

UNIVERSITY OF ZAMBIA (LUSAKA)

EXAMINATION PAPERS - SESSIONS 1979 AND 1980

SCHOOL OF LAW

(1) SECTION A : JUNE, 1979.

(11) SECTION B : AUGUST, 1980.

SECTION "A"

UNIVERSITY OF ZAMBIA (LUSAKA)

EXAMINATION PAPER - SESSION, 1979

SCHOOL OF LAW

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THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - JUNE 1979

L 210

LEGAL PROCESS

INSTRUCTIONS:

1. Read the exam very carefully before beginning, if your copy of the questions is smeared or defective notify the proctor immediately.
2. This is a closed book exam. No texts, notes, or other material is allowed, except statutes. Clean statutes (with no notes, writing etc) are allowed. Any prohibited material should be turned into the proctor before the exam begins.
3. This is a three hour exam. Budget your time carefully. Suggested times are given following the questions, these are suggested times only - not binding.

The three hour limit, however, is binding. The suggested times are given in consideration of complexity only - they do not necessarily reflect the weight the questions will be given in grading.
4. All parts to Question I are mandatory. 3 parts of Question II should be answered.

QUESTION 1 (SUGGESTED TIME FOR QUESTION I = 2 HOURS)

In the November 1978 elections Mr. Lisingu Lisingu was re-elected to Parliament. This made him the senior member (longest sitting) in the National Assembly. Mr. George Daka, however, was dissatisfied with the election procedures, and in late December 1978, filed a petition in the High Court Challenging Mr. Lisingu's election, claiming jurisdiction under CAP I article 77. of the Laws of Zambia.

In early January, Mr. Lisingu was chosen as Deputy Speaker of the National Assembly. On the same day Parliament passed an act which reads as follows: Enacted by the Parliament of Zambia

1. This act may be known as "The Privilege Against Undue Harassment by Unfounded Lawsuits Act."
2. Any challenge of the Parliamentary elections, from 1978 on, pursuant to CAP I article 77, shall first be referred to a committee composed of the following:
 - (a) The MP whose election is challenged,
 - (b) The Deputy Speaker of the National Assembly, and
 - (c) the most senior MP in the National Assembly.
3. Such committee shall review the challenging petition.
4. If the committee finds reasonable grounds for questioning the election results, the Deputy Speaker shall then apply to the High Court, pursuant to Cap I article 77 Section (2), for determination of the validity of the election. If the committee finds no reasonable grounds for questioning the election results no challenge shall be heard by the High Court.

Mr. Lisingu there upon declared such a committee formed, composed solely of himself, and announced he had found no reasonable grounds to question the election. Therefore he advised the High Court they lacked jurisdiction hear Mr. Daka's petition. Mr. Daka, in turn, amended his plea to include a demand for declaration that the Lisingu committee was invalid, the "Privilege ... etc" Act was invalid and unconstitutional, or alternatively for review of the committee's decision.

(Question 1 continued)

Due to the importance of the case, you have been hired as a research assistant to advise the High Court. You are asked to present a memo discussing the following points, referring to statutory and constitutional provisions, case law, and policy where relevant:

1. What importance must we attach to the Separation of Powers Doctrine? (i.e. Is it recognized in Zambia, and how should it apply here?)
2. May we apply the "Privilege ... etc" Act retrospectively to the previous election and petition?
3. (a) Is the Act valid and constitutional? (In answering this interpretation of CAP I article 91, and CAP I article 77 section (2) should be considered).
 (b) If we find it is inconsistent with one or both of these articles - what may we do?
4. (a) May we review the formulation of the Lisingu committee (and its membership)?
 (b) If we may, is it a valid committee?
5. (a) May we review the committee's decision? (Here consider CAP I article 138 section 10, and cases on review of discretionary decisions).
 (b) If we may review the decision, what is our test (i.e. what limits are there on our scope of review)?

QUESTION II (SUGGESTED TIME FOR QUESTION II - 1 HOUR)

Choose THREE of the following topics, (each letter A, B, C, and D is considered one topic), and discuss those topics, including in your discussion the following points:

1. Which major legal systems may be described by these terms?
2. What are the advantages and disadvantages of each item?
3. Should Zambia's legal system adopt these characteristics? If so, to what extent? Why or why not?



(Question 2 continued)

- A. Adversary system v. Inquisitional system.
 - B. Jury v. Judge as fact finder.
 - C. Development of law by common law or by codification
 - D. Right to free counsel provided by the State
 - E. Strict adherence to Stare Decisis, or freer exercise of overruling powers by courts.
 - F. Centralized Governmental authority v. Separation of Powers.
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END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - JUNE 1979

L 220

Contract

TIME : THREE HOURS

INSTRUCTIONS

- (i) Read the questions carefully before you attempt an answer.

 - (ii) Answer FOUR questions in all with at least ONE question from Section A and at least TWO from Section B.

 - (iii) This is not an open book examination and therefore no material of any kind is to be consulted in the examination room.
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SECTION A

"The difficulty which is apparent through nearly all the reported cases is the reconciliation of two principles:.....(1) that of freedom of contract, by which a person is held bound by an agreement into which he has deliberately entered and (2) that of freedom of work by which an employer is prevented from restraining a servant from exercising his energies in work for himself or others to an extent greater than is necessary for the protection of the employer." (Palmer A. J. in African Lakes Corporation Ltd. v. Murray (1947) 6 L.R.N.R 166)

Is it valid to talk of reconciliation of the two principles rather than a sacrifice of either?

It is often stated that remedies under customary law are restitutionary rather than compensatory. With reference to a Zambian community of your choice, examine the validity of this statement.

A second year law student asserts that "freedom of contract" is bourgeois ideology. Make out an argument to defend or to refute the validity of his assertion.

SECTION B

Banda and Zulu decided to enter into an agreement of sale of a house and drew up the following document:

DEED OF SALE OF HOUSE

Whereas Banda (hereinafter referred to as the 'Vendor') is desirous of selling his house situate along Kwacha Road and Zulu (hereinafter referred to as the 'Purchaser') is desirous of purchasing the said house;

Now therefore this deed witnesseth as follows:

1. In consideration of K10,000 payable by the Purchaser to the Vendor, the Vendor agrees to transfer ownership of the said house to the Purchaser.

2. The said sum of K10,000 is payable in four equal instalments the first such instalment being payable at the execution of this deed and receipt of which the Vendor hereby acknowledges.
3. The other instalments of the purchase money are payable in three months of the executing of this deed, one instalment being paid every month.
4. The purchaser hereby acknowledges that he has examined the house and the documents of title relating thereto and is satisfied as to quality and freedom from encumbrance.

In witness whereof the parties hereunto have set their hands on this 18th day of June 1978

Sgd - Banda Vendor
Sgd - Zulu Purchaser
Sgd - Muna Witness.

It had been arranged that Zulu would hand over the first instalment of the purchase price before Banda signed the deed. On the day the deed was signed Zulu did not bring any money. He told Banda, "Let us sign the document, money is not a problem. I am expecting a lot of money from my shop in the East and I will give you the deposit tomorrow." Both signed the deed and the following day Zulu left the country and came back a month later.

Banda then demanded K5,000 from Zulu but the latter refused alleging that Banda had tried to "swindle" him and that he should clarify which house was being sold. In fact Banda had two houses on Kwacha Road. One was a 6 bedroomed house valued at K50,000 and the other was a 2 bedroomed house valued at K6,000. Zulu insts that he had the former house in mind at the time of the contract.

Having instituted a suit against Zulu in which he had pleaded the deed, Banda is now wondering whether he could prove:

- (a) That the agreement was exacted from him by fraud,
- (b) That it was the 2 bedroomed house which was meant to be the subject of sale
- (c) That he had never received any part of the purchase money.

Advise him.

What would be the effect on the transaction of proving any of the above?

Zambia Constructors (Zaco) agreed to build a house for Liwewe. A memorandum of agreement was drawn up in this form.

Memo of Agreement To Construct House

1. Total Price : K28,000
2. Period of Completion: 7 months from the date hereof.
3. Quality of Work : 4 bedroom bungalow with brown tiled roof and closed garage. Details as per plans, designs and instructions of M/s Chintu and Associates Architects.
4. Payment : K5,000 down and balance in accordance with a progress certificate of a qualified valuer appointed by M/s Chintu and Associates Architects.
5. Disputes: To be settled by arbitrator mutually agreed upon.
6. Penalty : K50 per day of failure to complete without prejudice to a claim for damages in case of any other breach.

Dated 15th day of January 1978

Witnessed by Signatures of:

Secretary to Zambia Constructors - Builder

Liwewe D.

- Owner

Chintu M.

- Witness.

Zaco built the house to wall plate and asked for a valuation. The progress report of the valuer showed that Zaco had used insufficiently strong bricks and had deviated from the architectural plan in constructing the living room. The plan recommended payment to him of K2,000 and advised breaking and rebuilding parts of the structure. Zaco was dissatisfied and employed his own valuer who reported that the structure was perfect despite the use of weak bricks in parts. He recommended a progress payment of K7,000. Liwewe refused to pay anything for what he termed 'shoddy' work. Zaco stopped work for 2 months during which he called on Liwewe to agree on an arbitrator to resolve the dispute. During the month Liwewe insisted on having Tembo a quantity surveyor and close friend of Chintu as arbitrator but Zaco refused to have him.

Zaco paid its valuer K45 professional fees. During the two months it was inactive, it reduced its staff suddenly and had to pay K600 as wages in lieu of notice of termination. It refused a 12 month contract offer worth K16,000 on the grounds that it was already committed to another contract.

After the delay of 2 months, Liwewe tendered K2,000 on the strength of the first report which Zaco accepted and commenced to build but work stopped again for one month during which time Zaco was asking Liwewe for money to continue building. Liwewe decided to release K5,000. He made the Secretary of Zaco sign a note which released him (Liwewe) from "past obligations, if any, incurred with respect to the building contract." The note also constituted an acknowledgment by Zaco that Liwewe's rights under the contract remained unaffected by anything he had done so far.

Zaco completed the building four months late. Liwewe is suggesting that the balance of the price should be reduced in accordance with paragraph 6 of the Memo of Agreement. Zaco disputes this and insists that in addition to payment of the whole price, Liwewe must reimburse him for all the expenses incurred in relation to the contract.

ADVISE THEM FULLY.

The following circular was issued by the Manager of the National Housing Corporation to adult law students at the University.

It read

"For those of you who do not have homes in the town, I am extending this golden opportunity for you to acquire a house in order to facilitate the successful completion of your studies. The houses available for sale range from K7,000 to K12,000. If you are interested in the offer please contact my Secretary who will arrange for other details."

In response to the circular, Kaluwa an adult law student visited the Secretary who asked him to pay a deposit of K1,000 before his application could be processed. The deposit was uniform payable by any student interested in a house. Kaluwa paid the deposit and filled in and signed a small document in the following form:

Name of Applicant - Kaluwa
Address - Box 2222, UNZA
Occupation - Student
Areas Preferred - 1. Kalundu
- 2. Olympia Park
- 3. Munali
Type of Quarters Required - Three bedroom bungalow with
Servant's quarters.
Payment Suggested - Through mortgage arrangements
Paid so far - K1,000

Six months after filling in the document, Kaluwa received a telephone call from the Secretary informing him that the Corporation had allocated him a house at Munali. Kaluwa made a request that he be allowed to move into the house immediately as his family of five had arrived from the village and he had no convenient place to keep them in. He wrote a note to the Secretary in support of his request which ended thus:

"In view of the fact that procedures for finalising the transaction are likely to drag on for months, please decrease my sufferings by allowing me to take immediate possession. What will follow after is a mere formality."

The Secretary wrote back:

"We have no objection to your moving in and indeed your moving in will be in our interests as burglars do a lot of damage to our empty houses."

Kaluwa occupied the house for eight months which expired in July of the year. In that month he was expelled from the University for leading a students' demonstration against the government. Two days after his expulsion from the University, he received a notice from the Secretary to the National Housing Corporation. It read:

"This is to notify you that you are in unlawful occupation of the Corporation's property at Munali. You must vacate the same within one month from the date hereof. If you fail, you will be unpleasantly evicted through the proper channels."

After the expiration of the notice, the police accompanied by the Secretary forcefully evicted Kaluwa and his family. They had to sleep out in the courtyard for a month.

Kaluwa is threatening to institute proceedings for an order of specific performance directed against the Corporation to transfer the Munali house to him. He also wants damages for breach of contract inclusive of compensation for pain and suffering and embarrassment to him and his family.

FULLY ASSESS HIS CHANCES OF SUCCESS.

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - JUNE 1979

L 230

THE LAW OF TORTS

TIME: 3 Hours

INSTRUCTIONS:

1. Candidates may bring into the examination room only with the following materials: STATUTES, HANDOUTS and CASEBOOK.
 2. ANSWER FOUR QUESTIONS IN ALL INCLUDING QUESTION NO. ONE WHICH IS COMPULSORY i.e. it MUST BE ANSWERED BY ALL CANDIDATES.
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1. Although it had links with landed property that is with the era of feudalism, negligence is the tort of the era of capitalism that is of the era of production under the hegemony (domination) of capital. Discuss (25 Marks)
2. At Nkeri Island 10 miles from Hari Beach Hotel, the Ministry of Home Affairs of the republic of Y maintains an institution for the rehabilitation of prisoners under the control and supervision of prison officers. On 13th June 1977 a party of such prisoners were working on the island under the supervision of five prison officers. That night 10 of the 30 prisoners escaped and went aboard a Ministry's boat which they found nearby. They set it in motion and drove away while the officers were sleeping. A quarter of a mile away was a fleet of pleasure boats which were maintained by Oliga Inc., an American Company which has a minority holding in the Hari Hotel. The escapees, in order to avoid being easily identified and hence arrested, took one of the pleasure boats which had been moored and boarded it. The boat suffered extensive damages and had to be written off.

It was admitted that of the 30 prisoners under rehabilitational experimentation by the Ministry, 15 had records of previous escapes or attempts to scape; and that of the 10 escapees 6 had records of at least two escapes.

- (a) Oliga Inc., sues the Ministry of Homes Affairs claiming damages for negligence. What result?
- (b) What difference, if any, would there be to your answer if the pleasure boat was owned and operated by Peoples Safaris Co-operative Society, a number of Small Industries Development Organisation (SIDO)? (15 marks)

3. " Malicious prosecution is an action which runs counter to the obvious policies of the law in favour of encouraging proceedings against those who are apparently guilty, and letting finished litigation remain undisturbed and unchallenged. It never has been regarded with favour by the courts, and it is hedged with restrictions which make it very difficult to maintain."

William v. Prosser, Law of Torts 1955, at p. 652.

- (a) What are the restrictions which the courts have developed to discourage actions for malicious prosecution?
- (b) Given the problems which crimes pose to development efforts in Zambia, should the courts apply these restrictions even more strictly? If your answer is in the negative elaborate why? (15 marks)

4. Ali and Musa have been good friends for a long time. At present both are students at the University of Zambia. They plan a tour of East Africa in the long vacation. The route they intend to take is Lusaka - Dar-es-Salaam - Nairobi - Kampala - Dar-es-Salaam - Lusaka. They will travel in a brand new Volvo car which Ali bought after winning the first lottery (pick-a lot) price in January this year.

In Southern Uganda i.e. on the Kampala - Dar-es-Salaam leg of their journey, they consume a substantial amount of Uganda Waragi (gin) from which Ali, the only licensed driver, gets drunk. Although he can see that Ali is drunk, Musa accepts the proposition that they drive on. On the way they encounter a sharp bend over a narrow bridge. Ali is afraid to proceed but Musa urges him not to be a coward and to cross. In the

6. Although the test of the "Reasonable Man" with its appearance of objectivity and simplicity makes it possible for the community values to be infused into the administration of the law, it nonetheless obscures the true nature and character of the law.

Discuss the above statement in relation to the law of torts.

7. In Zambia where the Party (UNIP) is the supreme policy - and decision-making institution, the immunities which in other systems are accorded to members of parliament (MPs), and those accorded to Executive Officers charged with important responsibilities such as Ministers, have been rendered superflous.

Discuss. (15 marks)

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - JUNE 1979

L 240

Criminal Law

TIME : THREE hours

ANSWER: FOUR questions: TWO from Section A and
TWO from Section B.

SECTION A

Chama has a speech defect of which he is very self-conscious. One night on his way home he meets a gang of youths who mock him by imitating his manner of speaking and one of them, Mutono, pretends to hit Chama with his fists. Chama, now very angry and frightened, draws a knife and throws it at Mutono. The knife misses Mutono and strikes and kills Soko, a passer-by.

Consider the criminal liability of Chama.

"The 'actus reus' of attempt requires something which goes beyond mere preparation. There must be an act which is immediately and not remotely connected with the intended offence. The problem is where to draw the line between mere preparation and actual attempt."
(Collingwood).

Explain and illustrate this statement with the use of decided cases.

At a Magistrates Court, Chileshe pleaded guilty to a charge of theft. He now wishes to appeal against sentence. Advise him

- (a) as to the procedure for the appeal; and
- (b) as to the principles used by the High Court in determining whether to allow the appeal.

- (a) To what extent may a person consent to an assault upon himself?
- (b) Choma sets fire to his house intending to collect the insurance money on it. Unknown to him Rollo was inside the house and is seriously injured. Advise the D.P.P. as to the appropriate charge(s) against Choma.

SECTION B ✓

Consider the liability for theft in the following cases:-

- (a) Lottie is the manager of a shop. He is told by Sakala, the owner of the shop, that no one is allowed to take money from the shop till for their own purposes without the express permission of Sakala. One evening Lottie realises that he has no money with which to take his girl friend out and decides to borrow K10 from the till although he does not get the permission of Sakala. He intends to replace the amount the next morning. Would it make any difference if Lottie was owed K20 by Sakala?
- (b) Soko is given an envelope containing his wages by Kabwe, his employer. Later, upon opening it, Soko finds that he has been given an extra K1 by mistake. He decides to keep it and uses it to pay for goods worth 75 ngwee in a store. The cashier, mistakenly believing it to be a K5 note, gives Soko K4.25n in change. Soko does not inform her of the error.

6. Discuss the criminal liability (if any) in the following cases:-

(a) Mulwe demands payment of K50 that he is owed by Wina. Wina persuades him to accept a post dated cheque although Wina knows that there is no prospect of the cheque being honoured when presented at the bank.

(b) Kasote agrees to sell cooking oil to Banda. He pours a quantity into Banda's container which already contains a little oil. Banda is about to pay when Kasote is called away and is gone for some time. Banda, tired of waiting, takes the oil without paying for it.

7. At 20.00 hours one evening Matongo, falsely representing that he was a Zesco employee, was allowed to enter the home of Mrs. Phiri to deal with an electrical fault which Matongo claimed had been traced to the house. Mrs. Phiri became suspicious and Matongo, panicking, hit her with an ornament which he picked up off a shelf and escaped taking with him a camera belonging to Mrs Phiri. Later Matongo sold the camera to Moono in a bar. Moono is suprised that the camera is being offered at such a low price but deliberately refrains from asking any questions about it.

Consider the criminal liability of Matongo and Moono.

END OF EXAMINATION

L 240

CRIMINAL LAW

ANSWER: FOUR Questions.

TIME: THREE Hours.

Examine critically the decision of the House of Lords in *D.P.P. v. Smith* [1961] A.C. 290, and explain the significance of the decision in the criminal law.

X, who has a history of mental illness goes to a party where he drinks a large quantity of alcohol. He is given some tablets by Z. X believes them to be a cure for his headache but in fact the tablets contain an hallucinatory drug, a fact known to Z. X forms a belief that the woman with whom he is dancing is bewitching him and he picks up a table knife and stabs her to death.

Afterwards, X claims that he cannot remember any of the events. He is charged with murder and you are asked to advise as to his defence. What advice would you give?

P persuades T to join him in a robbery. The plan is to waylay the victim and for P to snatch the money whilst T keeps watch a few metres away so as to prevent interference from passers-by. On the morning of the attack T tells P that there must be no violence used on the victim. P replies "O.K. but I may have to knock him out". T agrees so long as this is as far as P goes. When the attack is made, the victim struggles and is knocked down by P. P and T start to run away but P, hearing the victim shout loudly for help, runs back and hits him with a club. The victim dies as a result of this attack.

Discuss the criminal liability of P and T for each other's action.

UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - JUNE 1979

L 250

CONSTITUTIONAL LAW

TIME: THREE HOURS.

Candidates may bring in the Examination Room clean Constitution of the Republic of Zambia.

Attempt FOUR questions.

What do you understand by the term "Constitutional Law" and what are its sources? Give examples and authorities of such sources.

Describe the principles which govern the Zambian Electoral System and suggest any reform in relation to the electoral law.

It has been argued that One-Party democracy or government is the best for African countries than a Westminster model. Do you agree with this statement? Give reasons in your answer.

John Kaufman, a rich businessman, owns a lot of property which include Chitipa maize farm with a farm house, a set of flats in Lusaka and a number of ~~mercedes~~ benz cars. When the Cabinet sat on 10th of January, 1979 it decided that a government agricultural farm should be established and that Chitipa maize farm should be acquired for the purpose without compensation. Mr. Kaufman was informed accordingly. He was also told that from first of June, 1979 the government is to rent six of his flats for the purpose of housing expatriate: civil servants recruited from overseas at the rate of K100 each instead of K300 each and that two of his mercedez benz were to be used by the expatriates free-of-charge to and from their places of work. Kaufman protested but in vain. So he wrote a letter to the editor of the "Times of Zambia" complaining about the seizure of his farm without compensation, free use of his cars by the government and the renting of the flats at a low rent and accused the government of exploitation.

3. L250

The Speaker of the National Assembly has informed the appellant that he was not entitled to resume his seat in the House until it had been determined by judicial decision whether or not he had vacated his seat by reason of the relevant provisions of the Constitution.

Write notes on three of the following:

- (a) The National Conference of the Party (UNIP);
- (b) Executive power;
- (c) Procedure on the removal of the President from the office of the President of the Republic
- (d) Estimates of Expenditure and Revenue.
- (e) Bicameral and Unicameral Legislatures.

Define the doctrine of collective responsibility. Discuss how the doctrine operates in both multi-party and One-Party governments.

Discuss the Constitutional position of Traditional authority in Zambia.

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA
UNIVERSITY EXAMINATIONS - JUNE 1979

L 310

Evidence

TIME : THREE hours.

ANSWER: ANY FOUR questions.

1. Doris the wife of Banda on the 11th of March 1979 was seen with John by Mary who passed them on her way to a stream where she was going to fetch water. On her way back she passed them again. After she had passed them for about five minutes she then heard the words "sister Mary although you are going, John is killing me". Mary ran away. She did not turn round because she was afraid. Moonze who was nearby heard shouting a little later from the direction of the stream, he went out and saw Doris coming along "holding her gut" and crying "my husband has killed me".

Banda is charged with murder, at the trial the prosecution contends that the words heard by Doris and Moonze are admissible. Discuss.

2. James, a young University of Zambia law graduate is charged with buggery. The Complainant being a fellow mojo aged 20. He denied the charge and declined to answer questions. At the trial the evidence for the prosecution included medical evidence that the complainant had been sexually interfered with on the day in question and also indecent photographs were found in James' room by a police constable. James opts to give unsworn evidence in his statement while denying the charge, he states that the complainant had told him in his room on the afternoon in question that he had already on the same day allowed an act of gross indecency on his person and would do the same again for money. He asked the court to disbelieve the complainant because he was that sort of youngman. The prosecution introduced a number of previous convictions, some for theft, others for buggery and an acquittal for theft. The trial judge rules that the prosecution is entitled to do so. The defence appeals.

Discuss.

Mutale was charged with espionage. On the night of December 4 there was an absence of lights in the general office of Zambia Airforce. At that time they would ordinarily be burning. Investigations showed that there were windows broken in the general office, and that an attempt had been made to open the safe in the accounts office. In the adjoining office there was a window broken and files lying around, some of which were open. A search disclosed Mutale hiding on some beams in the roof. Mutale made a statement to the officer commanding after having been interrogated by a number of officers. The officer commanding ordered that his house be searched but he protested. The officers of the army without a warrant searched the house and discovered a secret file which belonged to the Zambian Airforce. The next morning Mutale was arrested by a policeman and he made a statement after the policeman asked him to make a statement and told him to remember that he had made an earlier statement to the commanding officer. He made a statement admitting that he was spying for Rhodesia. At the trial he said that he made a statement after arrest but said that he did not know its contents though he had signed it.

Discuss the admissibility of the various items of evidence.

Munda lost three heard of cattle. At the time the cattle were stolen they were being looked after by a young girl Babu unusual though it was and she was raped by one of the thieves. Three men John, James and Juma are subsequently arrested and are charged with stock theft and Juma is in addition charged with rape. Babu aged 9 was called to give evidence. Babu asked by the judge whether she goes to church replied no and further asked whether she knew what sin meant replied no. But she told the court that to tell the truth meant not to tell lies and meant stating what one saw or knows. There is also evidence by Banda that he found John, James and Juma slaughtering an animal. They claimed that they bought the animal at a neighbouring village, but when Banda promised to investigate they ran away into the bush. At the trial

John is pardoned and turns a prosecution witness and informs the court that he, James and Juma stole the cows and that Juma raped the young girl who was looking after the cows. The prosecution asks the court to convict James and Juma of stock theft and in addition convict Juma of rape. They both deny the charges.

Discuss.

Nyama, a barber, shaved Mwansa with a dirty razor and consequently Mwansa contracted ringworm. Mwansa sues Nyama for negligence. At the trial Mwansa gives evidence that his friend Mwamba and Baron had also suffered from ringworm after being shaved with a dirty razor by Nyama a week earlier. He further proposes to call his friend Nyumba to give evidence that from his experience as a barber of one year standing a razor causes ringworm and therefore in his opinion the illness of Mwansa was caused by a dirty razor.

Discuss the admissibility of the various items of evidence.

James sought to administer certain interrogatories to Mary in order to establish that Mary's late husband had created a secret trust in her, in his favour these interrogatories were based on communications between Mary and her late husband during their married life. Mary refused to answer the interrogatories to be administered. James urges the court to compel Mary to answer the interrogatories inquiring about matters which she and her late husband discussed while he lived. John is also seeking the courts permission to tender a letter in his possession. This is a letter written to an advocate in his professional capacity by Mary some years back but soon after her husband's death admitting the existence of a secret trust and asking what steps she could take to defeat the trust.

Discuss the admissibility of the evidence in question.

Jane a Ndola resident hears that you are studying Law. She comes to you to seek legal advice. She tells you that she last saw her husband John in 1966. At that time a very healthy looking man of 24. He left home saying: "I am fed up with you, I am going to seek peace." This is after they had had numerous problems in the home. Later the following year she had heard that he had been arrested on a robbery charge in Lusaka and jailed for 10 years. John escaped from prison in 1968. After he ran away from prison and while being persued by the police he jumped into Ngwerere river and has not been seen since. There are two theories; one that he drowned, the other that he swam under water and emerged in Chunga and is hiding. Jane tells you that she has recently met a young man who makes her heart tick and she would like to marry him. She argues that John is dead and states further that her belief is strengthened by the fact that any sensible court would take the view that if a person stays under water for a while he dies this is as obvious as the fact that water is wet and needs no proof. This she argues, is in addition to the fact that this guy has now been missing for a long time.

Discuss.

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - JUNE 1979

L 320

Property Law and Succession

TIME : THREE hours

ANSWER: FOUR questions. At least ONE question MUST be answered from each Section.

Candidates can bring into the examination room all relevant statutes but no other documents.

SECTION A

1. EITHER

(a) Compare and contrast the customary laws governing the tenure of land of the Luvale with the comparable laws of EITHER the Ngoni OR the Tonga.

OR

(b) "I believe that a series of estates of administration is likely to cover most systems of African land tenure..... In hierarchically organized tribes, like the Barotse, Zulu, and Bemba, the gradation of estates will be woven into the social organization; in more undifferentiated organizations, such as the Tonga, the gradation will not always carry with it such stringent social obligations..... In tribes..... such as the Lozi, the series of estates of administration will be part of the social hierarchy, so that ownership of the land-holding of a superior estate will give power over all inferior estate holders....."

Max Gluckman, The Ideas in Barotse Jurisprudence

Explain, and comment on, these observations.

SECTION B

2. (a) Compare and contrast the provisions of the Trusts Restriction Act (No. 64 of 1970) with the common law rule against perpetuities. 3

(b) Discuss the legal effect of the following dispositions

(i) "To D in trust for my nephew when he attains the age of 21."

(ii) "To my dear wife R, the whole of the unexhausted residue of my leasehold estate, but should she remarry after my death, to T my brother in trust for A, B, and C (my children) and their children."

(iii) "My grocery shop in Chilanga to D in trust for my daughter S when she gets married."

(D sells the shop to P, who is unaware of the trust; P gives the shop, as a gift, to K, who has notice of the trust.)

3. "Land is one of the primary and most important factors of production in our national economy. Like money (that is capital, which it represents) it can fall under the control of a few individuals - the landlords - determined to exploit it for their own ends at the expense of the landless" (President Kaunda).

Outline the provisions of the Land (Conversion of Titles) Act (No. 20 of 1975) and the Lands Acquisition Act (Cap. 296), and consider to what extent, if at all, these Acts offer remedies for the problem identified by President Kaunda.

4. Chililabombwe is a retired miner who is looking for land on which to settle. He has heard of "improvement areas" and "statutory housing areas", but does not know what advantages there are in such areas. What he wants above all is a good title to land. He does not mind going back to his district of birth but does not want tribal tenure.

He approaches you and seeks your advice.

Advise Chililabombwe.

5. (a) What provisions are made for public participation in the preparation of a development plan under the Town and Country Planning Act (Cap. 475)?
Evaluate these provisions and consider what improvements, if any, you would recommend in the law or practice.
- (b) A, a land developer, wanted to build a bar in UNZA Square, since this has proved a lucrative business. He was met with objections from both existing bar owners in the area and the UNZA Planning Authority. Bar owners expressed the view that there were far too many bars in the area. The Planning Authority refused planning permission on the strength of what the bar owners said. The Authority advised A to build premises for a butchery which, of late, it had been trying to encourage. The Authority further attached the condition that A would have to repair a two kilometers section of the public road opposite the area of development.
A ignored both the Planning Authority and bar owners and built a bar. The Authority now wants to take action against A.
Evaluate the respective rights of A, the Authority and the bar owners.
6. Bambazonke, an elderly white farmer in Monze, died intestate in February 1978. His estate was administered by the Administrator General. Because of Bambazonke's ill health in the past five years the farm was managed by Moses. Bambazonke told Moses that he could have the farm when Bambazonke died.
After Bambazonke's death, Moses approached the Administrator General to arrange for the transfer of title. The Administrator General subsequently wrote Moses that he was only willing to lease the farm, in the interests of the deceased's estate.

6. (continued)

The Administrator's letter stated that in principle he agreed:

- (1) to lease the farm for 30 years;
- (2) the rental shall be K150 per month;
- (3) the first five years rental to be paid in advance and thereafter to be paid monthly in advance;
- (4) the premises could be sublet to suitable persons,
- (5) the farm would be available June - July 1979.

The Administrator General advised Moses to contact his lawyer if he was interested, so that the lawyer could attend to the registration formalities. Moses contacted a lawyer who has since left the country without carrying out his client's instructions.

Subsequently the Administrator offered the farm to another person. Moses became concerned.

Advise the parties.

SECTION C

7. "The last wishes and instructions of DG of UNZA to take effect when I die.

My cottage in the Sala Reserve to go to my two daughters - Goodheart and Joy (notwithstanding that I come from a matrilineal community which would favour my nephew Jackson). To John I give K10,000 from my money in Bank Square in trust for my two sons Peter and James. All my debts and moneys owed to me will be attended to by my wife Rose and my two elder brothers. But as for my wife, however, I am sorry I have to leave her only K100 because she continues to be a bother to my personal life.

All else that is left is reserved for UNZA Wildlife Conservation Society.

Dated this 25th day of September 1977 at the University of Zambia.

Made by me as my last wishes DG

Witnesses:

Rose

Joy

Mark (Blind)

Erasmus."

2

The Law Development Commission has in recent months been concerned with overhauling the Law of Succession, which has provoked public criticism. Your assistance is invited in this law reform exercise. Comment particularly on the following:

- (a) the suitability of the English Wills Act, 1837;
- (b) the freedom of the Zambian testator to divest himself of customary law;
- (c) reconciliation between the different customary laws of succession subsisting in patrilineal and matrilineal communities respectively, and
- (d) benefits and funds established under various Acts of Parliament, i.e. pension schemes and the National Provident Fund.

END OF EXAMINATION

UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - JUNE 1979

L 330

Commercial Law

TIME : THREE hours

ANSWER: FOUR questions, TWO from EACH section

SECTION A

1. Section 1 of the Sale of Goods Act describes a contract of sale as a contract whereby the seller transfers or agrees to transfer the property in the goods to the buyer.
 - (a) What are the important rules relating to the time of passing of property from the seller to the buyer?
 - (b) To what extent is it important to ascertain the time of such passing of property?

2. Transactions relating to sale of goods would become cumbersome if not impossible if the purchaser were required to ascertain for himself and obtain proof that the seller is the true owner of the goods whenever a purchaser intends buying goods. It would also be a world of fraud if the law allowed any person who could get possession of goods or documents of title to goods belonging to others to sell them freely and pass good title.

To what extent has the law reconciled these two conflicting positions?

✓ 3. "... It is common knowledge - and I suppose, common sense - that when people enter into a Hire Purchase Agreement they enter into it not so much for the purpose of hiring, but for the purpose of purchasing by a certain method, by what is in effect, deferred payments."

(a) In the light of this statement explain the nature of a hire purchase agreement.

(b) What are the important terms a hire-purchase agreement should contain that would distinguish such an agreement from a credit sale agreement?

4. United Suppliers Limited as owners entered into a written hire purchase agreement with B in respect of a refrigerator which B was allowed to take home and use. The agreement provided, inter alia, for an initial payment of K200 and a monthly rental of K10 until the completion of the balance of the purchase price of the refrigerator which was fixed at K750. United Suppliers Limited also retained for themselves the property in the goods and the right to take possession of the refrigerator in the event of B defaulting in payment of any rental.

B had paid over half the amount by way of rental, when he found himself in financial difficulty. He pledged the refrigerator for K350 with which he met his financial difficulties, but could not pay future rentals. United Suppliers Limited in the exercise of their right given to them under the agreement now seeks to take possession of the refrigerator from the pledgee whose address was given to them by B.

Advise the parties concerned regarding their legal positions and how best they should act in the circumstances.

SECTION B

✓ 5. (a) Enumerate and outline the provisions in the Hire-Purchase Act intended to safeguard a purchaser.

(b) What were the shortcomings in the common law relating to hire purchase that made such statutory provisions necessary?

A is a building contractor who employed B for the purpose of negotiating the terms under which A would put up a building on C's land. B concluded the agreement on A's behalf and A accepted this in the belief that B had discharged his duties faithfully. Subsequently A discovered that B had accepted a gratification of K500 from C. Both B and C admitted this. But both of them insisted that the gratification had no influence whatsoever on the terms of the contract negotiated. But A is furious and feels that his business will be ruined if he allows this incident to pass over.

A now seeks your advice regarding his rights.

Advise him with regard to his rights against B and C.

(a) Explain the requirements relating to the duty of disclosure in contracts of Insurance.

(b) A proposal form relating to life assurance contained the following question;

Have you suffered from any illness during the last 10 years?

The proposer answered this question in the negative. But he had suffered heart ailment 12 years ago and it was also later discovered one year after the issuing of the Insurance Policy that unknown to the proposer he had been suffering from tuberculosis for 3 years. This could not be detected even at the medical examination conducted by the insurers before the proposal was accepted.

(i) Has the proposer discharged his duty of disclosure?

Give reasons for your answer.

8. Phiri has appointed Banda as the General Manager of his supermarket. Banda's duties included making of purchases for the super-market. Phiri had given written instruction to Banda

(a) that he should not exceed K1,500 credit in respect of any seller of goods to the market;

(b) that he should not make any purchase on credit from 3 named traders.

Phiri rarely supervised Banda's work but on a sudden inspection Phiri discovered that Banda had run into heavy credit purchases and also had bought goods on credit from the traders appearing in the prohibited list.

Phiri thinks that he has a right to refuse payment because Banda has exceeded his authority.

What advice would you give Phiri? Set out reasons for your advice in full.

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA
UNIVERSITY EXAMINATIONS - JUNE 1979

L340

Constitutional and Administrative Law

TIME : THREE (3) hours

NUMBER OF QUESTIONS: FOUR (4) questions, at least ONE (1) from Section Two.

NOTES: Candidates are permitted to bring into the examination room copies of the Constitution of Zambia.

SECTION ONE

"Constitutional law is concerned with the organisation and functions of government at rest whilst administrative law is concerned with that organisation and those functions in motion."

Discuss this statement generally and with particular reference to the nature and scope of these two fields of law in Zambia.

- (a) Explain the place and role of the Commission for Investigations in the administrative process of Zambia.
- (b) Compare and contrast this Commission with "Ombudsmen" established elsewhere, especially in Sweden, the United Kingdom, New Zealand and Tanzania."

"Emergencies constitute matters beyond the constitution. Indeed they manifest a danger to the constitution itself, as well as the entire Political Order, and have to be dealt with largely outside the realm of Constitutions."

- (a) What provision is made by the Constitution of Zambia for emergencies?
- (b) Discuss the quotation above, comparing it with the common law theory of civil necessity.

"The system of delegated legislation is both legitimate and constitutionally permissible, subject to certain safeguards."

Elucidate the above statement, explaining the need for, and justification of delegated legislation and its inherent dangers. What safeguards and controls are provided in the legal system of Zambia against the abuse of the system of delegated legislation?

SECTION TWO

- (a) Discuss the justification for the establishment of special tribunals within the administrative process.
- (b) Evaluate the performance of the Town and Country Planning Tribunal in the light of this justification.

At common law public officers served "at the pleasure of the crown." The Constitutions of Zambia, 1964 and 1973, vest the power to dismiss public officers in the President, but established a number of "service commissions".

Explain the legal powers of the President and the service commissions respectively, and discuss the effect of the constitutional provisions on the common law principle of dismissal and service "at pleasure", reviewing relevant judicial decisions in Zambia.

On 10th January 1979 a detention order was made under Regulation 31 of the Preservation of Public Security Regulations and was, on the same day, served upon John Banda. On 20th January a Gazette notification was published to the effect that John Banda had been detained under the orders of the President. On 23rd January Banda was handed a sheet of paper written in English stating the reasons why he had been detained. Banda protested that he did not understand the language used in the statement and the contents of the statement were translated to him by the authorities. The statement said his detention had been ordered because.....

"During the last one year you constituted a threat to the security of the State as on several occasions during this period you have been seen in the company of people of hostile origin and disposition who have been involved in illegal mining and sale of emeralds."

Banda has written to you from his place of detention to request you to challenge his detention in a court. What steps will you take to this end and how will you argue the case?

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - JUNE 1979

L 350

Family Law

TIME: THREE hours

ANSWER: THREE questions

Lord Penzance defined marriage as a

"Voluntary union for life of one man and one woman
to the exclusion of all others" in Hyde v. Hyde (1866).

Discuss. How far does this definition fit in African
customary law marriage?

Henry Mwagai married Mary Mwenda in 1960 under the Marriage Ordinance Cap 211 and agreed to separate for a period of 5 years in 1961 because Henry took to over-drinking. In June, 1963 Henry fell in love with Tamara Mhoneye and married her under Bemba customary law. Henry moved from Kitwe and went to live with his wife Tamara in Livingstone. A baby boy whom they named Joshua was born in May 1965. Henry bought a farm and a house in Livingstone and he and his wife Tamara, moved to live at the farm. Since the time Henry married Mary Mwenda, he had always admired Tom Mwenda who frequently visited his sister before a separation agreement was entered into. Tom who was 15 years of age had a feminine face and behaved likewise. He was in Form Three at Chawamba Secondary School in Lusaka. When on April 6 Henry came to Lusaka for an interview for a job as an engineer at Mazembe Limited he went to see Tom at Chawamba Secondary School. He fell in love with the youth and secretly arranged for Tom to undergo a sex change operation so that he (Tom) becomes a woman. This was done on 12th of June, 1965 under false names of Henry Sikule and Agness Mwanga. Henry and Agness lived in a Company House in Lusaka. After living together for a period of two years Agness was frustrated about Henry's behaviour as the latter came home always drunk. Agness (Tam) now seeks your advice as to whether he can successfully petition the court for a decree of nullity. Advise him on all legal issues involved in this problem.

3. "A void marriage is one that will be regarded by every court in any case in which the existence of marriage is in issue as never having taken place and can so be treated by both parties to it without the necessity of any decree annulling it."

"A voidable marriage is one that will be regarded by every court as valid subsisting marriage until a decree annulling it has been pronounced by a court of competent jurisdiction", per Lord Greene, M.R. in De Reneville v. De Reveville.

Discuss the two statements in relation to void and voidable marriages quoting authorities where necessary.

4. Write notes on two of the following:

- (a) Judicial Separation
- (b) Connivance and Condonation;
- (c) Domicile; and
- (d) Mahande v. Mahande.

5. In the summer of 1959 Rosemary Cuamba, a General Manager of Fuko Company, got engaged to Patrick Nkaranga, a clerk in the Ministry of Home Affairs. Soon after engagement Patrick accompanied his boss on a month's tour of Eastern Countries. While he was away, Rosemary had intercourse with a Pakistani. Patrick and Rosemary got married towards the end of 1960. In January 1961 a baby boy was born, but to Patrick's amazement, a coloured. He was named Charles. Patrick protested and told Rosemary that the child was not his and refused to have anything to do with it although he allowed her to keep it at home. Two more children were born. A girl whom they named Chimwemwe was born in 1965 and a boy named Tandika was born in 1970. During the pregnancy of Tandika Patrick spent most of the nights outside the matrimonial home. This made Rosemary suspicious. She started inquiring about her husband's movements and discovered that he spent the nights at the house of his girl friend, Maria Shati. She warned him that if he did not stop his ways she would be forced to have a boy friend too. Patrick could not care less and argued that being an African husband he was entitled to have more than one wife. One day Patrick

5 (Continued)

brought Susan home. Susan was eleven (11) years of age and Patrick claimed her to be his daughter who was born before they got married and that her mother was Maria Shati. Rosemary accepted the child and looked after her as one of her own children. In 1972 Rosemary met Chakufa Mpala at one of the company's meetings and fell in love with him. She started coming home late. This annoyed Patrick who threatened to leave the matrimonial home. They quarrelled every night and Rosemary told Patrick that she was in love with Chakufa and there was nothing to stop her from seeing him. Patrick withdrew to a spare bedroom and refused food cooked by Rosemary and he rarely talked to her. He wanted to leave the matrimonial home, but it was very difficult to get a house within six month's of application for a house from the Government's Housing Committee. However Patrick has now filed a petition for divorce and briefs you as his counsel.

- (i) Discuss the arguments on both points of law and fact you will adopt in presenting your client's case before the High Court.
- (ii) In deciding whether to grant Patrick a decree nisi, what factors ought the judge take into consideration?
- (iii) Suppose the petition for divorce is successful, what other reliefs, or orders are the parties and the children entitled to obtain?
- (iv) Would it have made any difference if Rosemary was pregnant at the time Patrick filed the petition for divorce?

Note that the house which was the matrimonial home was the company house which was allocated to Rosemary by virtue of her employment. Rosemary's salary was four times more than Patrick's.

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - JUNE 1979

L 410

Jurisprudence

TIME: THREE hours

ANSWER: Any FOUR Questions

INSTRUCTIONS: Support your answers with illustrations and cite authorities wherever necessary. You are expected to express your own ideas, giving reasons.

1. Outline the characteristic features of THREE principal schools of jurisprudence, indicating the differences between their approaches to the study of Law. Which of these schools do you consider is the most valuable for Zambian law students to study?
2. Critically examine Austin's definition of law as a command of the Sovereign. In what respects does the 'command theory' differ from the ^{natural} law theory?
3. "Possession is one of the most vague of all vague terms, and shifts its meaning according to the subject-matter to which it is applied, ---- varying very much in its sense, as it is introduced either into civil or criminal proceedings".
Discuss.
4. "Critically evaluate the attempts which have been made to define the legal concept of "duty" and to explain its significance in a legal system".
5. Elucidate the role that law can play as a tool of social engineering in a developing country like Zambia.

6. "To apply the words literally is to defeat the obvious intention of the legislature and to produce a wholly unreasonable result. To achieve the obvious intention and to produce a reasonable result we must do some violence to the words It is only when the words are absolutely incapable of a construction which will accord with the apparent intention of the provision and will avoid a wholly unreasonable result that the words of enactment must prevail".

Discuss, in the light of the above observation, the main canons of statutory interpretation.

7. "Discuss the following in the context of the legal system of Zambia:

- (a) Judicial precedent; and
- (b) Custom".

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - JUNE 1979

L 420

Business Associations

TIME: THREE hours

ANSWER: FOUR questions

1. "Zambia's economic revolution launched in 1968, is in law hampered by the gross inadequacies of the Registration of Business Names Act Cap. 687, and the Companies Act Cap. 686."
Comment.
 2. Chanda Public Limited Company has among its objects the manufacture of all types of medical drugs save penicillin tablets. Directors P, Q, and R of Chanda Public Limited Company order the manufacture of penicillin tablets which are supplied to the University Teaching Hospital, a government hospital, under a contract of sale at the cost of K900. The University Teaching Hospital pays K300 only for the tablets. The tablets are used for treating patients by the University Teaching Hospital. Forty patients die as a result of these tablets. A Commission of Inquiry is instituted and makes the following findings:-
 - (1) That the purported penicillin tablets contained a poisonous substance which killed the forty patients.
 - (2) That the directors P, Q and R had ordered the introduction of the poisonous substance, knowing that it was poisonous, into the purported penicillin tablets during the manufacturing process.
- Advise the following:-
- (a) The State on behalf of the University Teaching Hospital.
 - (b) Chanda Public Limited Company.
 - (c) Directors P, Q, and R.

3. Banda signed the Memorandum of Association of Mojo "Company" for 250 shares. Thereafter the "Company" was incorporated on November 30, 1978.

On October 5, 1978, the Directors sent notices summoning an extraordinary general meeting to pass a special resolution to wind up the Mojo Company owing to its insolvency. On October 21, 1978, Banda refused to pay for his shares on the ground that he was induced to apply for them by misrepresentations of a promoter of the Mojo Company and sought rescission of the contract. On the same date October 21, 1978, Musonda brought an action against the Mojo Company for rescission of his contract to take shares, on the ground that he was induced to purchase by the fraudulent misrepresentations of the directors.

On October 22, 1978, the extraordinary resolution to wind up the Mojo Company was passed.

What result? Advise all the parties.

4. (a) The articles of Association of Molosi Company Limited were in form of Table A of the companies Act except for the following modification: The articles contained only one clause relating to the auditors of the company. The clause was in the following terms: "The company in general meeting shall appoint one person to the office of auditor of the company whether such person be a member of the company or not. The company shall not, before the expiration of three years from the date of appointment of such person, do anything to terminate his appointment as auditor of the company."

Bwalya, a member of the company was appointed auditor of the company on the basis of the terms contained in the articles of association. Bwalya served the company as auditor for only nine months and was dismissed by the company. Advise Bwalya.

4 (continued)

- (b) The articles of association of Nchanga Company Limited contained the following provision: "The appointment of managing director shall be subject to determination if he ceases from any cause to be a director of the company. The director of the company shall be removed from office of directors by extraordinary resolution of the company".

Banda a director of Nchanga company Limited signed a contract with the company as its managing director for a period of twenty years. For reasons best known to themselves, the company, by extraordinary resolution, removed Banda from the position of director two years after his appointment to managing director. He was at the same time advised that his services as managing director had similarly come to an end. Advise Banda.

5. (a) "How can the purity of the principle that the company's capital be maintained be preserved when a company can at the same time redeem its preference shares? Surely this amounts to a company purchasing its own shares and also amounts to a return of capital to shareholders otherwise than on a formal reduction of capital approved by the court".

(Anonymous). Comment.

- (b) What are the rules of law which are aimed at ensuring that the company's capital is properly raised and maintained?

6. (a) What is the legal nature of a share? To what extent is it in accordance with the principles of Zambian Humanism?

6. (continued)

(b) Soko sold his shares to Manda and delivered a duly executed transfer, accompanied with the share certificate in respect of the shares transferred. Before the company registered the transfer in question, a general meeting of the company was convened to declare dividends. The dividends were declared and paid to all the members of the company. After the registration of the transfer, Manda discovered that the company had previously declared dividends which he did not receive. Upon further inquiry, he discovered that the dividends had been paid to Soko, who appropriated them.
Advise Manda.

7. Banda, Zondo and Mumba are directors of Motor Holdings Company Limited. At a board meeting held in 1975, a resolution was passed to sell all the cars of the company which were over five years old. There were hundreds of these cars. A second resolution was passed, in favour of selling a large number of the cars to Zondo, who was the chairman of the board of directors. Zondo paid the company for the cars.

The following day, Zondo sold the cars to Tycoon at a large profit. A week later, the news of the directors resolution to sell the cars of Motor Holdings had become public. Numerous applications for cars were received by the company from members of the public. Smart, one of the applicants was worried about the success of his application for seventy (70) cars. He made inquiries about the people who were directors of the company. On discovering that Banda and Mumba were some of the members of the board, he invited them to a luncheon at Hotel Intercontinental. While at dinner, he promised them a share in the profits he would make from selling the cars acquired from their company if they would assist him with his application. Subsequently, a board meeting was convened to consider the applications. The chairman of the board proposed to give priority to applications for less than ten (10) cars. Mumba and Banda argued in favour of applicants for more than ten cars.

7. (continued)

A vote was taken and Smart's application, being the only one for more than ten cars, was approved. Later Mumba and Smart met in Cairo Road. Mumba said "Man, hadn't it been for our strong effort, you would not have got those cars". Smart replied, "I have not forgotten my promise of profits to you." Mumba and Banda did indeed get their huge share from Smart.

Advise the company of its right, if any, against Zondo, Banda and Mumba,

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA
UNIVERSITY EXAMINATIONS - JUNE 1979

L 430

International Law

TIME : THREE hours

INSTRUCTIONS : Attempt any FOUR questions out of those set below.
Only documents on international law can be brought into the examination room.

- I. Elaborate on the attributes of legal personality of international organisations with the specific reference to the United Nations Organisation.
- II. Are newly independent states under the legal obligation to succeed to treaties of their predecessors? Evaluate the practice of states in the light of the Vienna Convention on 'Succession of states in respect of treaties'.
- III. Under traditional international law states were allowed to acquire territory by conquest. Nowadays the use of force, with certain exceptions, is illegal. Discuss how this affects the possibility of acquiring good title to territory by conquest.
- IV. (a) Discuss the position of unrecognised states or governments under the international law, as well as under the municipal law of nonrecognizing states.
- OR
- (b) It has been urged that States are under the legal duty to recognise a new state or a new government which fulfils the legal requirements of statehood or of governmental capacity. State your views on this matter.
- V. Analyse and comment on legal content of the principle of self-determination.
-

END OF EXAMINATION

UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - JUNE 1979

L 440

Conflict of Laws

TIME : THREE hours

ATTEMPT ANY FOUR questions. Your answers must be supported with Judicial pronouncements and statutory provisions.

- (a) The existence of a status of a person under the law of a person's domicile is in general recognized by The Court of England but such recognition does not necessarily involve giving effect to the result of such status. Discuss.
- (b) A Roman Catholic priest is a citizen and domiciled in a foreign country under the law of which he is, as a priest, incapable of marriage. He marries an English woman in England. Does he acquire the Status of a married man? Decide.

It is generally suggested that "There is no act, no circumstance in a man's life, however trivial it may be in itself, which ought to be left out of consideration in trying the question whether there was an intent to change (his) domicile" (per Kindersley V.C. in *Drevon v Drevon*, 1864, 34 L.J. Ch 129) Discuss judiciously referring the case law how the courts have behaved in the given cases in order to determine the question of a change of domicile.

Although marriage is a consensual transaction under the modern English Law, it is quite different from an ordinary civil contract as it can only be contracted between a man and a woman and once the contract is executed marriage becomes a domestic relation and is subject to dissolution only through legal proceedings or the death of one of the spouses.

Describe marriage as a contract and a status.

- (a) To what extent does the principle of Locus regit actum apply to marriage in the English conflict of laws?
- (b) H is a Polish national serving with the British Army in Italy, who marries W a Polish national in 1946 in an Italian Church by a Roman Catholic priest serving as a Polish Army Chaplain. The marriage did not comply with formal requirements either of Italian or Polish law. H and W are now living permanently in England. They consult you on the validity of their marriage. Advise them.
- (a) The proper law of a contract is the system of law with which the transaction has its closest and most real connection (Dicey). Discuss.
- (b) A, a man of eighteen, domiciled in a country in which majority is reached at that age, enters into a contract with B a domiciled English man in England to supply him certain number of bales of cotton from his home country which he could not comply with. Can B make A liable for the breach of contract before an English court and demand damages for the non fulfilment of promise?
- (a) Which rule or rules govern the assignment of tangible movables under the conflict of laws?
- (b) A and Co a Californian corporation sold a motor car in California to B residing in California on hire purchase basis with this stipulation that title shall remain with A and Co till the price is fully paid and that until then B shall not remove the car out of California. Before the full payment is made B took the car without the knowledge and consent of A and Co to New York where he sold it to C who took it in good faith and for value. Who has the superior title in the present case? Write your opinion.

3. L440

- (a) Relate the conditions which have to be fulfilled before a foreign judgment can be enforced in England by action.
- (b) What kind of defences can be taken to actions on foreign judgments?

Write short notes on any two of the following:

- (i) Donatio mortis causa
- (ii) Capacity
- (iii) Location of intangible movables
- (iv) The lex loci solutionis

END OF EXAMINATION

L 440

CONFLICT OF LAWS

THREE Hours.

R: FOUR questions.

On what grounds do the Zambian Courts give effect to a rule of foreign law in a case involving a foreign element? Is such course of action in keeping with the terms of the Judicial Oath as set out in the Promissory Oaths Ordinance (Cap. 68, Laws of Zambia).?

(i) Dori Lal's original home was Bombay in India. When he was four years old, his parents emigrated to Kenya which later became their home. At the age of 22 years, Dori Lal left Kenya for good and came to live in Zambia. It was here that he met and married in a monogamous form Jinadu, a girl of 19 from Uganda. Jinadu's parents are citizens of Uganda, they still live there and up to the time of her marriage Jinadu herself lived with her parents in Uganda.

In January, 1969, Dori Lal was declared a prohibited immigrant and deported from Zambia. Before travelling to England where he intended to settle down for the rest of his life, Dori Lal had gone to South Africa for a short holiday. Here, he had become involved in local politics, convicted of the crime of espionage and sentenced to imprisonment for life.

Jinadu, Mrs. Dori Lal, did not of course go with him to South Africa but after a brief visit to her own parents in Uganda had gone to Kenya to apprise her husband's parents of the circumstances leading to his deportation. It was whilst Jinadu, Mrs. Dori Lal, was still in Kenya that the news broke that Dori Lal was serving a life sentence in South Africa. Jinadu lost no time in asking the Kenyan High Court for a decree of divorce, which was granted on the ground that it had become physically impossible for the couple to cohabit. This, however, is not a ground for dissolving a marriage in Zambia. Jinadu who has come back to Zambia, seeks your advice as to whether she can legally marry here under the provisions of the Marriage Ordinance (Cap. 132, Laws of Zambia). Advise her.

(ii) Would it make any difference to your advice that the South African Courts would have recognized Jinadu's divorce;

(iii) That Jinadu obtained her divorce in Bombay; or

(iv) In Uganda?

3. (a) "The foundation of jurisdiction is physical power ..." (Holmes J.) To what extent is this true, so far as the rules relating to the recognition of foreign judgements are concerned?

(b) Discuss briefly, the scope of the doctrines of fraud and of natural justice in the law relating to the recognition and enforcement of foreign judgements.

4. Umtata, a girl aged 16 years, was born and domiciled in Zambia where her parents live. At the age of 14 years, she eloped with John Dixie aged 18 years to Hippiland, Dixie's home country. They were married there in a monogamous form. Unlike Zambia (see section 32A(1) of the Marriage Ordinance, Cap. 132), the minimum age of marriage in Hippiland is 13 years. Moreover, parental consent to marriage is not necessary if one of the parties to it is over 16 years of age.

Umtata, totally fed up with Dixie and Hippiland, has now come home to Zambia. But her parents want her to marry in Customary form, Zimaziku, a young man to whom she had been betrothed in absentia. She has also consented. Umtata's parents have come to you seeking advice as to the validity and legality of their daughter's contemplated second marriage. Advise them.

5. Discuss the following problem:

A, domiciled and resident in New York, has a current account at a Zambian bank in Lusaka, which shows a credit balance of K50,000. A, in New York assigns one-half of this sum in writing to X, a New York creditor of his. Later, while on holiday in France, A, assigns the whole sum in writing to his wife W, who gives notice to the bank. X sues the bank in Zambia for K25,000. The Bank, having notice of W's claim, interpleads. By New York Law, the assignment to X is valid; it entitles X to sue the bank in his own name, and it has priority over later assignments, despite the absence of notice to the debtor. By French Law, the assignment to W is void as a gift between husband and wife.

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - JUNE 1979

L 450

International Trade and Investment

Law

TIME: THREE hours

INSTRUCTIONS: CANDIDATES ARE PERMITTED TO BRING INTO THE EXAMINATION ROOM ALL RELEVANT ZAMBIAN STATUTES AND THE GENERAL AGREEMENT ON TARIFFS AND TRADE.

ANSWER FOUR QUESTIONS - FROM AT LEAST THREE PARTS OF THE EXAMINATION.

PART A

1. Critically discuss Zambia's law for foreign Investments. .
2. In discussing the relevance of the doctrine of Comparative Advantages to Zambia, one must keep in mind the fact that the doctrine is both a child of politics and Economics.

In the light of the above observation, discuss the possible applicability of the doctrine to Zambia's Contemporary International Economic Relations.

3. Write on either (a) The Regulation of manufacturing in Zambia OR (b) The Regulation for the transfer of Technology and Expertise under the 1977 Industrial Development Act.

4. Discuss the legality of Article 24 (d) of the Industrial Development Act 1977, in the light of the Contemporary International Law position on Nationalisation of foreign Investments. OR, 4(b)

Critically discuss the processes and the legal framework of Copper Nationalisation in Zambia.

5. Why has it been necessary for Zambia to accede to the (1965) World Bank Convention for the Settlement of Investment Disputes?

Outline the law as laid out by the said convention.

PART II

6. (a) What, in your view are the main obstacles and problems facing the establishment of the New International Economic Order?

OR

- (b) Discuss UNCTAD'S role in the World Commodity Trade.

7. (a) Critically discuss the measures that UNCTAD is evolving on the question of Trade in Manufactures for developing Countries OR;

- (b) On the question of shipping.

OR

- (c) 'Restrictive Trade practices are inevitable occurrences in International Commerce of the World Capitalist Economy.'

Discuss the adequacy of UNCTAD's measures on this issue in the light of the above observation.

8. (a) Do you consider the charter of Economic Rights and Duties of states an adequate legal basis for the equitable Restructuring of the World Economy?

OR

- (b) Critically discuss the principles and the law of Permanent Sovereignty over Natural Resources and Wealth.

PART III

What options are available to Zambia in constructing trade Agreements between herself and the Industrialised Trading Nations of the World (id est both Capitalist and Socialist Nations)?

'In 1965 - The General Agreement on Tariffs and Trade Organisation, did attempt to accomodate the interests of developing countries by adopting New measures in the form of Part IV of the GATT treaty. Yet, by December 1964, The General Assembly of the United Nations Conference on Trade and Development (UNCTAD) for the purpose of dealing essentially with the problems that is the concern of PART IV of GATT. And; ever since then, it appears that developing countries favour to deal with their Trade and developmental problems in UNCTAD rather than in GATT.'

In the light of the above observation critically discuss the adequacy of the GATT measures for developing countries as are now contained in PART IV of The GATT Treaty.

1. (a) What is the law of GATT in regard to Quantitative Restrictions or; in regard to the National Treatment obligation?

OR
- (b) Write on any two of the following:
 - (i) The Escape clause and market disruption in GATT
 - (ii) Regionalism and GATT
 - (iii) Balance of Payments problems and the law of GATT
 - (iv) Countervailing and Anti-dumping measures in GATT and Developing Countries.

PART IV

Write on any One of the following:

12. (a) The Rights on Unpaid seller against goods in an International Sales Contract.
 - (b) Frustration OR, a force majeure in International Sales Contract.
 - (c) The Question of the proper law of International Sales Contract.
13. Discuss the major methods of financing International Sales transactions.

END OF EXAMINATIONS

Labour Relations Law

TIME: THREE HOURS

ANSWER: FOUR QUESTIONS, AT LEAST ONE BEING CHOSEN FROM EACH SECTION

SECTION A

1. The individual contract of employment has been described as the "corner-stone of the edifice" in labour law (Kahn - Freund, 1956)
 - (a) What modifications have been made to the individual contract of employment by the "imperative norms" in the Employment Act, Chapter 512?
 - (b) "A breach of contract does not necessarily discharge the contract. In order to have this effect the breach must be 'fundamental' and be 'accepted' by the party not in default'.
Discuss briefly.
2. List and discuss, referring to relevant cases, three ways in which a contract of employment may be terminated other than termination with or without notice.
3. "In spite of the protection given to the worker at common law higher standards have been sought through protective legislation because of the inadequacies of the former and to meet the new risks which emerged with the coming of the industrial society."
 - (a) Critically examine the basis and extent of protection in one of the following statutes compared to the protection given to the worker at common law: the Minimum Wages, Wages Councils and Conditions of Employment Act, Chapter 506; the Workmen's Compensation Act, Chapter 509; the Zambia National Provident Fund

- (b) To what extent can the Apprenticeship Act, Chapter 51 be regarded as a piece of protective legislation if at all?

SECTION B

4. (a) Give a brief but critical assessment of the functions and the roles of the Industrial Relations Court and Ministry of Labour in connection with industrial dispute settlement under the Industrial Relations Act, 1971.
- (b) Restrictions on the right to strike vary widely from country to country, ranging from total prohibition to a few minor restrictions. What is the position in Zambia?
5. "Despite the changes brought about by the Industrial Relations Act, 1971, it can be said that trade union legislation in Zambia is still based on some fundamental principles derived from British trade union law:
- (i) Freedom of association
 - (ii) Right to bargain collectively, and, in certain circumstances, to withdraw labour.
 - (iii) Minimum participation by and interference by government"

Discuss

6. (a) "The best way to achieve industrial democracy in Zambia is an extension of collective bargaining with statutory backing. The introduction of Works Councils involves merely the appearance of participation without the reality, plus extensive practical problems in connection with the duties of managers."

Discuss.

- (b) The Zambia Mining Company, a mining multinational with most of its operations in Zambia, happens to have a managerial post at its Luena division. The company's management at the division wishes that in order to boost production a man of some calibre must take up the post. There also exists at the division a Works Council one of whose powers under the Industrial Relations Act, 1971, Section 72 (1) and (2) is to approve some decisions of management. Eventually Mr. Bambazoke who is at Malubuchi division is informed that he will be transferred to Luena division to take up the vacant post. The Malubuchi division informs the Works Council at Malubuchi under Section 71 of the above act, of Mr. Bambazonke's appointment and transfer to Luena. Similarly the management at Luena division informs the Works Council of Luena under Section 71 of the act of the appointment. The works council at Luena disagrees saying that the management at Luena has contravened Section 72 (2) (b) by not referring the decision to transfer Mr. Bambazonke from Malubuchi to them for approval. Unable to persuade the management to rescind its decision the Works council now appeals to the Industrial Relations Court. What result?

7. (a) Describe the role and functions of the International Organisation in the creation of international labour standards.
- (b) What have been the effects of the ILO international labour standards on Zambian labour legislation?

THE UNIVERSITY OF ZAMBIA

UNIVERSITY SUPPLEMENTARY EXAMINATIONS - SEPTEMBER, 1979

L 480

LABOUR RELATIONS LAW

TIME: THREE Hours.

ANSWER: FOUR QUESTIONS, AT LEAST ONE BEING CHOSEN FROM EACH SECTION.

SECTION A

1. In spite of the modifications made to it by "imperative norms" in the Employment Act, Chapter 512 and other statutes, the individual contract of employment is still the "corner-stone of the edifice" in labour law.
Discuss.
2. (a) "The terms of a contract may be either express or implied."
Illustrate with a number of decided cases.
(b) The contract of employment may be legally terminated in a number of ways. Describe ^{three} ways in which this may be done.
3. Briefly outline three major principles of protective industrial legislation. To what extent have the principles been followed in Zambian labour legislation?

SECTION B

4. (a) Critically examine dispute settlement procedures under the Industrial Relations Act, 1971.
(b) What has been the general impact of the above procedures on Zambian industrial relations?
5. It has been suggested that the Industrial Relations Act, 1971 has fundamentally changed the basis of trade union legislation. Discuss in relation to (i) trade union and government roles in dispute settlement.
(ii) Freedom of association.

6. (a) What is industrial democracy?
- (b) To what extent has it been achieved through Works Councils under the Industrial Relations Act, 1971?
7. "The ILO has reached the end of its useful life". Discuss in light of the organisation's principles and recent developments in its work in the field of international labour standards.
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END OF EXAMINATION - L480.

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - JUNE 1979

L 490

Taxation

TIME: THREE hours

INSTRUCTIONS:

- (i) Candidates may bring into the examination room and consult therein a clean copy of the Income Tax Act Cap 668 of the Laws of Zambia.
 - (ii) Read the questions carefully before you attempt answers.
 - (iii) Answer FOUR questions in all with at least one from each section.
-

SECTION A

EITHER:

A. Discuss the adequacy or otherwise of the tax incentives to agricultural development taking into account the nature of the Zambian economy.

OR:

B. It is frequently said that the tax incentives to manufacturing enterprises have contributed to underdevelopment to the extent that they have encouraged dependency on imports. Consider this view basing your discussion on the Zambian experience.

In the Budget Speech for 1979, the Minister of Finance and Technical Cooperation observed that:

"... the level of inflation has placed a heavy burden on average earnings. It has also been observed that during periods of high inflation, when the ranges of taxable income are not adjusted in line with inflation,

(continued)

that employers must increase wages and salaries disproportionately in order to maintain the real value of take home pay..... Finally, we have noticed that the rates of taxation on very high incomes have had a serious impact on the motivation of our top managers and professional workers....."

How equitable are the tax changes effected to cope with the problems outlined by the Minister?

What would you consider to be the proper policy with respect to:

- (a) Taxation of gifts
- (b) Taxation of gains illegally obtained
- (c) Taxation of damages for personal injury and injury to reputation.

SECTION B

Lord Sands observed in *C.I.R. v. Scottish Automobile and General Insurance Co. Ltd.* (1932) S.C. 87 at page 94 that:

"... a company formed to construct a bridge over the water of Leith at Balerno will probably take powers wide enough to cover the bridging of the Bosphorous."

In the light of this tendency of company objectives being widely drawn, to what extent is it advisable for a court to assess the taxability (or otherwise) of a company's transaction by reference to its memorandum of association?

Banda, Zulu, Phiri, Lungu and Mvunga were the original subscribers to Wako ni Wako Transporters Ltd a company formed

"(i) to engage in the business of transporting goods and persons;

(ii) to acquire, invest in or manage a transport business of whatever description

(iii) to do everything necessary to and/or incidental to the achievement of the above objectives."

The sharecapital of the company was K200,000 divided into 2,000 shares of K100 each. Half of this was fully subscribed in this proportion:

Banda	900 shares
Zulu	40 shares
Phiri	30 shares
Lungu	25 shares
Mvunga	5 shares

In the first two months of its starting business, the company bought 10 lorries at 20,000 per lorry. Half the purchase money was borrowed from a bank at 5% p.a. interest. The lorries were intended to transport customers' goods from Kapiri to Lusaka. After two months of operation the company found that business was not good due to the opening of the Southern railway route. It was decided to decrease the fleet by selling some of the vehicles.

The first vehicle was sold at K17,000. The second one fetched a handsome figure of K25,000. Impressed by this gain the company sold the rest of the vehicles one by one throughout its first year of operation and netted a grand total of K270,000. The loan and interest was repaid.

In the same year it was agreed that more shares should be taken by shareholders in order to increase the capital of the company. Instead of taking shares himself, Banda proposed his three sons as subscribers and they were allotted a total of 300 shares in equal portions. The other subscribers increased their subscription by 50 shares each.

By a formal agreement with his sons (one was 23 and the other two below 17 years) Banda lent them the money which they used to buy the shares. They undertook to pay back the loan with interest at 6% p.a. from dividends distributed to them and agreed that the company could retain dividends and pay them to Banda until all the loan and interest was repaid. From all the other activities of the company, it netted K25,000

(continued)

net of costs. The profit included K15,000 obtained when in the tenth month of its operation the company bought the private transport business of Mr. Zulu at K10,000. It then formed another company most of whose shares were owned by Wako ni Wako Transporters Limited to which company the business was sold at the gain of K5,000.

- Consider:
- (i) the tax liability of Wako ni Wako Transporters in its first year of operation
 - (ii) the tax liability of Banda on the basis that 60% of the company's profits were distributed as dividends in the first year.

Banda and Zulu entered into a partnership with the intention of carrying on farming together. The starting capital was K50,000. Banda contributed K40,000 and Zulu the remainder. The partnership bought a piece of land at K5,000, and tractor at K6,000. Using a loan of K9,000 from the Agricultural Bank, the partnership built two small dwelling houses at a cost of K2,000 each. They were used as dwelling houses for the partners both of whom worked at the farm as managers. The rest of the loan was spent on constructing a water pump and irrigation system. This involved among other things constructing a small house in which was fitted an engine which pumped water into a large system of pumps and sprinklers. The engine cost K800 whereas the pipes and sprinklers cost K200.

At the end of the third year of operation the partnership's accounts disclosed the following information:

- (a) A loss of K2,00 incurred in the first year of operation. The loss was incurred because all the sheep which had been bought for breeding had died of a contagious disease.

(continued)

(b) K4,000 in accounts receivables K3,000 of which was owed by a butchery to which the partnership had supplied some meat. The butchery had become bankrupt in the second year of the partnership's operation.

No profit was recorded in this year.

(c) A profit of K6,000. Three quarters of this was obtained by the partnership when it took off six acres of its farmlands, subdivided into small residential plots, which were serviced with access roads and water and then sold to a company which was planning to start a food processing factory in the neighbourhood. This was done in the third year of operation.

(d) At the end of its third year of operation the partnership had farm stock worth K20,000.

Make an assessment of the partnership's tax liability at the end of the third year of its operation giving reasons for your assessment.

END OF EXAMINATION

UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS- JUNE 1979

L 530

LLM - INTERNATIONAL LAW

: THREE hours

: Attempt four questions - including the question marked as an obligatory one and three others, choosing at least one from Part A and Part B.

An Obligatory question

It has been held that Vienna Convention on State succession to treaties, while leaving the newly independent states free under the clean slate formula to determine their own treaty relations, holds out to it the means of achieving the maximum continuity in those relations.

It has also been claimed that the Convention properly reflects the practice of newly independent states on succession to treaties.

Evaluate critically both opinions in the light of the relevant articles of the Convention.

PART A

A government came into power through revolution removing the legally elected government. It abrogated the constitution of the land and remained in power unchallenged, unobstructed or resisted by any person or party for more than a decade. During its stay in power, it had conferred numerous concessions and favours on a national of a foreign state creating international obligations.

This government was taken over by the People's Party which restored the abrogated constitution and nullified all the concessions, contracts and grants given by the former regime to individuals without the approval of the legislative wing of the Parliament. (Cont'd)

The national government of an individual whose interests (contract or legal obligations) were invalidated challenged the legality of this decree and hence the matter was referred to arbitration. It was argued by the contending state that the fallen government was the only government as there was no other government disputing its sovereignty. Consequently, the succeeding government could not by its decree avoid international responsibility for acts of that government affecting its nationals. On the other hand, it was argued on behalf of the defendant that the previous regime was not recognised by the plaintiff state either as a de facto or de Jure government hence it could not present the claim on behalf of its subjects.

Discuss and write your decision.

3. According to art. 11 of the Vienna Convention on succession to treaties, a succession of States does not as such affect a boundary established by a treaty. In the commentary to the article, International Law Commission maintained that the principle contained in it has been supported by the weight of the evidence of the State practice. The Commission's comment on the article was made in full realisation that there have been many boundary disputes between newly independent states. Vienna Convention on the Law of Treaties and the weight of legal opinion has been also pointed out in support of the principle according to which boundary settlement is unaffected by the occurrence of succession.

Discuss.

4. (a) Point out the differences, if any, between de facto and de Jure recognition of state or government as the case may be.

The newly emerged government of state X nationalizes all its textile mills including the one belonging to the plaintiff, a British subject. The state X's commercial Deligation in U.K. purports to sell the textiles so acquired to buyers in England. The plaintiff seeks injunct in a British court restraining the Commercial Delegation from selling the seized textiles. The defendant as an instrument of a sovereign independent sate raises, by way of defence, plea of jurisdictional immunity.

(a) cont'd

How will you decide the suit in case government of state X was not recognized by Great Britain at the time of the institution of the suit? Will it make any difference in your answer if the British government accorded de facto or de Jure recognition to the government of state X during the pendency of the suit. Discuss giving reasons.

Is there any duty to recognize a new state fulfilling all the legal requirements of statehood.

PART B

"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 customary international law and the provisions of the U.N. Charter on self-defence.

Political relations between Nkhwesa, a small but militarily well supported dictatorship, and two much larger states, Chikamoneka and Gomani, which share a common border with Nkhwesa and regard themselves as frontline states to that state, are strained. In a recent armed conflict Nkhwesa was nearly defeated as a result of a sudden incursion into her territory by guerilla insurgents launched from the territories of Gomani and Chikamoneka. Nkhwesa survived the attack only because of her superior weaponry and reinforcement from mercenary forces. The Government of Nkhwesa has now learned that the guerilla forces attacked her together with the regular forces of Gomani and Chikamoneka have been increased to a size ten times those of the Nkhwesa forces. Besides, Gomani and Chikamoneka have both been supplied with new missiles fitted with conventional warheads by a third state, Aisha, a superpower which regards herself in common cause with Gomani and Chikamoneka. Nkhwesa has no defence to these missiles.

(cont'd)

5. (b) continued

The Government of Nkhwesa has recently acquired long range missiles with nuclear warheads from another super power committed to Nkhwesa in retaliation to the other super power's assistance to the "frontline states". Nkhwesa proposes to respond to any "aggression" on the part of Gomani and Chikamoneka by using these nuclear missiles against both military installations and urban concentrations in the territories of Gomani and Chikamoneka without waiting for a resort to nuclear weapons by those states.

Advise the Government of Nkhwesa as to the legality of this proposed course of action. Nkhwesa is a party to the Hague Regulations of 1907 and is also a member of the U.N.

6. Although the right of self-determination is undoubtedly one of the most important aspects of contemporary international law, the exact contextual situations and circumstances of its application has not yet been delineated. Discuss.

7. EITHER

It has been suggested that the Additional Protocols of 1977 to the Geneva Conventions, 1949, is another vital step in the development of humanitarian aspects of the law of armed conflict. Do you agree?

O R

"The war criminal, like the pirate, is a hostis humani generis. International law therefore permits, indeed requires, any state to try the war criminal and to apply the same impartial standard whether or not that state has been a belligerent in the armed conflict in question."

To what extent does the above statement reflect the present position in international law with regard to war crimes jurisdiction?

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - JULY 1979

LL.M

L 550

Land Law

TIME : THREE hours

ANSWER: FOUR Questions only.

1. How far has the Land (Conversion of Titles) Act (No. 20 of 1975) aided development of rural land?

Evaluate provisions of the Act, making far reaching suggestions wherever necessary.

The Attorney-General of UNZA has invited you to participate in the drafting of a new law relating to registration of land. He wants to be advised by memorandum, particularly, on the following points:

- (i) existing difficulties under the present laws;
- (ii) categories of land which should benefit from the proposed legislation;
- (iii) Advantages and disadvantages of registration; and
- (iv) the model the land registration law should adopt.

Examine the nature of rights and interests in land under customary law with a view to recommending legislative modifications to facilitate development of the land.

Is the existing system of granting development or planning permissions under the Town and Country Planning Act (Cap.475) an effective means of regulating land development?

Discuss the weaknesses and difficulties of the system, suggesting also an alternative machinery for regulating the development of land.

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

Comment on:

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

END OF EXAMINATION

SECTION "B"

UNIVERSITY OF ZAMBIA (LUSAKA)

EXAMINATION PAPER - SESSION, 1980

SCHOOL OF LAW

1. Legal process	L 210
2. Contract	L 220
3. The law of torts	L 230
4. Criminal law	L 240
5. Constitutional law	L 250
6. Evidence	L 310
7. Property law and Succession	L 320
8. Commercial law	L 330
9. Administrative law	L 340
10. Family law	L 350
11. Jurisprudence	L 410
12. Business Associations	L 420
13. International law	L 430
14. Conflict of laws	L 440
15. International trade and Investment	L 450
16. Labour law	L 480
17. Comparative family law	LL.M. 510
18. Constitutional law	LL.M. 520
19. International law	LL.M. 540
20. Jurisprudence	LL.M. 580.

UNIVERSITY EXAMINATIONS - AUGUST 1980

of all - candidates must take the examination in the examination room. :
- at 10:00 (a.m.) and to be in L 210

LEGAL PROCESS

THREE HOURS

INSTRUCTIONS:

Read the instructions carefully. You have three hours to complete examination. You must answer three questions in all. must answer question 1, and then answer two of the questions listed in Group II. 30 points is the maximum possible for question 1, 20 points possible for each of the 2 questions answered from Group II. This is a total of 70 points. Accompanying the examination are a few materials you may or may not choose to refer to. You may also bring clean statutes (those without writing), and may refer to these statutes only. In addition you may refer to any cases, statutes, or other materials used or referred to in L210 lectures, but these materials may be physically brought into the examination room. Good luck.

All students must answer this question. A total of 30 points may be awarded for a perfect answer.

Able Advokat, a noted lawyer practicing in Lusaka, became embroiled in a suit with one of his former clients, a Mr. Badd Client. Badd Client brought an action against Able, alleging that Able had breached a contract with Badd. The contract was made in Luapula Province where it should have been performed and was allegedly breached. Able resides and normally practices in Central Province. Badd brought the suit in an Eastern Province magistrate's court near where Badd resides.

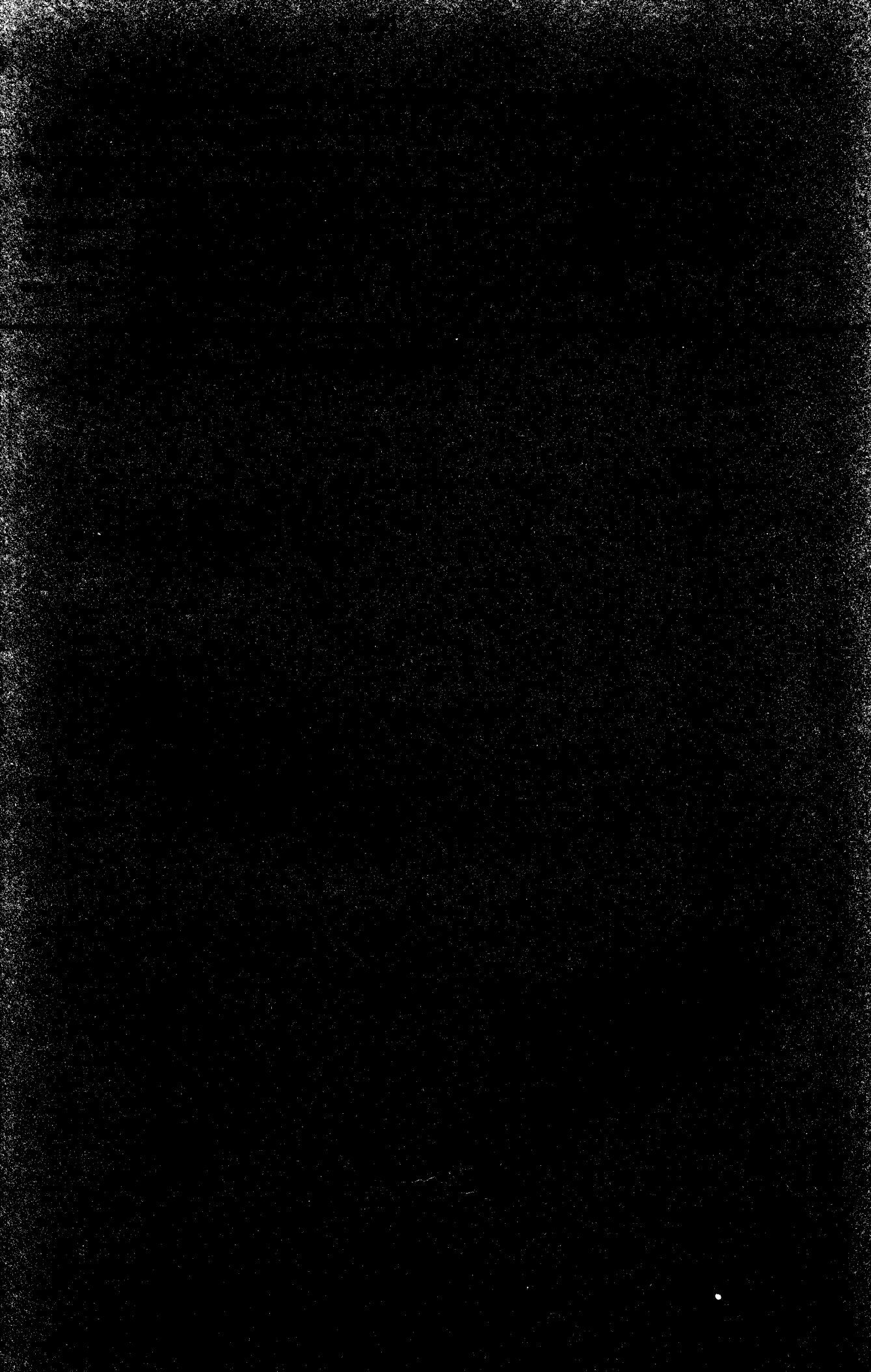
Able appeared at the Eastern Province court. Approximately half-way through the trial, Able, for the first time, raised the issue of jurisdiction, claiming that the trial ought to have been brought in Central Province. He therefore asked for a dismissal of the suit, or alternatively, that it be transferred. The judge denied these requests; the trial proceeded and Able lost. Able now appeals, solely on the claim that the trial magistrate ought to have dismissed or transferred the suit. Discuss legal and policy arguments for both sides.

GROUP II: Choose and answer only two (2) of these questions. Up to 20 points may be awarded for each of the two (2) answers.

1. Assume that there is in force in Zambia, an Act known as "The Mishanga Boys Licensing Board Act," referred to as the MBLB Act. Section 5 of the MBLB Act reads as follows 5. The Director may grant such licences for engaging in Mishanga trade as he sees fit. Section 1 of the MBLB Act defines the Director as "the Director of the Mishanga Boys Licensing Board." Section 2 provides that the President shall appoint the Director. In 1978, Wireless Mulenga was appointed by the President to a 5 year term as MBLB Director. In October of 1979, Wireless went on long leave. While he was gone, Nina Katanga, the Assistant Director, opened his mail and continued his correspondence. On Nov. 27, with Wireless still absent, Zeb Daka applied for a licence. When he received no reply by Dec. 15, he went to the Director's office and asked for his licence. Nina slammed the door in his face, and told him no licences were being granted. Zeb demanded a hearing, Nina replied "I hear you just fit through the door." She then stamped Zeb's application "refused by Director" and slid it under the door to Zeb.

Zeb has applied for a writ of certiorari and a writ of mandamus to review the refusal and to order Nina to issue Zeb a licence. Briefly identify possible arguments for each side, including consideration of any possibly relevant precedents, then discuss and evaluate possible arguments based on interpretation of the MBLB in light of article 138 section 10 of the Constitution of the Republic of Zambia.

2. Compare and contrast the Fundamental Rights Section of the Zambian Constitution to the models provided by the Bill of Rights of the American Constitution and the Fundamental Rights of the Soviet Constitution. Consider not only the types of rights, but implications regarding the legal and judicial systems, the state and individual in those systems etc.



Discuss and compare basic aspects of the inquisitorial legal system as opposed to those of the adversary system. Discuss as well the assertion that Zambia's legal system appears to be an adversary system, but in practice behaves abit closer to common notions of an inquisitorial system. Compare (and identify) at least one country using the more purely adversary system, and one relying more heavily on the inquisitorial system.

END OF EXAMINATION.

Cap. 45 Subordinate Courts Act

3. 4 "Each Subordinate Court shall have the jurisdiction and powers specified by this Act and any other written law for the time being in force shall ordinarily exercise such jurisdiction only within the limits of the District for which such court is constituted."

3. 57 (Subsidiary) Rule 5

Order IV

4. Subject to the law respecting transfers, the place for the trial of any suit or matter shall be regulated as follows:

(a) all suits arising out of the breach of any contract, real or personal and determined in any court having jurisdiction in the District in which such contract ought to have been performed, or in which the defendant does or carries on business.

S. 23 (2) "Any cause or matter may, at any time or at any stage thereof, either with or without the application of the parties thereto, be transferred by the Court or a judge from any subordinate court to the Court, from the Court to any subordinate court, or from any session or sitting of the court to any other session or sitting."

(3) "A transfer to a subordinate court under the provisions of section (2) shall take effect notwithstanding the provisions of section of the Subordinate Courts Act, and for the purpose of any such transfer subordinate court concerned shall be deemed to have jurisdiction throughout Zambia, but no such transfer shall be deemed to enlarge the limits upon the civil jurisdiction of subordinate courts by the provisions of III of the said Act or to confer any jurisdiction in excess thereof."

(4) Where any transfer has been made under the provisions of subsection any person affected by such transfer may make application to the Court or to the judge, as the case may be, or for an order transferring the cause or matter to the subordinate court of some District other than that to which it was first transferred, or to the Court, and the Court or the judge shall on such application make such order as, in the circumstances, maybe just and reasonable."

Cap. 45 Subordinate Courts Act

S. 4 "Each Subordinate Court shall have the jurisdiction and powers provided by this Act and any other written law for the time being in force and shall ordinarily exercise such jurisdiction only within the limits of the District for which each such court is constituted."

S. 57 (Subsidiary) Rule 5

Order XIV

"1. Subject to the law respecting transference, the place for the trial of any suit or matter shall be regulated as follows:

- (a) All suits arising out of the breach of any contract may be heard and determined in any court having jurisdiction in the District in which such contract ought to have been performed, or in which the defendant resides or carries on business. . . .

(c) In case any suit shall be commenced in any other court than that in which it ought to have been commenced, the same may, notwithstanding, be tried in the court in which it shall have been so commenced, unless the court shall otherwise direct, or the defendant shall plead specially in objection to the jurisdiction before or at the time when he is required to state his answer to or to plead to such suit.

(d) No proceedings which may have been taken previously to such plea in objection shall be in any way affected thereby; but a judge of the High Court may order that the suit be transferred to the court to which it may be proved to belong, or, failing such proof, that it be retained and proceed in the court in which it has been commenced."

Cap. 45 Subordinate Courts Act

S. 27 "Any civil cause or matter may at any time before or after hearing thereof, either with or without application from any of the parties thereto, be transferred from a court presided over by a magistrate of the first class and having jurisdiction to entertain such civil cause or matter to another court presided over by a magistrate having such jurisdiction as the order of the magistrate before whom such cause or matter comes or is set down or in the court where the same is pending; whether or not a previous transfer under this section or otherwise:

Provided that any party to such cause or matter may at any time within fourteen days of the making of such order make application to the court making an order setting aside the transfer, and the magistrate or court shall upon such application make such order as in the circumstances may be just and reasonable."

S. 28 "An appeal shall lie to the High Court from any judgment, order or decision of a subordinate Court whether interlocutory or final:

Provided that no appeal shall lie except by special leave of the subordinate court, or of the High Court, from an order made ex parte or by consent, or as to costs only."

S. 20 (1) "In civil causes and matters, a Subordinate Court of the
t class shall, subject to the provisions hereinafter contained, and in
tion to any jurisdiction which it may have under any other written law,
in the territorial limits of its jurisdiction, have jurisdiction....

(a) in all personal suits, whether arising from contract, or from
or from both, where the value of the property or the debt or damage
med, whether as balance of account or otherwise, is not more than four
red Kwacha; ..."

S. 12 "The jurisdiction vested in Subordinate Courts shall be
cised (so far as regards practice and procedure) in the manner provided
this Act and the Criminal Procedure Code, or by such rules and orders
court as may be made pursuant to this Act and the Criminal Procedure
e, and, in default thereof, in substantial conformity with the law and
ctice for the time being observed in England in the county courts and
rts of summary jurisdiction."

S is a citizen of Kula, a country where there is a civil law
A is a contractor and has a number of trucks which he uses in
his business. S entered into a contract with Kale Stores and
Co. also citizens of the same country for building two extra
stores in different cities as an implementation of their
expansion programme. With the intensification of the war,
the government requisitioned more than half of his trucks for
transporting food, medicines and other facilities to the battle
front. As a result of this S was only half way his job of building
one of the stores and had not done any significant work on
the store in the other city by the time they had contractually
agreed the work should be completed. Kale Stores and Co. are
threatening to sue S for breach of contract. S has retained
you as a defence counsel. How would you advise him?

"... no one can occupy the position of a principal against
his will." (Cheahire and Fifoot). Looking at the Law of
agency, how accurate is this statement?

Write on any THREE of the following:

- (a) Anticipatory breach of contract
- (b) Unilateral contract
- (c) Rescission
- (d) Doctrine of abrogation
- (e) Mitigation of damages

UNIVERSITY EXAMINATIONS - AUGUST 1980

L 220

CONTRACT

THREE HOURS.

ER: THREE QUESTIONS.

State and explain, giving examples from decided cases, the doctrine of Restraint of trade. What amendments, if any, would you suggest be made to this doctrine ^{to make it} more autochthonous (home grown).

B is a citizen of Zile, a country where there is a civil war. B is a contractor and has a number of trucks which he uses in his business. B entered into a contract with Kale Stores and Co. also citizens of the same country for building two extra stores in different cities as an implimentation of their extension programme. With the intensification of the war, the government requisitioned more than half of his trucks for transporting foods, medicines and other facilities to the battle front. As a result of this B was only half way his job of building one of the stores and had not done any significant work on the store in the other city by the time they had contractually agreed the work should be completed. Kale Stores and Co. are threatening to sue B for breach of contract. B has retained you as a defence counsel. How would you advise him?

"..... no one can occupy the position of a principal against his will." (Cheshire and Fifoot). Looking at the Law of Agency, how accurate is this statement?

Write an any THREE of the following:

- (a) Anticipatory breach of contract
- (b) Unilateral contract
- (c) Rescission.
- (d) Doctrine of abrogation
- (e) Mitigation of damages.

5. Ida is a girl of 14 years of age doing her junior secondary school. Her father, a wealthy man told her that she could pledge his credit for whatever she wanted provided she exercised some restraint. Relying on this statement she got a beautiful pair of shoes worth K50 from Mwaiseni Stores and a gold necklace from Star Jewellers in Lusaka.

When schools closed, Ida went to the Copperbelt to spend the vacation with her aunt Sela. Half way the vacation Ida ran out of money. She went to the nearest National Commercial Bank and got a loan of K350.00 to meet her needs for the rest of the holiday. She also bought some cosmetics, washing powder for herself, and a chicken for her auntie, Sela, on credit from an Indian trader who knew her family very well. She decided to use her name on these occasions believing that this would not make a difference to her father.

Her father has refused to give her money to repay the loan and for the items she bought during her vacation saying that she has too extravagant. He is also disputing the contentions by Star Jewellers and Mwaiseni Stores that the necklace and shoes qualify for necessities to Ida. National Commercial Bank, the Indian trader, Star Jewellers and Mwaiseni Stores have retained your their legal counsel. What legal advice would you give them?

6. Hadley V. Baxendale (1854) 9 EXCH. 341 lays down two rules for determining damages for breach of contract. State and discuss these rules and the problems that are involved in their application.

END OF EXAMINATION.

THE LAW OF TORTS

TIME: THREE HOURS.

INSTRUCTIONS:

- 1) Candidates may bring into the examination room the following materials only viz: STATUTES, CASEBOOKS AND HANDOUTS.
- 2) ANSWER FOUR (4) QUESTIONS INCLUDING QUESTION NUMBER ONE (1) WHICH IS COMPULSORY i.e. IT MUST BE ANSWERED BY ALL.
-

In Zambia where the Party (UNIP) is the supreme policy - and decision-making institution, the immunities which in other legal systems are accorded to Members of Parliament (MPs), and those accorded to Executive Officers charged with important responsibilities, such as Ministers, have been rendered superfluous.

Critically examine this statement.

(25 marks)

There was a collision in Zubi between two trains owned and operated by the Zubi National Railways Corporation. A number of persons had died and some had been severely injured. About 70 persons had been trapped inside the trains involved in the accident. Negligence on the part of the Zubi National Railways Corporation has been admitted regarding this tragic accident.

Y volunteered and worked at the scene of the accident a whole day. The work he was doing was trying to rescue the living and removing the dead. As a result of this experience he suffered nervous shock and was hospitalized for one month. Because of his hospitalization his employer lost one month of his labour power / contribution to production in the factory.

- (i) Y wishes to sue Zubi National Railways Corporation for damages in negligence. Y's employer too, wishes to sue Zubi National Railways Corporation for damages in negligence in respect of the loss he incurred for one month that Y did not work because he was sick and hospitalized. Both Y and his employer come to you for advice. What result and why?

Question No. 2 continued

(ii) Would there be any difference to the position you have taken in respect to Y's claim if Y had been hired/employed by the Zubi National Railways Corporation for the rescue operations?

(15 marks).

3. "A person can be imprisoned while he is asleep, while he is unconscious and while he is a lunatic [mentally sick]"; per Lord Atkin in Meering v. Grahame-White Aviation Co., [1919] 122 L.T. 44 at p. 53.

With the aid of cases discuss the correctness or otherwise of this statement with reference to the development of the tort of false imprisonment.

(15 marks)

4. "Malicious prosecution is an action which runs counter to the obvious policies of the law in favour of encouraging proceedings against those who are apparently guilty, and letting finished litigation remain undisturbed and unchallenged. It never has been regarded with any favour by the courts, and it is hedged with restrictions which make it very difficult to maintain." William L. Prosser, Law of Torts, (Hornbook Series) 4th ed. 1971 at p. 841.

(i) What are the restrictions which the courts have developed to discourage actions for malicious prosecution?

(ii) Given the problems which crimes pose to development efforts in Zambia, should the courts in this country apply these restrictions even more strictly? If your answer is in the negative elaborate more why you take that position.

(15 marks)

5. At Nkuze Island, 10 kilometres from the Ezi Beach Hotel, a state owned hotel, the Ministry of Home Affairs of the Republic of Y maintains an institution for the rehabilitation of prisoners under the control and supervision of prison officers. On 14th June, 1979 a party of five prisoners were working on the island under the supervision of five prison officers. That night 20 of the prisoners escaped and went aboard a Ministry's boat which they found nearby. They set it in motion and drove away while some of the officers were sleeping and had gone to a dance taking place at the Officers' Mess on the island.

Question No. 5 continued

About $\frac{1}{2}$ a kilometre away was a fleet of pleasure boats which were owned and operated by Omera Inc., an American Company which has a minority holding in the Ezi Hotel. The escapees, in order to avoid being easily identified and hence arrested, took one of the pleasure boats which had been moored and boarded it. They later abandoned the boat after using it. The boat suffered extensive damages and had to be written-off.

Evidence was adduced and it was admitted that of the 30 prisoners under rehabilitational experimentation by the Ministry, 15 had records of previous escapes or attempts to escape; and that of the 20 escapees 12 had at least two escapes.

- (i) Omera Inc. sues the Ministry of Home Affairs claiming damages for negligence. What result?
- (ii) What difference, if any, would there be to your answer if the pleasure boat was owned and operated by Mulungushi Safari Company, a co-operative society promoting tourism in the Republic of Y? (15 marks).

Ngech is a captain in the armed forces of the Republic of Piny, an African country. Captain Ngech and a group of friends frequently go to drink at Corom, his club, on the suburb of Tye, the capital city of Piny.

On 24th June 1976 captain Ngech and his friends (military and civilian) were drinking at Corom as usual. They were joined by Mer, another member of the club and a businessman. After about one hour Mer left the club and drove-off. In town he (Mer) met Ochol, a friend of Captain Ngech, and manager of Bel Corporation, a parastatal organization of Piny, concerned with milling business. Ochol also has close connection with State House of Piny, being a cousin to the president of Piny. Mer told Ochol that Captain Ngech and others of Corom club had been planning how to overthrow the government of Piny. Ochol informed captain Ngech later that day of this allegation. The allegation was of course false.

In September 1976 there were re-organization and promotions in the armed forces of Piny. Captain Ngech, one of the most capable and highly trained officers, was not promoted.

In January 1977 Captain Ngech sued Mer for damages for defamation. What result and why? (15 marks)

7. "The policy underlying vicarious liability would have been jeopardized by a literal adherence to the control test, and courts have not hesitated to hold the employer answerable even though the work which the servant is employed to do is of a skilful or technical character, as to the method of performing which the employer himself is ignorant."
John G. Fleming, The Law of Torts, 4th ed. 1971 at p. 316.

- (i) What is the policy underlying vicarious liability and how appropriate is it to the socio-economic conditions of Zambia?
- (ii) What are the tools or mechanisms which the courts have developed to by-pass or modify the control test? Are you or are you not satisfied with the administration of these tools? (15 marks).

END OF EXAMINATION.

UNIVERSITY EXAMINATIONS - AUGUST 1980

L 240

CRIMINAL LAW

THREE Hours.

FOUR questions.

You may bring into the examination an UNMARKED copy of the Penal Code (Cap. 146)

Examine the doctrine of strict liability in relation to the purposes of criminal punishment.

Solomon required transport so that he could steal from Rabia's shop. He asked Thyolani to lend him his (Thyolani's) car and he agreed. Thyolani suspected that the car would be used to transport stolen goods but decided to ask no questions. Solomon drove to Rabia's shop and got his eight-year old son, Davy, to enter the shop through a small window and take some goods. Whilst waiting for Davy to return from the shop, Solomon spotted Basil, a security guard. He recognised him as the man who had recently insulted Solomon's wife. He accordingly hit him with a stick causing serious wounds.

Consider the criminal liability of Thyolani, Solomon and Davy for their actions.

Excluding provocation, examine, with the use of decided cases, the extent to which the law permits a person to kill in order to save his own life or that of another.

4. Robert has committed adultery with Mrs. Tembo. Her husband, Yonah, went to see Robert intending to kill him. There is a violent argument during which Robert calls Mrs. Tembo "a whore" and speaks of her in an obscene manner. This causes Yonah to lose his temper. He immediately picks up a candlestick and strikes Robert several blows, inflicting fatal injuries.

Yonah is charged with murder. Advise as to whether a plea of provocation would be successful.

Would it make any difference if Yonah was impotent and Robert had said that he, Robert, was more of a man than Yonah. This caused Yonah to lose his temper and kill Robert immediately with the candlestick?

- 5. (a) Euclid recklessly strikes Priscilla with a stone causing Priscilla to suffer slight bruising to her cheek.
- (b) Nipa, in jest, threatens to shoot Crispin. Both parties believe the gun to be unloaded. However, the gun goes off and the bullet strikes MacDonald, who has just come into the room, causing a minor wound.
- (c) Stora persuades Gertrude to consent to sexual intercourse with him by falsely pretending that such action will cure her of an illness.

Consider what criminal liability (if any) exists in these situations.

Excluding provocation, explain with the use of decided cases, the extent to which the law permits a person to kill in order to save his own life or that of another.

(a) Explain, giving examples from decided cases, the doctrine of "recent possession."

(b) Mushota, a university student, had been owed K20 for many weeks by a fellow student, Bridget, who said that she was unable to repay the money. Accordingly, Mushota went to Bridget's room and removed books worth K20 and left a note stating "I have waited long enough. I have taken some books to satisfy your debt to me." Mushota also took a K5 note of Bridget's so as to teach her a lesson. She intended to return it to Bridget later.

Consider the criminal liability (if any) of Mushota.

Consider the criminal liability for robbery in the following cases:-

- (a) Gasper steals Chaloka's wallet by picking his pocket. Chaloka discovers the loss a few seconds later and immediately sends his house servant Alfred to demand the return of the wallet from Gasper. Gasper threatens to kill Alfred if he tries to recover the wallet.
- (b) Kasonde is a bank messenger carrying money in a bag. He is waylaid by Davis who demands that Kasonde hands over the bag. Kasonde refuses and Davis produces an imitation gun and threatens to shoot Kasonde. Kasonde runs away and in order to prevent the bag from falling into the possession of Davis, he throws it into a drain from which it is never recovered.
- (c) Manal, a government employee, is sitting on a wall waiting for her driver. She has with her a briefcase which is placed on the wall next to her. For security reasons, the case is chained to her wrist. Wezi does not realise this. He comes up behind her, grabs the case and runs. The chain prevents Wezi escaping with the bag but the tug of the chain injures Manal's wrist.

- 8. Critically examine, with the help of decided cases, the distinction that the courts have drawn between a plea of insanity and a plea of automatism.

END OF EXAMINATION.

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - AUGUST 1980

L 250

CONSTITUTIONAL LAW

INSTRUCTIONS:

TIME: 3 (THREE) HOURS.

The following may be consulted in the Examination:

-) Zambia Independence Act, 1964
- i) Zambia Independence Order, 1964
- ii) The Constitution of Zambia (1964 Edition)
- iv) The Constitution of Zambia (1973 Edition)
- v) All relevant Constitution Amendments Acts.

Answer ANY FOUR Questions.

It is often asserted in relation to the history of "Euro-American constitutionalism" that its early propounders and architects were critically preoccupied with "questions concerning the aims of government, the grounds of political obligation, the rights of individuals against the state, the relation of executive to legislative power, the relation of the executive and legislative power to the judicial power; and with devising and deploying ways and means designed to limit government authority.";

- (a) Comment upon this statement highlighting on what you understand to be the origins, objective, and scope of constitutional law as the discipline developed in the West;
- (b) within the context of the above statement, consider the role played by the English and French political philosophers in the names, respectively, of John Locke and Montesquieu in the development of practical constitutional systems in England and in the newly founded nation of America.

2. Discuss the main organs of government established under the first constitution of the Protectorate of Northern Rhodesia (1924). Consider the extent to which personal liberties were protected under that constitution with reference to decided cases.

3. Describe and comment upon the constitutional setup of the Federation of Rhodesia and Nyasaland (1953-1963). What were the main apparatus devised under the Federal constitution whose aim were to protect interests of Africans in the Federation?

How effective did they prove?

- 4. (a) Distinguish between a dual and a single executive;
- (b) examine the executive in Zambia in terms of that distinction;
- (c) comment on the reasons advanced for the preference of an executive president in Commonwealth Africa.

~~5. When an act of Congress is appropriately challenged in the court~~

as not conforming to the constitutional mandate, the judicial branch of the Government has only one duty - to lay the article of the constitution which is involved beside the statute which is challenged and to decide whether the latter squares with the former - its delicate and difficult office is to ascertain and declare whether the legislation is in accordance with, or in contravention of, the provisions of the constitution, and, having done that, its duty ends. - Roberts, J. in United States v. Butler, on 297 U.S. 1, 80 L. Ed. 477 (1936).

Comment generally upon this statement, and then indicate whether the Zambian constitutional practice reflect the same approach to the judicial function in constitutional cases, illustrate your answer with reference to decided cases.

6. State the facts of Feliya Kachasu v. Attorney-General for Zambia bringing out clearly the arguments on behalf of the petitioner, and discuss the judgment of Chief Justice Blagden. Which decision do you think was more intrinsically protective of the liberty of an individual vis-a-vis state authority between that in the Kachasu case and that in the Patel currency case. Give reasons.

Write a comprehensive note on

- (a) emergency or security laws in Zambia;
- (b) rights of detained persons under the constitution;
- (c) the interpretation which the courts have placed on these rights.

What changes did the One-Party Constitution of 1973 introduce in respect of:

- (i) the election of members of parliament;
- (ii) the election of the President;
- (iii) the relationship between party and government institutions; and
- (iv) Chapter III of the Constitution on the protection of fundamental rights and freedoms.

Examine critically the judgments of the High Court and the Court of Appeal on the One-Party case of Harry Mwaanga Nkumbula and the Attorney-General for the Republic of Zambia..

Choose three from the following and comment:

- (i) The National Commission on the Establishment of a One-Party Participatory Democracy;
- (ii) The House of Chiefs
- (iii) The Judicial Service Commission
- (iv) Lewanika Concessions
- (v) The British South Africa Co. (the B.S.C. CO)..
- (vi) The Chipango case, 1970 (High Court decision only)..

END OF EXAMINATION.

THE UNIVERSITY OF ZAMBIA
UNIVERSITY EXAMINATIONS - AUGUST 1980

L 310

Evidence

TIME : THREE hours
ANSWER : FOUR questions

1. Banda, a professional thief, uses a Benz to Kalingalinga where he breaks into the house of Grace Zulu and therein rapes her. Banda further steals ten dresses from Grace Zulu's house. The police mount a search for Banda. Acting on information, they go to studio 22 where they meet Banda. They overhear him telling others that he had just been to Grace Zulu's house. The police arrest and detain him for two weeks before bringing him to trial. On the day before the trial he makes two confessions which the police seek to introduce. He made one in the morning the other in the afternoon of the same day. The second one admits the whole offence while the first one admits to being in Kalingalinga. With the first one no warning and caution was administered. With the second one it was. The police later break into Banda's Benz and discover a bag of emeralds and they then decide to charge him with illegal possession of emeralds. At the trial Banda calls a friend to testify that he is of good character and also alleges that Grace Zulu had invited him into the house and that he has had sexual connection with her on previous occasions. Grace Zulu denied this and Banda asks the court for permission to call Steven to prove that Banda has had previous connection with Grace.

Discuss the various items of evidence.

2. Mwaanga, a witness for the state, was driving the car in which a boy named John was sitting when the latter was shot. They had been trying to obtain some whisky for Mwaanga. While searching for it, or pretending to do so, they were frightened away by what they supposed to be a rifle shot. The two, with one Jesse, who was also a member of the party, returned to the car and drove away. As they proceeded along the road another shot was fired and John was wounded in the back of the head and on being ^{hit} shouted "Oh James, did you have to do that?" About an hour before he died according to the testimony of his father, who asked who had hurt him, he replied: "Oh Daddy! James shot me with a .22 rifle. I have to die". The sister of the deceased, a girl aged 5 years old, testified to the same fact and added that about 15 minutes after the deceased was brought to the police where the statement was made the accused James came on the scene driving a truck. No one was with him and he had a .22 rifle. The Court permitted the girl to repeat the conversation which occurred between the boy and her father. The conversation consisted of a question by the father, addressed to no one in particular as follows: "who has hurt my darling boy?" and John replied according to the father: "Oh Daddy James shot me with a rifle. I have got to die". According to the girl the boy replied as follows: "Papa James shot me with a .22 rifle to die".

The testimony discussed above was admitted over objections. James has been convicted. Discuss the issue presented.

3. Tembo and Banda were charged with indecent assault and theft of a doll from Mary, a little girl aged 5 who gave unsworn testimony. She described the alleged assault in her evidence and stated that Tembo was her assailant, but she did not say that she had identified him as the culprit shortly after the assault. The girl's mother and the police constable testified that shortly after the incident, Mary went up to Tembo saying, "That's my man", and described what had happened. To this Tembo replied "I am innocent." Also at the trial the grandmother of the girl gave evidence that she came home and found Mary looking dejected after asking her what was wrong and promising her some sweets. She told her that she had been indecently assaulted by Tembo.

(continued on next page)

3. (continued)

Banda, Tembo's companion, gave evidence that he was present and that he admitted to stealing the doll with Tembo but that the indecent assault was Tembo's own problem. In addition, since the crime, the police searched Tembo's flat and found ten pictures of nude young girls. They seek to bring these to court.

Discuss the admissibility of each item of testimony.

4. You are appearing as an advocate for Chamba Valley Local Authority the plaintiff in an action claiming a declaration that a certain way across land of which the defendant is the owner is a public right of way. The defendant, giving evidence, states that until these proceedings he had never heard of anyone claiming to use the way in question. You have in your possession a letter written to an advocate by the defendant some years ago complaining that a man is using the way and claiming a right to do so and asking what steps can be taken to stop him. You also know that the defendant had gone to his spiritual advisor, a Catholic priest where during a private conversation he admitted that a year ago another man called Juma had similarly claimed such a right and it is also known that the defendant consulted a lawyer called John whom he asked for advice on how best to defeat the plaintiff's claims. This lawyer is quite willing to give evidence on your side.

What use, if any, can you make of this material?

5. In 1945 Mr. Kasuba left the matrimonial home and was not heard of again although Mrs Kasuba took no steps to trace his whereabouts. In January 1954 Mrs Kasuba, thinking Mr. Kasuba must be dead, married Tip Top a white man from Spain. Tip Top had arrived in the country two months before they married. Later in 1954 a child was born. This was six months after their first ever meeting. The child was black and had no trace of being a mulato. Mrs. Kasuba was known to be a woman of the world and she admitted to having boyfriends which she considered normal. Tip Top recently died and John, Tip Top's son by a previous marriage asks for probate and alleged that he is the only son of Mr. Tip Top. James, the black child seeks a declaration that he is legitimate.

Discuss all relevant issues of evidence.

6. Chanda, a business tycoon in Lusaka, and two of his employees, Phiri and Never Tembo have been jointly charged with raping Rosie a very beautiful Lusaka lady, who is well known for her snobbish attitude towards men, three months ago. Immediately after the incident, Rosie reported her plight to Mrs. Chanda, giving her the details of the incident. Mrs. Chanda, who had for sometime been complaining about her husband's cruelty to her, immediately petitioned for divorce, but the High Court granted her a decree of judicial separation, two weeks ago. The trial of Chanda began two weeks ago, and Mr. Chanda has engaged the services of H. E. Shapiri, and Messrs. Phiri, and Never Tembo have both engaged the services of Mr. Kapwepwe. During the trial, the Police Prosecutor, Inspector Chalwe, was confronted with the following problems:

He discovered that both Mrs. Chanda and Never Tembo have very crucial evidence for the prosecution and wanted to call them as witnesses for the prosecution. But both Mr. Kapwepwe and Mr. Shapiri have objected to this, arguing that Never Tembo and Mrs. Chanda can neither be called to give evidence for the prosecution nor is their evidence admissible. Inspector Chalwe called for adjournment in order to come and consult you, a state advocate, for advice. In addition to these problems, Inspector Chalwe has also learnt that both Mrs. Chanda and Never Tembo, apparently overawed by the reputation of the two counsels, have vowed not to give evidence for the prosecution.

Advise Inspector Chalwe of the relevant law of evidence relating to these problems and how to solve them.

7. (a) Revolutionary Phiri, the editor of the campus newspaper, "THE DIALECTIC", went to a Longacres restaurant, "Longacres Steakhouse" for a meal. Phiri claims that the plates the meal was served in were so unhygienic and the food was so badly prepared that he developed a terrible stomachache the following day and he now has rashes all over the body. Revolutionary Phiri claims that several people who had been to the restaurant to have meals have complained of the same effects. Phiri wants to put an end to this and wants to sue the proprietor for negligence. Consider whether or not the testimony of persons who went to the same restaurant will be admissible. Give reasons for your answer.

7. (b) John Zulu, and Peter Chilesi are very good friends and both are police officers. John Zulu who is the more competent and intelligent of the two has recently had rapid promotions and has been earmarked for a big post in the police service. Peter Chilesi, very resentful of Zulu, planned to upset Zulu's fortunes. He took some pistols, uniform and stationery belonging to the police and planted them in Zulu's flat. He then went to the officer in-charge and reported that he suspected his friend, John Zulu, of engaging in illegal activities. The officer-in-charge consequently instructed two of his men to watch Zulu. But the two officers, overzealous to get John Zulu prosecuted illegally broke into his apartment and discovered quite a large quantity of police property in the flat.

Zulu has been charged with theft and at the trial the officer-in-charge who is called to give evidence informs the court that the investigations started after he had received some information from an informant. John Zulu who knows that Peter Chilesi is the informant wishes to seek permission of the court to disclose his identity. John Zulu seeks your advice on this matter. Advise him of the relevant law of evidence relating to the issue or issues.

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS AUGUST 1980

L 320

PROPERTY LAW AND SUCCESSION

TIME: THREE Hours

ANSWER: FOUR questions. ONE question ONLY must be answered from Section A and Section C.

Candidates can bring into the examination room all relevant and unmarked statutes but no other documents.

SECTION A

1. "LAND ROW LOOMS IN THE SOUTH"

What has incensed them is that suddenly they find they can no longer graze their cattle in the areas they have been for years.

Nor do they have adequate arable land since the pasture land has been demarcated into plots for settler farmers.

The affected villagers have discovered that the "confiscated" land, which was their source of not only grazing land but also firewood, water and other domestic necessities, is now out of bounds and a few have actually been forced to pay "fines" for "trespassing" when they graze their animals there." (Sunday Times of Zambia, May 18, 1980).

Evaluate the nature and basis of the rights claimed by the aggrieved villagers under customary law.

2. (a) ~~What provisions are there for individual grants in Rese and Trustland?~~
- (b) A, a very successful farmer in an area within Trustland to move to another farm he has recently acquired. The he cultivates in Trustland was obtained from a relative his retirement from town and as such is subject to cust law. He has valued his farm in Trustland at K15,000. approaches A to purchase his farm and the latter agrees B and A express the wish that the sale transaction must be satisfactory and not defective. Legal title in the farm should pass to B without any adverse or competing claims to the land. B also wishes to raise the cost pr by mortgaging the farm, the subject of the sale. Advise A and B on how best their intentions can be achi

SECTION B

3. (a) Compare and distinguish briefly:
- (i) a licence and a lease; and
 - (ii) an easement and a profit a prendre.
- (b) An agreement between the Government of Zambia as lessor T provides:
- "The lessor hereby demises and leases unto the said lessee all the emerald minerals which may for here be found in, throughout and upon that certain parc tract of land and premises (the land is then described)."
- The Agreement then gives power and authority to the les "to search for dig up and carry away the minerals" when they may be found within the limits of the said land".
- Discuss the kind or kinds of rights and interests creat by this agreement.

4.

Jackson, an expatriate farmer owns a farm on stateland in the Chisamba area. Jackson was a freehold tenant until 1975 when all freehold estates were converted into statutory leases of 100 years by the Land (Conversion of Titles) Act (No. 20 of 1975). Jackson has now been out of the country for five years. Before leaving he sold his farm to Tito for K20,000. This was, however, subject to State consent. Tito paid the K20,000 and a conveyance of the farm was executed. The transaction was not registered pending State consent. The Commissioner of Lands subsequently granted consent but reduced the price to K15,000. The duration of the consent was limited to one year which has since expired. Tito now applies for an extension of the period of the State consent. The Commissioner declines and states: "Consent cannot now be renewed and as the owner of the farm is out of the country the state wishes to respossess the farm."

Advise Tito as to what remedies are available.

5. " 13(1) Notwithstanding anything contained in any other law or in any deed, instrument or document, but subject to the other provisions of this Act, no person shall subdivide, sell, transfer, assign, sublet, mortgage, charge, or in any manner whatsoever encumber, or part with the possession of, his land or any part thereof or interest therein without the prior consent in writing of the President."

Land Conversion of Titles Act (No. 20 of 1975)

" 3a The President may, whenever he is of the opinion that it is desirable or expedient in the interests of the Republic so to do, compulsorily acquire any property of any description."

Lands Acquisition Act, Cap 296, Revised Laws of Zambia

Identify the problems in the land tenure system of Zambia which these provisions amongst many others attempted to cure. Evaluate also the effectiveness of the provisions.

6. (a) What advantages, if any, does the Trusts Restriction Act (No. 1 of 1970) have over the common law rule against perpetuities?

(b) Discuss the legal effect of the following dispositions:

(i) "To D in trust for my only child when he attains the age of 21" (This is not a child of a validly contracted marriage).

(ii) "To S, my sister, in trust for my wife, the whole of the unexhausted residue of my leasehold estate, but should my wife remarry after my death, to my children A, B and C and their children."

(iii) "My grocery shop in Chisamba to T in trust for my daughter S when she gets married."

(T sells the shop to P, who is aware of the trust; P gives the shop, as a gift, to K, who has no notice of the trust).

7. The relevant criteria in granting development or planning permissions are material provisions of a development plan, where there is one, any other material considerations.

Approving these criteria in Total Oil Products (Rhodesia) Pvt.,

Ltd. v. Municipal Council of Livingstone, the Town Country Planning

Tribunal endorsed Lord Denning's test laid down in the English case

of Pyx Granite Co. v. Ministry of Housing, namely that for conditions

attached to a planning permission to be valid ".....those conditions

..... must fairly and reasonably relate to the permitted development."

Evaluate the administration of these criteria under the system of control of development in Zambia.

SECTION C

8. (a) "Suggested Guidelines for Legislation on Succession.....

(1) Testate succession----- There should be a provision in the legislation that the Will once probate is granted, should override any customary law relating to the devolution of the property of the deceased. The proposed legislation should not lose sight of the fact that the property which the testator intends to pass on to the beneficiaries under the will should be the personally acquired property of the testator ----"
(Per W.S. Bruce-Lyle, J.S.C.)

Comment on this proposal.

(b) X was an employee of the Credit Organization of Zambia (COZ) before it was dissolved. The Credit Organization of Zambia Act 1967 provided in S.88 for a pension scheme for its employees. X was a member of this scheme.

Rule 6 of the rules of the pension scheme stipulated:

"If a member dies before his normal retiring date, the sum assured, or such modified sum as may be payable in accordance with Rule 8 ---- will be paid by the Insurance Company to the employer. The benefits will be payable to the member's beneficiaries who are defined as wife, widow, children (including legally adopted children) and only if there is no wife, widow or children (including legally adopted children) shall payment be made by the employer to the estate of the member."

X died before his retiring age, survived by a widow and three children. Y, X's elder brother now contests the administration of the pension scheme as the person entitled to it under the matrilineal customary law of inheritance.

Comment on the suitability of the pension's scheme and the respective rights of the interested parties.

9. "The last wishes and intentions of GD of the University of to take effect when I die.

My cottage on the UNZA estate to go to my two daughters - Goodheart and Joy (although the latter has been naughty of late) To each of my two sons Peter and James K300.00 in cash out of my monies in Bank Square. All my debts and monies owed to me will attended to by my wife Rose and my two elder brothers John and I. But as for my wife, However, I am sorry I have to leave only K10 to her as a token appreciation of her services because she still continues to bother me.

All else that is left, including the money with the Zambia National Provident Fund, is reserved for the University of Zambia Fund for the advancement of legal education.

Dated this 20th day of December 1975 at UNZA.

Made by me as my last wishes. GD

Witnesses:

Rose

Joy

Mark (Blind)

Erasmus

The following are other relevant facts in this testamentary disposition:

- (i) GD is the testator's nickname;
- (ii) Although witnesses were present when the testator was signing the document, they did not sign their names in each other's presence;
- (iii) At the time the testator was signing Erasmus remarked: "It must be another cursing letter he is writing his father";
- (iv) there is evidence that the testator's wife Rose was not in a bother but a very pleasant wife to the testator.

Comment on the effect of these dispositions and the wife's rights as a beneficiary.

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - AUGUST 1980

L 330

Commercial Law

TIME : THREE hours

ATTEMPT 4 questions

1. Pax wrote to Anda, sole proprietor of Anda Real Estate Agency:
"I understand you are the best in your field. I am the owner of Sunningdale Villa - a 25 acre land on which is situated a seven bedroomed house, east of Lusaka International Airport. I shall be most grateful if you can find me a purchaser. The valuation officers of the Ministry of Lands and Natural Resources place the present market price at K40,000."

Anda wrote back agreeing to find a suitable buyer and then went to see an old client of his, Mr. Tuna, a very prosperous industrialist at Kitwe. He represented that Sunningdale Villa was a 30 acre property, that it could hold 3,000 sheep, that the house on the property was a twelve bedroom house and that the selling price was K50,000. Anda did not reveal that he was selling on Pax's behalf.

Anda managed to obtain title deeds on the property and on the presentation of these to Tuna received K50,000. He then went to tender K35,000 to Pax as the purchase price which Pax rejected insisting that the price was K40,000.

After Tuna went into occupation, he found that the house did not correspond with Anda's representation, in particular the property had never been used for the breeding of livestock. Then a search at the Deeds Registry in Lusaka disclosed that Pax was in fact the real owner of the property.

As a junior member of a firm of solicitors representing Tuna's interests, write a brief setting out arguments for and against your client's legal position.

2.

"When an instrument is by custom of trade transferable like cash, by mere delivery and is also capable of being sued upon by the person holding it pro tempore, then it is entitled to the name of negotiable instrument and the property in it passes to the bona fide transferee for value, although the transfer may not have taken place in market overt." Per Lord Blackburn, Crouch v. Credit Foncier of England (1873) L.R. 8 Q.B. 374 at 381.

Comment on this statement in the light of the development of the law relating to negotiable instruments.

3.

On October 26, 1964, Dr. Sakala, a popular Lusaka medical practitioner, gave his wife Irene four cheque leaves which he signed as drawer but otherwise left the other details to the amount, date and name of payee to be filled in by her as the need arose, to make provision for her up-keep.

Jenifer, Dr. Sakala's personal secretary, stole two of the cheque leaves and filled in one for the amount of K1,000, dated it November 1964 and inserted her name as payee. She then endorsed and presented it at the Longacres branch of Barclays Bank where the doctor maintained an account, and succeeded in getting the money.

The doctor learnt of the theft of the cheque leaves on his arrival from London a month later. Jenifer again succeeded in cashing the second cheque employing the same tricks as previously except that this time the cheque was dated December 25, 1964 but she in fact cashed it on December 25, 1964.

Dr. Sakala threatened legal action against the Bank for honouring the two bills and for debiting his account with them. If you were counsel for Barclays, how would you advise them?

- V 4. How have the implied conditions as to description, merchantability and fitness for purpose in contracts of sale of goods tempered the rigour of the common law doctrine of caveat emptor? Relate your answer to sections 13, 14 and 15 of the Sale of Goods Act, 1893.
5. Write short notes on any four of the following:
- (i) c.i.f. contracts;
 - (ii) holder in due course;
 - (iii) apparent or ostensible authority;
 - (iv) stoppage in transit;
 - (v) insurable interest.
6. Alex, the administrative assistant to the Dean of the School of Law, UNZA, entered into a hire-purchase agreement with B & A Finance Co. which advanced him K3,000 for the lease and purchase of a Fiat 127 G saloon car from Lusaka Motors Co. The loan was guaranteed by UNZA, the employers of Alex. He paid an initial deposit of K1,500. The agreement provided that the remainder should be paid off in three monthly instalments; that if Alex defaulted, thus necessitating efforts at collection, he would pay a 10% collection fee and that he would not assign, sell or otherwise part with possession of the vehicle before the payment of the final instalment.
- Alex, who was in constant financial difficulties, defaulted in the payment of two instalments and sold the car to Doe for K3,000 thereby hoping to defray the outstanding balance. Unfortunately he applied the proceeds to the settlement of other equally pressing family matters.
- Advise B & A Finance Co. and Lusaka Motors Co.
- Would your advice be different if Alex had paid off the balance with the proceeds from the sale of the car?

THE UNIVERSITY OF ZAMBIA
UNIVERSITY EXAMINATIONS - AUGUST 1980

L 340

Administrative Law

TIME: THREE Hours

ANSWER FOUR QUESTIONS. ALL CANDIDATES MUST ANSWER QUESTION ONE

1. Assume that on the 29th July, 1980, legislation was passed giving the Minister for Development power "to acquire without compensation any land which he, in his absolute discretion, deems useful for the erection of recreational complexes for the use of the public". On the 30th of July, 1980, the Minister, having received a surveyor's report, took the decision to acquire a large area of land along the Great East Road. Accordingly, his Department sent out notices to all affected parties requesting them to make representations to the Minister within one week from the date thereof.

X, a party affected by the Minister's decision, writes to the Minister saying that he (the Minister) had been ill-advised and that the legislation is ultra vires the Constitutional provision that no person shall be deprived of his property without cause. He also alleges that, since the one week's notice was insufficient to enable him to prepare a formidable case which might lead the Minister to change his mind, this in itself resulted in a breach of the rules of natural justice.

The Minister, having read X's letter, dismisses it as being 'too petty' for his personal attention. He therefore requested a 'junior' officer to deal with the matter, and specifically, to inform X that it is not the policy of his ministry to give people the opportunity to 'prepare formidable cases'. The officer has an 'old score' to settle with X and, determined not to miss this opportunity, he immediately writes to X on the basis of the Minister's "brief" to him and without
(cont.....)

consulting X's letter. In his letter to X, he says:

"The Minister has rejected your representations. He noted that your membership fee to the Party is in arrears. This decision should save you the misery of your struggles in the town and speed up departure to your farm where you naturally belong"

The Minister endorses this letter. There is a provision in the legislation to the effect that "the Minister's decision is final and conclusive and shall not be questioned in any court of law".

Advise X as to his possible remedies.

2. "The (African) judge with his insights severely limited by many of the foreign origins of his ideas needs therefore the guidance of a nationally adopted statement of ideology that should inform him clearly of his administrative law functions" (Nwabueze).

Discuss, with special reference to Zambia, how the adoption of such a statement of ideology might resolve Administrative Law problems.

3. "While it is the function of the executive of a country to be dynamic it is the function of the Courts to be conservative so as to ensure that the rights and duties of the individual are determined by the rule of law". (Sir Charles Newbold).

To what extent does the "rule of law" dictate this attitude? Give examples from decided cases.

4. "The recent Supreme Court decision in NKUMBULA and SIMON KAPWEPWE v A.G. and UNIP (1979), SCZ judgement No. 15, marks a significant advance in judicial review".

Explain and discuss this statement.

What are the uses and limitations of the remedial provisions under Act 29(1) of the Constitution? Give examples from decided cases.

"Natural Justice is an "illegitimate child" of administrative law"

Critically assess this statement.

"The remarkable thing about the Commission for Investigations is that it can follow maladministration anywhere it smells it and remedy it before you know it".

Explain and discuss.

Write short notes on any TWO of the following:-

- (a) Parliamentary control of administrative action;
- (b) Administrative and Special Tribunals;
- (c) the classification of administrative acts;
- (d) subordinate legislation.

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - AUGUST 1980

L 350

Family Law

TIME : THREE hours

ANSWER Question 5 and any two others.

Candidates may bring with them in the Examination Room the Zambian Law of Marriage Act of 1918.

Mr. and Mrs. Chindawala are great friends of Mr. and Mrs. Saluzi. On January 12, 1974 Mr. and Mrs. Chindawala visited the home of the Saluzi's. After preparing food, Mrs. Saluzi asked her daughter Masozi, to take it to the table. Masozi put the food on the table and walked towards the visitors, knelt down and greeted them. After finishing eating the food Mr. Chindawala told Mr. and Mrs. Saluzi that he and his wife were impressed by the beauty and behaviour of their daughter and would very much like their son, Daliso, who was 12 years old to marry her. Masozi was 10. In January, 1980 Mr. Chindawala informed Daliso that he was going to marry Masozi the daughter of Saluzi. Daliso agreed. Mr. Saluzi also told his daughter that he was marrying her to Daliso whose father had already paid bride price of four head of cattle. Masozi refused. Saluzi told his daughter that everything had been arranged and she must not disgrace him to his great friend Chindawala. He also told her that if she refused to marry a man of his choice he was going to disown her as his daughter. On hearing this Masozi agreed to marry Daliso. They were married under customary law in February, 1980. However, the marriage is not a happy one especially since after five months of cohabitation, there is no sign of pregnancy on the part of Masozi. Daliso beats his wife almost every day saying that he never loved her but was forced to marry her by his parents. Masozi reiterates that she too was forced by her father to marry him. In May, 1980 Daliso fell in love with Maria Nzenga and married her under the Marriage Act, Cap. 211.

(Cont....)

- (a) Discuss the legal issues involved in this problem and advise Masozi what course of action to take to terminate her marriage.
- (b) Would it make any difference if the marriage with Masozi had been contracted under the Marriage Act?

"A void marriage is one that will be regarded by every court in any case in which the existence of marriage is in issue as never having taken place and can so be treated by both parties to it without the necessity of any decree annulling it"-per Lord Greene M.R. in De Reneville v. De Reneville [1948] 1 All E.R.56. Discuss.

Discuss "desertion" as a ground for judicial separation.

Examine the defences of condonation and connivance in relation to an application for a matrimonial order.

On March 12, 1965 John Chiomba, a Chief Accountant in the Ministry of Finance, married Alice Mhone, a state advocate, in a Roman Catholic Church in Lusaka. On June 12 of the same year Alice's elder sister, Ethel, came to visit her sister in Lusaka but found that Alice had gone to London to attend a law conference. However her brother-in-law was at home. As they were chatting over a cup of tea one afternoon, Ethel disclosed to John that Alice had a four year old daughter called Rosemary whom she was looking after. John was shocked as Alice had never mentioned this fact to him. After a while Alice came back from London. John asked her about Rosemary in the presence of Ethel. Alice confessed that it was her child. She was furious with her sister and they quarrelled and fought. As Ethel caught Alice by the neck, John, fearing that his wife was going to be killed, took a knife and stabbed Ethel in the back. Ethel was admitted in hospital for a week and discharged.

John told his wife not to worry and requested her to bring the child to the matrimonial home. He accepted her as a child of the family. In July, 1966 a baby was born whom they named Samson. He was followed by Joel in February, 1976. On March 12, 1977 John met Susan Nkororo a doctor and an adulterous relationship commenced. When Alice discovered John's adulterous association with Susan she offered to forgive him if he promised to stop seeing Susan. John rejected the offer. The couple then became estranged although Alice

(cont...)

his "wifely" duties.

In April, 1977 John renewed his association with Susan and he left the matrimonial home and rented a flat where Susan went to live with him. Alice discovered this in July, 1977. Alice now realises that there is nothing she can do to save the marriage. She, therefore, wants to file a petition for divorce in the High Court of Zambia and briefs you as her advocate.

- (i) What lines of argument both on points of law and fact will you adopt in presenting your client's case before the High Court?
- (ii) In deciding whether to grant Alice a decree nisi, what factors ought the judge to take into account?
- (iii) If a decree nisi is granted, what other reliefs or orders are the parties entitled to obtain?
- (iv) The police intend to prosecute John for assault causing actual bodily harm to Ethel. Has John any defence to the charge?

Write notes on two of the following:-

- (a) Bride price
- (b) "Adultery" as a fact situation.
- (c) ~~Non~~-consummation of marriage.
- (d) Kumalo v. Kumalo (1974) S.J.Z. 77.

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA
UNIVERSITY EXAMINATIONS - AUGUST 1980

L 410

Jurisprudence

TIME : THREE hours

ANSWER: Any FOUR Questions

INSTRUCTIONS: Support your answers with illustrations and cite authorities wherever necessary. You are expected to express your own ideas, giving reasons.

- (a) Critically examine Austin's Concept of Law.
 - (b) How does Austin's conception of law differ from the Islamic concept of law?
 2. Section 12 of the Local Courts Act provides that customary law shall apply provided it is reasonable and not contrary to natural justice or incompatible with any written law.
Discuss, with suitable illustrations, how this statutory provision has been interpreted in resolving disputes arising under customary law in Zambia.
 3. According to Hohfeld the word "Right" is used in a wide sense to cover four different concepts. What are these concepts and how are they distinguished from one another?
 4. Analyse critically the concept of ownership and discuss its functions in social ordering.
 5. Outline the characteristic features of the sociological school of jurisprudence, and examine the importance and usefulness of the sociological theory in promoting development in Zambia.
 6. Comment on any one of the following:
 - (a) American Realism; or
 - (b) law and morality.
-

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - AUGUST 1980

L 420

Business Associations

TIME: THREE HOURS

ANSWER: ANY FOUR QUESTIONS.

Describe any three instruments of control of parastatal organizations in Zambia, indicating problems, (if any) affecting the instruments of control you choose to describe. Credit will be given for a description of instruments of control in relation to a named parastatal organization of your choice.

- (a) Describe the nature of the contract contained in the articles of association of a company registered under the Companies Act, Cap. 686.
- (b) How far is it true to say that a member of a limited liability company can enforce rights given him by the articles of association in his capacity other than that of a member of the company.

The memorandum of association of Mwembeshi Single Purpose Company Ltd. includes the following provisions:

Objects:

- "Engage (i) in the production and sale of cotton and maize, and
(ii) in any other business which the directors may think profitable"

(continued)

3. (continued)

The memorandum goes on to say:

"The intention is that objects specified in any paragraph of the objects clause shall be in nowise limited or restricted by reference to or inference from the terms of any other paragraph or name of the company."

The Board of Directors has resolved to purchase the Nkana-Kitwe emeralds mine. Sakala who is a shareholder in the company has objected to the company buying the mine. Advise Mwembeshi Company.

Would the result be any different if the decision of the Board to buy the mine was a result of atrocious mismanagement and very poor business acumen on the part of the board of directors?

4. X, Y and Z who compose the board of directors of Zomba Co. Ltd. also operate a co-operative society in which they are fully paid up members together with seven other individuals who manage the business of the society. The society is in the business of manufacturing and supplying blankets. Zomba Ltd. was formed with the object of supplying blankets to schools in Lusaka. Two years ago the following statement by a top government official appeared in the newspapers: "the country will be faced with a critical shortage of blankets in the near future". Seeing this imminent shortage to be the only opportunity to boost its own business, the Society's management, after consultation with all of its members, raised the price of each blanket supplied by it to K60 instead of K40 charged by the other firms in the same business. In addition the Society invited interested companies to enter into contract with it for the supply of blankets for five years at the new price of K60 per blanket. To avoid a situation whereby the company might be forced out of business in case of a shortage, the board of Zomba resolved to contract with the society. The society has honoured its contractual obligations with Zomba for the last two years. Zomba has run into financial problems and has been unable to pay the Society for the blankets supplied to it.
- (continued)

continued)

In May 1980, the Zomba Board resolved that in fact the company would never be able to carry on with the contract for the remaining three years since the company's financial position was deteriorating. Following this resolution, X the chairman of Zomba wrote a memorandum to the society asking them to supply any interested member of the Zomba Board with the blankets in place of Zomba. The memorandum was signed by the chairman and bore the official stamp of the company. Two days after receipt of the memorandum from the Chairman of Zomba the society received another letter from the Chairman asking them to supply him with all the blankets which should have been supplied to Zomba for three years. The society replied: "We have considered your memorandum bearing the official stamp of the company and have accordingly agreed to supply you with the blankets as requested". X has received the blankets and resold them to a new company which he formed for the purpose of acquiring the blankets at double the cost price. Zomba Ltd. has gone into liquidation. The Society has put a claim for the price of the blankets supplied to the company. The shareholders of Zomba have learned for the first time, through the liquidator, that the Society had entered into contracts with Zomba. Advise the liquidator as regards:

- (a) transactions between the Society and Zomba Board
- (b) dealings between X and the Society after the resolution of May 1980.

Sacha holds 200 ordinary shares in a private company, Twapya Ltd., which he agreed to sell to Mojo for K500. Accordingly a validly executed document of transfer was delivered to Mojo together with the share certificate in respect of the shares in question and Mojo paid the purchase price. The articles of association of Twapya Ltd. provide, inter alia: "The directors may in their absolute discretion and without assigning any reason therefor or without specifying any grounds therefor, decline to register any transfer of shares (whether fully paid up or not)". Mojo has never seen the articles of association of the company. Four days after receipt of the share certificate Mojo presented it to the company for registration. The Board of Directors refused to

(continued)

5.(continued)

register the transfer and told him to sort out his problems with Sacha. Mojo also learnt that the company had declared and paid out a dividend to Sacha in respect of the shares sold to him just a day before he presented the certificate for registration with the company. Sacha has refused to give Mojo either the purchase price for shares or dividends in respect of the shares sold to him. Mojo would like to sue Sacha for both the purchase price and dividends. Advise Mojo. What remedies (if any) has he against the company.

6. Sakala Phiri joined Tiyende Pamodzi Building Association last January. At the time that he joined the Association it had 25 members and capital amounting to K50,000, K30,000 of which was contributed by Sakala Phiri himself. Last April the Association entered into a contract with Continental Timber Supplies Ltd. to buy some timber. In May, Bombay Plywood Ltd entered into negotiations with Continental Timber Supplies Ltd to buy the timber which was the subject of the contract with Tiyende Pamodzi Building Association. The Board of Directors of Continental Timber Supplies Ltd. resolved to sell and did sell the timber to Bombay Plywood Ltd. because they were not sure of the nature of the Tiyende Pamodzi Building Association. Because of the abortive contract with Continental Timber Supplies Ltd. and other problems facing the Pamodzi Association 16 members have decided to leave the Association and withdraw K12,000 from the Association's capital. Sakala Phiri with his capital of K30,000 and 8 other members with their capital of K8,000 have decided to continue in business under a different type of business association. In addition to this total capital of K38,000 they want to raise extra capital of K15,000 but they do not want to borrow from the bank. Because of the money he has contributed and in order to ensure the initial successful operations of the new business, Sakala Phiri wants to have a control of the proposed association. But at a later stage in life of the business, he would like to have the business expanded in terms of capital and membership.

(continued)

ntinued)

- (i) Phiri wants to bring an action against Continental Timber Supplies for breach of contract. But he wants to be advised as to the nature of the Pamodzi Association before he commences proceedings. Advise Sakala Phiri.
- (ii) Advise Sakala Phiri as to the business Association they have to form taking into consideration the question of control and the method or methods they have to employ to raise the extra capital.
- (iii) Advise Phiri of what methods to use to raise the capital and increase the membership of the new association at a later stage in its life.

Smart Tembo, Never Sakala, and Enterprising Phiri are all partners in a firm known as Tesaphiri Cement Works. The firm manufactures and deals in cement. In February 1980, Enterprising Phiri was authorised by the other partners to purchase a very sophisticated cement processing machine for the firm from Mazembe Heavy Machinery Co. Ltd. The purchase price of the machine was K25,000. John Mbega, the sales manager of Mazembe Heavy Machinery Ltd. indicated to Enterprising Phiri that the machine could in fact be sold to Tesaphiri Cement Works at a 15% discount. Enterprising Phiri proposed to John Mbega that if he (John Mbega) sold the machine at a discount and issued a receipt of K25,000 in the name of Tesaphiri Cement Works, Tesaphiri Cement Works would sell cement to John Mbega for six months. John Mbega accordingly wrote the receipt for K25,000 but actually sold the machine at a 15% discount. A month after this, Tesaphiri Cement Works ran out of chemicals and was unable to sell the cement to John Mbega.

- (i) John Mbega wants to sue Tesaphiri Cement Works for breach of contract. Advise John Mbega.
 - (ii) What remedies, if any, have Smart Tembo and Never Sakala against Enterprising Phiri?
-

3. (b) Lord Stowell writing in 1813 (The ELIZA ANN (1813) 1, Dods, 244 at p. 248) said:-

"According to the practice now prevailing a subsequent ratification is essentially necessary and a strong confirmation of the truth of this position is that there is hardly a modern treaty in which it is not expressly so stipulated and therefore it is now presumed that the powers of plenipotentiaries are limited by the condition of a subsequent ratification. The ratification may be a form but it is an essential form, for the instrument is in point of legal efficacy, is imperfect without it."

Discuss the importance of ratification in treaty making today.

4. Advise the Zambian Foreign Minister on the following incidents which are drawn to his attention and which await his consideration. A sufficiently detailed memorandum is requested by him:-

(a) A Liberian University student from the Main Campus of Tolbert University in Monrovia has taken refuge in the Zambian High Commission in Monrovia, Liberia. The student, a Liberian citizen, alleges that political persecution by the authorities has made life unbearable in Liberia and therefore wishes to seek asylum in Zambia the heaven of participatory democracy.

(b) A Japanese national working for I.T.T. (Zambia) Ltd. an electronics engineer has been brought before the Lusaka Senior Resident Magistrate charged with the offence of causing death by dangerous driving, an incident which resulted in the death of another Japanese national. The vehicle involved in the mishap belonged to a very senior Japanese diplomat accredited to the Japanese Embassy Lusaka and who in fact was a passenger in the car at time of the accident. The car, a Peugeot 504, bore number-plates.

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(c) A Russian diplomat attached to the Tourist Exchange Department at the Russian Embassy in Lusaka has been arrested by Police in Kafue for having taken photographs with a powerful telephoto lense, of the Kafue Road Bridge which was a 'Security Zone'. The diplomat claims that he took the photograph of the bridge in order to make post-cards out of the frame. The police think he is a spy.

It is said that states are the main, though not the exclusive, subjects of international law. This is so because there exist other entities which by their very nature and because of their functions possess a very large measure of international personality and also the capacity to operate on an international plane.

Discuss these "other entities" and consider their position vis-a-vis a state, which under international law is said to be an international person.

T II

In the Monetary Gold Case ICJ Repts. 1954 p. 32. the International Court of Justice quite categorically stated that:- "To adjudicate upon the international responsibility of Albania without her consent would run counter to a well established principle of international law embodied in the Courts Statute namely that the Court can only exercise jurisdiction over a state with its consent."

Consider Article 36(1) of the Statute of the International Court of Justice and comment on the extent of the jurisdiction which the court may exercise under this particular Article.

The Bogota Charter (in Article I) describes the Organization of American States (O.A.S.) as a "regional agency" within the United Nations. Could this also be said of the Organisation of African Unity? Make a critical comparison of the O.A.U. and the United Nations.

8. When the United Nations Charter was framed in 1945 there were distinct functions intended for the General Assembly and the Security Council. Practice over the years however has demonstrated the tendency of the plenary body to encroach on the domain of the executive body.

Taking the 1950 Uniting for Peace Resolution as the starting point, give reasons for this development and assess what contribution, if any, this development has made to the efficacy of the organization.

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA
UNIVERSITY EXAMINATIONS - AUGUST 1980

L 440

Conflict of Laws

TIME : THREE hours

ATTEMPT any FOUR questions. Your answers must be supported with judicial pronouncements and statutory provisions.

1. What do you understand by the term "status"? How is it acquired? Does a person's status depend wholly on the law of domicile? Does the recognition of a person's status by the Courts of England compel them to give effect to the results arising out of such status

Discuss critically illustrating through case law which type of status will not be recognized by the Courts of England.
2. (a) "I do not think, that any one can doubt that, with regard to the transfer of goods the law applicable must be lex situs. Business could not be carried on if that were not so." (Per Maugham, J. in *Re Anziani*, (1930) 1 ch 407, 420)

Critically analyze the above statement.

(b) Distinguish between an assignment and a conveyance. Which law governs the priority of competing assignments of a debt or other intangible things under the English Conflict of laws. How did the English Courts determine the problems of priority in *Republica de Guatemala v Nunez* (1927), 1K.B. 669) and in *Kelly v Selwyn* (1905) 2 Ch 117) Cases?
3. Action in England upon torts committed abroad will succeed only if (a) The act would have been actionable if committed in England and (b) The act was not justifiable by the law of the place where it was committed. Discuss.

4. (a) When and under what circumstances will a foreign decree of divorce be recognized in England? Illustrate critically.
- (b) H and W are domiciled in New Zealand but resident in Victoria (Australia). They agree to separate. H then acquires a domicile in Victoria, and W returns to New Zealand. Two years later, W applies for and obtains a divorce in New Zealand under Section 12(2) of The New Zealand Divorce and Matrimonial causes Act, 1928. Will this divorce be recognized in England? Discuss.
5. Define legitimacy under the classical English law and discuss how it can be acquired either by a child who is the product of a polygamous marriage or who has been legitimated by the subsequent marriage of his parents. Can such a child inherit an English property under a will or intestacy of his father?
6. Determine the domicile of the deceased in the following cases:
- (a) D is born in India of parents domiciled in England. In his infancy D is taken to Italy, where he resides and is domiciled for the next fifty years. He then leaves Italy, with the intention of settling in New York, but dies in mid-Atlantic.
- (b) A, of Scottish domicile of origin, founded a business in Dominican Republic in 1919 where he remained for his whole life except for occasional visits to England in which country he had become domiciled whilst an infant through his father. His family, however, remained in England. Three months before his death he cabled that his health prevented him undertaking airflight. Two months before his death he wrote that he was retiring from business activities and that he was staying with his friends where he died ultimately.

7. Which is the proper law in the following cases:-

- (a) X, a resident of South Africa, agrees with A and Co., an English company carrying on business in South Africa, to serve them as a brewer in their business at Johannesburg. The Contract is made at Johannesburg in English form and language
- (b) A, who carries on business in England, charters a French ship belonging to X, a French man, at a Danish port in the West Indies, for a voyage from Haiti to Le Havre, London or Liverpool at A's option. The charter party is entered into by the master in pursuance of his general authority as a master. A ships a cargo at Haiti for Liverpool with which the ship sails. On her voyage she sustains damage and puts into Fayal, a Portuguese port, for repair. The master there borrows money from B on bottomry of the ship, freight and cargo, and repairs the ship. She completes her voyage to Liverpool. B proceeds in the English Court of Admiralty against the ship, freight and cargo, which are insufficient to satisfy his bottomry bond. The deficiency is paid by A. X gives up the ship and cargo to A and is thereby, according to French law, freed from all liability on the bottomry bond. A claims indemnity against X for money paid to B. Which law will govern the rights of A and the liability of X?

8. Write short notes on any two of the following:

- (i) Lex loci contractus
 - (ii) Capacity
 - (iii) Location of intangible moveables
 - (iv) Christian Marriage
-

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - AUGUST 1980

L 450

INTERNATIONAL TRADE AND INVESTMENT LAW

TIME: THREE Hours

ANSWER: FOUR questions - TWO from each Section.

Students may bring into the examination unmarked copies of the Industrial Development Act 1977, the UN Convention on Settlement of INVESTMENT DISPUTES; AND THE GATT PROVISIONS.

SECTION A

1. Critically evaluate G.A.T.T. as an institution intended to liberalise world trade.
2. Consider the legal nature, function and importance of the most-favoured nation clause in the G.A.T.T.
3. (a) Critically analyse the role UNCTAD has played in crystallising the formation of World Commodity Agreements.

OR

- (b) Consider whether commodity agreements are an adequate solution to the perennial problems of price fluctuations in the world commodity markets.
4. The government of Zambia, a developing country in Southern Africa, is invited to a summit for Central, East and Southern African countries (who are members of G.A.T.T.) aimed at creating an economic community to be known as Uhuru Economic Community. At the end of the conference a treaty creating the community is signed and later ratified making all participating states members of the community. Advise the government of Zambia on the effects of such membership on its rights and duties under the G.A.T.T.

SECTION B

1. Discuss the factors that influence foreign investment and show whether or not these have adequately been dealt with under the Zambia Industrial Development Act of 1977.

2. Critically examine any two of the following:-

(a) The concept of permanent sovereignty over natural resources and wealth.

(b) The legal framework of nationalisations of foreign investment in any one country.

(c) Demands of the developing countries under the New International Economic Order.

3. Examine the constitution and structure of the International Centre for the settlement of investment disputes, and its role in the settlement of investment disputes.

4. Discuss the role of the World Bank (I.B.R.D.) and the International Finance Corporation (I.F.C.) in providing the much needed development capital to the less developed countries.

5. "Nationalization and Expropriation are methods which are used by developing countries in the struggle to assert their economic sovereignty."

Discuss.

END OF EXAMINATION.

... T.T.A. ...

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - AUGUST 1980

L 480.....E

LABOUR LAW

THREE HOURS

FOUR QUESTIONS, TWO FROM EACH SECTION.

ALL QUESTIONS CARRY EQUAL MARKS. PLEASE READ THE QUESTIONS CAREFULLY.

SECTION A

plain the doctrine of restraint of trade in the law relating to contracts
employment.

What justification is there for the introduction of implied terms
into a contract of employment?

Tembo was employed as the Managing Engineer of Motor Care Limited.
The contract of employment provided, inter alia, that Tembo would
work for the Company from 08.00 hours to 17.00 hrs daily, super-
vising repairs to motor vehicles brought by clients. Soon after
joining the Company Tembo employed two mechanics at his house
situated close to the Company's premises and undertook repairs to
vehicles at rates which were much less than the rates charged by the
Company. Clients of the Company patronised Tembo's private workshop.
All this was done by Tembo outside his hours of employment with the
Company.

Motor Care Limited consults you as to their rights in the situation.
What advice would you give to the Company? Set out fully the
reasons for your advice.

5. What are the ways in which a contract of employment may be terminated by events other than termination with or without notice?

- (a) What are the significant provisions made to protect employees by either (a) Employment Act, Cap. 512, or (b) Minimum Wages, Wages Councils and Conditions of Employment Act, Cap. 506?

- (b) Tembo was employed by ABC Company as a Security Guard on a monthly salary of K80.00. The contract of employment inter alia provided for payment of salary on the 15th day of the month following the month for which the salary fell due and specified that payment would be made part in cash and part by the supply of provisions in the form of mealie meal, saladi and paraffin which were sold by ABC Company. Tembo finds that the price charged by the Company for these provisions is above the market price.

Advise Tembo.

SECTION B

5. Consider critically the arguments for and against workers' participation in decision-making in Zambia. Use any one or two European countries for your comparative analysis.

- (a) Enumerate and assess the main powers of the Industrial Relations Court in Zambia.
- (b) ABC Co. Limited wished to lay off some workers employed by the Company. The Company has a Works Council and the Personnel Manager is a member of this Council. The General Manager to whom the Company delegated the power to decide which of the workers should be laid off, sent letters of termination with two months' notice to, inter alios, the Personnel Manager and two other employee members of the Council. The letters of termination came as a surprise to these employees because the only source of prior information they had was rumours that the Company might lay off some workers.

Advise the Personnel Manager and the two other employees as to their rights, if any, under the laws of Zambia.

3. L 480

the roles of Trade Unions in Zambia?

What purposes was the International Labour Organisation set up?

To what extent has this Organisation achieved these purposes?

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - AUGUST 1980

LL.M. 510

COMPARATIVE FAMILY LAW

THREE HOURS.

ANY THREE QUESTIONS.

Support your answers with decided cases and authorities.

Discuss the concept of Marriage in African Law pointing out the differences between the African concept of marriage and the concepts as they obtain in other legal systems that you have studied.

Discuss with suitable illustrations and authorities the extent to which adultery has been recognised as a good defense to a charge of matrimonial cruelty in England.

Examine critically the nature, kind and the degree of fraud that is recognised as valid for the annulment of marriage in India and in England.

Evaluate critically the guidelines provided in English law to establish breakdown of marriage. Do you consider that the "breakdown" concept of marital dissolution is suitable to Zambian society.

Discuss the Islamic Law of divorce. What reforms do you suggest on this subject?

Discuss the English law of maintenance of spouses during the subsistence of marriage. Also elucidate the various procedures adopted in England to enforce right of maintenance between the spouses.

END OF EXAMINATION.

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - AUGUST 1980

LL.M. 520

CONSTITUTIONAL LAW

TIME: THREE HOURS

ANSWER: ANY THREE QUESTIONS.

Tambalala was a former British dependency which became independent in 1970 under the usual Westminster-type constitution made in London. Its government now proposes to adopt a new one-party constitution. The government is anxious that the new constitutional order should command the loyalty, obedience, and respect of the people of Tambalala.

Write a memorandum for the government of Tambalala advising on the following matters;

- (a) the mechanics for the adoption of the new constitution best calculated to attain its objectives;
- (b) whether or not to incorporate in the new constitution a justiciable code of fundamental rights and freedoms (consider likelihood of court action challenging the introduction of a one-party state);
- (c) the extent to which the one-party state may foster the ideals of "participatory" democracy.

Comrade Bonzo is a member of the Central Committee of the party for Social Justice, the ruling party in the African state of Acadia. He is also the general manager of the State Copper Corporation in that country. He wakes up one odd morning, only to find his house surrounded by armed soldiers. There has in fact been a military coup the previous night. The soldiers then whisk him away and put him into detention at Zana Muoni, a maximum security prison. Some of Bonzo's comrades manage to escape from the country, form a government in exile, and swear to work day and night to regain control of Acadia. Comrade Bonzo had been detained on the authority of an order made pursuant to a decree constituting a group of 10 army officers as the new government of Acadia, and conferring on them the power to make any orders or other decrees "for the proper governance and administration of the country."

Question No. 2 continued.

- (a) He manages to instruct you, as a constitutional lawyer, to bring an action of habeas corpus against the commissioner of police and the new Minister of Interior, on the ground that since the government itself came to power through "illegal" means, the order under which he is detained must ipso facto be illegal.
- (b) Alternatively Bonzo argues that even if one were to ignore the illegal nature of the new government, this regime cannot begin to issue lawful orders because it has not fully established itself as a government. One piece of evidence of this is the fact that the overthrown regime is actually seeking to regain control of the country.
- (c) Comrade Bonzo has been sacked from his post as general manager of the State Copper Corporation which is part of the Civil Service. Whereas the decree constituting the new government had expressly provided for the continuation of the judicial and a few other services, no such mention was made of the Civil Service. Bonzo wants you to sue the government for the payment of his gratuity and other fringe benefits, to which he would certainly have been entitled under the pre-coup Civil Service regulations.

How would you advise him on all three counts? Discuss with reference to the theory of the juristic implications of a revolution propounded by Hans Kelsen, and to any decided African cases on these questions.

3. The One-Party Constitutions of Tanzania (1965) and of Zambia (1973) contain provisions for the establishment of institutions analogous to that of the Ombudsman in some other countries. These institutions are now known as the Permanent Commission of Enquiry (the PCE) and the Commission of Enquiries (the CE) of Tanzania and Zambia respectively. Discuss.

- (a) Discuss the plausible arguments for the creation of such institutions in the politico-legal environment of a new nation such as Zambia or Tanzania with a one-party form of government;

on No. 3 continued

- (b) why institutions such as these can, in an African state, prove to be more effective.
- (i) in the protection of individual rights than a constitutional bill of rights; and
 - (ii) in the control of unfair administrative decisions and actions by both party and government officials.

Give a comprehensive account for the failure of federalism as a solution to the many permanent political and social problems of some African states at, or immediately before independence. Discuss with reference to any three such African federations which have so far collapsed.

Choose two from the following and comment comprehensively:

- a) Constitutional development of any African country within commonwealth Africa;
- b) Role of John Locke and Montesquieu in the development of 'Euro-American' constitutionalism;
- c) The Westminster model - its features and adaptations to independent commonwealth African countries;
- d) The extent to which the presidential systems of government can be said to be more relatively suitable forms of governments to the conditions of African countries than say the parliamentary system.

END OF EXAMINATION.

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - AUGUST 1980

LL.M. 540

INTERNATIONAL LAW

TIME: THREE HOURS.

ANSWER: FOUR questions out of eight provided.

"Now there is one truth that is not open to denial or even to doubt, namely, that the actual body of international law as it stands today, is not only the product of the conscious activity of the European mind, but has also drawn its vital essence from a common source of European beliefs, and in both of these aspects it is mainly of European origin." Per Prof. Verzijl, "West European Influence on the Foundations of International Law", Intern. Rel. (1955) 137, at 139.

Do you agree with this assertion? Relate your opinion to what you consider to be the contribution of Afro-Asian nations to the development of international law.

Discuss the various theories relating to state recognition. Which theory do you think is mostly followed by the majority of states?

Are the acts performed by a government or a state before recognition valid in International law? Discuss with reference to decided cases.

Illustrate by reference to appropriate cases the doctrinal bases of a state's right to espouse the claims of its citizens for injuries sustained by them through the acts of foreign states.

What is the relationship between International Law and Municipal Law? Are they two systems quite apart from each other or are they manifestations of a single conception of law? Do the rules of International Law automatically become the laws of states or do they require special legislation for their implementation?

Discuss fully illustrating your answer with practices observed by states in relation to treaties.

5. What role have Regional Organizations being playing in the maintenance of international peace and security?
6. There is no part of the law of treaties which the text writer approaches with more trepidation than the question of interpretation (Lord McNair, The Law of Treaties, 1961, p. 364).
Do you agree with the statement? Discuss the various rules which the arbitrators and judges have elaborated for interpretation of treaties borrowing mainly from the private law of contract.
7. What justifications do you find for the modern trend in States' enlargement of the area of their jurisdiction over off-shore waters?
8. Nowhere science policy and law have come together so close as in the solution of international problems concerning the use of the outer space.
Discuss elaborating various Resolutions and Conventions which the international community has adopted in recent years to save the human race from the total annihilation.

END OF EXAMINATION.

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THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - AUGUST 1980

LL.M. 580

JURISPRUDENCE

THREE HOURS.

THREE QUESTIONS.

lson's theory has added several important ideas to those of English analytical jurisprudence but, his theory is, contrary to his claim, neither PURE nor UNIVERSAL.

ment and Elucidate.

ever, one prominent jurist observes that his theory is "too pure, too non-committal, too neutral" to be useful to Afro-Asian societies.

critically examine the validity of this observation.

ound's theory of social interests is one of the significant ideas of the present century, not only because it preserves that continuity with the past which is inevitable and valuable, but also because it stands for the method of reason and compromise which is essential for the development of a democratic and free society".

- Patterson.

ment and elucidate.

Discuss fully the extent to which you agree, if at all, with the view that Pound's theory is inapt for contemporary, plural and transitional civilisations of the present day developing countries of Asia and Africa including Zambia.

3. (a) Maines cautious generalisation regarding "Status to Contract" has been punched full of holes, yet it serves as a useful paradigm for the orientation of present day legal changes and is/has been true as applied to Zambian society. Comment.

How far is it correct to say that evolution to-day is cyclical - a return from contract to status?

- (b) "Prof. Hart presents a positivistic account of law that is designed to give more adequate picture of the notion of law by dealing with the various difficulties besetting Austin's account

- Theodore M. Benditt.

Comment and elucidate.

4. "..... there is no way open to us by which we can compel a man to live the life of reason. We can only seek to exclude from his life the grosser and more obvious manifestations of chance and irrationality. We can create the conditions essential for a rational existence. These are the necessary, but not the sufficient conditions for the achievement of that end." (Lon Fuller)

Comment on this statement and show whether this can be said to be a valid criticism of classical Natural Law. Show also whether Lon Fuller's principle of reciprocity can be considered as an improvement on classical Natural Law.

5. EITHER

- (a) ".....In the sphere of criminal law I entertain no doubt that there remains in the courts of law a residual power to enforce the supreme and fundamental purpose of the law, to conserve not only the safety and order but also the moral welfare of the state, and that it is their duty to guard it against attacks which may be the more insidious because they are novel and unprepared for....."

Per Viscount Simmonds in *Shaw v. Director of Public Prosecutions*.

Discuss the above statement in the light of the assertion that so long as the dimensions of private and public morality are not clearly defined in matters of morality the individual's freedom of choice and liberty will be eroded.

"showering" is a new "craze" among the Zambian youth. It all started about 5 years ago when a group of youngsters came for a picnic in Lusaka. They carried with them flasks which, according to them, contained special water. During the sessions the youth would pour the content of the flasks on their heads and all of a sudden this would send them into hysterics. They would huddle each other, sing, clap hands and eventually fall into a long sleep. The youth almost always have their sessions at the Lusaka showgrounds and they all show signs of good health.

There has been a great deal of public outcry against this "craze" and a few articles have appeared in the local dailies condemning "showering". It has been labelled as "immoral," "an eyesore" and indeed one paper has condemned it as being against the principles of Humanism since it debases the values of man and has suggested that anybody who has taken part in any of the sessions for the past two years must be punished.

You are a parliamentary draftsman in the Ministry of Legal Affairs and you have been summoned by an obviously ^{worried} Minister of Legal Affairs for a discussion on possible measures to be taken to solve this problem. In the light of the public outcry what advice or suggestions would you give?

END OF EXAMINATION.

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