights under the Patent Act.

Please advise.

(12 marks)

- (b) “The owner of an important and prominent item or product protected under intellectual property law might be tempted to use his position to control a market to the disadvantage of competitors and consumers alike. He can prevent or deter potential competitors from developing products similar to his own and he can charge high prices for the product....” Per David Bainbridge , Intellectual property.

Discuss the validity or otherwise of this statement.

(8 marks)

QUESTION SEVEN

“.....in exceptional circumstances, where the plaintiff has an extremely strong *prima facie* case, where the actual or potential damage to the plaintiff is very serious, where it was clear that the defendant possessed vital evidence and where there was a real possibility that he might destroy or dispose of such material so as to defeat the ends of justice, the court had the jurisdiction to order the defendant to ‘permit’ the plaintiff’s premises and inspect and remove such materials”. Anton Piller KG V Manufacturing Processes Ltd (1976) 1 Ch 55

Critically discuss the judicial enforcement of intellectual property.

(20 marks)

END OF THE EXAMINATIONS

**THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW**

**UNIVERSITY SECOND SEMESTER EXAMINATION
JULY/AUGUST, 2001**

L 492 – TAXATION

TIME : THREE HOURS (Plus 5 Minutes to read the Paper).

INSTRUCTIONS:

1. Answer **Question One** and any other **Three** questions.
 2. Students are allowed to bring into the examination room **the Income Tax Act** plus a **Scientific Calculator**.
-

Question 1:

- a. Demetria and Mwape Holdings Limited is a business enterprise engaged in the business of buying and selling Building Cement. In the fiscal year 2001/2002, the company bought the following stock for resale:

1 st January	- Opening Stock	13 units @ K5,000	=	65,000.00
15 th March	- Purchased	30 units @ K5,500	=	165,000.00
25 th July	- Purchased	30 units @ K6,000	=	180,000.00
30 th Sept.,	- Purchased	20 units @ K6,350	=	127,000.00
15 th Oct.,	- Purchased	10 units @ K6,350	=	63,500.00
22 nd Dec.,	- Purchased	15 units @ K7,000	=	<u>105,000.00</u>
Total purchases		118 units for		<u>K 705,500.00</u>

The company was able to sell 90 units in that fiscal year. Calculate the valuation discount for this enterprise using all the ~~four~~ ^{three} methods.

(45 Marks)

- b. Critically discuss and analyse the concept of tax treatment of the family in the Zambian context. (15 Marks)

Question 2:

Nkandu Limited is a private Limited company engaged in the business of buying and selling pineapples. The company buys its pineapples (mainly in September/October) from Mwinilunga, North-Western Province and resells them at Soweto Market in Lusaka. In the Fiscal year 2001/2002, the company bought a Mercedes Benz Truck at the cost of K350 million. You are told that the salvage value of the truck is K50 million and its service life is 300,000 kilometres. Using the units of production method. Calculate the depreciation of this truck in its first three years of use taking into account that in the first, second and third year, it travelled 400,000 kilometres, 70,000 kilometres and 150,000 kilometres respectively.

Question 3:

- i) Douglas is a Legal Practitioner with Tafuna and Chipili Associates. In the fiscal year 2001/2002, Douglas's annual taxable income was K95,300,00.00
- Calculate his annual tax liability.
 - Calculate his monthly tax liability.
- ii) In the fiscal year 2002/2003, Douglas was retired on medical grounds and he was paid a lump sum payment of K70 million. Calculate the tax due on that amount.

Question 4:

Dancewell is an Accountant with KPMG. In the fiscal year 2001/2002, Dancewell's annual salary was K30,500,000.00. Dancewell paid out K500,000.00 in that year to NAPSA; he also contributed K400,000.00 to Kasisi Home for the Orphange, he also paid K300,000.00 to ZICAS for his accountancy annual subscriptions. Calculate his tax liability in that fiscal year?

Question 5:

Vivien is an employee of the Ministry of Legal Affairs under the International Law Development. In the fiscal year 2001/2002, Vivien earned K7,500,000.00 consultancy fees from the Good Governance Project.

She also earned K4, 350,000.00 as interest on her Savings Deposits with Zambia National Commercial Bank Limited (Big, Strong and Profitable) Vivien decided to put her Roma House on rent and in that year, she was paid K9,500,000.00 as annual rentals. Vivien also earned the following income at her formal work place; annual salary = K9,000,000.00; education allowance K500,000.00, housing allowance K4,500,000.00. Calculate her tax liability in that fiscal year?

Question 6:

Kaluba Sindiso Investment Limited is a limited liability company engaged in the business of Landscapping. In the fiscal year 1995/1996, the company made a loss of K85 million Kwacha. In the subsequent years, the company made the following profits:-

1996/1997	=	K 3 million
1997/1998	=	K 7 million
1998/1999	=	K12 million
1999/2000	=	K15 million
2000/2001	=	K10 million
2001/2002	=	K 5 million

The company has approached you for advice on how it can avoid paying tax on these profits in view of the fact that it made that colossal loss in 1995/1996.

Question 7:

- a. Mabvuto and Sons Limited is a Public Limited Company engaged in the business of sisal refining and processing. The company is also listed at the Lusaka Stock Exchange. In the fiscal year 2001/2002, the company made a profit of K45,700,000.00. Mabvuto the Principal Shareholder, was paid K5,350,000.00 as dividends by the said company. Calculate the tax liability for both the company and Mabvuto on these income?
- b. Discuss and distinguish between the classical system of company taxation from the Imputed system.

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

SECOND SEMESTER DEFERRED/SUPPLEMENTARY EXAMS.
SEPT 2001

TAXATION (L492)

TIME: THREE (3) HOURS (PLUS 5 MINUTES READING TIME)

INSTRUCTIONS:

1. Answer Question One and Any other Three
 2. Students are allowed to refer to all relevant statutes
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Question One

- A) Mr Phiri Jackson is fishmonger. He buys his Fish Siavonga and he resells them in Lusaka. The Fishing season is open only in the months of May-October and closed from November-April. Mr. Phiri bought a refrigerated Mercedes Benz truck valued at K450 million. The truck has a service life of 100,000 kilometres and its Salvage value has been put at K50 million. Identify the method required to calculate the depreciation of this truck and calculate the depreciation per kilometre assuming that in the first year the truck travelled 15,000 kilometres and the second year 9,000 kilometres and third year 10,000 kilometres.
- B) Mr Jackson Phiri made a profit of K38,900,000.00 in the fiscal year 2000/2001. Mr Phiri is a blind person registered with the Zambia Council for the Physically Handicapped. Calculate the tax due from Mr. Phiri.
- C) Mrs Jackson Phiri is fish farmer in Ibex Hill. In the fiscal year 2000/2001, Mrs Phiri made a profit of 9,700,000.00. Calculate her tax liability.
- C) Mr. Jackson Phiri has come to you as his tax lawyer to inquire whether he should pool both his income and that of his wife when computing his tax

liability. Advise him.

(40 marks)

Question Two

It is said that accelerated depreciation is better than the offering of tax holidays in an investment code. Critically discuss this assertion.

(20 marks)

Question Three

Mr. Tangu Nkole's annual taxable income was K38,500,000.00

- a) Calculate her annual Tax Liability?
- b) Calculate her monthly Tax Liability?

(20 marks)

Question Four

With the help of illustrations, critically discuss and distinguish tax evasion from tax avoidance. Which one is legal and give examples?

(20 marks)

Question Five

ABC Limited is a private limited company engaged in the business of cement manufacturing. In the fiscal year 1991/1992, the company made a colossal loss of K105million. In the subsequent years, the company made the following profits:

1993/4	-	K10million
1994/95	-	K15million
1995/96	-	K20million
1996/97	-	K25million
1998/99	-	K30million
1999/2000	-	K45million
2000/2001	-	K55million

The company has come to you for advise on how they avoid/ameliorate their tax liability on these profits in view of the colossal loss of 1991/1992. Advise them?

(20 marks)

Question Six

VNS Investments Limited is a business enterprise situated in Mutendere compound of Lusaka. The company is in the business of buying and selling mealie meal. In the fiscal year 1999/2001, the company made the following purchases:

January	2	Opening stock	3 units @	K1000	= K3000
February	5	Purchased	20 units @	K1,200	= K24000
March	5	Purchased	20 units @	K1,500	= k30000
June	5	Purchased	15 units @	K4,000	= k60000
September	6	Purchased	15 units @	K4,500	= k67500
December	28	Purchased	10 units @	k 5,000	= k50000

Total purchases	83 units for K234,500
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The company sold 63 units in that fiscal year. Using LIFO, FIFO and Average Cost methods, calculate the Valuation discount?
(20 marks)

Question Seven

Mrs John Nyuma is an architect with Pilgrim Construction Limited. In the fiscal year 2000/2001 and in the month of August, Mrs Nyuma's basic salary was K4,320,000.00. She was paid the following allowances:

Education allowance - K250,000.00

Health allowance - K500,000.00

Housing allowance - K420,000.00

Mrs Nyuma also provided Consultancy Services to the builders of Manda Hill in Lusaka where she was paid K5,500,000.00. She received K250,000.00 as interest on her Zanaco Saver Deposit Account. She also earned K7,300,000.00 from her house in Ibex Hill which was put up for rent. Calculate her tax liability?

(20 marks)