

UNIVERSITY OF ZAMBIA EXAMINATION PAPERS, SESSION, 1982

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THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - AUGUST/SEPTEMBER 1982

L 110

LEGAL PROCESS

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

ANSWER: Any FOUR questions.

1. Discuss the composition and powers of the following courts:
 - (a) the Supreme Court;
 - (b) the High Court;
 - (c) the Subordinate Courts.

 2. When deciding cases Courts in Zambia often refer to previous decisions (or judgments) made by other courts in Zambia and elsewhere.
 - (a) What are the reasons behind this practice?
 - (b) Is the practice of following previous decisions, in your opinion, a desirable one?

 3. Discuss the role of assessors and jurors in the trial of cases.

 4. The statutory Law of Zambia (namely the Local Courts Act, Subordinate Courts Act and the High Court Act) stipulate the conditions under which African customary law may be applied by the Courts of Zambia. Describe these conditions. (Reference to decided cases is required).

 5. In 1967 the Government of the Republic of Zambia introduced the Legal Aid Department. A layman wishes to know what the Department does. Advise him.

 6. Describe how Judges, Magistrates and Local Court Justices are appointed.
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END OF EXAMINATION.

CONSTITUTIONAL LAW

INSTRUCTIONS:

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

Candidates may consult the Constitution of Zambia in the Examination.

ANSWER: FOUR QUESTIONS.

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1. Discuss the contributions which Montesquieu, John Locke, and Rousseau made to the development of constitutional theory.
 2. Examine comprehensively the salient features of the self-government Constitution of Northern Rhodesia (January 1964 - October 1964). Emphasise its importance in the constitutional history of Zambia.
 3. Discuss the relationship between the Executive and the National Assembly under the Independence constitution. In what ways do you think the Executive controlled the National Assembly?
 4. Appraise with the help of cases how the courts in Zambia have attempted to control the Executive's power of detention and restrictions under Article 27 of the Constitution.
 5. Compare and contrast the decisions of the High Court for Zambia between FELIYA KACHASU v. A-G (1967) and PATEL v. A-G (1968). From these decisions can you say that the courts in Zambia have the power to review legislative and executive powers?
 6. Discuss the decision of the Court of Appeal in the famous one-party case of Nkumbula v. A-G (1972).
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END OF EXAMINATION.

UNIVERSITY EXAMINATIONS - AUGUST 1982

L 210

LEGAL PROCESS

TIME: THREE hours (plus 15 minutes to read the examination paper).

ANSWER: FOUR questions (at least ONE question MUST be from Part I)

PART I

1. In an angry letter to the TIMES OF ZAMBIA, Likolo Imbua (a Lozi) and an Accounts Assistant working for the Chipata District Council said among other things that Mr. Able Phiri, the District Executive Secretary of Chipata District Council was a tribalist, liar and a ^{corrupt} man. Naturally Mr. Phiri is outraged by the appearance of this letter which he considers to be highly defamatory. Mr. Phiri is contemplating commencing an action for damages against Mr. Imbua. He seeks your legal opinion regarding:
 - (a) the best court in which to start the action and
 - (b) the law which is to apply to the dispute.

Write a legal opinion setting forth the various considerations involved and giving appropriate guidance.

2. Section 198(1) of the Roads and Road Traffic Act (Cap. 766 of the 1972 Edition of the Laws of Zambia) provides as follows:-

"Any person who, when driving or attempting to drive a motor vehicle on a road, is under the influence of intoxicating liquor or drugs to such an extent as to be incapable of having proper control of such vehicle, shall be guilty of an offence and liable upon conviction to a fine not exceeding K1,000 or to imprisonment for a period not exceeding five years, or to both such fine and imprisonment."

Question 2 continued.....

Sanikonda Zulu, a Managing Director of one of the Parastatal Companies operating in Lusaka, suffers from Diabetes (a disease). One morning he is found in a comatose state, in the Company's car park, after driving in an erratic fashion along a busy public road leading from his home to his office. Zulu is charged under Section 198(1) of the Roads and Road Traffic Act. At the hearing of the charge medical evidence is adduced to the effect that the condition of Diabetes arises as a result of a person's pancreas failure to produce insulin. In order to replace this substance (insulin) which the body can no longer manufacture, an affected person must inject himself daily with a measured quantity of insulin, which is made artificially. Occasionally the insulin may, not be in proportion to the affected person's needs or may be defective, and when this happens a reaction takes place leading to the affected person behaving in an abnormal manner and then going into a comma.

Assume that the court is faced with the task of interpreting the section quoted above for the first time.

- (a) Prepare the arguments for the prosecution.
- (b) Prepare the arguments for the defence.

(Your arguments must refer to the general rules of statutory interpretation).

PART II

- 3. Discuss fully the Sources of Zambian Law.
- 4. "It is revolting to have no better reason for a rule of law than that it was laid down in the time of Henry IV. It is still more revolting if the grounds upon which it was laid down have vanished since, and the rule simply persists from blind imitation of the past." (per Mr. Justice Holmes of the United States Supreme Court).

Comment on this statement, using it a basis of your own assessment of the usefulness of the common law doctrine of Stare decisis in Zambia.

5. Compare and contrast the post-Independence Local Courts with the earlier Native Courts with regard to:
- (a) jurisdiction,
 - (b) appellate structure and
 - (c) selection and tenure of Court members.
6. (a) Outline the advantages and disadvantages (if any) of being legally represented in Zambia.
- (b) Critically assess the role of the Legal Aid Department in Zambia.
- (c) Should trial by judge and jury be introduced in Zambia?
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END OF EXAMINATION.

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - AUG. 1982

L 230

THE LAW OF TORTS

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

INSTRUCTIONS: 1. Candidates may bring into the examination room only the following materials viz.
Relevant statutes and casebook.

2. Answer FOUR questions in all, including Question Number ONE which is COMPULSORY.

1. THIS QUESTION IS COMPULSORY.

"In the development of our law, two principles have striven for mastery. The first is for the protection of property: no one can give a better title than he himself possesses. The second is for the protection of commercial transactions: the person who takes in good faith and for value without notice should get a good title."

per Denning, L.J. in Bishopsgate Motor Finance Corporation Ltd. v. Transport Brakes Ltd. /T9497 1 K.B. 322 at pp. 336-337.

With the aid of authorities discuss the statement in relation to the development of the tort of conversion.

2. DEE v. KEEY

In January 1980 the plaintiff and defendant made a contract whereby the plaintiff agreed to sell a certain property to a company to be formed by the defendant. Subsequently an oral agreement was made by the parties. This oral agreement went beyond the written one.

In April 1980 the plaintiff transferred a portion of the property to the company formed by the defendant. Later, the plaintiff acting from the position that some terms of the oral agreement had not been complied with, refused to transfer the remaining portion of the property to the defendant's company.

The defendant filed a petition of complaint against the plaintiff in the magistrate's court. The petition charged the plaintiff with fraud, cheating, or breach of trust. A preliminary inquiry was made by a lay magistrate who did not have jurisdiction over the matter. A subsequent inquiry was held by the chief magistrate in an open court. The magistrate found that no fraud, cheating or breach of trust had been committed by the plaintiff, saying "no criminal case of any nature could be made out of the complaint." He therefore dismissed the petition.

The plaintiff, who was represented at both inquiries by an advocate, now sues the defendant for damages for malicious prosecution. What results?

3. ADOR v. ASHOCK AND CO. LTD.

The defendants own and maintain a small fleet of taxis for the purpose of carrying passengers from the international airport to the centre of the city, thirty (30) kilometres away. The actual running of the defendants' taxis was entrusted by the defendants to the drivers of the taxis. These, in turn, managed themselves by means of a management committee of five (5) men who they themselves appointed.

The defendants are the holders of licences for the taxis in question. The licences were issued by the city council. The terms of the licences require control and supervision by the defendants.

According to the terms of the agreement made between the defendants and the drivers, the defendants received 60% of the proceeds of hiring the taxis, and 40% of the proceeds was shared by the drivers.

The plaintiff was a passenger in one of the defendants' taxis. The taxi collided with another vehicle. It was established that the accident occurred because the driver was drunk and the plaintiff who sat next to the driver was having a heated political argument with the driver.

The plaintiff sustained serious injuries. He now brings an action in negligence against the defendants. What results?

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

With the aid of authorities discuss the extent to which this claim is correct and/or justified.

5. "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, The 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?

6. At Bondo Island, five kilometres from 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 20th June 1981, a party of such prisoners were working on the island under the supervision of six 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 others had gone to a dance taking place at the Officers' Mess on the island.

Continued next page.....

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Question six 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 majority holding in the Ezi Hotel. The escapees, in order to avoid being easily identified, 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 established that of the thirty prisoners under rehabilitational experimentation by the Ministry, two had records of previous escapes or attempts to escape; and that of the 20 escapees none had records of previous escapes or attempts to escape.

Omera Inc. sues the Ministry of Home Affairs claiming damages for negligence. The case is brought before you in the High Court of the Republic of Y. Write the judgment of the court.

7. 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 (for example Cabinet Ministers), have been rendered superfluous.

With the aid of authorities critically examine this statement.

END OF EXAMINATION.

3. (a) Examine critically the excessive force defence. How far does it form part of the law in Zambia today?
- (b) Chuulu is asleep one night in his house when he is awakened by the sound of his car alarm. He rushes to the bedroom window and sees a figure standing by his brand new Mercedes car with the door open. Believing it to be a thief, Chuulu gets a gun and shoots at the figure intending to disable him. However, he is so frightened that his hand shakes as he fires and the bullet hits the victim in the head killing him instantly.

It is later discovered that the "thief" was Chuulu's security guard who had opened the car door to admire the new vehicle.

You are asked to act for Chuulu who has been charged with murder. Advise him.

4. Kashoke, a member of a dissident organisation, is told by its leader, Chanda, to rob a certain store in order to obtain more funds for the organisation. Kashoke is warned that a failure to do so will result in "serious consequences" for him. Kashoke, who is terrified of Chanda agrees. He drives to the store in a car supplied by Chilufya and successfully carries out the robbery. Unknown to Kashoke, Gondwe has been sent to the store by Chanda with instructions to pose as a customer and assist Kashoke if necessary. In fact no assistance is necessary and Gondwe takes no part in the crime. Upon being apprehended, Chilufya claims that he believed his car was to be used to transport some stolen property and would not have allowed it to be used in a robbery had he known of the true purpose.

Kashoke, Chanda, Chilufya and Gondwe are all charged with robbery. Consider the result in the case.

5. Mwape goes to Nyirenda's house knowing Nyirenda is absent. He persuades Phiri, Nyirenda's houseservant, to allow him into the house and to take a radio by falsely pretending that he is a friend of Nyirenda and is acting with his permission. Phiri knows that Nyirenda has in the past regularly given such permission and has been told to allow Nyirenda's friends to enter the house and borrow items. After Mwape has left the premises, Nyirenda arrives and realising what has happened chases after Mwape. Mwape threatens to kill Nyirenda if he tries to take the radio back and he desists.

Mwape later agrees to sell the radio to Mitti who knows how it was obtained. Mwape is on his way to deliver the radio to Mitti when he is apprehended by the police and confesses to how he obtained the radio. He is allowed to proceed to Mitti's shop where he hands over the radio. The Police then apprehend Mitti.

Consider the criminal liability of Mwape and Mitti.

- (a) Chenda, the Manager of the Betta Shoe Shop is unable to account for one hundred pairs of shoes valued at K10 00 which have gone missing from the shop between a stocktaking in August 1981 and another stocktaking in May 1982. Chenda blames the loss on dishonest shop assistants and there is no evidence that he had taken any of the missing shoes himself.

Consider the criminal liability of Chenda.

- (b) Trinah is very short of money. She meets Chrispine in a bar who says that he can change two kwacha bank notes into twenty kwacha notes by using a secret magical formula. Trinah hands over ten two kwacha bank notes to Chrispine and is told to return the next day to collect the money. She returns to the bar the next day but there is no sign of her money or of Chrispine. She later learns that Chrispine has taken money from other people in the same manner.

Examine the criminal liability of Chrispine.

THE UNIVERSITY OF ZAMBIA
UNIVERSITY EXAMINATIONS - AUG 1982

L 250

CONSTITUTIONAL LAW

INSTRUCTIONS:

1. TIME ALLOWED: THREE hours (3) plus 15 minutes to read the question paper.
 2. The following are allowed to be consulted in the Examination:
 - (i) The Constitution of Zambia (1964 Edition).
 - (ii) The Constitution of Zambia (1973 Edition).
 3. ANSWER: Any FOUR questions.
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1. What does the term 'constitutionalism' both mean and entail? Discuss the origins and development of 'Euro American' constitutionalism and indicate the extent to which it has influenced constitution-making in Anglophonic Africa.
2. Discuss the constitution of the defunct Federation of Rhodesia and Nyasaland with particular reference to the safeguards which that constitution constitutionalised to protect the interests of Africans. Give a constitutionalist's reasons why the Federation of Rhodesia and Nyasaland collapsed.
3. Explain in detail the traditional role and functions of the Speaker in the Legislative process. Is the Speaker of the National Assembly of Zambia subject to the jurisdiction of the High Court? Explain and illustrate your answer with reference to decided cases.

4. Carefully compare and contrast features of African presidentialism such as the one operating in Zambia with the American model of presidentialism. To what extent does the former incorporate in it elements of parliamentary system of governments such as characterise the British system?

5. It is sometimes said that a necessary condition of securing individual liberty in any state is the preservation of the state itself. If the security of the State is threatened, it is therefore permissible to relax the common law and constitutional safeguards of individual liberty to the extent necessary to meet the threat.

Comment on this view with particular reference to articles 27 and 30 of the Constitution of Zambia.

6. State the facts of Feliya Kachasu v. Attorney-General for Zambia bringing out clearly the arguments on behalf of the petition 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 another Zambian case the Patel Currency Case.

Choose three from the following subjects and comment comprehensively:

- (i) The Lewanika Concessions, 1890.✓
- (ii) The Monckton Report, 1960.✓
- (iii) The National Commission on the Establishment of the One Party Participatory Democracy, 1972.
- (iv) Emergency laws in Zambia.
- (v) The Central Committee.
- (vi) The Constitution of Zambia (Amendment) Act, No. 22 of 1975.
- (vii) The House of Chiefs✓

END OF EXAMINATION.

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - AUG. 1982

L 310

LAW OF EVIDENCE

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

ANSWER: ANY FOUR questions.

1. Chanda, a business tycoon in Lusaka, and two of his employees Juma and Patrick have been charged with peddling in emeralds and attempting to corrupt a police officer by offering him a bribe so he could turn a blind eye to the crime. At the time of the arrest the emeralds were in the bookcase of Juma's son aged 7. Immediately after the incident the police officer, Mwanza, wrote a comprehensive report in his note book and arrested the three. Mr. Chanda told his wife what had happened and his story amounted to a confession. This conversation was overheard by John who unknown to the couple was in the room next to their bedroom. Soon after the arrest of Chanda, Mrs. Chanda who had for sometime been complaining about her husband's cruelty to her, petitioned for divorce and was in the meantime granted judicial separation. The trial of Chanda began a week ago and Mr. Chanda has engaged the services of Shapiri S.C. During the trial before he could give evidence the police officer who arrested them died. The prosecutor is confronted with the following problems. He wishes to tender the evidence of the dead police officer. He wishes to call Juma's son as a witness. He wishes to call Mrs. Chanda as a witness and also wishes to call John to testify on what he heard Mr. Chanda say to his wife. The defence has objected to this, arguing that John and Mrs. Chanda can neither be called to give evidence for the prosecution nor is their evidence admissible. The prosecutor called for an

Question 1 continued.....

adjournment in order to come and consult you, a state advocate for advice. In addition to these problems, the prosecutor has also learnt that Mrs. Chanda and John apparently out of dislike for the prosecutor have vowed not to give evidence for the prosecution.

Advise the prosecutor on the law relating to his problems.

2. John and Mary lived together as man and wife for 20 years. This is since 1958. Mary cooked, cleaned the house and entertained visitors in the house. They often attended parties as Mr. and Mrs. John Mwale.

A search at the Lusaka registry revealed no registration of their marriage. John disappeared from Lusaka in 1971 and has not been heard of since. Mary assuming him dead went through a marriage ceremony with one Simon and a normal child called Mike was born 7 months after John's disappearance. Simon accepted the child as his and spent alot of money on his upbringing. The child resembled a longtime boyfriend of Mary called Peter who she admitted to have been meeting from time to time for many years. In fact Mary had in private conversation told Joan, her best friend, that the child belonged to Peter. Mary recently died. John's nephew Masauso has applied to the court for a declaration that John is dead and that he Masauso should inherit John's huge house on the grounds that he is the only known relative of John. This is contested by Mike.

Discuss the various evidential issues that arise with report to the marriages that occur, the disappearance of John, the legitimacy of Mike.

3. The notorious criminal, Never Kapenda, has been charged with and convicted of the murders of Snodia Akapelwa, Mary Phiri, Gloria Tembo and Alice Mulenga. All the four charges were in the same indictment but appeared as different counts. In the first three cases, the left breasts and the genital organs were severed from the bodies and in all four cases ballistic reports indicated that the bullets which killed them were all fired from the same pistol. Postmortem results also indicated that all the four victims were shot in the neck.

In the case of Alice Mulenga, she was entertaining her 9 year old daughter, Brenda, and her friend Christine, 9, when the shot was fired. And almost immediately, Alice Mulenga shouted, "I have been shot in the neck! Go and call the rector and my solicitor! I have something very confidential to disclose to them!" Brenda and Christine rushed out to call the two gentlemen and when ^{they arrived and} Alice Mulenga saw them she exclaimed, "I have been shot. I will die. That Never Kapenda, I hate him!" These were her last words; she died after having uttered these words. When Christine saw this she broke down and said; "I heard the shot. I looked through the window and saw Never Kapenda running away. It was Never Kapenda."

At the trial the prosecution called the solicitor, the rector and Alice Mulenga's daughter, Brenda, as the principal witnesses (for the prosecution). Christine was in Salisbury and was therefore unable to give evidence. Both the rector and the solicitor tendered in evidence the statement Alice Mulenga had made just before she died and Brenda deposed to the statement made by Christine after Alice's death. The prosecution also gave as evidence the charge in one count as evidence of the charges in the other counts. The defence pleaded alibi in relation to Gloria Tembo's death, denied the charge in relation to Alice's and objected to the admissibility of the charge in one count as evidence of the charge in the other counts on the ground that it was evidence of similar fact and therefore prejudicial. The defence also applied for different trials to be held on each case.

Question 3 continued.....

The trial judge held as admissible the evidence given by the rector, the solicitor, and Brenda. He refused to grant the application for separate trials and Never Kapenda was accordingly convicted. The defence counsel wants to appeal against the convictions and has come to you for advice. Advise him.

4. James and Thomas were charged with burglary and theft. The police alleged that the two broke into a house to commit rape and steal valuables. They were unable to commit rape as the intended victim Mary shouted for help and some one came to her aid. They were therefore not charged with rape. While in that house James picked up a brief case belonging to the owner of the house. At the trial James, through his counsel, denied the burglary and theft and alleged that Mary had invited him and Thomas to the house and that the whole prosecution was stage managed because Mary was a girlfriend of the local police chief. He further alleges that Mary is a loose girl. James repeated these allegations when he himself got into the witness box. The prosecution has information that last year James and Thomas broke into Anne's house and pleaded the same sort of defence and were acquitted. They also suspect that on the same night James and Thomas broke into a shop. This was shortly before the break in at Mary's house. At the scene of this break in the police recovered a revolver which they believed to belong to James. While James is in the witness box the prosecution produce a revolver which is shown to James. He is asked whether he is the owner of the gun. James refused to answer the question. The prosecution insists that he is obliged to answer all questions put to him in cross-examination.

Discuss.

5. Mr. Banda and members of his family retired to bed at about 8 p.m. When he retired his overalls and a jacket were hanging on a hook in his bedroom. When Banda arose at 5.30 a.m. the following morning he noticed that his overalls and jacket were missing and that some of the rooms of his residence had been ransacked. He reported the matter to the police and also to his local party chairman. Musonda was found wearing one of the shirts and was seen by the child of Mr. Banda. This was reported to Mr. Banda who in turn reported the matter to the local party chairman. The local party chairman sent for Musonda. The chairman asked Musonda where he got the shirt. Musonda stated that he bought it. The party chief told him that he would not live his house until he was satisfied how the shirt came into the possession of Musonda. After a while Musonda asked the chairman for permission to go and consult his wife. He was allowed to go. The next day Musonda asked to see the chairman and told him in Bemba that he and his friends Chanda and John broke into Mr. Banda's house. Where upon the chairman wrote this down in English. He reported the matter to the police who arrested both Chanda and Musonda. Chanda denied any knowledge of the break in and alleged that Musonda was deliberately implicating him. A search without a warrant and without Musonda's knowledge led to the recovery of the stolen overall. John was indemnified by the state and was called as a witness. He was the only prosecution witness. Apart from him, the only other evidence was the confession Musonda made to the chairman. Chanda is connected to the crime through Musonda's confession. Chanda and Musonda are charged with housebreaking and theft. Discuss the evidential issues that arise.

6. Tembo was charged with defilement and was jointly charged with John for the theft of a book and a doll. Tembo is alleged to have committed this offence on the daughter of a colleague of his. The little girl aged 7 gave unsworn evidence describing what is supposed to have gone on. She sustained injuries to her private parts in the attack. The police officer and the mother testified that shortly after the incident the girl Mary had gone up to Tembo and said this is the man. To this allegation Tembo remained completely silent and said nothing. He in fact ran away when he saw a police car passby. At the trial the grandmother of the girl gave evidence that Mary came home and after she asked her what was wrong with her dress and why she had blood stains on it she stated that she had been sexually assaulted by Tembo. John denied any involvement in the theft of the books but stated that he had been present when Tembo sexually assaulted Mary. In addition, since the crime the police searched Tembo's flat and found there in ten pictures of nude young girls.

Discuss the evidencial issues that arise.

7. (a) Phiri went to a Matero restaraunt for a meal on Saturday the 20th of May 1982. Phiri claims that the plates the meal was served on were so dirty and the food so badly prepared that he developed a terrible stomachache the following day and he now has rashes all over the body. Phiri claims that two people who had been to the restraurant complained of the same effects. On investigation it is discovered that these two ordered and were served eggs and bacon. Phiri wants to put an end to this and wishes to sue the proprietor for negligence. The pripietors argued that 20 people had meals in the restaraunt on the 20th of May and did not fall sick. On investigation it is proved that all the 20 had steak and mushroom for their meals. Consider whether or not the testimony of the various persons who went to the same restaraunt will be admissible.

Question 7 continued....

- (b) Banda being dissatisfied with construction of her house hired an architect to inspect the building and to report to her. The architect gave periodic reports and the contractor only proceeded to the next stage after the architect's report and Banda's approval. The house was completed. The City Council refused to issue a Certificate of Occupation on the grounds that the house had major structural defects. Banda has sued the contractors. The contractors argue that she was estopped from alleging defects in the construction.

Discuss.

END OF EXAMINATION.

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - AUG 1982

L 320

PROPERTY LAW AND SUCCESSION

- TIME: THREE hours (plus 15 minutes to read the question paper).
ANSWER: FOUR questions, at least ONE from each section.
NOTE: Candidates may bring into the examination room all relevant statutes so long as the same do not contain any annotations or side notes.
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SECTION A

1. (a) Evaluate the provisions relating to public participation in the preparation of a development plan under the Town and Country Planning Act (CAP 475). What improvements would you recommend in the law and practice relating to public participation? 7.5 marks
- (b) A, a land developer, wanted to build a cafe in Kabulonga since this has proved a lucrative business. His application for planning permission was refused on the basis that owners of other cafes in the area lodged objections, arguing that there were too many cafes in the neighbourhood. The Planning Authority advised A to build a butchery, which of late it has been trying to encourage. The Authority further attached the condition that A must provide sufficient parking space for vehicles and repair a two-kilometre section of the public road opposite the area of development.
- A ignored both the planning authority and cafe owners and constructed a cafe. The Authority now wants to take action against A.
- Discuss the rights of A; the Planning Authority; and the neighbouring cafe owners. 10 marks.

ction A continued.....

- (a) Discuss the security of title of a registered proprietor under the Lands and Deeds Registry Act, CAP 287 of the Laws of Zambia. 7.5 marks

- (b) Mr. Adam is an owner of a house in one of Lusaka's residential areas. His employers decided to send him abroad for study to prepare him to take over the management of the company. As he would be taking his family with him, he decided to let his house to Mr. Milimo. The lease was for three years and was to commence three months after its execution.

The lease was duly executed in Lusaka, but a month before its commencement Adam received an offer from one Lukas to buy the house and pay him in foreign currency through his bank abroad. Adam, cognisant of the importance of foreign currency excitedly accepted the offer and instructed Lukas to prepare the conveyance. Unfortunately for Adam, Lukas discovered that Milimo had lodged a caveat at the Lands and Deeds Registry and declined to proceed, alleging that Adam could not grant vacant possession.

Advise Adam. 10 marks.

- (a) Distinguish interests of benefit from interests of control. How does the distinction help us understand the mode of land ownership under customary law in Zambia? 7.5 marks

- (b) Discuss the nature of the interest in land which customary law confers on landowners. What factors affect the content of customary land rights in Zambia?

10 marks

SECTION B

The Law Development Commission is concerned with overhauling the Law of Succession which is the cause of so much anxiety to bereaved families. Your views are invited in this law reform exercise by discussing any three of the following:

- (a) the suitability of the English Wills Act, 1837 and the Inheritance (Family Provisions) Act, 1938;
 - (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) benefit and funds established under various Acts of Parliament, i.e. pension schemes and the National Provident Fund. 17.5 marks
- (a) Contrast the equitable right to redeem from the equity of redemption. Consider whether ^{the} equitable right to redeem operates unfairly on mortgagees: 7.5 marks
- (b) Mr. Bobat owns a plot in Lusaka, abutting the Great East Road. He constructed on it a dwelling house and furnished it with large dressing mirrors drilled into the wall and affixed window blinds. Encouraged by the constant flow of traffic he decided to establish a petrol filling station. He bought petrol pumps belonging to Shell-BP from a notorious thief and bolted them to storage tanks embedded in the ground.

"The number of European settlers in any British possession whether a colony or protectorate directly influenced the land tenure system adopted. The land tenure systems which emerged in areas where European settlement occurred or was anticipated was designed to encourage the purchase and development of the land by individuals or companies and to provide security for this investment. Where European settlement was not a significant factor principles controlling land holding were very different."

MVUNGA M.P.: The Colonial Foundations of Zambia's Land Tenure System.

Discuss the above observations in the context of East and Central African countries.

17.5 marks.

END OF EXAMINATION.

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - AUGUST 1982

L 330

COMMERCIAL LAW

TIME: THREE hours (plus 15 minutes to read the question paper).
ANSWER: ONLY FOUR questions selecting TWO from each Part.
You should give reasons in full for your conclusions.

PART A

1. (a) What are the rules laid down in the Sale of Goods Act to determine when property in the goods will pass from the seller to the buyer in a contract for the sale of goods?

(b) What is the importance of determining such time?
2. Section 21 of the Sale of Goods Act lays down that where goods are sold by a person who is not the owner thereof and does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell. Discuss and explain other exceptions to this rule.
3. Mr. Samuel Banda appointed his cousin Phiri as the general manager of his farm. Mr. Banda rarely visited the farm as he was otherwise busy in Lusaka. The farm is situated about 6000 kilometres away. Phiri made all purchases necessary for the farm. He also made all sales of farm produce. Mr. Banda paid the bills incurred by Phiri. Mr. Banda had, however, instructed Phiri not to purchase fertiliser for the farm from any local trader and not to sell chicken at less than K3.80 a kg. After about 6 months Mr. Banda visited the farm and discovered that Phiri had purchased fertiliser for the farm from local traders and had sold chicken at K2.20 a kg.

Question 3 continued.....

Mr. Banda has decided not to pay for the fertiliser. He has also decided to recover from customers the shortfall in the price of chicken sold by Phiri, as Phiri had acted contrary to his express instructions.

Advise Mr. Banda as to his chances of success.

Will your advice be different if Phiri had bought a Benz car for K20,000 on credit from a local dealer for use in the course of his duties as farm manager?

4. What constitutes bribery in the law of agency? What are the important rights of a principal against an agent who has accepted a bribe and the other party who has given a bribe to the agent?

PART B

5. The manager of Star Insurance Company seeks your advice relating to the following matters:

His company was the insurer covering all risks in respect of vehicles belonging to Overlund Transport and Shipping Co. Ltd. (hereafter referred to as Overlund).

Five of these vehicles were stolen one night while the vehicles, which were on their way to Livingstone from Chipata, were parked in the open at a petrol station.

The Insurance Co. has discovered that the vehicles belonging to Overlund are always parked in open space when not in use. Overlund does not have buildings for this purpose.

The proposal for the particular contract of insurance contained the following question:

Are the vehicles to be insured parked inside a secured building when not in use?

Question 5 Part B continued.....

Overlund Co. had answered the question "Yes".
The proposal form was made the basis of the contract of insurance.

- (a) Advise the Manager of the Insurance Company regarding their liability.
- (b) Would your advice be different if the vehicles were damaged by collision while they were being driven on the road?

6. A & Co. delivered to B a sewing machine under an agreement in writing entitled "Hire Purchase Agreement." The agreement provided, inter alia, for an initial payment of K100 and a monthly rental of K10. The cash price of the machine was fixed at K1250 and the purchase price at K2900. Property in the machine would pass from A & Co. to B only on B's payment of the final instalment.

- (a) Can this agreement be enforced as a hire-purchase agreement under the law of Zambia? Give your reasons.
- (b) If not, what is the legal effect of this agreement? State in particular the rights and liabilities of A & Co., and B under the agreement.

7. "This debtor and creditor relationship is the basic principle of the law of banking. It does not, however, provide a sufficiently wide formula for the solution of all the problems, or the understanding of all the business of modern banking."

- (a) Explain the nature of the legal relationship in modern times between a commercial bank and its customers.
- (b) Outline 3 principal duties imposed on such a bank in respect of its customers.

8. Mr. Peter Chanda intends to expand his business as a commercial farmer. He is faced with the problem of finding capital for this purpose. He estimates his present capital requirements at K25,000. Mr. Chanda has applied to the Bank for a loan of this amount.

Mr. Chanda has Farming stock worth K18,000, agricultural machinery worth K5,000, a motor car worth K3,500, and a life policy worth K50,000 at maturity and a present surrender value of K35,000. He intends buying a tractor worth K15,000, a pickup van worth K6,500 and to put up a building with the balance of the money for the purpose of garaging the vehicles.

You are the legal adviser to Chanda's Bank. The Bank seeks your advice as to how best the Bank should be secured in the event of its granting Mr. Chanda the loan facilities he has asked for.

Advise the Bank on the following matters:

- (a) The different kinds of security which they can have under the law of Zambia.
- (b) What is the best form of security they should call for in this instance.

Give your reasons.

END OF EXAMINATION.

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - AUG. 1982

L 340

ADMINISTRATIVE LAW

TIME: THREE hours (plus 15 minutes for reading the paper).
ANSWER: FOUR questions. QUESTION ONE IS COMPULSORY. Answer any THREE questions from the rest of the paper.

THIS QUESTION IS COMPULSORY.

You are consulted by S. S. states that he was recently expelled from the University of Khandaha after being found guilty by the University's Disciplinary Committee of taking part in a demonstration at a graduation ceremony. S. denies that he committed this offence. Only when he arrived at the hearing^{was}/he informed of the nature of the charges against him, although he was aware of what he was likely to be charged with because the day after the graduation he had been called to the Principal's office and the Principal had remonstrated with him for disrupting graduation. He did not, however, ask for a postponement of the hearing when the charges were put to him. The University rules provide that the Disciplinary Committee shall consist of five members and that the Committee's quorum shall be three. It is further provided that a member of the Students' Representative Council shall be entitled to be present at all hearings of the Committee. S. says that at the time of his hearing the overall Committee consisted of only four members, the fifth member having previously left the University. However, there were three members present throughout his hearing. There was no member of the Students' Representative Council present because this student organization had not been informed that the hearing was taking place. S. was allowed to appear personally at the hearing, to call witnesses and to present his case fully. He was not allowed to sum up and to

L 340

ADMINISTRATIVE LAW

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ANSWER: FOUR questions. QUESTION ONE IS COMPULSORY. Answer any THREE questions from the rest of the paper.

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Question One continued.....

address the tribunal at the end of the evidence. He believes that in deciding to impose a sentence of expulsion the Committee took into account certain allegations of previous misconduct on his part at the University. These allegations were raised by one of the members of the tribunal in S's absence and he was not given an opportunity to reply to them. Finally, the tribunal gave no reasons for its decision, the rules governing its procedure not obliging it to give reasons.

ADVISE S.

Answer any THREE QUESTIONS from the rest of the paper.

2. Should damages be payable to citizens who sustain losses by unlawful administrative action? Give reasons for your answer.
3. Critically assess the justifications for, and the effectiveness of the means of control over, delegated legislation.
4. Do administrative tribunals provide simpler, speedier, cheaper and more accessible justice than the ordinary courts? Illustrate your answer by reference to the functioning of at least two Zambian administrative tribunals.
5. 'The point at which the political process provides or can provide effective control (of central administration) is the line to which judicial review should advance. Unless it does so, there must continue to be an area of governmental activity in respect of which aggrieved citizens can look to neither the political process nor the courts for effective redress.'

(Thomas, Parliamentary Control of the Administration of Central Government: Fact or Fiction?, p. 22)

Critically assess this statement, relating your answer to the Zambian situation.

6. 'Both the House of Lords and the Privy Council have now confirmed that reports of the death of the traditional distinction (between jurisdictional and non-jurisdictional errors of law) were exaggerated.'

(Griffiths, Case and Comment, [1980] C.L.J. 233).

Explain, by reference to appropriate cases, the development of the principles of judicial review relating to errors of law within jurisdiction, and errors of law outside jurisdiction.

7. 'The Court shall not grant any relief sought on an application for judicial review unless it considers that the applicant has a sufficient interest in the matter to which the application relates.'

(English Law Commission, Report on Remedies in Administrative Law, Cmd. 6407)

Examine the current requirements on the standing of applicants for judicial review in administrative law. In the light of the principles which the courts have already applied, what is the Law Commission's recommendation likely to mean in practice?

8. To what extent is decentralisation compatible with proper financial accountability? Discuss this issue in relation to the position in Zambia since the passing of the Local Administration Act 1980.

END OF EXAMINATION.

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - AUGUST/SEPTEMBER 1982

L 350

FAMILY LAW

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

ANSWER: Any FOUR questions.

1. A highly-qualified oil engineer and domiciled Englishman by the name of George Smith was separated from his wife. He came to Zambia on a short contract with Indeni Petroleum Company in Ndola. He met eighteen-year-old Mary Muchindu. They went through a ceremony of marriage before the Ndola Urban District Registrar of Marriages. Because the Registrar was in a hurry to attend an important meeting outside Ndola, the ceremony was conducted around 0800 hours in his house. For witnesses, Mary Muchindu brought two friends. It had been mutually agreed that soon after the ceremony, they would fly to the Islamic Kingdom of Saudi Arabia and settle there where George Smith had just been offered a very good job. At the end of the ceremony of marriage, the Certificate of Marriage was issued but for some unknown reason, the Registrar's Certificate of Marriage had not been issued.

Consider the validity of this marriage.

2. Shortly after their wedding before the Lusaka District Registrar of Marriages Sophia Redford and Lawrence Pritchard, both originally from England, separated and there was no communication between them. Sophia Redford went to London to do a degree and whilst there she heard from her distant relative that Lawrence Pritchard had died in a pineapple factory accident in Solwezi where he was the chief electrician. On her return from London and without further inquiries about Lawrence Pritchard, Sophia went through a ceremony of marriage in the Catholic Church in Monze with Simon Jacobs, another Englishman. He, like Sophia Redford, had presumed that Lawrence Pritchard was dead, although Simon had once tried to contact Lawrence Pritchard's relatives on the telephone about Lawrence. Sophia and Simon lived together for many years and had several children. They were a happy dancing pair, and for the two consecutive years that they won the national "Mr. and Mrs." dancing competition, they had entered as Mr. and Mrs. Jacobs. The marriage broke down and when Sophia filed divorce papers in the High Court, she discovered that neither the church building nor the officiating priest were licenced and she began to wonder whether she was validly married to Simon Jacobs.

Advise her.

Would your advice be different if Sophia Redford and Simon Jacobs were both Africans and they had already been validly married in accordance with African customary law before they went through the ceremony of marriage in the Monze Catholic church?

3. As a result of a serious car accident, prominent and respected businessman Edward Mutale was not quite the same again. He was forgetful and sometimes confused. Some of his business competitors in fact called him mad. His wife had just died in the same car accident and so he wished to marry again. He found identical twins, Joy and Joyce. After a very brief courtship, Edward Mutale was falsely accused of having made Joy pregnant, and Joy warned that if he did not marry her, she was going to take him to the Local Court and invite the press to cover the proceedings. When his relatives heard what Edward Mutale had done they were shocked and his young brother threatened to beat him up unless he married the girl. The parents sent Joy outside the country to abort. She was scheduled to be away only for a few weeks but she overstayed. As the wedding ceremony could not be postponed, Joy's parents in panic gave away Joyce at the ceremony of marriage which took place in the Office of the Lusaka Registrar of Marriages. On their wedding night there was no sexual intercourse. Subsequent attempts on the part of Edward were equally unsuccessful. Edward wanted to end this marriage.

Advise him.

4. On 21st January 1979, part time law student Samson Kawesha married Rachel Musonda before the Lusaka District Registrar of Marriages. This marriage was never consummated because Kawesha never achieved an erection. When he was reading a book called "Bromley's Family Law" he discovered in 1980 to his relief that he could end this marriage after all and he very secretly wrote letters to a close ^{priest} friend of the family seeking spiritual advice. Later, Kawesha's employers sent him to Australia for a course. He took Rachel along and included her in his passport. On their return and on his suggestion, they adopted a child. Then he lost his job. He took to heavy drinking and fell into the habit of assaulting his wife. The wife found herself a job and she was now able to maintain the family. She

Question 4 continued.....

even bought him a car and found him another job. She once found him ⁱⁿ a compromising position with another woman but she forgave him. On December 19th 1981, Samson Kawesha filed papers for a decree of nullity of their marriage, which she opposed, on the ground of his own impotence.

What advice can you give Rachel Musonda?

5. Albert Zulu wanted to buy a house in Roma Township, Lusaka. He had ten thousand kwacha only. So he asked his wife Martha to find some more money. She gave him one thousand kwacha. The full purchase price of eleven thousand kwacha was given to the vendor. The house was in Albert's name. Later the wife decorated the inside of the house and constructed a water fountain outside. She spent one hundred kwacha. A bank account was opened. As Albert was a bankrupt the account was in the wife's name. Into this account, the wife deposited nothing while Albert was depositing fifty kwacha monthly. The wife could not withdraw from this account without the express permission of the husband. Albert needed another house. At this time he was unemployed. He opened a stall in the market. While he was up and down looking for commodities for the stall, his wife stayed in the stall selling. After five years, fifteen thousand kwacha profit was made and another house was bought. It was in Albert's name. The marriage broke down.

Martha seeks your legal advice on her rights, if any, in the two houses and the bank account.

6. Godfrey Banda's marriage was not a happy one. He frequently went home late and very drunk. When intoxicated, he was in the habit of belittling his wife even in the presence of visitors. At one time he even beat her up in Cairo Road. One evening when he thought that his wife had gone away to the Copperbelt, he brought in a girl and they were found in the pantry naked. Beatrice, his wife, was a devout Christian and Godfrey knew it. She packed up all ~~her~~ her belongings and left him but he found her and brought her back. Although she frequently threatened to leave him, she never actually left him. Godfrey found a better paying job in Livingstone. Beatrice had serious problems in her family in Lusaka, and so she wished to leave Lusaka. She and two of the children had asthma. She was therefore anxious to go to Livingstone because, unlike Lusaka which is relatively cold, Livingstone is hot throughout the year and hot weather relieves asthma. Suddenly Godfrey Banda refused to go to Livingstone and offered his wife no explanation and she failed to persuade him to go. She and all the children left leaving him alone in Lusaka and there was no communication between them for about two years. Before the expiry of three years after their marriage, thrice Godfrey Banda drove to Livingstone, beat up his wife, parked her in the boot of the car and drove to the Victoria Falls where he threatened to push her down the gorge. She was now a nervous wreck. ~~but~~ but never sought medical treatment. Beatrice wants to divorce.

Advise her.

END OF EXAMINATION.

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - 1982

L 410

JURISPRUDENCE

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

ANSWER: ANY FOUR Questions.

1. The Penal Code defines theft as the taking of possession without the consent of the owner or possessor with a fraudulent intention.

Following three cases involving the interpretation of this provision also of the concept of possession, decided by the lower court are pending before the Court of Appeal. You as one of the leading Zambian lawyer have been engaged to argue the three appeals.

Argue the cases of your clients marshalling precedents and juristic opinion on the point and meeting the possible arguments from the other side.

(i) Mr. M. McNube, who had borrowed two kwacha from Mr. T. Miyanda, gave a currency note to Miyanda which both believed to be a two kwacha note but which was in fact a five kwacha note. Miyanda discovered this fact on reaching home and appropriated it. The lower Court has held him guilty of theft.

- (ii) Mr. S. Patel found on the floor of his shop a ten kwacha currency note which he picked up and appropriated without making any attempt to find the person who might have dropped it. On complaint Mr. Patel was prosecuted and the Court has held him guilty of theft.
- (iii) Mr. P. Amoo purchased at a public auction a cupboard and paid for it. He subsequently discovered a secret ^{drawer} in it containing a diamond ring. Mr. Amoo appropriated the ring. On complaint he was prosecuted and has been held guilty of theft.

The eternal problem of law with regard to the concept and content of ownership is that of balancing competing social interests and individual's right of enjoyment. The balancing depends upon the socio-economic and political philosophy of a particular society at a particular time. Some of the juristic definitions of ownership, development and shaping of the concept and content of ownership in the Soviet Union and Zambia reflect and establish this fact.

Comment and elucidate.

The defendant, an administrative Officer in Zambia, is vested with the authority of issuing licences for running movie houses. The plaintiff applied for the grant of a licence on the prescribed form complying with other requisite formalities. His application remained pending for three years despite repeated reminders. He eventually sought a remedy before the Court. The Court dismissed his suit on the ground that the filing of the suit against the defendant implies the existence of a claim (right) in the plaintiff and that the plaintiff can have such claim (right) only when the defendant exercises his authority. The plaintiff has appealed against the aforesaid decision.

In another case X, a foreign diplomatic agent accredited to Zambia, whose car was comprehensively insured caused an accident while driving his car on the Cairo Road and seriously injured Y. Y filed a suit for damages against the Insurance Co. The latter's plea that since the diplomatic agent enjoyed an immunity^{and} was under no duty to pay damages the Insurance Co. was absorbed as well has been upheld by the Court. Y has appealed against this decision.

Argue the two appeals. bringing out a clear distinction between the various jural relations involved.

The Austinian or positivist approach to the definition of Law is hardly suited to a developing society as that of Zambia witnessing troubled Social conditions and having a constitutional commitment to certain values and goals.

Critically comment, elucidate and present an alternative definition model of law which you consider to be relatively more appropriate.

Zambia hosts a Conference of the World Congress on the Philosophy of Law and Social Philosophy (IVR). The theme of the Conference is "Changing Society and the Approaches to Law and Legal Interpretation." As a participant in the Conference you have to present a well reasoned treatment of the Sociological approach without ignoring the element of truth in the Positivist and the Realist approaches. Point out in your paper what you consider to be the exaggerated emphasis which the last two approaches give to certain aspects and stress that not this or that approach but a synthetic approach is better suited to developing societies as that of Zambia.

6. "Jurisprudence to-day", observes Prof. Julius Stone, "is a chaos of approaches, to a chaos of topics, chaotically delimited."

Assess the element of truth in this observation in the light of a critical assessment of some of the prominent definitions of Jurisprudence and point out the definition which you consider to be relatively more satisfactory.

7. You have been appointed Minister of Justice of a small state, Problemia, having five million inhabitants. Problemia had for a long period a peaceful, democratic and constitutional government. During a prolonged economic crisis and depression a small well-organised disruptive group constituted itself into a political party under the name of Reformist Revolutionary Party (RRP), exploited the prevailing discontent resulting from such a crisis and captured power as a result of the general elections by employing dubious devices viz. by giving tall promises, by falsehoods, physical intimidation of voters frightening them to either vote for them or to keep away from the polls etc. Left to themselves people would have voted against them.

When the RRP came to power it left intact the ancient constitution of Problemia and the Civil and Criminal Codes and Code of Procedure. However, a reign of terror was imposed. Political opponents were indiscriminately put into jail. Judges who rendered decisions contrary to the wishes of the RRP were beaten and murdered. The accepted meaning of the provisions of the criminal code was perverted to jail any one about whose support to the regime there was ^{the} slightest doubt. Secret statutes were passed about which no one except the higher-ups in the RRP knew. Retroactive statutes were enacted and people were convicted under such secret and retroactive laws.

Hundreds of people were killed by party gangs in open day light. A general amnesty was declared under which only members of the RRP who were duly tried and convicted under the law by the preceding constitutional government were released. Property of all opponents was taken over by marauding groups belonging to the RRP. The RRP did not look with favour to the suggestion by its own party men for enacting a law to confiscate such property on the ground that it would attract unfavourable comment abroad. However, such confiscation by these groups was ratified and the titles to property obtained by threats of physical violence were confirmed under secret statutes.

The RRP has at long last been voted out of power and a constitutional and democratic government has been restored. You have been appointed Minister of Justice of this Government. The first task that you face is a strong public demand that the "Grudge Informers" viz. those people who under the RRP regime settled their personal scores animosities and jealousies by reporting against or by fabricating reports about such persons with regard to non-observance by them of laws, secret or otherwise, enacted by the RRP, and with regard to their opposition to the RRP and its policies. Hundreds of persons against whom such reports were made were tried and convicted under the RRP regime and many were sentenced to death for trivial offences including violation of secret statutes.

You as a member of a constitutional and democratic government are facing a dilemma as to what should be done with regard to such grudge-informers. Five prominent members of Parliament representing a cross-section of the political parties represented in the Parliament render the following proposals for your consideration:

First M.P.: "We can do nothing about these grudge-informers. The acts they reported were unlawful according to the rules of the RRP then in actual control of the nations affairs. The sentences imposed on their victims were rendered in accordance with principles of law then obtaining."

Howsoever detestable these principles may be, they were nevertheless then the law of the land. One of the principle difference between that law and our own lies in the vast discretion it accorded to the judge in criminal matters. However, this rule and its consequences are as much entitled to respect by us as, to take just one example, the reform which the RRP introduced into the law of wills, whereby only two witnesses were required instead of three. It is true but is immaterial that the rule granting uncontrolled discretion to the judge was never formally enacted but was a matter of tacit acceptance. The RRP Government was as much lawful as ours. The difference lies rather in the field of ideology. Our system of government is based on the assumption that when an objective has been duly incorporated into a law or a judicial decree it must be provisionally accepted even by those who disagree with it: they wait their chance at the polls, or in another litigation, to secure a legal recognition for their own aims. The RRP, on the other hand, simply disregarded laws which they did not approve. It did not even consider it worth the effort involved to repeal them. If we pick and choose declaring this judgement invalid, that statute void, this sentence excessive, that sentence void, we shall be doing exactly the same thing we most condemn in them. This alone, I consider, is the course that will insure the triumph of conceptions of law and government in which we believe and for this we must resist the strong public pressure for punishing the grudge-informers."

Second M.P.: "I arrive at the same conclusion as my colleague but by an exactly different route. To me, it seems absurd to call the RRP regime a lawful government. A legal system does not exist simply because a constitution or code are left on the shelf unrepealed and policemen with uniforms continue to patrol the streets. A legal system presupposes laws that are known, or can be known, by those subject to them."

"It presupposes equality under the law, equal protection of the laws, uniformity of action and that like cases will be treated alike. It presupposes the absence of lawless power interfering with the administration of justice whenever it does not function according to the whims of those in authority. All these presuppositions have nothing to do with ideology but instead come into the very conception of an order of law. In my opinion law in the ordinary sense ceased to exist under the RRP regime. Instead of a government of laws we had a war of all against all. The acts of the grudge-informers were just one phase of that war. For us to condemn these acts as criminal would involve as much incongenity as if we were to attempt to apply juristic conceptions to the struggle for existence that goes on in the jungle or beneath the surface of the Sea. We must put this whole dark, lawless chapter of our history behind us. If we stir among its hatreds, we shall bring upon ourselves something of its evil spirit and risk infection from its miasmas. Let us do nothing about the grudge-informers. What they did was neither lawful nor contrary to law, for they lived, not under a regime of law, but under one of anarchy and terror."

Third N.P.: "I have a profound suspicion of any kind of reasoning that proceeds on an 'either - or' alternative. Neither the whole RRP regime was out ^{of} the realm of law nor are its doings entitled to full credence as acts of a lawful government. I, therefore, disagree with the extreme assumptions on which the arguments of my two brother N.P.'s are based. Both arrive at a conclusion that is ethically and politically impossible. We did not have during RRP regime 'a war against all'. Much of the normal human life went on, marriages were contracted, wills were made, goods were sold. Usual dislocations, e.g. automobile accidents, bankruptcies, unwitnessed wills etc were there. Much of this normal life as well as dislocations were unaffected by the RRP regime and ideology. The legal questions which arose in this area were handled by the Courts much in the same way as they had been formerly and as they are being handled to-day. If we were to declare everything that happened under the RRP regime without legal basis it would invite intolerable chaos."

"On the other hand, we cannot certainly say that murders committed in the streets by RRP ^{hordes} acting under orders from the top were lawful because the RRP had won the elections and achieved control of the government. We must, therefore in this situation, as in most human affairs, discriminate. Where the RRP philosophy intruded itself and perverted the administration of justice from its normal aims and uses, there we must interfere. Among the perversions of justice I would count, for example, the case of the man whose wife developed illicit relations with another man while her husband was posted by the regime on active duty on the borders and who informed against him for what was an offence against a secret statute known to few viz. of expressing doubt about the leadership of RRP regime and abhorrence about its acts expressed by him in the strict privacy of the bedroom. The husband was thereupon sentenced to death. This informer was a murderer under the criminal code which was in effect under the RRP regime and which the regime had not repealed. She secured the death of one who stood in the way of her illicit passions and utilized the Courts, which had become instruments in the hands the ruthless regime for her murderous intent. There are other cases that are equally clear. I admit that there are also some that are less clear e.g. when some persons to curry favour with the regime reported everything to the higher-ups that appeared suspect. I do not know how such cases should be handled, and make no recommendation with regard to them. But the fact that such troublesome cases exist should not deter us from acting at once in cases that are clear of which there are far too many."

Fourth M.P.: "Like my colleague I too distrust 'either - or' reasoning but I think we need to reflect more than he has. His proposal to pick and choose among the acts of the deposed regime is thoroughly objectionable. It is exactly what the RRP regime did. We like this law, so let us enforce it. We do not like the other law, therefore it never was law at all. This executive act we disapprove, let it be deemed a nullity but not the other which we do not disapprove."

If we proceed this way we take the same unprincipled attitude as the RRP regime, now supplanted, took towards the laws and acts of the government. We shall have chaos, with every judge and every prosecuting attorney a law unto himself. Instead of ending the abuses of the RRP regime, my colleague's proposal would perpetuate them. There is one way of dealing with this problem that is compatible with our philosophy of law and government and that is to deal with it by duly enacted law viz. by a special statute directed towards it. Let us study the whole problem of grudge-informers, collect all relevant facts, and draft a comprehensive statute dealing with it. We shall not then be twisting old laws for purposes for which they were never intended. We shall thus provide penalties appropriate to the offences and not treat every informer as a murderer. I admit we will encounter a highly difficult problem in drafting such a law but that should not deter us from adopting the only course that will lead us out of a condition of lawless, personal rule."

Fifth M.P.: "I find a whole lot of irony in the last proposal. It speaks of putting a definite end to the abuses of the RRP regime, yet it proposes to do this by resorting to one of the most hated device of that regime, ex post facto criminal statute. My colleague fears the confusion that will result if we attempt without a statute to undo and redress 'wrong' acts of the departed order, while we uphold and enforce its 'right' acts. My colleague implies that the judicial sentence imposed on the husband against whom his loose charactered wife reported was so utterly disproportionate as to be clearly wrong. But we must remember that at that time the underground movement for the overthrow of the RRP regime was mounting in intensity and attempts were being made to dislodge the regime by any means. From their point of view that regime had a real problem, and the only objection we can make to their solution of it (other than the fact that we did not want them to solve it) was that they acted with somewhat more rigour than the occasion seems to demand. Will he deny the existence of any need for law and order under the RRP regime? I, therefore, say on the basis of very respectable authorities that the main purpose of criminal law is to give an

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - AUG. 1982

L 420

BUSINESS ASSOCIATIONS

TIME: THREE hours (plus 15 minutes for reading the questions).
ANSWER: FOUR questions (Two from each section).

SECTION A

- (a) What is the purpose of the memorandum of association?
- (b) Papa Pia and Mama Mia were the incorporators of a company known as Chongololo Co. Ltd; and they held equal shares. The share capital of the company, which was all issued, was K8,000 divided into 8,000 shares of K1 each. Papa Pia paid fully for his 4,000 shares but Mama Mia only paid K2,000 for her 4,000 shares.

Chongololo Co. Ltd operated successfully during its 10 years of business but thereafter two things happened: first, Papa Pia died in a plane crash and, secondly, there was a world-wide economic recession which affected operations of most companies and, in particular, caused Chongololo Co. Ltd to sustain heavy losses. Undaunted by the above events Mama Mia continued to run Chongololo Co. Ltd single-handedly for 10 months, hoping the situation would improve. But creditors were not impressed and so they went ahead and petitioned for the company's liquidation.

The company called upon Mama Mia to contribute K2,000 but the total amount owing to creditors was K10,000. One of the creditors, Kabanki, who was owed K3,000 decided to sue Mama Mia to recover his money. Examine whether it is feasible to maintain such an action.

2. (a) "Any company that is formed under the Companies Act has distinctive tripartite form: it has shareholders, the board of directors, and officers-who are agents of the board." Explain the legal theory of corporate control using this model.

(b) Katyoka is the Managing Director of ZADCO, which owns 99% shares in ZEDCO and is also the beneficial owner of 1% shares which are held by nominee shareholders. In addition, Katyoka is also the Chairman of the board of directors of ZEDCO.

On 10th June, 1982, Katyoka, without consulting ZEDCO board of directors, wrote a letter to Kwendo - who had been working as General Manager for ZEDCO for the past 8 years - advising him of his immediate dismissal for incompetence.

Prior to the letter of dismissal, Kwendo had always been receiving instructions from Katyoka and had always executed those instructions to the letter. The letter of dismissal has proved a bitter pill to swallow. Hence, Kwendo now questions the competence of Katyoka to dismiss him and he has come to you for legal advice. What is your advice?

(a) There is no statutory requirement for directors in companies formed under the Zambian Companies Act, Cap. 686. Discuss.

(b) Discuss critically the director's duty to act bona fide in the interests of the company with reference to nominee shareholders.

SECTION B

- (a) What is the Morrison theory of arm's length control?
- (b) INDECO is a company wholly-owned by the Government. It was formed under the Companies Act, Cap. 686, for the purpose of implementing the government's industrial policy. During the 1968 Economic Reforms INDECO was charged with the responsibility of negotiating government take-over of 26 privately-owned companies and thereafter to hold shares which the government was to acquire in those companies. The companies to be taken-over ranged from retail shops to transport and manufacturing undertakings.

As a result of the take-overs the then Chairman of INDECO realised that there was need to rationalise the company's operations to ensure maximum control. Two proposals were accordingly put before him as follows:-

- (i) to form sub-holding companies to be responsible for retail shops, transport and manufacturing sectors; or
- (ii) to establish departments or divisions within INDECO - and these departments or divisions were to be responsible for various sectors, such as retail shops, transport and manufacturing.

If you were the Managing Director for INDECO, what proposition would you accept? Give reasons for your choice.

5. (a) How does one become a member of a co-operative society?
- (b) Explain the concept of democratic control in a co-operative society.
6. (a) Discuss the rules which help to determine whether or not partnership exists.
- (b) Chiwasha & Co. is a partnership composed of Mr. Banda, an adult, and Master Phiri, an infant. The partnership is engaged in selling a certain Eastern Province delicacy called Mbeba. This partnership arose out of an oral agreement between Mr. Banda and Master Phiri; and so far no formal deed of partnership setting out conditions and terms has been executed.

However, notwithstanding that most of the partnership work (especially digging and preparing mbeba) is done by Master Phiri, the profits are shared as follows:-

Mr. Banda	60%
Master Phiri	40%

Master Phiri now wishes to pull out of the partnership and also wishes to be advised on his share of capital. Advise Master Phiri.

END OF EXAMINATION.

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - AUG. 1982

L 430

INTERNATIONAL LAW

TIME: THREE hours (plus 15 minutes to read the examination paper).

ANSWER: FOUR questions, picking at least ONE from Section B.

SECTION A

1. In 1980, UNZA students decided to commemorate the Soweto uprising by staging a peaceful demonstration at the United States Embassy, to protest against that country's close ties with apartheid South Africa. Unfortunately, the demonstration became violent and a car leaving the embassy at the time was badly smashed, and its passenger, an official of the embassy, was injured. The students then passed through town, where stones were thrown at a shop owned by Bonzo, an American citizen. Apart from damage to the shop, Bonzo's daughter was badly injured. You have been asked to represent Zambia before the International Court of Justice. Analyse the issues that are likely to come before the Court.

Write an opinion on behalf of the Zambian government on the relationship between the EEZ concept /Exclusive Economic Zone/ and the concept of contiguous zone, with particular reference to the interests of Zambia as a landlocked country.

Treaties and the General Assembly are competing instruments of international legislation. State the manner in which they each perform this function indicating how they may be complementary to each other in performing this function.

4. State A has had a strife in its territory for some time. Lately, leaders of a particular group calling itself Limbo have claimed to have control of a considerable part of the territory, and that they have support of the rest of the population of the country. This group has started making laws for the part of the country under its control, and have assumed control over businesses previously controlled by the legitimate government in the area. It is claiming title to all property at home and abroad belonging to these corporations. How does International Law deal with this situation?

SECTION B

5. The International Court of Justice is the only permanent judicial body for the settlement of disputes between members of the International Community. Write an appraisal of the Court's statute viz-a-vis its ability to carry out this function.
6. Lack of enforcement machinery for breach of international law is a drawback to its effectiveness. Analyse the United Nation's Security Council and the General Assembly's powers in this respect.

END OF EXAMINATION.

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - AUG. 1982

L 440

CONFLICT OF LAWS

TIME: THREE hours (plus 15 minutes to read the question paper)
ANSWER: FOUR questions.

1. Muhamad is a Somali national who entered Zambia in 1977 at the peak of illegal emerald mining in Ndola rural. At the time he came to Zambia he had a valid Somali passport but he did not present himself to Zambian Custom Officials for necessary papers. Instead he entered the country through a bush path which leads to a village in Nakonde on the border with Tanzania.

He stayed in Ndola rural and did not arouse suspicion of the Ministry of Home Affairs Officials. Mohamad got married to a local girl and had two children by her. He even started a transport business and vowed never to go back to Somalia.

In 1981 he was caught along with other foreign nationals in the operation clean-up by the police following a public complaint that Ndola rural was 'flooded' with foreigners without any valid papers at all.

Mohamad told the authorities that he cannot be deported because he has established himself in the country with his family and business which was active in promoting Operative Food Programme by transporting agricultural produce to the markets.

He was deported. Mohamad, however, decided to settle in Nigeria where he had a small business. He died in a plane crash while flying to Nigeria by Air Tanzania.

Question 1 continued.....

Consider the following issues:-

- (a) Did Mohamad acquire domicile of choice in Zambia?
- (b) At the time of his death, where was he domiciled?

2. Y is a young Zambian student studying in England for A levels on his father's sponsorship. The Government of Zambia has determined that Zambians studying for A levels in London need £274 monthly allowance and therefore parents and organizations sending people there should not remit more than £274 per month. This recent law is the result of an amendment to the Exchange Control Act.

Y, who until then was staying within walking distance of his school decides to move into a cheaper apartment outside London. The place is 20 miles away from school and he experiences transport problems.

Y then writes to his father who sends him £1000 to buy a second hand car. This money is deposited in a London Bank. The London Bank refuses to release this money to Y because it is aware of the amendment to Zambian Exchange Control Act prohibiting remitting more than £274 per month.

Y decides to take the London Bank to **an English** court to secure release of his money.

Advise the parties.

3. Bwalya and Mundia got married in Zambia in 1926 their country of domicile. In 1930 Bwalya, the husband went to Malawi to take up a new job, leaving Mundia, his wife temporarily at home in Lusaka. Mundia committed adultery with Bafidibanya, a neighbour while the husband was away in Malawi.

Owing to pressure of work, Bwalya could not come home to obtain a divorce. He obtained it instead in Malawi.

Mundia subsequently married Mario, a domiciled Angolan and gave birth to Santos, a son. This marriage was celebrated in Lusaka.

In 1935, Mundia's father died leaving all his Zambian realty and personalty to Mundia for life and thereafter absolutely to her children. Mundia has now died. Can Santos succeed under his grandfather's will?

4. X and Y are domiciled Zambians studying in England. Y is a male aged 22 years and X the female is 20 years old.

The two met at a party in London at the home of another Zambian. They fell in love and got engaged a month later.

Y's father is a traditionalist and wanted his son to marry under Zambian customary law. Y and X wanted to get married immediately but they did not have enough money to fly home for the ceremony.

Instead the marriage ceremony took place in London in the Zambian High Commission premises. They complied with all the Zambian customary requirements. There was however, no church service as required in England.

Is the marriage between X and Y valid for the purposes of legitimacy of their children?

5. Mwansa & Sons Ltd. is an importer of Pharmaceutical products and runs a chain of chemists throughout the country. They have a contract with Smith Inc . a New York manufacturer of the said products.

Two months ago, Mwansa and Sons Ltd. received a regular consignment of drugs. Among them was "Pepto-Bismol" a well known remedy for digestive upsets from Smith Inc .

The contract for this sale like any other contained a clause that the "property should pass in New York and that the contract shall be governed by the law of New York State."

D, a Lusaka resident bought "Pepto-Bismol" from Mwansa and Sons Chemist in Cairo Road. He took two tablespoons of it as prescribed by the manufacturer for his digestive upset. D suffered severe gastritis (inflammation of the stomach) as a result. He stayed in the University Teaching Hospital for three months. Subsequently it was proved that a wrong formula was used by the manufacturer.

Advise D as to his legal rights.

6. X is a shareholder in a public company. Y is one of the directors of the said company incorporated and carrying on business in Country A.

In an action in the High Court of Country A judgment was given in favour of X against Y who, under the law of Country A, is personally liable to the members for any loss resulting from false statements in the company's prospectus.

By the law of Country A, such actions are classified as final. Y did not appear at the trial and he did not appeal against the decision of the High Court of Country A. He has since then become resident in Zambia.

Advise X whether he can succeed in an action to enforce his judgment in Zambia.

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - AUG. 1982

L 450

LEGAL ASPECTS OF INTERNATIONAL TRADE AND INVESTMENTS

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

INSTRUCTIONS:

1. Candidates may bring into the examination room GATT's Basic Instruments and Documents.
 2. Answer FOUR (4) questions.
-

1. Ayen, BOZ and Cleo are contracting parties to the General Agreement on Tariffs and Trade (GATT). Ayen and BOZ had a treaty between them before they became GATT members. Article V of the treaty provides:

"Each of the Contracting Parties binds itself unconditionally to impose no higher or other duties or conditions and no prohibition on the importation of any article, the growth, produce or manufacture, of the territories, of the other than are or shall be imposed on the importation of any like article, the growth, produce or manufacture of any other foreign country." And Article VII of the treaty reads:

"With respect to the amount and collection of duties on imports and exports of every kind, each of the Contracting Parties binds itself to give the nationals, vessels and goods of the other the advantage of every favour, privilege or immunity which it shall have accorded to the nationals, vessels and goods of a third state, and regardless of whether such favoured state shall have been accorded such treatment gratuitously or in return for reciprocal compensatory treatment."

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - AUG. 1982

L 450

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Question 1 continued....

Abu Ltd. incorporated in Ayen and doing business in Ayen.

imported bicycle spares from BOZ in July 1980.

The customs department of Ayen, acting under the authority of the Customs and Excise Act which was passed after the treaty and GATT commitments, assessed duties on the merchandise at 45% ad valorem, and Abu Ltd. paid them. Abu Ltd later discovered that bicycle spares imported from Cleo to Ayen are free of any duties.

They bring this action against the Attorney-General of Ayen to recover the money they paid as duties in July 1980 in respect of the bicycle spares they imported from BOZ. Their argument is that the imposition of the duties was illegal.

(i) What results and why?

(ii) Would your answer be different if:

(a) Cleo is a former colony of Ayen?

(b) all the states involved here are contracting parties to the ACP - EEC Conventions (the Lome Conventions)?

2. "The International Monetary Fund is the most powerful supranational government in the world today. The resources it controls and its power to interfere in the internal affairs of borrowing nations give it the authority which United Nations advocates can only dream. This tremendous power does not inhere in the corps of economists who staff the IMF, nor even in the Board of Governors appointed by its member nations. The IMF must be seen as the keystone of a total system."

Cheryl Payer, The Debt Trap: The IMF and the Third World, (London, 1974) at p. IX.

Discuss.

3. "The special problems of countries highly dependent on exports of agricultural products in primary, semi-processed and processed forms underlined the urgent need for deliberate measures to be taken by the international community to secure equitable and remunerative returns for such products..."

Commonwealth Heads of Government Communique, Ottawa, Canada, August 1973, paragraph 16.

- (i) What are the special problems which these countries experience?
- (ii) With the aid of authorities and/or suitable examples analyse the effectiveness of the measures which have been taken by the international community to solve these problems.
4. The Republic of A is a newly independent land-locked African state, a member of the O.A.U., the Non-Aligned Movement and the U.N. There are heavy private foreign investments in A in the mining, manufacturing and agricultural (plantations) sectors of its economy. These investments are owned principally by nationals of B, its former colonial power.

In the state of transit, W, there are also heavy private foreign investments by the nationals of B, in similar sectors of W's economy. In fact, some of its enterprises operating in A have their regional offices or headquarters in W.

Question 4 continued.....

The government of A has taken over all the agricultural, manufacturing and mining businesses in the country. The aliens whose interests are adversely affected by this take-over are all nationals of B. The government of A has further:

- (i) distributed all the land in the plantations to the landless as part of its agrarian reform;
- (ii) distributed some of the manufacturing businesses to its nationals to run as private concerns; and
- (iii) converted the rest (including the mines) into public/state enterprises to be run by the National Development Corporation, a government owned and controlled corporation.

The formula for compensation which the government of A has published is "Reasonable compensation determined in accordance with the laws, regulations and circumstances of A, and taking into account excessive profits which have been repatriated by the affected enterprises."

The government of B has written a letter of complaint to the government of A saying that the take-over is illegal under international law. The letter also proposes an adjudication before an international tribunal.

You have been asked by the Attorney-General of A to advise the government as to the course of action it should take. What are the options available to the government of A?

5. "A persistent theme in Zambian development has been the need to generate sustainable growth in alternative sectors to diversify the economy away from dominance of copper, but to date little success has been achieved in developing agriculture and manufacturing...." World Bank, Accelerated Development in Sub-Saharan Africa: An Agenda for Action, (Washington D.C.) 1981, at p. 29.

Examine how effectively the system of incentives under the Industrial Development Act, 1977, has dealt with these problems.

6. In September 1982 the Council of Ministers of the ACP-EEC will meet in Salisbury, Zimbabwe. The meeting is intended to review, among other things, the provisions of the ACP-EEC Convention (Lome II) in respect of two problems, namely:
- (a) the system of stabilization of export earnings (Stabex), and
 - (b) the project and programme aid for mineral products.

You are on the delegation representing Zambia. Suggest proposals to improve the working of the two schemes.

7. "The distinction between majority and minority participation in an industry by government may, in certain circumstances, be rather artificial, as equity alone, even when accompanied by joint management, cannot lead to effective control."

Discuss.

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - MARCH 1982

S 925

CRIMINOLOGY

Instructions

1. TIME: THREE hours.
 2. QUESTIONS: Answer SIX of the questions below.
 3. WEIGHTINING: All questions carry equal marks.
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1. Contrast the commonly used definition of crime with the definition of crime put forward by the labelling approach, the Marxian criminology, and the critical criminology.
 2. Elaborate on the filtering process.
 3. What were some of the common features of the theory of anomie and the different theories of subculture and what were their respective weaknesses in the light of some of the more recent theories?
 4. To what extent does the critical criminology combine the Marxian and the labelling theories, and how does it analyze the causes of crime.
 5. Elaborate on Odera Oruka's Punishment and Terrorism in Africa.
 6. Give a brief account of the history and sociology of prisons.
 7. Which "pros" and "cons" in relation to imprisonment can you enumerate and discuss?
 8. Describe the social situation of ex-prisoners.
 9. Elaborate on the crime of the powerful.
 10. In the light of the theories covered in the course which causes of crime can we identify in Zambia?
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END OF EXAMINATION.