

UNIVERSITY OF ZAMBIA
UNIVERSITY EXAMINATIONS NOVEMBER/DECEMBER 1994
LAW

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THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - NOVEMBER/DECEMBER 1994

L 110

LEGAL PROCESS - CERTIFICATE IN LAW

TIME: THREE (3) HOURS (PLUS TEN (10) MINUTES TO READ THROUGH THE EXAMINATION PAPER).

ANSWER: ANY FOUR (4) QUESTIONS

1. English law applies in Zambia thirty (30) years after Zambia's political independence.

Discuss the law(s) which make this possible and whether or not this state of affairs is satisfactory.

2. Under what circumstances will courts in Zambia apply African Customary Law.

(You are expected to refer to relevant statutory provisions and decided cases).

3. Local Courts in Zambia play an important role in the adjudication of disputes. On occasions, however, their performance has been criticised. Discuss the merits and demerits of settling cases through the Local Courts.

4. (a) Outline the reasons why Delegated legislation is important.

(b) What is "judicial precedent". Should this system be retained in Zambia.

5. Describe the rules which guide lawyers and judges in the interpretation of statutes.

6. Discuss the Equitable remedies of Injunction and Rectification.
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END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - NOVEMBER/DECEMBER 1994

L 140

CRIMINAL LAW AND PROCEDURE

TIME: 3 HOURS

INSTRUCTIONS: PLEASE ANSWER QUESTION 1 WHICH IS COMPULSORY PLUS ANY OTHER 3 QUESTIONS.

YOU MAY BRING THE PENAL CODE INTO THE EXAMINATION ROOM

1. Kuyipa Mutima decides to break into the house of Katundu Zambili, a very rich man. He breaks in at midnight and takes a video cassette recorder. Before he can also put a portable stereo into his sack, Katundu wakes up and chases him down the road. When he is caught, Kuyipa knocks Katundu on the head with his sack and while he is lying on the ground, removes his watch from him. What offences can Kuyipa be charged with? Please discuss your answer.
2. What powers do police officers enjoy in relation to
 - (a) the arrest of persons who commit driving offences
 - (b) the arrest of persons who commit non-arrestable offences
 - (c) the arrest of persons who commit offences which carry a capital punishment
3. Write short notes on the following:
 - (a) actus reus
 - (b) mens rea

4. You have been asked by the Law Development Commission to make recommendations on the reform of the Criminal justice system in Zambia. What recommendations would you make regarding the following punishments:-
 - (a) corporal punishment
 - (b) imprisonment
 - (c) fines
 5. Discuss the elements of the offence of rape.
 6. Outline briefly the law regarding self-defence.
 7. Discuss, with the help of decided cases, the effect of pleading provocation to a charge of murder.
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END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - NOVEMBER/DECEMBER 1994

L 150

CONSTITUTIONAL LAW

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

INSTRUCTIONS:

1. ONLY UNMARKED STATUTES MAY BE BROUGHT INTO THE EXAMINATION ROOM.
 2. ANSWER QUESTION ONE (1) AND THREE OTHER QUESTIONS.
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Q1. Kapelwa is the Secretary General of an opposition party called Constitutional Party of Zambia (CPZ). He is a very strong critic of the government. He does not mince his words when he describes the government as a bunch of crooks and dealers. Because of his vitriolic attacks against the government the President orders the state-controlled media not to cover him. Further, all police stations in the country are instructed by Police headquarters not to grant Kapelwa permits to address rallies. Kapelwa goes to Livingstone, where he applies for a permit to hold a rally but his application is turned down by the Regulating officer on "security grounds." His application for permits to hold rallies in Chongwe and Kabwe are turned down on similar grounds. The state-media also stops covering him.

Agitated by all this he comes to you for advice.

Advise him.

Q2. What role does the National Assembly play in Zambia? In your view does the National Assembly have sufficient power and independence to offer effective checks and balances to the other organs of government?

Q3. Mabisi is a senior accountant at PTC and lives in Chelstone. One day an armoured car transporting money amounting to K120,000,000 from PTC main offices in Lusaka to Meridien Bank at Kafue Roundabout is hijacked by three heavily armed men wearing masks. The driver and 2 guards are tied up, gagged and dumped by the roadside. Mabisi reports the robbery to the management and the police after seven hours. As a result he is suspected of involvement in the robbery.

The police then take Mabisi into custody to "assist them in their inquiries." He spends two days in police cells, where he is not given food, or water for bathing. The police interrogate him continuously for the whole period. He is warned that if he does not co-operate something nasty will happen to his wife, Emelda. Finally, he breaks down and confesses that he had supplied information to the robbers as regards the contents of the armoured car, its movements and its security. He then leads the police to a house in Chaisa Compound, where K100,000,000 is recovered after a search without warrant and three men are arrested and charged with aggravated robbery. The three men - Mwansa, Halupepe and Banda - are then brought before a magistrate after three days. Their application for bail is denied. They are not committed to the High Court for trial until after 18 months because of the DPP's delay in issuing a fiat. Mabisi is released after two days and becomes a state witness in the trial. The trial takes two years to conclude and the accused are found guilty of the offence.

Advise Mabisi, Halupepe, Banda and Mwansa on their legal position.

Q4. What is the Rule of Law? To what extent is the rule of law observed in the Third Republic?

Q5. Never Kapenda, a notorious criminal, is arrested and charged with theft of a motor vehicle. He is acquitted of the offence because of insufficient evidence. He is then served with a presidential detention order under Regulation 33(6) of the Preservation of Public Security Regulations. He receives grounds of detention after sixteen days which state that -

"It has been found necessary to detain you because of your involvement in car thefts, which have become rampant in Zambia."

The grounds of detention are in English, which Kapenda can barely read.

Kapenda hires you as his lawyer. Advise him.

Q6. Have the courts in Zambia been effective sentinels of individual liberty? If not, what factors have prevented the courts from being effective?

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - NOVEMBER/DECEMBER, 1994

L210

LEGAL PROCESS

TIME: THREE (3) HOURS (PLUS TEN (10) MINUTES TO READ THROUGH THE EXAMINATION PAPER).

ANSWER: ANY FOUR (4) QUESTIONS

1. In 1965 an eminent English Judge stated:

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

(NYALI V ATTORNEY-GENERAL (1965) IQ.B1 at pp 16-17).

With this quotation in mind discuss the applicability of both English judge-made law and statutory law in Zambia. (You are expected to refer to the relevant statutory provisions and suitable illustrative decided cases on these issues).

2. Recently a layman attended a High Court session in Solwezi. His cousin was facing a serious criminal charge. His cousin was legally represented by a lawyer from the Legal Aid Department in Ndola.

In the course of the trial the State Advocate and the defence lawyer addressed the judge on how certain provisions of the law should be interpreted. What the State Advocate submitted was different with what the defence lawyer submitted and yet the two were referring to the same law! This amazed the layman as he had heard that lawyers were "learned" people and he could not understand why there should be difficulties in interpreting written laws.

Explain the issues involved in interpretation of statutes and the principles of law that guide judges and lawyers in the interpretation of statutes.

3. George Kapolous was an established resident of the Republic of Zambia. He originated, however, from Greece in the late forties. After ten (10) years stay in Zambia he divorced his wife whom he had brought over from Greece. Later on he was joined in Zambia by a young brother Dino. In the middle of the 1960's he married a Zambian woman from Chikanta area in the Southern Province. He paid all customary dues and observed all traditional ceremonies attendant upon Tonga marriages.

Recently he died after a long illness. However, prior to his death, he had assisted his widow's young brothers and sisters as an African would although he was Greek. He was highly valued as an in-law.

After his death, the question of "Cleansing" the widow has arisen. The widow's father has successfully sued Dino the young brother of Kapolous in the Local Court which ordered that Dino must "cleanse" the widow since Kapolous had observed tradition with regard to his married status. Dino is outraged. He wishes to appeal against the Local Court's decision.

Advise him on the legal position regarding his intended appeal. (You are expected to refer to relevant statutory provisions and suitable illustrative decided cases.)

4. In 1966 the then Attorney-General of Zambia James Skinner informed the National Assembly that Local Courts the successors to the defunct Native Courts would only be in operation for a few years after which they would be replaced by courts presided over by trained lawyers. To-day twenty-eight (28) years later the Local Courts are still in operation.

Critically assess the role of the Local Courts in Zambia's Judicial system and indicate whether or not in this day and age Zambia still needs these courts. (Give reasons for your answer).

5. (a) Discuss the equitable remedy of Rectification.
- (b) "In a developing country like ours the whole question of the independence of the judiciary must go deeper than the Constitutional guarantees as to tenure and salary. It must involve the entire attitude of Government and society to free institutions....."

(Mr. Willa Mungomba, Member of Parliament for Mperokoso South in a debate in the Zambia National Assembly in 1973).

With this quotation in mind discuss the concept of "judicial independence" and the law(s) which address this issue in Zambia.

6. (a) What is Delegated Legislation? Outline the rationale for this system.
- (b) "Mr. Ryan, for the defendant cross-appellant, first argued that Thixtors case was wrongly decided. He submitted that this court was not bound by its previous decisions.....I have no doubt

that this court as the ultimate court of appeal for Zambia is not absolutely bound by its previous decisions. It can, however, only be for very compelling reasons that the court would refuse to follow a decision of the court and only where the court considered that the previous decision was wrong. The relaxation of the rule is not its abandonment and ordinarily the rule of stare decisis should be followed. Abandonment of the rule would make the law an abyss of uncertainty....."

(Per Doyle J.A. in the case. PATON V ATTORNEY-GENERAL (1968) Z.R. 185 to 190).

With this quotation in mind discuss whether or not the system described in the quotation is suitable and necessary for Zambia and further what the rule(s) regarding the applicability of foreign precedents in Zambia are.

(You are expected to use suitable illustrative authorities).

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - NOVEMBER/DECEMBER 1994

L 230

LAW OF TORTS

TIME: THREE HOURS

INSTRUCTION: ANSWER ANY FOUR QUESTIONS OF THE FOLLOWING

1. Write critical notes on any TWO of the following:
 - (i) The Rule in Rylands v Fletcher
 - (ii) Vicarious Liability
 - (iii) Remoteness of Damage in the law of torts

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

3. The newspapers in Zambia have claimed that the law of libel in this country prohibits to a greater degree investigative reporting.

With the aid of authorities discuss the extent to which this claim is correct or otherwise.

4. (a) State and discuss the requisites of the tort of malicious prosecution.

- (b) X was found murdered at a certain place. D who was on bad terms with P informed the police that he saw P giving certain spear blows to X. The police prosecuted P for murder of X. The trial magistrate acquitted P on the finding that D's story was absolutely false.

P sues D in a court for damages and attaches to the writ a certified copy of the magistrates judgement. he also establishes D's enmity towards him. Will P succeed in recovering damages? Give reasons and cite authorities in support of your answer.

5. "Whether an act constitutes a nuisance cannot be determined by an abstract consideration of the act itself, but by reference to all the circumstances of the particular case; the time and place of its commission, the seriousness of the harm, the manner of committing it whether it is done maliciously or in the reasonable exercise of rights and the effect of its commission, that is whether it is transitory or permanent, occasional or continuous, so that it is a question of fact whether or not a nuisance has been committed."

With the aid of authorities discuss.

6. Explain the requirements of the tort of false imprisonment. How does this tort differ from the tort of malicious prosecution. Refer to decided cases.

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - NOVEMBER/DECEMBER 1994

L 240

CRIMINAL LAW

TIME: Three hours

INSTRUCTIONS:

Please answer question one which is compulsory plus three other questions. All questions carry equal marks.

The following clean statutes are permitted in the examination hall:-

Penal Code, Cap. 146
Criminal Procedure Code, Cap. 160
Constitution of Zambia, Cap. 1

Q1. Answer both part (a) and (b)

- (a) Outline the law relating to various parties to a crime. Explain the liability of the different parties and support your answers with decided Zambian cases.
- (b) Discuss one offence which requires at least two persons to enact it and outline the law regarding this offence in Zambia.

Q2. Write notes on the following:

- a. automatism
- b. doli incapax
- c. mens rea

Q3. Discuss in detail, the problem of causation in the case of murder, paying particular attention to the following issues:

- a. intervening acts or events
- b. killing by frightening someone into taking their own life
- c. the 'sine qua non' rule

Conclude your answer with a comment on Thabo Meli v R. [1954] 1 All E.R. 373.

Q4. Explain the legal principles enunciated in the McNaughten's case. Discuss the implications of this defence as compared to the defence of diminished responsibility contained in S.I. No. 3 of 1990.

Q5. Panga Ndalama is a well known witchdoctor in Lusaka, who specialised in helping people to make their fortunes. One day he convinced one Quick Dealer to hand over K10,000 so that he could turn it into K1 m by certain processes which involved wrapping up the money and washing one's face with the resultant parcel. When, having fulfilled his obligations the K1 m did not materialise, Quick Dealer went to challenge Panga Ndalama at his house; demanding the refund of the K10,000 paid. Panga chased Quick Dealer out of the house using a broom which cracked Dealer's skull. He is still in a critical condition in the hospital when the police arrest Panga. Elaborate and discuss the various points of law relating to the different charges that the police can raise against him. Illustrate your answer with suitable cases.

Q6. Draft a proposal to the Minister of Legal Affairs indicating a need to reform the criminal justice system in Zambia and explaining the reasons why. You may substantiate your arguments with cases legislation or any other means available to you.

Q7. Criminal law, like any other law is supposed to apply equally to all persons regardless of their race, religion, colour, creed, sex or marital status. However, there are specific areas of criminal law which appear to target offenders of a particular gender. Discuss those provisions of the P.C. which are gender biased, taking care to indicate whether you feel this is justified. Whatever position you take must be supported by reasons.

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - NOVEMBER/DECEMBER 1994

L 250

CONSTITUTIONAL LAW

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

INSTRUCTIONS:

1. ANSWER QUESTION ONE AND THREE (3) OTHER QUESTIONS
 2. ONLY UNMARKED STATUTES MAY BE BROUGHT INTO THE EXAMINATION ROOM
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- Q1. Critically discuss the rationale for freedom of expression. With the aid of authorities discuss to what extent the current law on freedom of expression in Zambia is compatible with democracy.
- Q2. Pamela Sibanda, Nelly Chipman and Maanga have just graduated from Law School. They are disgusted with the way the government is running the affairs of the nation. Moreover, they also strongly feel that the existing opposition parties are ineffective and do not provide a sufficient check on the MMD government. They form a new political party called the Republican Party (RP), whose main objective is to provide potent opposition to the MMD and to offer an alternative government in waiting, to the people. The RP wins the support of many young people throughout the country. In public statements the three leaders of the Party accuse the MMD government of corruption, incompetence and failure to honour its manifesto. They state that once the RP is elected into power all present MMD leaders implicated in shady deals will be arrested and prosecuted. As a result the RP incurs deep hostility from the ruling Party. Attempts to register the Party prove unsuccessful as the Registrar of Societies turns down the application for registration on the ground of 'public security'. The Registrar says he is not obliged to justify his action as he has absolute discretion in the matter.

Deputy Ministers in charge of Northern, Copperbelt and Southern Provinces instruct the police commanders in their areas to deny the RP permits to hold public meetings, rallies and demonstrations. Chairpersons of RP Provincial Committees in the three provinces subsequently apply for permits to hold public meetings in the three provinces but all applications are turned down "on security grounds." Pamela, in her individual capacity applies to the Regulating Officer in Lusaka for a permit to hold a demonstration to protest these actions by the state. Her application is rejected on the instructions of the Inspector-General on the ground that individuals have no right to apply for a permit except on behalf of registered societies.

With the aid of authorities advise the RP and Pamela on their legal rights.

Q3. Super Ken, who ruled Zambia from 1964 to 1991, has decided to reactivate his political career after spending three years in retirement. At a series of public meetings he denounces the government's implementation of SAP and alleges that the government is riddled with corruption. He calls for immediate general and parliamentary elections and the formation of a government of national unity. He says the MMD government has lost the confidence of the people. Incensed by Super Ken's utterances the government introduces a Bill in the National Assembly which, inter alia, seeks -

- (a) to abolish Super Ken's pension;
- (b) to confiscate his passport; and
- (c) to bar him from contesting future elections.

48 MPs from the MMD, NP and UNIP vigorously oppose the Bill but it is nevertheless passed by the National Assembly. The 48 MPs then present a petition to the Speaker requesting a report on the Bill vis à vis its constitutionality. The Speaker rejects the petition on the ground that it is "frivolous and mischievous", and that Parliament is Supreme and its legislative competence cannot be questioned by anybody. The President then signs the Bill, which is then immediately implemented.

Mbewe, an MP, who tables a motion censuring the Speaker for his action, is suspended from the National Assembly for 3 months for "gross indiscipline" by the Standing Orders Committee chaired by the Speaker. Super Ken's passport is seized and his pension is cancelled.

Mbewe, Super Ken and 47 aggrieved MPs come to you for legal advice. Advise them.

Q4. An independent and impartial judiciary is considered indispensable for the protection of individual rights and freedoms, and the preservation of democracy.

In your view has the Zambian judiciary been a sentinel of liberty? If not what factors have reduced its effectiveness in protecting human rights? How can its role be enhanced?

Q5. The Times of Zambia on October 1 publishes a story in which it reveals that it has discovered a plot to destabilise the government by the Democratic Party (DP). The plot, code-named "Free Our Motherland From Crooks," calls for the holding of public rallies and demonstrations to protest the harsh economic reforms which have impoverished the majority while benefiting a few 'fat-cats'. Two days later the President declares an emergency pursuant to Article 31(1) of the Constitution on the ground that national security is threatened. Several DP leaders, including the President, Mweemba, are then served with police detention orders issued by Inspector Magubbwi, purporting to act pursuant to Regulation 33(6) of the Preservation of Public Security Regulations. On 10th October the President, without explanation, quietly issues another emergency proclamation under Article 30 of the Constitution. He then makes the following regulations pursuant to Section 3(1) of the Emergency Powers Act, CAP. 108:

"The Preservation of Public Security Regulations made under the Preservation of Public Security Act shall apply as if made under the Emergency Powers Act."

Several more DP members, including Locha, Gondwe, Keith and Akalemwa, are arrested and detained pursuant to detention orders issued by the President under the Emergency Powers Regulations. The detainees are sent to remote parts of the country making it impossible for lawyers and family members to visit them because of impassable roads. Grounds of detention are served on the second group of detainees after 15 days and the fact of their detention is published in the gazette after sixteen days. Each of the detainees gets a letter in the following terms:

"That between August 1994 and October 1994 you conspired with persons unknown to foment discord in the nation by authoring a document code-named, "Free Our Motherland From Crooks."

Keith can prove that he was in Swaziland participating in a Youth Conference during the relevant period. Akalemwa is blind. Meanwhile, Mweemba and other leaders who were in the first group of detainees are released after 7 days and no grounds of detention are served on them.

Advise the various detainees and ex-detainees as to their legal rights.

- Q6. "A remarkable feature of presidential government in Commonwealth Africa is the extent to which it incorporates elements of the Westminster parliamentary system. Indeed it may justifiably be said that vital elements from the latter system are the superstructure upon which presidentialism in Commonwealth Africa is built."
B.O. Nwabueze, Presidentialism in Commonwealth Africa
37 (1974)

Analyze this statement in relation to the system of government in Zambia established under the 1991 constitution. To what extent is Nwabueze's statement applicable to Zambia?

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - NOVEMBER/DECEMBER 1994

L 320

LAND LAW AND PROPERTY RELATIONS

TIME: THREE HOURS

ANSWER: QUESTION ONE AND ANY THREE

1. "When they were governed by their own customs and laws, the notion of separate ownership in land or of the alienation of land by a Chief or anyone else was foreign to their ideas."

In Re Southern Rhodesia [1919] AC 211

(a) Critically evaluate this statement and examine the concepts of land ownership in the traditional system. Does the term "ownership" when used in relation to land exist at all in the African system?

(b) How does the proposed land bill attempt to redress the theory of land ownership?

2. Generally, there are three categories of land in Zambia, namely, Stateland, Reserves and Trustland. These categories were introduced by the Colonial System and have continued to regulate relations in land.

a) Analyse the nature of rights and interests in these three categories of land.

b) In what way(s) does a Reserve differ from Trustland both in terms of the concepts and also as regards to the formal rights therein.

3. The Maxim "Nulle Terre Sans Seigneur" is the basis of the doctrine of tenure.

How does the doctrine of tenures differ from the doctrine of estates?

4. a) Describe the rise of equitable interests in English Land Law.
- b) Musonda executed a trust of his house on plot No. 1, Lusaka for Lusaka Chambers, a Law Firm as trustees in favour of his eleven year old son, John. Musonda died two years after he executed the trust.

Meanwhile, Jane, Musonda's brother and guardian of John persuaded Lusaka Chambers to sell the house to raise money for John's upkeep and school fees which she could not meet on her own following the death too of John's mother.

Lusaka Chambers sold the house to Chilenje Valuers who used their position to undervalue it through their connections in the valuation field. Instead of raising twenty million kwacha (K20 m) the estimated market price, the house fetched a paltry six million kwacha (K6 m) and after paying legal costs, Jane only received two million kwacha (K2 m). On receipt of this money, Jane travelled to Johansburg to buy items to resell in Lusaka but while there, she lost the money in a hotel. It was stolen while she drunk beer with her boyfriend.

At the time of the house sale, John was twenty years nine months reading a bachelor's degree in Law. After covering the topic on equitable interests, he has approached your Law firm to help set aside the sale and recover the house from Chilenje Valuers who have since also sold it to the University of Zambia.

Explain the steps that must be taken and define the law at each stage.

5. Mudenda owns a house in Kalundu Township, Lusaka.

His friend Hobeday is an executive with Anglo American Corporation in Lusaka. On one of their week-end drive, Mudenda disclosed that he infact was looking for a tenant for his house. He was evicting his present tenants because they could not pay him the increased rent he had imposed to meet the costs of the repairs of his car. That very afternoon, he told the tenants to leave the following week end. Despite resistance from the tenants Mudenda stood his ground and reminded them that though they had paid rent for two years, the agreement was verbal and could "refund" them the unfinished term less the costs of cleaning the "dirt" they had caused to the premises which amount would result in the tenant paying Mudenda.

When the tenant and his family delayed to move out, Mudenda brought some boys from the street and forceably moved them out.

At that point, Hobeday disclosed that he was infact looking for a house for his girlfriend, Bwalya. Bwalya was a third year law student who had failed to secure accommodation on campus. Hobeday promised to pay for the house and it was agreed that the house could be leased for two years with option to renew. Hobeday paid one year's rent and promised to pay for the other year "as soon as possible". He never did.

Meanwhile and three years later, Mudenda became broke and failed to service the mortgage with the African Commercial Bank where he obtained a mortgage for the construction of the house some five years ago. Hobeday only paid for one of the three years Bwalya had taken possession of the house. Now, Mudenda and Hobeday are no longer friends. The agreement between Mudenda and Hobeday was not registered at Lands Registry because Mudenda had argued that as friends this would not be necessary. There was even no attempt to secure consent from the Commissioner of Lands.

Using decided cases, identify the issues and advise the parties as to their rights and duties.

6. In what way does the Intestate Succession Act, 1989, fail to address the concern of the widow in both traditional and legal marriage particularly in relation to the child born out of wedlock and the widower?
7. The Lands Acquisition Act 1970 is an anachronism in a liberalised environment?

Critically evaluate the powers of the President in the Act showing the extent to which the Act hampers the security of tenure.

Analyse the dispute settlement mechanism provided in the Act and identify its weaknesses.

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - NOVEMBER/DECEMBER 1994

L 330

COMMERCIAL LAW

TIME: THREE HOURS (PLUS FIVE MINUTES FOR READING THE QUESTION PAPER)

ANSWER: ANY FOUR QUESTIONS

STUDENTS ARE PERMITTED TO BRING INTO THE EXAMINATION ROOM CLEAN COPIES OF RELEVANT STATUTES.

1. The classification of goods as "specific goods" is important in the sale of goods law. Discuss.
2. Musonda agreed to sell a quantity of maize to Chanda for K3 million. Chanda accepted a three month bill of exchange drawn by Musonda in his favour for K3 million and maturing on 1st April 1993. The day before the bill is payable Chanda consults you. She tells you that only 10 per cent of the maize has been delivered and accordingly she does not propose to pay the bill when it is presented. Advise Chanda.
 - (a) Would it make any difference if all the maize had been delivered, but half of it had since been rejected by sub-buyers as of unmerchantable quality.
 - (b) If, no maize having been delivered, Chanda refuses to pay the bill on 1st April and Musonda discounts it two days later with Gullible Bank Ltd who are not aware that Musonda has not delivered the maize as per agreement with Chanda. What is Chanda's liability to Gullible Bank Ltd?
3. Where goods are sold by an agent without the authority or consent of the owner what are the legal rights and/or liabilities of the buyer, agent and the Principal.

4. Makete bought a brand new gold coloured BMW car K10 million from Snaz Motors Ltd of Lusaka on 24th February, 1994. He excitedly looked it all over. He opened up the bonnet to admire the gleaming engine. He opened up the boot and was very pleased with its size as being a briefcase businessman, he sometimes had to carry his merchandise in his car. Makete personally drove the car home from the showroom. However, his happiness was short lived.

Two days later he noticed black dots on the floor beneath the car. He took the car to his friend Sikini Mataila, a mechanic who advised him to replace the oil seals because they were leaking. Sikini told Makete to give him money as he knew where to get the seals cheaply. And being a friend Sikini offered to do the replacement job for Makete free of charge. Makete gave Sikini K10,000. Sikini went to Soweto Market and bought the seals and fixed them. The oil stopped leaking. Three days later heavy rains fell throughout the night. When Makete woke up he found his gleaming gold new BMW had turned to a rusty brown colour. He was so upset that he decided to take the car back to Snaz Motors Ltd. On the way there the gears jammed twice. Makete therefore decided to let the mechanics at Kamodni Filling Station have a look lest the car be unable to reach Snaz Motors on the Makeni Road. The mechanics did an appraisal and found that apart from the defective gear box, many parts in the engine were also defective. They advised Makete that they could fix everything for him for K1 million. Makete does not see why he should spend so much on a new car. He takes the car back to Snaz Motors and demands to have his K20 million back plus K10,000 for replacing the seals. Snaz Motors refuse to give him the money back and are insisting that they can fix everything that is wrong for free within a month. Makete sues Snaz Motors for return of the money demanded plus damages. The High Court dismisses the claim on the ground that the car was nevertheless drivable and roadworthy. Makete appeals.

You are the appeal Judge. Give your detailed judgement.

5. Critically discuss the principles enunciated in four of the following five cases:

- a) Macaura V Northern Assurance Co. Ltd
(1925) A.C. 619
- b) Dalby V India and London Life Assurance Co.
(1854) 15 CB 365
- c) Griffiths V Fleming (1909) 1 KB 805

d) Harse V Pearl Life Assurance Co.
(1904) 1 KB 558

e) Tomlinson (Hauliers) Ltd V Hepburn
(1966) A.C. 541

6. Mr. Banda is the owner of the popular spacious well situated and respectable La Gondola Night Club. Mr. Banda's health is failing and he is unable to continue with the punishing regime of late nights that is part of running a night club. His son and heir Masauso, has just left to study ACCA in the United Kingdom and will be away for at least three years. Mr. Banda therefore decides to lease out the club on a yearly contract.

Mr. Banda engages the well connected Mwale to find him a suitable and reliable tenant. If possible Mr. Banda would like the tenant to pay the rentals annually in advance. Mr. Banda is to pay Mwale a one off payment of 10 per cent of the annual rent secured. Mr. Banda gives Mwale the spare set of keys to enable him show prospective tenants around. Mwale advertises in the Sun Newspapers for offers above K800,000 per month. The advertisement costs Mwale K50,000.

Offer I is from Mr. Mukuka, a dubious wealthy businessman whose source of wealth is unknown. He runs the notorious Kutemba Night Club in Mutendere. Mr. Mukuka is proposing to pay K1 million per month payable one year in advance. Mr. Mukuka promises to pay Mwale 10 per cent of the yearly rentals if Mwale ensures that Mukuka's bid is successful.

Offer II is from Mr. Kalizya. Mr. Kalizya is currently running a night club in what used to be the Casino at Pamedzi Hotel. He is charged K2 million per month payable monthly in arrears. He offers to pay for the La Gondola K1.5 million per month. However, he wants to negotiate for payment to be half yearly in advance (hence every six months).

Offer III is from Mr. Hantobolo who owns the reputable and elegant Trez Cher chain of Night Clubs which are found in Livingstone, Kabwe, Ndola and Kitwe. He has been looking for premises in Lusaka. Mr. Hantobolo offers K900,000 per month payable annually in advance.

In order to ensure that Mr. Banda accepts Mr. Mukuka's offer, Mwale allows Mr. Mukuka to immediately occupy the premises and start operations. He also informs Mr. Banda that Mr. Mukuka's was the only offer received.

However, Mr. Banda does not want to do business with Mr. Mukuka and asks him to vacate the premises. In the meantime Mr. Banda also learns of the other two offers.

Advise Mr. Banda.

7. Mr. Kalikiti took out a comprehensive motor insurance policy on his Mercedes Benz car AAL 3535 with ZIC Insurance Company Ltd. Among the risks covered were damage to the car however caused; damage to other cars; and liability to third parties for injuries. The policy also covered any person driving the car with his permission.

Mr. Kalikiti's son Andrew was involved in a car accident with Mr. Mopichi at the junction of Chindo Road and Leopard's Hill Road where the traffic lights were malfunctioning. Andrew was on Leopard's Hill Road which is the main road.

Mr. Mopichi has a similar insurance policy to Kalikiti's with Manfive Insurance Company.

Mr. Kalikiti informed ZIC Insurance that he was taking his car to Star Motors. The usual practice was for Star Motors to fix the car and ask the owner to sign a satisfaction note which was presented to ZIC together with the repair bill. However, after three months, Star Motors had failed to repair the car to Mr. Kalikiti's satisfaction. Mr. Kalikiti therefore decided to take his car to Pilatus Ltd. Pilatus Ltd fixed it within two weeks. When Pilatus presented his bill to ZIC Insurance, they refused to pay on the ground that they had already paid Star Motors.

Mr. Kalikiti decides to present the bill to Manfive Insurance Company and also submits a claim for injury to his son. Before Manfive Insurance can even consider the claims they receive a letter from ZIC Insurance that they should be the ones to be paid under both claims.

Advise the parties with a full discussion of the basis or lack of basis for their claims or responsibilities.

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - NOVEMBER/DECEMBER 1994

L 340

ADMINISTRATIVE LAW

TIME: THREE HOURS

ANSWER: QUESTION ONE (1) AND THREE OTHERS

NOTE:

CANDIDATES ARE ALLOWED TO HAVE IN THE EXAMINATION HALL AND TO REFER TO UNMARKED COPIES OF THE FOLLOWING STATUTES:

1. The Constitution of Zambia Act No. 1 of 1991.
 2. The Interpretation and General Provisions Act, CAP 2 of the Laws of Zambia.
 3. The Industrial and Labour Relations Act No. 27 of 1993.
 4. The Commission for Investigations Act, 1991.
 5. The Service Commissions Act, 1991.
-

Q1. THIS QUESTION IS COMPULSORY

On 10.11.79 X was offered employment as a Biochemist on permanent and pensionable terms by the Kachi Research Board (K.R.B) a statutory Board established pursuant to the provisions of the National Liquors Act (NLA).

On 15.11.79, X accepted the job offer and immediately started working for the Board. He also joined the Local branch of the National Liquors and Associated Workers Union (NALAWU) at his place of work.

On 22.04.90, NALAWU executive officials called a meeting at which the union members present resolved to take industrial action following the failure by the U.R.B. management to resolve a long-standing issue pertaining to funeral allowance. Immediately after the meeting, the Union's Secretary wrote to the Board Secretary of K.R.B. advising him of the strike action. Efforts by the Director of K.R.B. to persuade the striking staff to resume work proved futile and the industrial action entered its 4th week.

On 10.05.90, the Board Secretary of K.R.B. wrote a circular letter which was distributed to all the staff of K.R.B. wherein they were informed of the termination of their contract of employment with the Board. The material paragraphs of X's letter read as follows:-

"Dear Mr X,

re: TERMINATION OF CONTRACT

In a letter dated 22.04.90. addressed to me, your Union executive informed me of your Union members' unanimous decision to go on an immediate strike. I am directed to inform you that as your strike action was completely uncalled for, you have, by your action, terminated your contract of employment with the K.R.B. with effect from 22.04.90".

X has retained you as his counsel. He has handed over to you his said letter as well as a copy of the National Liquors Act. The relevant sections of the NLA read as follows:-

"S.33(1)

S.33(2) If the Director of the Board has reasonable grounds for believing that a member of staff should be removed from his office or employment on grounds of misconduct or for failure to perform the 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 Board's staff Tribunal; and
- (d) make arrangements for the member in question to be accorded an opportunity of appearing before, and being heard by the Board's Tribunal with respect to the matter.

S.3.4(1) There is hereby established a staff Tribunal to investigate, consider and decide on disciplinary cases referred to it under section thirty-three.

(4) A decision of the staff Tribunal shall be binding on the Board.

- A. Advise X as regards his legal position clearly bringing out the merits and demerits (if any) of pursuing a Court of action.
- B. Assuming sub-section (4) of section 34 cited above read as follows:-

"4 A decision of the staff Tribunal shall be final and binding on all the parties and shall not be called into question in any Court of law".

What would be your advice to X with regard to the above provision?

Q2. Write comprehensive notes on the following:-

- (a) Administrative adjudication in Zambia;
(b) the importance and relevance of Commissions of Inquiry and Service Commissions to students of Zambian administrative law.

Q3. (a) Are discretionary powers a necessary evil?
(b) What (if at all) has been the contribution of the case of RIDGE v. BALDWIN (1963) to the development of Zambian administrative law?

Q4. (a) In what circumstances are bodies other than the Courts bound to observe the rules of natural justice?

- (b) Kawago successfully applied for a residential plot from Tiwelanso Municipal Board. According to regulation 10 of the Board's regulations, which were enunciated by the Board Pursuant to Section 28 of the Town and Country planning Act, Kawago was obliged to notify the Board of her intention to build a house on her plot before actually proceeding to do so.

Kawago, without prior notification to the Board, proceeded to construct a double storeyed mansion on her plot.

The construction of the house by Kawago was brought to the attention of the Boards Chief Town Planner who immediately ordered the demolition of the house pursuant to regulation 11 of the said regulations which empowered the Chief Town Planner to demolish "any building or structure whatsoever which is built or constructed in breach of regulation 10".

Advise Kawago as to her legal position.

- Q5. "During the last thirty years there has been a marked expansion of the scope of administrative law, not only as a body of rules which constitute part of the corpus of the law of every country, but also as an academic subject".

per Mumba S.K.C. (1986)

Discuss the above statement with specific reference to the English and Zambian experiences to-date.

- Q6. Chibale Municipal Council (CMC) in the Eastern Province of the Republic of Zambia has received a large number of applications for trading licences for the year 1995. By the enabling statutory powers, the council "may grant licences upon such terms/conditions as it may seem fit".

You are the Council's Director of Legal Services and have been asked to prepare a brief for the councillors of CMC who wish to know whether and upon what grounds powers couched in such terms as above can be challenged in court.

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - NOVEMBER/DECEMBER 1994

L 350

FAMILY LAW

TIME: THREE HOURS
(PLUS 10 MINUTE TO READ THE QUESTION PAPER)

INSTRUCTIONS:

- (i) Answer FOUR questions - at least one question from each of the two parts.
 - (ii) All relevant and unmarked statutes may be brought into the Examination Room.
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PART I

1. Mrs. Olomide who has filed a petition for maintenance has just discovered that her husband has made a Will giving his block of apartments to his uncle. Although Olomide runs several businesses, a good part of his income comes from the apartments which he has given to his uncle under the will. Mrs. Olomide's petition is an interim maintenance petition pending the hearing of her petition for judicial separation. Advise Mrs. Olomide on:
 - (a) Whether she can legally restrain her husband from transferring ownership of the block of apartments.
 - (b) The legality or otherwise of her husband's alleged transfer of the block of apartments.
 - (c) The technical term of her maintenance petition.
 - (d) The appropriate judicial office to hear her maintenance petition.

2. (a) Briefly explain five grounds which may render a marriage void.
- (b) Joe and Betty got married under the Act in December, 1989. There were no children of the marriage and this was because Joe, on having learned that Betty had a child from some other man, developed repugnance towards his wife such that he could not bear even to touch her. Infact since the solemnization of their marriage, the couple have been sleeping in different bedrooms.

Joe decided to marry another woman, Alice, under the Lamba Customary Law. Andy, Betty's brother, is not happy with the arrangement and wants to contest the validity of Joe's marriage to Alice.

Advise Andy.

3. Kapotwe and Mable were married under the Act and have lived together for the past four years. The marriage was a very unhappy one. At one time Kapotwe committed adultery with his Secretary but Mable forgave him. A year and half after the adultery, Kapotwe, due to depression, developed a repugnance to sexual intercourse with his wife. At one time he even called her a slut before the children. Mable was, at first, unmoved by all these happenings as she was a woman of the world and very sexually active. However, in one of her encounters, she met Kamoto, a recent Law graduate from the University, who advised her that they could easily marry if she obtains a decree of divorce on the grounds of her husband's adultery and unreasonable behaviour.

What are her chances, if any, of being granted the decree?

PART II

4. (a) Kangwa, an illegitimate child, has since his birth two (2) months ago been in the care of his uncle and aunt who are both aged twenty (20) years and they reside in Bauleni, Lusaka. They wish to adopt Kangwa.

Advise them.

- (b) Who appoints a Guardian ad litem and what are the duties of a Guardian ad litem.

6. Tina was staying with her brother Bono in Matero, Lusaka, when she met her old boyfriend, Hendrix. Tina's father had a strong dislike for Hendrix whom he called a notorious drug addict and had turned down a proposed marriage between Tina and Hendrix. Tina subsequently married Hendrix under the Marriage Act (Cap 211) against her father's wishes and without his knowledge. She was 15 years of age then. Tina's brother, Bono, pretended to be her father and gave consent to the marriage. When Tina's father found out about the marriage, Tina already had two children of the marriage with Hendrix. Tina's father was furious at Tina and her brother's deception about the marriage. Nevertheless he gave up his earlier objection against Tina and Hendrix's marriage for the sake of the children of the marriage. He accordingly gave his consent to the marriage and demanded for bride-price from Hendrix. Hendrix paid the bride-price and the couple went through a ceremony of marriage under Tumbuka Customary Law.

Tina and Hendrix's marriage is on the rocks. Before petitioning for divorce Tina is anxious to know:

- (a) The validity of her marriage
- (b) The legal status of their children
- (c) Whether repayment of bride-price to her husband will be required as a condition for divorce.

Advise Tina.

6. Critically comment on the decisions in:

- (i) *Somanje v Somanje* 1972 Z.R
- (ii) *Khumalo v Khumalo* 1973 Z.R

7. Ben and Monde married in 1986 and there were two children of the marriage both daughters aged in 1994 four and six respectively. Both parties were comfortably off and Monde provided for the matrimonial home from her own resources. The house was in Woodlands, Lusaka. In 1992, Monde committed adultery with a married man who lived in Livingstone; she subsequently confessed and her husband forgave her. In 1993 she deserted Ben and abandoned the two children with him and went to live near the man in Livingstone. The break up of the home was in no way due to Ben's conduct. Ben asked his wife to come back so that they could look after their children, but she refused and advanced no reason for her refusal.

Ben took the children to be looked after by his unmarried sister and he provided them with a comfortable home which he owned exclusively. On hearing this, Monde instituted proceedings to have custody of the children because she wants the children to have a religious upbringing.

Advise Ben as to who will be granted custody, care and control and access to the two children.

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - NOVEMBER/DECEMBER 1994

L 410

JURISPRUDENCE

TIME: 3 HOURS PLUS 10 MINUTES TO READ THE PAPER

INSTRUCTIONS:

ANSWER QUESTION ONE AND ANY OTHER THREE

1. "Western legal systems, entirely European-oriented in concepts and attitudes, took little note of other systems until well into the nineteenth century. Their exponents, both judges and lawyers, saw little of value in systems outside their own."

With the above statement in mind, discuss the late evolution of anthropology in the field of law-related material and reveal some important results of its study, vis-a-vis the so-called primitive or simpler societies.

2. "The controversies that arise as to the question whether the law should enforce morals, are revealed in the Hart-Devlin debate."

Assess the fundamental issues raised in the said debate.

3. "Until the advent of the study of Jurisprudence, the widely held view has been that the lawyer knows little and cares less for the real world outside law books and lucrative law cases."

How do you think Jurisprudence has prided itself in trying to redress the role of a lawyer or student of the law?

4. Muka and Liwena are embroiled in an argument about the economic policies in the third republic. Muka is happy with the enabling legislation which has facilitated among other things, the privatisation of state companies. Liwena dismisses the new policies by alleging that they are meant for the benefit of only a few, i.e., the ruling class, through the use of the instrument of the law. He goes on to assert that, 'the law is only a superstructure built upon an economic base to serve the interests of the propertied ruling classes.'

Discuss the issues in the argument above, vis-a-vis the law and economic relations.

5. Do you agree, (giving authorities or relevant examples if possible) with the view that 'it is to the courts that we must go and not to the legislature in order to ascertain the true nature of the law. The Courts put life into the dead words of the statute?'
6. Write notes (comprehensive) on two of the following;
- a) Law and Politics
 - b) Law and Justice
 - c) The Rhodesian Decision in the Mazimbamuto Vs Lardner Burke case.
7. Compare and contrast the main tenets in the teachings of the Natural, Positivist and Sociological Schools of Jurisprudence.
-

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - NOVEMBER/DECEMBER, 1994

L420

THE LAW OF BUSINESS ASSOCIATIONS

TIME: THREE HOURS (PLUS 10 MINUTES TO READ THE QUESTIONS)

INSTRUCTIONS:

1. Students are advised to Answer question 1 and any other three questions, at least one question from each of sections A, B and C. In all students must attempt four questions.
 2. This is not an open book examination. However, students are allowed to bring into the examination room and to consult clean, unmarked copies of the Companies Act, Cap 686, the 'new' Companies Act No 26 of 1994, the Partnership Act of 1890 and any other relevant statutes.
-

Q1. COMPULSORY

Saimbwendwe Limited was incorporated under the Companies Act, Cap 686 of the Law of Zambia in August 1991. Its authorised share capital was K1,000,000. By the end of 1993 the total paid up capital was K500,000. The objects for which the company was established were set out in 5 distinct paragraphs as follows:

- (a) To do the business of canoe manufacturers and repairers and to assemble, manufacture and maintain all kinds of irrigation pipes, tractors, agricultural equipment and implements of all types and descriptions.
- (b) To import and export goods, articles and merchandise of whatever description for purposes of resell in the Republic.

- (c) To carry on the business of buyers and distributors of grain and agricultural produce generally and to sell, exchange hire or otherwise deal in packaging materials of such grain and agricultural produce.
- (d) To carry on the business of travel agents and bankers.
- (e) To do any other business in the furtherance of the above objectives as the directors may deem appropriate.

The three directors of the company were Sibweni (who unfortunately failed to take up his share qualification as he was out of the country for a several months after the company had been incorporated), Sinadabwe and his girl friend Melody who was a decade older (having been born exactly 3 years before Zambia's independence day).

Among other things, the Articles of Association of Saimbwende Limited provided that

"The Board of Directors shall have all the powers of members in General Meeting, and shall exercise such powers as they deem fit to do so."

Chipao Bank was approached by Saimbwende Limited for a loan to finance the importation of raw materials for their factory making soft drinks for sell to fishermen and farmers. The decision to enter into soft drink manufacturing was made by the Directors. Since Saimbwende Limited was well known as a dynamic company with diverse business interests, the Manager of Chipao Bank had no difficulties in approving the loan. It is not very clear whether the company's constitute documents were supplied together with the application.

Saimbwende Limited's chief accountant, Highway Malibiche was cooling off at his usual watering hole at the Lusaka Golf Club when he was approached by Miserable Banda, the Managing Director of Chongololo Investors Limited. The two agreed that Chongololo Investors Limited should supply 1000 overalls and 1000 pairs of safety boots for K2,400,000. The terms of their agreement was written on a packet of Peter Styvesant that

Miserable Banda had in his pocket. A week later Chongololo Investors Limited procured and delivered the goods but Saimbwende refused to take delivery of the consignment.

Meanwhile, the soft drink manufacturing business was a total flop and the Company was evidently not going to be able to repay the loan.

Advise Saimbwende Limited on their liability if any to either or both of the parties involved.

(25 marks)

SECTION A

- Q2. (a) There have been mixed views on privatisation in Zambia. There are those who feel that privatisation in Zambia has been rushed through and vital socio-economic considerations have been overlooked. There are still others who argue that privatisation in Zambia was long overdue and that it is proceeding very slowly.

In light of the provisions of the Privatisation Act, 1992 square the two opposing views on privatisation in Zambia.

(12½ marks)

- (b) "Ordinary partnerships are by the law assumed and presumed to be based on the mutual trust and confidence of each partner in the skill, knowledge and integrity of every other partner. As between the partners and the outside world (whatever may be their private arrangements between themselves), each partner is the unlimited agent of every other....."

Per Sir W.M. James L.J. in Baird's Case
(1870) L.R. 5 Ch. App. 725.

With the help of suitable illustrations, critically discuss the above quotation.

(12½ marks)

Q3.

- (a) "A share is the interest of a shareholder in the company measured by a sum of money, for purposes of liability in the first place, and of interest in the second but also consisting of a series of mutual covenants entered into by all the shareholders inter se in accordance with (the Act). The contract contained in the articles of association is one of the original incidents of the share. A share is not a sum of money...but is an interest measured by a sum of money made up of various rights contained in the contract including the right to a sum of money or more or less amount."

Per Farwell J. in Borland's Trustee v. Steel Brothers Co. Ltd (1901) 1 Ch. 279, 288.

Critically discuss this quotation in light of different types of shares and class rights. (15 marks)

- (b) In what major respects is a cooperative society formed under the Co-operative Societies Act different from a company formed under the Companies Act and a Partnership formed under the Partnership Act?

(10 marks)

Q.4.

SECTION B

- (a) Kingson Kambwili and Kickback Nshimbi are partners who trade under the name and style of Muzabwera Enterprises. Their partnership deals in food supplies. The two partners, Kingson and Kickback have nothing in common apart from their desire to make money.

Kickback signed an agreement on the firm's letterhead in the name of the firm to supply stationery to a mental hospital and received payment in advance, which payment was deposited in the firm's account. The firm failed to deliver the stationery. Later on Kickback pledged the credit of the firm and obtained stationery from a Soweto supplier called Goodies Suppliers in order to deliver to the mental hospital. On the way, however, the stationery was soaked by heavy unexpected rains destroying all of it.

The Partnership was not registered under the Registration of Business Names Act, Cap 687.

Advise Kingson Kambwili of the liability of the partnership or his liability, if any.

(15 marks)

- (b) "The best form of business association in Zambia is the sole proprietor followed by the private company limited by guarantee." Critically discuss.

(10 marks)

Q5.

- (a) The Privatisation Act sets out the various modes of Privatisation of state owned enterprises. Which one of these modes has been used more often than others so far and would you say it has proved to be the best method available? Give reasons.

- (b) Peter Chakorwa of Shangombo Village along with some village colleagues wish to form some kind of business enterprise for the purpose of buying grain from the villagers and reselling it. They also wish to open a shop that will bring in merchandise from the city in order to ease the sufferings of the people of Shangombo when it comes to acquiring essential commodities.

What form of business association would you advise Peter Chakorwa to form and why?

SECTION C

Q6.

- (a) Are cooperative societies still relevant to the business dictates of the Third Republic in view of the liberalisation of the economy? Explain in light of the cooperative principles.

(9 marks)

- (b) Kokoliko, the Deputy Minister in the Ministry of Finance and National Planning in the Republic of Kwenga was nominated as a shareholder in PIMCO a major parastatal company in the Republic of Kwenga. The Articles of Association of PIMCO did not make public office a condition precedent to becoming a shareholder. In March 1992 Kokoliko resigned as Deputy Minister on health grounds and died three months later of natural causes. His wife, Nkwilimba, as the survivor and personal representative wishes to inherit the husband's shares in PIMCO on the strength of a clause in the Articles of Association which reads:

"In the case of death of a member, the survivor or survivors where the deceased was a joint holder, and the legal representative of the deceased where he was the sole holder, shall be the only person recognised by the company as having title to his interest in the share."

Assume that the companies Act of Kwenga is paramateria with cap 686 of the Laws of Zambia. How would you resolve the problem?

(16 marks)

Q7.

- (a) Persons intending to form cooperatives must undertake extensive preparatory work before lodging their application to the Registrar. What does this preparatory work entail? Are they anywhere set out or implied in the Act? (12½ marks)

- (b) In what circumstances may a Partnership be dissolved with recourse to the courts of law?

(12½ marks)

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - NOVEMBER/DECEMBER 1994

L 430

INTERNATIONAL LAW

TIME: THREE HOURS

ANSWER: ANY FOUR QUESTIONS

1. Compare and contrast:-

- (i) Accretion with Prescription
- (ii) Territorial Principle with Nationality Principle
- (iii) Customary international law with General Principles of Civilised Nations.

2. Discuss the various methods of making treaties in international law.

3. "A state must be allowed the latitude necessary in order to be able to adapt its delimitation to practical needs and local requirements."

Define the rights of the Coastal State over its territorial sea and analyse the scope of the right of innocent passage.

4. (a) In what way(s) should the United Nations system be made to improve its structure and make the more effective?

(b) Are the UN General Assembly Resolutions sources of law and how do they differ from Security Council Resolutions?

5. Kachepa is an officer in the office of the President, a secret service. Part of his assignment was to monitor the political activities of students and lecturers at the University of Zambia.

Following a major student unrest at the university as a result of what students called intolerable corruption in government, Kachepa was dispatched to monitor the campus. Unfortunately, one mature age student recognised him as a member of the Special Branch.

When Kachepepa was identified stones rained on him from students but he managed to run away. Then, from a vantage point, Kachepepa took out his gun, until now hidden in his suit, shot dead ten students and escaped to safety. The students scampered in various directions.

Kachepepa ran to his friend, another Special Branch officer, who advised him to run to Namibia to escape the law. He did but in Namibia, police picked him up and charged him with the murder of the ten students in Zambia as well as other minor charges of illegal entry.

In the meantime, Zambia has made representations to Namibia for the return of Kachepepa to face murder charges. Namibia has declined the Zambia representations and explained that it had jurisdiction to charge Kachepepa for the murder offences.

Identify the issues and advise the parties. Would the principle of Universal Jurisdiction apply in a matter like this?

6. You are the Zambian High Commissioner to Kenya accredited to Somalia and the Horn of Africa. Somalia has suddenly slipped into civil war and a fratricidal fighting never seen before. The war has literally decimated the country to the ground with the result that there is no government and just no sign of central activity anywhere.

After everything around had been destroyed and all political life terminated, Somalia returned to the condition before colonialism. Various clans have assumed political authority over their people, a situation that has produced roughly seven major tribal groupings.

At the summit meeting of the Common Market for Eastern and Southern Africa (COMESA), seven leaders of these clans have appeared each claiming to be legitimate representative of the "government" of Somalia. This has been compounded by a resolution by COMESA urging the Heads of State and Government to declare the "state" in Somalia as non-existent.

Discuss the issues involved and prepare an opinion for your President on the state of the "state" and "Government" of Somalia.

7. Zambian authorities have nationalised a factory belonging to Mr. Ashid, an American national. The measure that nationalised the property merely said it was necessary in the public interest. In international law, there is a requirement that where property is nationalised, the nationalising state should pay prompt, adequate and effective compensation.
The Zambian authorities have not done this.

Mr. Ashid, who has since returned to the United States of America in frustration, has approached you with instructions to represent him against the Zambian government. You immediately write the Permanent Secretary in the Ministry of Foreign Affairs in which you draw his attention to the duty of the Zambian government in international law to pay prompt, adequate and effective compensation to your client for the nationalised property.

The Permanent Secretary has replied you denying liability because, as he claimed, Zambia was bound by Zambian Law which did not carry this duty for nationalised property. He writes that if the duty to compensate the owner of nationalised property existed in Zambian Law, government would have obliged.

- a) Advise Ashid and his counsel on their next course of action.
- b) What would be the position in an international arbitration where the law of one of the parties seems contrary to international law and public policy?

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - NOVEMBER/DECEMBER 1994

L 450

INTERNATIONAL TRADE AND INVESTMENT LAW

TIME: THREE (3) HOURS

INSTRUCTIONS:

ANSWER QUESTION 1 AND ANY OTHER 3 QUESTIONS. PLEASE NOTE THAT APART FROM QUESTION 1 WHICH CARRIES 40 MARKS, ALL OTHER QUESTIONS CARRY EQUAL MARKS.

1. (a) Discuss the dilemma of Zambia's ever increasing debt burden in view of the World Bank and IMF objectives and function.
(b) Make some proposals on how lawyers can contribute effectively to the resolution of this debt crisis.
2. Outline the major objectives of the Investment Act of 1993 taking care to discuss the incentives it contains. In what ways does it differ from the investment climate under previous investment instruments.
3. The General Agreement on Tariffs and Trade (GATT) was founded on the principles of free trade. Discuss those provisions under the agreement which promote this principle. Cite at least two major examples of efforts by two countries to control trade by circumventing one or other of the GATT provisions.
4. "The answer to Zambia's economic ills lies in closing its borders to imports". Discuss with regard to issues of
 - (a) regulation of quantitative restrictions
 - (b) balance of payments exceptions
 - (c) regulation of subsidies
5. (a) What is CIPEC? Outline its history .
(b) Examine the legal conception of international commodity agreements.

6. Transfer of technology is a crucial factor in the development of the third world.
- (a) Examine the Code of Conduct on Transfer of technology and indicate its positive or negative potential for the third world.
 - (b) Make suggestions as to how the Code could be improved upon in terms of passing technology to local Zambian industry.
7. Compare and contrast the functions and structure of the Southern African Development Community with the Preferential Trade Area for Eastern and Southern Africa. Discuss the rationale or lack of it for the existence of the two organisations in the same region.
-

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - NOVEMBER/DECEMBER 1994

L 480
LABOUR
ADMINISTRATIVE LAW

TIME: THREE HOURS

ANSWER: QUESTION ONE (01) AND THREE OTHERS

NOTE:

CANDIDATES ARE ALLOWED TO HAVE IN THE EXAMINATION HALL AND TO REFER TO UNMARKED COPIES OF THE FOLLOWING STATUTES:

1. The Employment Act and all amendments thereto.
 2. The Employment of Women and Young Persons Act and Labour.
 3. The Industrial and Labour Relations Act 1993.
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01. This question is compulsory.

Palibe Kantu was employed as a tutor at the Chingaipe College in the Eastern Province of the Republic of Zambia. The college is one of the constituent colleges of Kalyafye University, a public university established in accordance with the provisions of the Higher Education (H.E.A.).

'P.K' as he was fondly called by his admirers, was a highly gifted public speaker. Not surprisingly, he was elected President of the Local branch of the National College Tutors' Union (NACOTU).

On July 30th, 1992, 'PK' called a meeting of all the members of NACOTU at his college at which he urged them to go on an immediate strike following the university's failure/delay in implementing improved conditions of service. 'P.K's call for an industrial action met with immediate success as all the college staff vowed to remain on an indefinite strike.

On August 28th 1992, the College's Director wrote to P.K. advising him of the termination of his contract of employment with the college with effect from July 30th 1992, for going on an illegal strike. P.K.'s 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 college"

P.K. is extremely upset by the contents of the said letter. He has approached you and handed over to you the following:-

- (a) His letter terminating his contract of employment
- (b) A copy of the Higher Education Act (HEA)

The following are some of the provisions of the HEA:

"5.10 If the Director of the college has reasonable grounds for believing that a member of staff should be removed from his office or employment on grounds of misconduct or for failure to perform the 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's Tribunal; and
- (d) make arrangements for the member in question to be afforded an opportunity of appearing before, and being heard by, the University's Tribunal with respect to the matter.

5.11(1) There is hereby established a Tribunal to investigate, consider and decide disciplinary cases referred to it under section 10.

- (2) A decision of the Tribunal shall be binding on all parties before it".

Advise P.K. as to his legal position and demonstrate the merits and demerits (if any) of the respective cases for P.K. 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.

Q2. "[All] the reciprocal rights and duties of employer and employee depend upon the express and implied terms of the contract of employment"

per: HEPPLE & FREDMAN (1986)

Comment comprehensively on the above statement.

Q3. "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 - Vs - MULTILUX LTD [1974] IRLR 113 at p.114.

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

Q4. Orinoco Investments Limited, manufacturers of hair-care products intermittently engaged Kadansa as their Marketing and Sales executive in Lusaka. Kadansa was paid a commission of 10% on all sales effected by him.

In order to boost his sales, Kadansa appointed sales agents. The appointment of the agents had the blessing of the Orinoco management. From the sales by the agents, Kadansa received an additional commission of 3%. Among the other terms of Kadansa's employment were the following:-

- (i) the contract was for a duration of 7 years with an option to renew the contract upon the same terms for a further period of 4 years;
- (ii) During the currency of the contract, Kadansa was to receive detailed instructions on the techniques of selling;
- (iii) Kadansa was not to engage himself in any business connected with hair-care products for a period of 3½ years after leaving the employment of Orinoco Investments Ltd.

After working for a period of 4 years, Kadansa got attracted by the following advert in the "Times of Zambia".

"WANTED: Marketing Executive urgently wanted by a newly established American International Company. Only persons with vast experience in the marketing of hair-care products need apply. Attractive conditions of service await the right candidate".

Kadansa immediately applied for the job and received a letter offering him the job shortly thereafter. He accordingly gave his employers a day's notice and moved to join his new employers.

Advise both the company and Kadansa as to their respective legal positions. What are the chances of success of any court action?

- Q5. "An employer cannot protect himself from competition from his former employee, nor the latter's exercise of the skill and experience acquired during his employment, but he may, by a properly drawn covenant, protect his trade secrets and his business connections".
per Drake.

Discuss.

- Q6. 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 CAP 512 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'.

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMIANATIONS - NOVEMBER/DECEMBER, 1994

L490

TAXATION

TIME: THREE HOURS (Plus 10 minutes to read the question)

ANSWER: QUESTION ONE AND ANY THREE OTHER QUESTIONS

NOTE: CANDIDATES MAY CONSULT THE INCOME TAX ACT AND ANY AMENDMENTS THERETO.

1. Professor Augustus Montague was offered a teaching post in the School of Agriculture at UNZA. He arrived in Lusaka on September 1, 1993. His wife Sarah and son Julius arrived in the country on 20th October, 1993 to join him. In order to spend their time usefully the three formed a partnership with a view to producing early maturing maize seeds. Julius who was born blind was to be a sleeping partner.

The starting capital was K1 million. The wife and son contributed K300,000 and K200,000 respectively while the professor contributed the remainder. The firm acquired a loan of K6 million from Lima Bank at 30% interest and purchased a tractor worth K3 million and a water pump worth K600,000. In addition, the firm constructed a dwelling house for their workers which cost K2 million. K300,000 was spent on fencing the farm while K100,000 was spent on planting grass for the prevention of soil erosion.

The firm's accounts at the end of the financial year showed the following:

- (a) the entire loan plus interest was repaid;
- (b) expenses on utilities and wages were K2 million.
- (c) gross income of K10 million was recorded.

The firm has approached you as a tax consultant to determine the net profit due to each partner.

2. Jason Sangwapo went for medical treatment at a private clinic in Johannesburg to remove a cancerous tumor from his right leg. By the time he was out of hospital and fully recovered he was owing the clinic 10,000 Rands. In an effort to raise funds he looked for work at the ZCCM branch office in Johannesburg. As he is a computer expert, the company gave him a two week consultancy to instal their new computer software recently received from the headquarters in Lusaka. He was paid a consultancy fee of 15,000 Rands after two weeks. Meanwhile, being an accomplished guitarist he played with a famous South African Reggae Band for which he was paid 10,000 Rands. After the two weeks he persuaded the band to tour Zambia where they staged four shows in Lusaka, Ndola and Kitwe. He was paid K2 million.

Citing relevant authorities determine whether the Zambia Revenue Authority can tax him. If indeed he is taxable calculate the tax due from him. Assume that the exchange rate is K150 to a Rand.

3. "For any country, appropriate tax treatment of the family constitutes a cardinal issue for policy consideration in the design and implementation of its scheme of individual income taxation"

N. Simbyakula, "Tax Treatment of the Family in Zambia" in (1990) 39 Bulletin for international Fiscal Documentation, P502.

With reference to this statement discuss the available methods of tax treatment of the family that a country may adopt. In your view which is a better method and why?

4. J and J Ltd are transporters. In fiscal year 1987 they purchased a Leyland truck from Blackwood Hodge at a cost of K5 million. The truck was estimated to have a salvage value of K500,000 and a service life of 500,000 kilometres. At the beginning of fiscal year 1994 the truck's mileage reading was 430,000 kilometres. At the end of the year the truck finally clocked 500,000 km and the company auctioned it off for K1.2 million.

You have been informed that the company made a gross profit of K8.7 before the sale of the truck. Other expenses and utilities amounted to K4.37 million.

Using the units of production method determine the depreciation for fiscal year 1994 and the total tax due.

5. The Managing Director of Preamble Investments Ltd has sent you some information about his company. It has an authorised share capital of 1,600,000 shares at a par value of K2.50/share of which 250,000 shares are fully paid up.

At their Board of Directors meeting of 6th December, 1994 the directors declared a dividend of K20/share. Preamble Investments is also the majority shareholder in its subsidiary Preamble Holdings Ltd in which it holds 150,000 shares of which 120,000 shares are fully paid up. Preamble Holdings also declared a dividend of K60/share.

Both companies wish to be advised on how much withholding tax is due from each one of them.

6. (a) There are four commonly used methods of evaluating inventories as they flow through a business. Show by way of examples how any three of these methods are used to compute ending inventory.

- (b) Which method would you advise the Ministry of Finance to recommend for legislation if it is desired to raise greater revenues from the corporate sector? And what effect would such legislation have on the investment climate in Zambia?

END OF EXAMINATION